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

VOLUME II

PAGES 1183 TO 2160

APRIL 5 TO 16, 1935

GENERAL INDEX IN VOLUME IV

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

119782

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, APRIL 5, 1935

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

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

Present: Senators Harrison (chairman), King, George, Clark, Black, Gerry, Keyes, and Capper.

The CHAIRMAN. The committee will be in order.

STATEMENT OF MRS. ANNA DICKIE OLESEN, STATE COMPLIANCE DIRECTOR, N. R. A., STATE OF MINNESOTA

(The witness was duly sworn by the chairman and testified as follows:)

The CHAIRMAN. You are the State compliance director for the State of Minnesota?

Mrs. OLESEN. Yes, sir.

The CHAIRMAN. There was a matter testified to here the other day with reference to Mr. Tracy's testimony. I suppose that is what you are here about?

Mrs. OLESEN. Yes, sir.

The CHAIRMAN. You may proceed.

Senator KING. Who asked you to come?

Mrs. OLESEN. On the day of the hearing, Mr. Rosenblatt telephoned me and told me that this testimony had come in and that I should come to Washington at once with the files.

Senator KING. Who is Mr. Rosenblatt?

Mrs. OLESEN. He is connected with the N. R. A.

The CHAIRMAN. I think it was suggested in connection with the testimony of Mr. Tracy or the other gentleman that you probably ought to appear before the committee.

Mrs. OLESEN. Yes, Senator. And Senator Shipstead asked, I think, that I might appear.

I want to thank you gentlemen for giving us a chance to answer these charges. I know you are busy men and it is too bad that we have to take your time, but it is important for N. R. A. and for Minnesota and for our office that we give you a picture of the work and clear the charges against us.

In the first place, anyone can file a complaint in our office. The workings of the State N. R. A. compliance division in Minnesota and

all of the other States is compliance and not enforcement. We must keep that clearly in mind, that these offices are compliance offices, and our work must be done through persuasion and as conciliator.

We have absolutely no power or authority save as conciliators to act as a board of review.

All matters that come to our offices are confidential, absolutely, so far as allowing the name of the respondent to be divulged, because, for instance, one man might be jealous of another in trade or business and file a complaint against him, and it might not be a correct complaint, and we are not allowed to divulge to the public the name of any respondent. Perhaps after a complaint had been proven and the facts had been proven in a case and a man had been considered a violator, then the name can be given out, but even though we do not divulge the names of these respondents.

Senator KING. You determine whether he is a violator, do you?

Mrs. OLESEN. Our office determines if there is a violation, and if we can adjust that complaint, well and good. If we cannot, the complaint must be sent to Washington, now to the regional office, which is Omaha in our section.

The N. R. A. machinery is shot through with checks and balances, because the checks and balances are safeguards of American liberty, and I have worked in that office as executive director for a year, and every day comes to me more how it is all protected from every angle, especially the people who are complained against, the respondents, as we call them.

Our office then acts as a board of review and we are busy with it. We have cleared about 3,000 claims last year. That means a vast contact with human problems. It is always of a controversial nature, consequently these checks and balances must be ever present, and to outline the work—I want to outline the work in just a word, and I shall not detain you long.

Our office is managed largely through field letters from the Washington offices. All of our staff must read those field letters and study them and be acquainted with their every provision. The nature of the work demands guidance, so we all instinctively follow Washington's direction, because they have a greater grasp on the situation, and a greater grasp on the work.

I am going to outline to you the safeguards, the checks and balances, under which we work for the protection of the respondent.

Senator KING. You mentioned field letters which all of you must read and follow, because, as you state, Washington has a greater grasp of the problems than your people at home who wrote those field letters?

Mrs. OLESEN. That, sir, would be a matter for Washington N. R. A. to determine.

Senator KING. Who wrote them? You received them. Whose signature was appended to them?

Mrs. OLESEN. There was no signature appended to them.

Senator KING. No signatures?

Mrs. OLESEN. No, sir. They are field letters from N. R. A. I want to state this, sir. Those field letters do not say what we shall do in individual cases, but it is simply a general outline of the work, which I am now going to give you.

Senator KING. Have you any of them with you?

Mrs. OLESEN. I have not, sir; but we can get them.

For instance, we cannot remove a "blue eagle". We can in the case of disputes of wages and hours or in a restaurant, but we have not removed a "blue eagle" from a restaurant in Minnesota, and even if we did so that would be subject to review by N. R. A. in Washington.

The next thing, we can never cancel a contract. We have absolutely no power over contracts. We cannot assess industry for code assessments, that is, if a complaint comes to us that a certain firm has not paid a code assessment, that must also be sent to Washington.

We cannot compromise on wages, once the hours have been established. For instance, if a wage claim is filed against a firm and that firm says, "We admit the claim but we cannot pay the wage, but we can pay a compromise," then we must send that to Washington, now to the regional office in Omaha.

If we have a case which we cannot settle and we know there is a violation, that case may be sent to the district attorney, but now the State director has not power to do that. The regional office in Omaha can send cases to the district attorney and not our office.

We cannot issue rulings, exemptions, or interpretations of codes. We are under constant supervision. Many codes do not come under our jurisdiction. All of these authorities are set up to handle wage and hours provisions and fair trade practices.

We are under constant supervision because all over America today people are writing letters to Washington, and never before as much as they are now, and if we settle a case and both are satisfied, it ends there. If one party is not satisfied, immediately they write to Washington and Washington questions us constantly as to the way we settle our claims.

We must accept all complaints that come to our office. We have no authority to do anything but accept those claims, and if we cannot clear a claim satisfactorily to both sides, that claim must be sent to Omaha. It used to be Washington, but now it is changed to Omaha.

We have a pride in clearing our claims as fast as possible and want to do our utmost to settle the claims, so that we need not put the pressure on the regional office.

We are not interested, gentlemen of the Senate, in any contract whatsoever. We are only interested in code compliance. Honor and integrity must be the watchword, because if you do not have honor and integrity in all of your dealings of that nature, when it is so controversial, of course, it weakens the office.

The Perkins-Tracy case is only one of many cases that have come to our office. As I said, we cleared over 3,000 cases last year. This case of Perkins-Tracy involved fair trade practices and was brought by the code authority. I might say that our office has jurisdiction in hour and wage violations, and the code authorities have in most part the jurisdiction over fair trade practice violations, but when they find a violation which they cannot adjust, they bring it then to the Government office and state the facts to the State office. And whenever we get a case from the code authority, we know it is a difficult case, because the code authority has failed to bring about compliance or agreement, and we know that our job is going to be that much harder.

Senator KING. Is the code authority located in your State?

Mrs. OLESEN. Yes, sir; the code authority who brought this case was of the eleventh zone federation.

Senator KING. Who was the code authority?

Mrs. OLESEN. Mr. Herman Roe is his name. I do not know just what the eleventh zone federation comprises as to States, but I know that Minnesota is in that zone.

The CHAIRMAN. I think that the question at issue, from the testimony given was that probably you, in your capacity, had taken action in writing a letter assessing a certain penalty, before the authorities should have taken action.

Mrs. OLESEN. I will explain that, Senator, as I come to it.

Senator KING. And also that you sat in, in the determination of a matter as to which you had no jurisdiction whatever.

Mrs. OLESEN. I am coming to that.

Senator CLARK. Furthermore, that you requested the State authorities to cancel the contract and not make the award.

Mrs. OLESEN. I am coming to that. In due time we will arrive at it all.

The cases that are brought by the code authorities are the most difficult cases we have, as I said, because they have failed to bring about compliance and then it is our job. If we fail, then we send it on to the next higher authority. What I want you to get clearly is the picture that we are a compliance office and not an enforcement office, and that we must win by persuasion, conciliation, and education.

Mr. Roe of the eleventh zone federation code authority came to me to talk about a case. He said that they had a case now which was agitating them very much under the Graphic Arts Code, and when he said "graphic arts", I knew that we would have a very difficult case before us, because that code is hard to determine just sometimes what are the provisions.

The whole matter of the State printing or this printing was new to me, and the first thing I wanted to do was to find the background of the case, what it was all about. Mr. Roe filed a complaint with our office.

Now, gentlemen, I would have you know that we must take these cases. It does not matter who files them. When filed, they are our job and we must take them and do the best we can with them.

We do not always know the background.

I do not want to be facetious, but one day a woman came and brought a complaint to our office. We were putting it through the mill, going to call up the respondent and ask him to come to the office and see if we could make an adjustment, and a man came in very much agitated and he said, "Don't do anything about that case. I understand there is a complaint filed here. I do not work over hours," but he said, "This lady is a widow and likes my company, and I tell her that I am working nights so that I don't have to go out and see my friend." [Laughter.]

There was a case. We had to take it up. The man swore that he was not working overtime.

So, no matter what the case, we must take it at our office, and that office is just shot through with these human problems.

So we accepted the file. Mr. Roe was very insistent that we begin action. Every complainant wants action immediately. Sometimes they write in and say, "We sent in a complaint 3 days ago, and why

haven't we received the wages we should have been getting?" It has to go through the mill, and we have to go through it carefully, because there is so much at issue.

Now, I am coming to the matter of the State printing. I did not know the background of State printing. The first thing that I had to ascertain was, was Federal money involved? There again, whenever Federal money is involved, we have no right to handle the case. We must get what facts we can and send that to the Government contracts branch in Washington.

The first thing I had to ascertain was, was Federal Government money involved? If Federal Government money was involved in the printing or whatever contract it is—it does not matter under what code—we must send that to Washington.

So the first thing I did was to call Mr. Gene Spielman, who is the State printer for our State. We are in constant telephone conversation between the State departments—our office, and between many Government agencies—and that is because there are many matters to clean up which can be cleared up quickly and speedily by telephone, so we maintain this telephone communication between the various offices.

I called Mr. Spielman and I said, "There has been a complaint filed here under the Graphic Arts Code, and I want to know if these cases or this printing that is being done involves any Federal money. Are you doing any printing that involves Federal money?" He said, "No; absolutely not; it was all State funds." And therefore the Federal Government could not be interested from that standpoint.

I then thought, "What shall I do to get some more light on this matter?" And I called Mr. Ericson, I think, who is the State purchasing agent. We had had some other complaints in regard to fair-trade practices in regard to people complaining on State matters, where awards and contracts to people were given and contracts made. The rivalry is very keen.

I asked him what was going to be his policy regarding State contracts and the N. R. A.; were they going to award contracts to people whether they were in violation of the code or not? And he said that all contracts would have to be awarded on the bids, of course, and given to the lowest responsible bidder; that that was the State law and upon that they were going to stand.

That was a matter of policy that I wished to know, what the policy of the State would be in any case that might come before the State authorities who awarded the contracts.

I thought no more of the matter, but I immediately saw that that would be the policy, that they would give that work to the lowest responsible bidder.

Now, under the Executive Order No. 6646, when Federal money is involved, the purchaser, the one awarding the contract, has the bidder sign a compliance certificate, and that is given out to the man who signs the compliance certificate who is the lowest bidder, regardless of whether he has any violation. That is, it is not up to the man who actually accepts the contract to find out whether the man that is getting the contract is in violation or not. That is N. R. A. business.

And they award the contract on the compliance certificate, and then look into it later, and I think that is a very good system, because if you did not do that, you would hold up these awards too long.

So that was the policy that the State of Minnesota adopted. They are in sympathy with the N. R. A., certainly, but they were awarding their contracts to the lowest responsible bidder.

At that time that I talked to Mr. Ericson, I did not discuss with him any individual firm or corporation or business man who was in violation. I was asking for policy.

Shortly after, there appeared in one of the St. Paul papers an article stating that I had protested the Perkins-Tracy bid. I was much agitated over that because, first of all, all of the charges against anybody in our office must be confidential, because you do not know whether they are in violation or not.

Mr. Smith Scoggin, who testified here the other day, and who has worked very well with our office, who is the labor leader, called and told me that this was in the paper. He told it to me yesterday when we had a conference, and I immediately called the paper and said that I had never entered a protest on any bid, that anything that came to our office in the way of a violation was of a confidential nature, and that appeared in the paper. There was a headline in that article which was bad—I cannot just call it to mind now—but there was nothing in the statement which would call for that headline, and I was in no way interested in the contracts. I was only interested in the enforcement or compliance with the codes.

That publicity was unfortunate, but never came from my office, never came from me, and no one was authorized to make any such statements, and it was corrected in the paper when Mr. Smith Scoggin called my attention to it.

Mr. Zwickel, executive assistant in my office, sent a letter which will be in the record—I have the file here—sent a letter to Mr. Spielman telling him that the four companies—there were alleged violations of four companies of which Perkins-Tracy happened to be one. The other three names are given in the file.

Then the next thing was the hearing. You do not know when a new complaint is filed whether a man is in violation or not and therefore you must absolutely keep it of a confidential nature.

The next thing to find out was, was this company in violation or not; so we called a hearing to bring everything to the light of day to find out whether or not they were in violation. Each side had counsel, and Mr. George Tracy employed Mr. Rumble, who is one of the very splendid attorneys of the Northwest and a brilliant man. The code authority employed Mr. Firestone, another very splendid lawyer. They came to our office for the hearings.

Those hearings, of course, are informal. It is not a court, we are simply trying to find the facts in the case.

I forgot to mention one check and balance, which is in N. R. A., which is one of the most splendid things we have, which is the State adjustment board. The State adjustment board is advisory to the State director. That State adjustment board is composed of the gentlemen called by the employer, one by the employee group, and the third man is chosen by the other two, and is an impartial member. In Minnesota we have a splendid adjustment board. Mr. Klapper, who represents industry, is a far-seeing man, a man who has made a success of life. Mr. Cunningham, who has the confidence of the labor and employer group, is vice president of the American Federation of Labor, a man grown gray in the service of labor, and Mr. Jewett, an engineer.

I called that board in order that they might counsel and advise our office, because I knew it was a hard fought case, the code authority on the one side fighting for compliance, and on the other side Perkins-Tracy saying that they had not violated the code.

The great thing was to bring that into the record. We had not sat one day in that case before the State advisory board said, "That case has to be sent to Washington, there is much involved in the way of technicalities, and the code is hard to understand, but we will get it in the record and send it to Washington."

So then the hearings went on, and these hearings will be left for you to read and look over.

Those hearings were held in July. At the end of those hearings the State advisory board wrote a letter to me, giving their findings or advice, which was to send the case immediately to Washington because we wanted wiser heads than our own to look into the whole matter.

The whole time we were trying to protect Perkins-Tracy, protect industry, maintain justice, and we are not interested in contracts. We are interested in a competitive balance between industry so that they can make some money, and that labor can have their profit, too. That is all we are interested in.

Then the file was ready, and the State advisory board gave their decision, findings, and advice to send that file to Washington. Washington went through the file to determine if there were a violation.

I want to, if I may, just go back to one thing. During the hearing, the newspaper men of St. Paul and Minneapolis clamored to come in because they said, "This is such a vital matter that we want to know what is going on." I said, "No; you cannot come into this hearing because it is confidential; we dare not let anyone in because it is confidential, except those involved, until we know if there is a violation." And so insistent were they to come into that hearing, that I wired Washington to ask if they cannot come to the hearing, and Washington wired "No" that they were getting the facts there, and nothing should go to the public until they knew whether there was a violation or not. So I tried to protect the Perkins-Tracy Co. from undue publicity in the matter.

As you read their testimony, gentlemen, you will find in the files no word of a cancelation of a contract by any N. R. A. person, official, adjuster, or by the adjustment board. When this hearing came to our office and before the hearings started, it was never the matter of the cancelation of a contract; it was the matter of finding out whether the Perkins-Tracy Co. had violated the graphic arts or not.

Then that was sent to Washington for a determination, and Washington found a violation and returned the file to us as of January 18, 1935. The finding was that there was a violation at the time the bid was made, which we think was about July 9. The Perkins-Tracy Co. had not used any method of cost finding accepted by the National Code Authority and approved by the Administration—we talked it over yesterday, and he said the same thing. That was the finding of Washington.

Senator CLARK. Was there more than one method of cost accounting set up by the code authority?

Mrs. OLESEN. In Washington?

Senator CLARK. Anywhere.

Mrs. OLESEN. That I cannot answer.

Senator CLARK. The testimony here the other day was that the crux in the case was that under the cost-accounting system arbitrarily set up by the code authority, everyone in the industry was required to arbitrarily charge off 10 percent of the original cost for depreciation, no matter what the actual value of the property was at the particular time, and it was a violation of that that led to the controversy.

Mrs. OLESEN. Then I cannot answer, but there was a cost-accounting system set up at that time.

Senator CLARK. Do you know whether it set up a 10-percent depreciation of the original cost?

Mrs. OLESEN. That, sir, I cannot answer.

Senator CLARK. The statement here by Mr. Tracy was that the only violation of the code as far as setting up the cost accounting was that he insisted on setting up actual depreciation according to the standards prescribed by the United States Bureau of Internal Revenue and they insisted upon setting up this arbitrary and artificial depreciation.

Mrs. OLESEN. That you will find in the file of the testimony. There was a cost-accounting system set up by Washington, but the finding was that he had not used any method of cost finding accepted by the National Code Authority and approved by Washington.

Then that file was sent back to us and we were asked to find out the actual cost of his production. If we could not get that, to have him then submit their present system of cost finding.

That present system of cost finding was sent in a letter to Washington by Mr. Leffert, who attends to those matters for Mr. Tracy. Washington told him after that letter, Washington found them desperately to be in violation at the time the bid was made. There is still a question whether or not they are in violation at the present time. That matter is under consideration in Washington now—as to whether they are in violation at the present time—but under Mr. Leffert's cost-finding system which he sent to Washington, Washington found that they were in violation at the time the bid was made.

The CHAIRMAN. That was prior to March 22, 1935?

Mrs. OLESEN. Yes, sir.

The CHAIRMAN. And then you wrote your letter to them?

Mrs. OLESEN. You mean wrote my letter to the Perkins-Tracy Printing Co.?

The CHAIRMAN. Yes.

Mrs. OLESEN. Yes, sir.

The CHAIRMAN. So your action was taken after Washington?

Mrs. OLESEN. Yes, sir. On that case I checked with Washington because I knew this was a difficult case, and we are jealous of our reputation in Minnesota. I am personally, and I am jealous for the reputation of the office and the N. R. A. and the Administration in general; so when they found that Perkins-Tracy was in violation at the time the bid was made, after Mr. Leffert had sent the cost-finding system to Washington, Washington advised that I might assess the costs of the hearings on the Perkins-Tracy Co. The cost of the hearing, as I remember, was over $700, and Perkins-Tracy—it was figured that Perkins-Tracy's legitimate assessment might be made there for the cost, or a little over $300, as I remember it.

Senator CLARK. Do you know anything in the act that gives the compliance office authority to assess costs?

Mrs. OLESEN. Under that code. It was on advice from Washington, and it is under the Graphic Arts Code.

Senator CLARK. You mean on advice from N. R. A. at Washington?

Mrs. OLESEN. Yes, sir.

Senator CLARK. So that the N. R. A. here assumes authority to ask for costs in the case of hearings?

Mrs. OLESEN. The Graphic Arts Code allows that. We were working under the code.

Senator CLARK. May I ask this: It was stated here the other day that the four largest people in the graphic arts business—the four largest printers, I suppose you would call them—are able, as against all the other printers in Minnesota and North and South Dakota combined, to elect an absolute control of the code authority. Do you know whether or not that is true?

Mrs. OLESEN. I cannot answer that. We are not accountable for the code authorities. They are thrust upon us.

Senator CLARK. I understand that, but I ask you the facts.

Mrs. OLESEN. I don't know; I cannot answer that, but we are not responsible for the code authorities.

Senator CLARK. I know you are not responsible. I ask you for a fact.

Mrs. OLESEN. That I do not know. I cannot answer that question.

Senator CLARK. Is it also true, or do you know, that the Tracy-Perkins Co. actually paid its workmen something like 100 percent more than these four large companies who compose the code authority?

Mrs. OLESEN. We have asked Mr. Perkins-Tracy to submit his wages and hours to us, and we have never gotten them, so I cannot answer that. We have asked for it, but we have never gotten them. The letters in the file will show.

Senator CLARK. He testified to that effect.

Mrs. OLESEN. That may be; I would not doubt that, but we have never been able to get his wages and hours.

Senator KING. There was no complaint about wages?

Mrs. OLESEN. No, sir; they were clear on that. It is a fair-trade-practice case.

I called Mr. Rumble, who was Perkins-Tracy's lawyer, to our office and told him that we had assessed these costs. I presumed he had gotten the letter already. The code authority happened to be in the office also, and when Mr. Perkins-Tracy said, "Who will get this money for the assessment?" I said, "That goes to the code authority to pay for the hearings." He said, "I would not give the code authority a cigar." And, as far as I know, it has not been paid yet.

I have given you the facts as I have them. We spent days trying to find the facts in this case. The file is all in Washington, everything is here open for inspection.

There are some more matters, but I want first, with your permission—the statement was made by Mr. Smith Scoggin, and I deeply am disappointed in that statement—Smith Scoggin knows how we have fought for labor in Minnesota—and he said that we were not enforcing the code in the Graphic Arts Code as to hours and wages among these other printers. I wired our office to, as explicitly as possible, give me the number of cases we had handled under the

Graphic Arts Code. We have collected $3,696 in back wages under the Graphic Arts Code, and this money has gone to 45 employees.

And I want to read to you the telegram sent to Mr. McKnight, special assistant counsel of the N. R. A., Washington, who called on us to find out if Mr. Smith Scoggin's remarks were true that the Minnesota office had not done its best for labor. I wish to read this telegram:

ST. PAUL, MINN., *April 4, 1935.*

A. G. MCKNIGHT,
Special Assistant General Counsel National Recovery Administration, Washington, D. C.:

State Director Anna Dickie Olesen has given this office the fullest cooperation particularly in the matter of the collection of wages due to employees who have been paid less than code wages. Organizer Ray Wentz, of the St. Paul Trades and Labor Assembly, authorizes me to say that he has received 100 percent cooperation from the director.

GEO. W. LAWSON,
Secretary Minnesota State Federation of Labor.

The next comes from the grand old labor leader of Minnesota, Mr. Cunningham, and he says:

MINNEAPOLIS, MINN., *April 4, 1935.*

A. G. MCKNIGHT,
Special Assistant General Counsel National Recovery Administration, Washington, D. C.:

As president of State Association Journeymen Plumbers and Steamfitters, vice president State federation of labor, and organizer of Minneapolis Central Labor Union, I want to endorse Mrs. Anna Dickie Olesen's administration of the State compliance board no complaints from labor throughout the State.

T. E. CUNNINGHAM.

This one is from Mr. J. B. Boscoe, who has to do with printing labor in the printing trades:

MINNEAPOLIS, MINN., *April 4, 1935.*

ALEXANDER MCKNIGHT,
Special Assistant General Counsel N. R. A., Washington, D. C.:

The undersigned, who is president of the Minneapolis Allied Printing Trades Council, and business agent and secretary of both Minneapolis and St. Paul Printing Pressmen and Assistants Union, has had numerous occasions to call upon Anna Dickie Olesen, State national recovery administration compliance director, during her tenure of office in connection with various code compliance matters. I have received the fullest and most satisfactory cooperation. The problems presented on behalf of the printing trades have been weighty and involved and I have always found her to be fair and impartial in connection with all of her endeavors.

J. B. BOSCOE.

I think that answers, perhaps, the charge on the labor side of it.

They accused our office or myself of persecution, intimidation, coercion, and collusion. I deny all of the charges. We persecute nobody, we intimidate nobody, we coerce nobody, and we are not in collusion with anybody.

We are not interested in anybody's contracts anywhere in Minnesota. We are only interested in code compliance to give industry a fair break to get its balance of trade right, and to give labor its fair share of the fruits of its wage, and so that industry works under its fair-trade practices.

Mr. George Tracy is fulfilling his contract. Washington has found him in violation of the code of his industry on the day the bids were let. It is now to find out whether he is in violation yet, but he is fulfilling his contract. He is printing the House Journal and the Senate Journal and he is doing a good job of it as far as I can see.

Senator BLACK. May I ask you a question, of what Washington found him guilty of? I have a letter here and I want to see if this is correct. I have your letter here in which it says that he was fined $300——

Mrs. OLESEN. Not fined; assessment of the cost.

Senator BLACK. Here is what it is for, as I read it in the letter:

While the letter from the Central Accounting Bureau does not give sufficient evidence in the point of the statement made that the cost-finding system being maintained by the Perkins-Tracy Co. conforms to code requirement, the letter does state clearly that the cost-finding system, now operating by the Perkins-Tracy Printing Co., is not in accord with the principles and methods of cost finding declared by the United Typothetae of America and effective under the code.

What is the United Typothetae of America?

Mrs. OLESEN. It is an organization of printing employers.

Senator BLACK (reading):

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 the standard rates based on original cost, manufactured sales price of the equipment when new.

Senator CLARK. That is like paying for a dead horse, dead horses.

Senator BLACK (continuing reading):

And such depreciation has to be included in the cost even though the asset has been fully depreciated.

In other words, it is true, is it not, that he has been assessed $305 because he refused to follow a rule which required him to put in as a part of the cost a value which has already been fully depreciated?

Mrs. OLESEN. The matter of what the code says there is not under my jurisdiction.

Senator BLACK. I am not talking about that. But that is what he is assessed for, is it not?

Mrs. OLESEN. He is assessed, sir, but he has not paid it. You know, Shakespeare says——

Senator BLACK (interposing). Do you think it is fair to the public that has to buy the goods—if the gentleman there alongside wants to testify, I suggest that he be sworn.

Senator KING. Yes; I think that is a good idea.

Senator BLACK. That is perfectly all right for me if it is better for him to answer. I have no objection, but I simply want to get at the facts. Do you think it is fair personally to the consumer and to the country to let a man take a machine that we will say will cost him $3,000, that he has been charging off on for 10 years and has charged all of the $3,000 off before depreciation, and still require him by law or by regulation to put in as a part of the cost a continued depreciation after he has fully absorbed every dollar of depreciation in past years? Do you believe that is right?

Mrs. OLESEN. Well, Senator, I will have to give that some thought.

Senator BLACK. Let us see if you will. Let us take for instance a typesetting machine. It costs $3,000. The theory is that it depreciates each year, as it does, and therefore that when you begin to estimate the cost, you should permit a charge-off for the value of that depreciation. Now, we have it going on for a period of years and they charge off the $3,000, and then we will say that it goes on 2 more years and they charge off $600 more.

So by that time they have charged off $3,600. Do you think it right that that should continue, that they should continue to charge off until perhaps they reach $5,000 depreciation for a machine that only cost $3,000 originally?

Mrs. OLESEN. Well, that is a code matter.

Senator BLACK. I am not talking about the code. I am talking about a simple matter of justice. Do you believe in any such principle?

Mrs. OLESEN. I do not think it is a fair principle; no, sir.

Senator BLACK. It hardly seems honest; does it?

Mrs. OLESEN. But there may be other factors in there, too.

Senator BLACK. What is the difference between that and putting down $1,000 as a cost where there is no cost at all? Suppose they put $1,000 there for a salary when they did not pay any salary, would that be honest?

Mrs. OLESEN. No, sir.

Senator BLACK. Is it honest to put down to depreciation $5,000 for the cost of a machine that only cost $3,000?

Senator CLARK. And then declare a man to be an outlaw if he does not do it.

Senator BLACK. And then assess him $300 for disregarding the common laws and decency and morals and honesty.

Mrs. OLESEN. On that I am not prepared to answer your question. That is a question——

Senator BLACK (interrupting). You certainly have some ideas of fairness?

Mrs. OLESEN. Absolutely.

Senator BLACK. Do you believe it is fair to the country and to the consumer to require a man to charge off more than the thing costs and make him fix a price on that basis?

Mrs. OLESEN. It seems the question here is what kind——

Senator BLACK (interrupting). That is the question I am asking.

Mrs. OLESEN (continuing). What kind of a yardstick did he measure his costs by?

Senator BLACK. He has been assessed $305 for failing to comply with a code provision which requires him to continue to charge off and absorb that as a part of his cost after it has already been charged off. Do you believe that is fair? You are interested in the Administration, and I am sure you are, as you say.

Mrs. OLESEN. I am.

Senator BLACK. Do you believe that this Administration or any other administration can justify the requirement that there be a charge off as a part of the cost when there are no costs to be absorbed? I am interested in the Administration, too.

Mrs. OLESEN. Yes, sir; absolutely.

Senator BLACK. Do you believe that any such rule should be supported for one instant by a person that wants to have decency and honesty and fair dealing by a man who is engaged in business?

Mrs. OLESEN. You are putting a big question, sir. That is a question of the code. Now let us go to the question——

Senator BLACK (interrupting). Let us not go to anything else. That is a very simple question. A man has been assessed $305. I have read you the provision on which he has been assessed.

Mrs. OLESEN. On the cost of the hearings.

Senator BLACK. It requires him not only to charge off on the original cost when he may have paid only one-third of it, but it requires him after he has charged off every nickel, then to continue to put down as a part of his costs something that it has not cost him at all.

Mrs. OLESEN. The question of the assessment was not an assessment to get anything back for the violation. The assessment was on the expense of the finding out whether he had violated or not.

Senator CLARK. But the net result is that he is charged $305 for being told that he is in violation of the code and outside of the law, for having put in depreciation under the rulings approved by the United States Bureau of Internal Revenue.

Mrs. OLESEN. But, Senator, you see, if he had been proven innocent, he might have been called upon to pay his costs for finding out.

Senator CLARK. So he has to pay $305 in either event.

Senator BLACK. I have here the statement that you made to him, signed by you, telling him why he is assessed, and it is this statement:

It is clear that the cost-finding system and the methods that are described as being maintained by the Perkins-Tracy Co. do not conform to code requirements.

Mrs. OLESEN. That is true.

Senator BLACK. That cost-finding system requires him to put something in as a part of the cost that was not a part of the cost, because it required him after he had depreciated every dollar of cost, to continue to add to his cost something that he had not paid out.

Mrs. OLESEN. But, sir, if there is something wrong in the code there, our office had nothing to do with the writing of that code, you see.

Senator BLACK. I know that, but you are part of the N. R. A. and I want to see whether or not those who are charged with the responsibility of this and in responsible positions, whether they approve of methods which assess a man or an assessment——

Mrs. OLESEN (interrupting). That may be very true——

Senator BLACK (continuing). Because he declines to do something which frankly I consider to be dishonest.

Mrs. OLESEN. That is why these hearings are helpful, to bring to the light of day——

Senator CLARK (interposing). It was not helpful to Perkins Tracy?

Senator BLACK. Do you think you could justify an assessment against anybody for putting down $1,000 wages as a part of their cost that they had not paid. Do you believe you could?

Mrs. OLESEN. May I get that question again?

Senator BLACK. Would you justify or fail to condemn any company that put in as a part of its cost of production, $1,000 in wages that they had never paid out?

Mrs. OLESEN. But, Senator, the point is——

Senator BLACK (interposing). Do you believe that is right?

Mrs. OLESEN. Senator, as administrative officer, we may have to——

Senator BLACK (interposing). Do you believe that is right?

Mrs. OLESEN. May I answer in this way, sir?

Senator BLACK. I want to know whether you think it is right or not?

Mrs. OLESEN. I can answer it in just one moment——

Senator BLACK (interposing). I did not ask you anything but whether you think that system is right.

Mrs. OLESEN. Perhaps the system is not correct.

Senator BLACK. If you as State compliance officer should run up the figures on a report on cost where a man had put $1,000 in for wages that he did not pay out, would you condemn it or approve it?

Mrs. OLESEN. I would condemn it.

Senator BLACK. Suppose you find him putting down $1,000 for the purchase of a machine when he had only paid $100 for it, would you condemn it or approve it?

Mrs. OLESEN. You might as an individual condemn something, but it is the law. You may have to administer a law which——

Senator BLACK (interposing). Would you condemn that—frankly, I do not believe any such thing as that would be approved of as the law, and I think any decent court would strike it down instantly, but I want to know if there should come to you a report on costs where a man was reporting that he paid $1,000 for a machine, when you found out he had paid only $100, would you condemn it or approve it?

Mrs. OLESEN. That is not right.

Senator BLACK. Of course it is not right. And it is not right either, Mrs. Olesen, is it, to require anybody who chooses to charge off the depreciation on a machine that cost $3,000, requiring them to charge off $3,600 or $5,000 or $10,000. That is not right, is it?

Mrs. OLESEN. You are now attacking a section of the code.

Senator BLACK. I am just talking about simple every day principles of honesty and ethics and morality. Do you believe that is right or wrong?

Mrs. OLESEN. I think we must put the costs as they are.

Senator BLACK. In other words, you think it is wrong to put them at anything except what they actually are? I am sure you do. I realize you want to be loyal and I think you should, but in this case, frankly, I think loyalty requires that if you think that is wrong that you should say so. You are a Government official.

The CHAIRMAN. Do you desire to give an opinion on that?

Mrs. OLESEN. I am not familiar enough with the Graphic Arts Code to sit in judgment upon it. The costs were assessed according to the Graphic Arts Code.

Senator CLARK. Do you think it is proper for the N. R. A. to require a man under penalty of being declared in violation of the authority of N. R. A., do you think it is fair for the N. R. A. to require a man to do something that will land him in jail if he did it in making out his income-tax return? If he followed the same method in making out his income-tax return?

(No response.)

Senator CLARK. In other words, if a man went to work and deliberately padded this depreciation in making income-tax returns, and did it knowingly and deliberately, he would be very likely to land in jail. Do you think it is fair for the N. R. A. to require him to do that very thing in making up his cost?

Mrs. OLESEN. Well, I am sure the N. R. A. wants to be fair and just to everyone, and if there is something wrong in that code, hearings like this will help to correct it.

Senator CLARK. Do you think that is fair for the N. R. A. to compel a man to do something that would be a crime if he did it in making out his income tax?

Mrs. OLESEN. The income tax and this are two different things.

Senator CLARK. They seem to be.

Senator BLACK. I want to ask you one other question and I am sure you will answer this one. Do you approve of assessing a man a penalty——

Mrs. OLESEN (interposing). A penalty?

Senator BLACK. Making him pay out everything because he declines to be dishonest?

Mrs. OLESEN. Well, taking it from that viewpoint, but are you stating it correctly, Senator?

Senator BLACK. I am just asking you if you believe he should be assessed a penalty for doing something that is dishonest?

Mrs. OLESEN. On general principles, no; that is right.

Senator BLACK. That is exactly what I thought.

The CHAIRMAN. Mrs. Olesen, as I understand, you were trying to carry out your administrative function?

Mrs. OLESEN. Yes, sir.

The CHAIRMAN. I think you have covered the case.

Senator KING. I would like to ask one or two questions. How many officials are there in the N. R. A. in your State? The whole organization.

Mrs. OLESEN. I think there are about 20 of us.

Senator KING. And who pays the salaries of all these 20?

Mrs. OLESEN. The Government.

Senator KING. Where did you get your authority—and I ask for information—to sit in at this hearing when $700 was alleged to be due because of the costs?

Mrs. OLESEN. That was a hearing held in our office. I was not there all the time, but it was my duty to be there, you see.

Senator KING. Do you participate in those hearings?

Mrs. OLESEN. Yes, sir. That is, partly. I do not always go into the hearings but that is a part of the routine to try to find the facts.

Senator KING. Is it a part of your duty to sit at those hearings and make findings?

Mrs. OLESEN. Findings?

Senator KING. Yes.

Mrs. OLESEN. If we cannot make the findings—the adjustment board advised that there was such intricate—the code was difficult—to send it to Washington to get the findings.

Senator KING. I am just trying to find out the modus operandi.

Mrs. OLESEN. Yes; that's fine.

Senator KING. And I was wondering what your authority was, whether you were one of the fact-finding committee there, or whether it was somebody that was sent from Washington or the region.

Mrs. OLESEN. The facts went into the record.

Senator KING. Who presided?

Mrs. OLESEN. Mrs. Zwickel, my executive assistant.

Senator KING. Then the hearing was under your jurisdiction?

Mrs. OLESEN. Yes, sir.

Senator KING. How did you reach the conclusion that $700 was the cost? What was the basis of those costs?

Mrs. OLESEN. They were assessed as the cost of the two lawyers and the transcript.

Senator KING. I beg your pardon?

Mrs. OLESEN. The cost of the lawyers and the transcripts. Isn't that so?

Senator KING. You may ask that of him if he knows. I just want to know how you reached the cost of $700.

Mrs. OLESEN. That was actual cost of the hearing that was submitted to Washington, you see.

Senator KING. Lawyers' fees or cost of transcript?

Mrs. OLESEN. They were lawyers' fees and cost of transcript; yes, sir.

Senator CLARK. You mean Tracy-Perkins had to pay the fee of the adverse lawyer also?

Mrs. OLESEN. Half of it. And the code authority paid half of Perkins-Tracy lawyer.

Senator KING. But finally the Government has to pay a part of that?

Mrs. OLESEN. Oh, no, sir. They did not need to have hired laywers, Senator King. They could have come in without attorneys. Most of our cases we hear without attorneys.

Senator KING. But I understood you to say that the code authority had a lawyer?

Mrs. OLESEN. The codc authoity came with a lawyer. The respondent and the complainant. The complainant was the code authority in this case. Many times lawyers come with complainants and with respondents. They are allowed to have counsel.

Senator KING. Who paid the code authority lawyer?

Mrs. OLESEN. I presume the code authority. We did not. We have nothing to do with that. When a man brings counsel with him into the office, he pays the counsel.

Senator CLARK. What we are trying to get at is, did the matter of lawyers' fees form a part of the cost that you assessed against these people?

Mrs. OLESEN. Yes, they did.

The CHAIRMAN. Won't you put into the record an itemized statement of what made up that $700?

Mrs. OLESEN. Here it is right here. The transcript of the hearings before the State adjustment board, 1 copy for the code authority and 3 for N. R. A., $275; counsel fee in connection with the above hearing, $450; and incidentals, $50; the total was $775. You will have this in the record.

The CHAIRMAN. Thank you very much.

Mrs. OLESEN. May I just say this, that Mr. Tracy is fulfilling his contract; he has his people in. The contract cannot be taken from him because it is State money involved and not Federal money, and this case we handled as we have handled all other cases. It was a harder case, that is all; harder fought on both sides; we did our duty as we saw it. We were not in favor of either side; we were trying to find the justice in the case, and I deny collusion, intimidation, or these other charges because we are faithfully before God trying to do our duty and will continue to do so regardless of anything that happens. I thank you very much, gentlemen.

The CHAIRMAN. Thank you, Mrs. Olesen.

(The following statement was received from Mr. Herman Roe, executive secretary, Eleventh Zone Federation and St. Paul Typothetae.)

STATEMENT OF HERMAN ROE

STATE OF MINNESOTA,
County of Ramsey, ss:

Herman Roe, being first duly sworn, desposes and says that he is the executive secretary of the Eleventh Zone Federation, the zone code administrative agency for the commercial relief printing industry, division A–1, Code of Fair Competition for the Graphic Arts Industries, with jurisdiction over the region including the States of Minnesota, North and South Dakota, and Douglas County, Wis., which official position he has held since March 1934.

Further, that he is the executive secretary of the St. Paul Typothetae, regional code administrative agency for the commercial relief printing industry, division A–1, Code of Fair Competition for the Graphic Arts Industries, which agency has jurisdiction over all commercial printing establishments located within the city of St. Paul, Ramsey County, and a portion of Dakota County, and that he has held this official position since December 10, 1934.

That he is a resident of Northfield, Minn.

That the statement of facts made in the following letter are true and correct to his best knowledge and belief.

HERMAN ROE.

Subscribed and sworn to before me this 12th day of April 1935.

[SEAL] NEWELL N. NELSON,
Notary Public, Ramsey County, Minn.

My commission expires April 15, 1939.

ST. PAUL, MINN., *April 12, 1935.*

Senator PAT HARRISON,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR: On April 4, in my official capacity as executive secretary of the Eleventh Zone Federation and of the St. Paul Typothetae, zone and regional code administrative agencies for the commercial relief printing industry under the Code of Fair Competition for the Graphic Arts Industries, I sent you the following telegram:

"Charges made by George Tracy and L. Smith Scoggin before your committee regarding complaint case involving printing contracts for State of Minnesota are so unfair and inaccurate that I would welcome subpena to appear as witness. In view of accusations made against me personally and my conduct of code administrative agency I should be given an opportunity to present the facts. Perkins-Tracy Printing Co. have not been subjected to persecution or intimidation. Due to failure to comply with the provisions of the Code of Fair Competition for their industry it has been necessary to file several complaints alleging code violation against this establishment. Members of the industry who have complied with the code, have sincerely cooperated with the administration's recovery program and have made some slight progress in stabilizing a badly demoralized industry should be given a voice before your committee, while unfair competitors and flaunters of the code should not be given the encouragement they have received."

On April 10 I received a telegram signed by F. M. Johnston, clerk, Committee on Finance, in answer to the above request and was advised that "because of large number of persons desiring to be heard and limited time at disposal of committee it has been necessary to limit number of witnesses to be heard. Would suggest you furnish statement outlining you contentions, etc., which will receive consideration and attention of committee and will be placed in record of hearings."

While regretting that I was not granted the privilege of appearing personally before your committee I am following your suggestion and am submitting the following statement of facts in reply to the charges made by George S. Tracy, president of the Perkins-Tracy Printing Co., St. Paul, Minn., and L. Smith Scoggin, president of the St. Paul Typographical Union, when they appeared before the Committee on Finance, Tuesday, April 2.

I do not propose to go into detail regarding the code violation complaint case involving bids submitted on State printing contracts filed against the Perkins-Tracy Printing Co., July 20, 1934, as I appreciate that this matter is before the National Recovery Administration for determination and not before the Senate

committee. This complaint case was heard fully and fairly in proceedings held in the offices of the State compliance director of the National Recovery Administration in August and September 1934. The testimony presented in those proceedings covers 361 typewritten pages. In October the testimony and exhibits were referred to the Legal and Compliance Divisions of the National Recovery Administration, Washington. Following a careful study of the testimony the respondent was found guilty of code violation with respect to that portion of the complaint which charged that the Perkins-Tracy Printing Co. had submitted bids and proposals for the printing of various classifications of printing for the State of Minnesota, in which the prices quoted were not in accordance with any method of cost finding permissible under or approved by the Code of Fair Competition for the Graphic Arts Industries (art. 3, sec. 26, pars. (a), (b), (c), and (d)).

I am attaching to this statement a summary of the evidence presented in the hearing held on this complaint, and direct attention to the fact that contrary to the usual procedure followed by respondents named in complaints filed under codes of fair competition, the respondent in this case adopted an attitude of refusal to make an answer or to justify the prices quoted in the bids that were submitted, but refused to submit any evidence in the first instance.

This attitude is typical of the position taken by this respondent not only in this particular complaint case but in relation to several other complaints of code violation filed against the Perkins-Tracy Printing Co. during the past 8 months.

In appearing before the Committee on Finance, George Tracy made the statement: "The Perkins-Tracy Co. has never been charged with unfair competition with other printing concerns." The facts are that the records of the St. Paul Typothetae, regional code administrative agency, show that 10 separate complaints of code violation have been filed in which the Perkins-Tracy Printing Co. is named respondent. Each of these complaints was sustained. In every instance Mr. Tracy assumed an antagonistic and belligerent attitude. These complaints were in addition to the complaint involving the State printing contracts, which was filed in July 1934.

In addition to the complaints mentioned a complaint charging the Perkins-Tracy Printing Co. of code violation was received in December 1934, filed by a printer in Rock Island, Ill. Accompanying this complaint was a photostatic copy of a letter written by the Perkins-Tracy Printing Co. on November 19, 1934, to the Crook Bros. Laundry Co., Davenport, Iowa, quoting a price on an order for printing, which price forms the basis for this specific complaint. This complaint is mentioned because in appearing before the Finance Committee, Mr. Tracy, in answer to a question directed to him by Senator King, stated that his business was "intrastate purely."

Due to the delay of nearly 6 months on the part of National Recovery Administration in reaching a decision on the complaint involving State printing contracts, Mr. Tracy on numerous occasions was reported by St. Paul printers as boasting of his having "licked the National Recovery Administration and the code" and ridiculing observance of the provisions of the code and efforts on the part of competitors in the industry to gain compliance with the code.

Mr. Tracy in his statement to the Finance Committee said: "We are appearing before this committee in protest against persecution suffered by our establishment at the hands of the code administration." The facts are that at no time since the Graphic Arts Code was approved by the President has the Perkins-Tracy Printing Co. been subjected to persecution on the part of the code administrative agencies. This establishment has received the same fair treatment that every other establishment in the industry has been accorded. When complaints alleging a violation of the code of fair competition have been filed against the Perkins-Tracy Printing Co. it has been given every opportunity to answer such complaints.

Mr. Tracy also charged that the complaint involving State printing contracts "was filed as a coercive measure rather than to acquire compliance" with the Graphic Arts Code. That statement is false and is not supported by the records in the case.

Mr. Tracy also charged that "a monopoly" has prevailed in relation to State printing contracts "for approximately 20 years by three large printing concerns in the Twin Cities." This statement is not supported by the facts, as may readily be determined from the files in the office of the State expert printer in St. Paul. The records show that the bidding for State printing contracts has been on a highly competitive basis for many years and that the biennial contracts have been awarded to a representative number of printing establishments.

Mr. Tracy, in answer to a question addressed to him by a member of the Finance Committee, named the McGill-Warner Co., Brown & Bigelow, and the Syndicate Printing Co. as the establishments having "the monopoly on State printing contracts for approximately 20 years." Of the three establishments mentioned, the Brown & Bigelow Co. has never received a contract for State printing, in fact had never submitted a bid for any 1 of the 13 classes of State printing previous to June 1934. This establishment was awarded a contract for one class of printing for the biennium beginning July 1, 1934, which contract it did not accept, but requested that it be released from such contract, and this request was granted. The inaccuracy of Mr. Tracy's statement in respect to Brown & Bigelow is cited because it is typical of the inaccuracy of his charges generally as made in his appearance before the Committee on Finance.

Because of their superior equipment and exceptional facilities for giving efficient and speedy service, plus high-quality workmanship, two of the establishments, the McGill-Warner Co. and the Syndicate Printing Co., named by Mr. Tracy, have been awarded contracts for one or two classes of State printing at different times. In no biennial period has either of these establishments been awarded as many State contracts, namely five, as were awarded to the Perkins-Tracy Co. in July 1934.

Of the five contracts awarded in 1934 to the Perkins-Tracy Printing Co., one was held for the period July 1, 1932, to July 1, 1934, by a St. Paul printing estabment, the Victory Printing Co., which can be classified as a medium-sized plant in the industry, its annual mechanical pay roll averaging $25,000. This establishment is a union shop, having operated as a union shop over a period of 18 years. The Perkins-Tracy Co. became a union shop 3 years ago. The Victory Printing Co. submitted a bid in July 1934 for a renewal of the State printing contract it had held and the bid submitted was in compliance with the provisions of the Graphic Arts Code. This union shop lost this contract to the Perkins-Tracy Printing Co., which submitted bids not based on experience and not in compliance with the code provision that "no establishment shall sell or offer to sell its product for less than cost of production." It was the generally accepted knowledge in the printing industry in the Twin Cities that the bids submitted by Perkins-Tracy Printing Co. were not based on any knowledge of cost but were "guess-timates", and were not in compliance with code provisions. These bids, therefore, constituted an open invitation of a complaint of code violation which action was taken in the regular procedure of code administration and in no sense constituted persecution or discrimination against the Perkins-Tracy Printing Co. In fact, similar complaints were filed against three other printing establishments in St. Paul which submitted bids on one or more of the classes of State printing, these complaints alleging that the bids submitted were not in compliance with the provisions of the Graphic Arts Code.

Referring to Mr. Tracy's charge that certain printing establishments in the Twin Cities "dominated the code authorities", the facts are that the eleventh zone federation, zone code administrative agency, is governed by a board of directors consisting of 22 members of the industry—these directors residing in Duluth, Minneapolis, Owatonna, St. Paul, and Winona, Minn.; Superior, Wis.; Fargo, Grand Forks, and Wahpeton, N. Dak.; Aberdeen and Sioux Falls, S.Dak. Seventy-five percent of these directors own and operate what can be described as medium-sized printing establishments. Not once at meetings of the board of directors or at general meetings of the eleventh zone federation has the so-called "dollar vote" been exercised. Every member, irrespective of the size of his establishment, has had an equal vote with every other member and at no time has there been any action taken by any representative of the so-called "larger printing establishments" to dictate any decision taken by the governing body or the members of the code administrative agency. On the contrary, the representatives of the larger establishments have consistently made concessions to and indicated a desire to help the smaller establishments in the industry, doing everything within their power to improve the financial standing of every member of the industry and to promote recovery.

The board of directors of the St. Paul Typothetae, regional code administrative agency, consists of 9 members, 7 of whom are owners or officers of small or medium-sized printing establishments. In this code administrative agency also every director and every member has at all times had an equal voice and equal vote, at no time has the dollar vote been used. The official minutes of the meetings of the board of directors and of all general meetings of the organization will support the assertion that at no time has there been any evidence of domination by the two establishments in St. Paul that Mr. Tracy would classify as "larger establishments".

In a statement made before the Senate Finance Committee Mr. George Tracy stated "for years we have observed a cost-finding system." To prove that such a claim is unfounded, I cite the sworn testimony of O. C. Link, cost accountant, deputized by the State National Recovery Administration director to investigate the cost-finding system, if any, used by the Perkins-Tracy Printing Co. Following an examination made in July 1934 of the books and records of the Perkins-Tracy Printing Co., Mr. Link testified that he found the records incomplete and that they attempted to base their costs on total pay-roll hours rather than productive hours; that they did not obtain records by departments; had no production records, and did not make proper allocation of overhead expenses to the various departments (pp. 166 to 170, 177 to 192, transcript of record, National Recovery Administration code hearing, Perkins-Tracy Printing Co., complaint case).

When Mr. George Tracy presented his prepared statement to the Senate Finance Committee he gave the members of the committe, who were present, the impression that his establishment was complying with the Graphic Arts Code in another respect, namely, in paying the contribution due to meet the expense of code administration. In answer to a question regarding his assessment, directed to him by a member of the committee, Mr. Tracy replied: "I am paying about $27 a month." Mr. Tracy, if he wished to be truthful and accurate, would have stated that his establishment has not paid its code assessments for the months of November, December, January, February, or March. Failure to pay the contribution due for code administration expense constitutes a violation of the code, according to National Recovery Administration ruling.

Messrs. Tracy and Scoggin in their statements presented to the Senate Finance Committee placed considerable emphasis upon the fact that they disagreed with the method followed in charging for depreciation on equipment in determining departmental hour costs and costs of production under the cost-finding principles declared by the National Code Authority for the Commercial Relief Printing Industry. Members of the committee devoted considerable time to questioning the witnesses on this point of depreciation. Without entering into a detailed discussion of this subject permit me to say that, in my opinion, the item of depreciation does not deserve the emphasis that was given to it because it constitutes less than 10 percent of the total all-inclusive cost in the printing industry. Wages constitute approximately 50 percent of the total cost, other important cost factors being: (1) Departmental direct supplies and expense; (2) rent and heat; (3) executive salaries; (4) selling salaries and commissions; (5) clerical salaries; (6) general expense; (7) power, light, taxes, insurance, office expense, bad debts, spoilage, advertising, etc.

In his statement Mr. Tracy charged that I, as executive secretary, of the code administrative agency, had entered into collusion with the State National Recovery Administration compliance director in connection with the complaint case involving the State printing contracts. I hereby enter an emphatic and vigorous denial to this charge. Such denial should, however, be unnecessary in view of the answer to this charge made by Mrs. Anna Dickie Olesen, State National Recovery Administration compliance director, in her appearance before the Finance Committee on Friday, April 5.

Similar and emphatic denial is entered against the very broad and unfair charges made by Mr. Tracy that his establishment had been subjected to agitation, intimidation, coercion, and persecution in connection with this complaint case. The records of this office will fully refute these charges. To substantiate this statement this code administrative office, its executive officers, and its directors would welcome a thorough investigation.

If the Perkins-Tracy Printing Co. has suffered injury to its business as a result of being named respondent in the code violation complaint involving the State printing contracts, such injury is not due to what Mr. Tracy referred to in his statement as "this unfair and unjust charge of noncompliance," but is due to the failure of the Perkins-Tracy Printing Co. to comply with the provisions of the Code of Fair Competition for the Graphic Arts Industries.

Respectfully submitted.

HERMAN ROE,
Executive Secretary, Eleventh Zone Federation and St. Paul Typothetae.

COMPLAINANT'S SUMMARY, NATIONAL RECOVERY ADMINISTRATION CODE HEARING

ELEVENTH ZONE FEDERATION, GRAPHIC ARTS CODE, ADMINISTRATIVE AGENCY, COMMERCIAL PRINTING DIVISION, COMPLAINANT *v.* PERKINS-TRACY PRINTING CO., RESPONDENT

The complaint in this matter alleges violations of the Code of Fair Competition for the Graphic Arts Industries, Division A–1, Commercial Relief Printing, in two particulars: (1) Submitting bids and proposals 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, and (2) quoting prices on said printing below the cost of production as ascertained by a cost finding system and principles of accounting prescribed by the code.

The respondent put in bids to the State of Minnesota for certain State printing on or about July 9, 1934, and sometime later in that month was awarded five contracts on the bids so submitted. The actual bids of the respondent were as shown on exhibit A.

It is to be noted, at the outset, that the respondent refused to submit any evidence in the first instance, beyond statements of counsel, appearing in the record, pages 1 to 15, making various objections and claims. Although the position of the code authority was that the burden of proof was upon the respondent in the first instance to prove that there had been no code violation, when respondent did not submit any evidence, the code authority proceeded affirmatively to prove the allegations of the complaint.

Mr. George S. Tracy, president of the respondent, was examined by Mr. Firestone, attorney for the code authority, at the first day's hearing (record, pp. 16 to 27, 33 to 36). A further examination was to be made of this witness in reference to records referred to by him in his testimony, and at the next hearing the respondent refused to give any further testimony, the statement by his attorney being, as follows (bottom of p. 67 and top of p. 68): "I think the respondent at this time will take the position that the burden is on the complainant herein to prove its case without relying upon the records of the respondent or without submitting the respondent to cross examination, and thereby compelling him to produce his own records in order to sustain the complaint, and for that reason, and because we do not think that you have any authority to compel us to furnish any of our records at a hearing of this kind. We prefer to use our records if at all when we put in our own case." It is to be noted that respondent at no time put in its records, even when respondent submitted its evidence, and the actual books and records of the respondent have been withheld and not produced in this matter.

The code authority then proceeded affirmatively to prove the violations alleged.

Mr. William A. Repke, executive secretary of St. Paul Typothetae, the regional code administrative agency, testified that the respondent was a member of the St. Paul Typothetae, and identified the constitution and bylaws of that organization, approved March 23, 1934 (exhibit "D") which provide, among other things, for carrying out the terms and conditions of the Graphic Arts Code, the application for membership in this organization by the respondent being exhibit H. This witness further testified in reference to cost-finding methods provided by the code, the United Typothetae Association standards and economic hourly cost rates, exhibit E, the United Typothetae Association cost determination schedules, exhibit F; and the witness further testified as to the maintenance of a cost certification bureau by the St. Paul Typothetae for the purpose of furnishing facilities to printers to properly determine cost of any given piece of work for such printers as did not have their own cost-finding systems, as provided by the code, and that this respondent used the cost-certification bureau for this purpose until about the time that the particular bids in question were placed by the State of Minnesota. This witness further testified (p. 89) that he called upon respondent to ascertain if it had a cost system, and was told "that it was none of my business whether they had a cost system or not, and when the proper time comes we would find out whether they had a proper cost-finding system or not."

John H. Cooper, certified public accountant and cost accountant for the St. Paul Typothetae, testified that he called upon the Perkins-Tracy Co., the respondent, on two occasions, as a representative of the regional code authority, and testified in detail as to what he found in the respondent's place of business in the way of records relating to cost finding; that these records were not proper records, were not kept or classified in proper manner, were incomplete, not departmentalized and kept on the wrong basis (pp. 153 to 155, exhibit J).

C. C. Link, cost accountant for the Minneapolis Typothetae, and deputized by the State National Recovery Administration director's office to investigate the cost-finding system of the respondent, testified in detail as to his visits, both to respondent and to its auditor, Mr. Lethert, and that he found the records incomplete, based on costs attempted to be ascertained on the basis of total pay-roll hours rather than productive hours, not departmentalized, no production records, and various other omissions, and with no proper allocation for overhead expense (pp. 166 to 170, 177 to 192), and he further testified that Mr. Lethert, auditor for said respondent, was installing a new system of cost finding to be effective as of Aug. 1, 1934 (p. 170).

At the first hearing, when George S. Tracy partially submitted to cross examination, he gave figures as to respondent's claimed hour costs based on Mr. Lethert's audit made in July 1934, after the bids in question were submitted (record, pp. 33, 34), and furthermore, his accountant, Mr. Lethert, likewise gave those hour costs as determined by him (pp. 39, 40). These hour costs were based primarily on pay-roll hours instead of productive hours (p. 167).

Paul B. Havelt, cost auditor for the Minneapolis Typothetae, regional code authority for that city, and an experienced printing estimator and cost auditor, then testified that taking the respondent's figures of hour costs, as given by respondent's president, George S. Tracy, and respondent's auditor, Mr. Lethert, hereinbefore referred to, the bids in question submitted by the respondent were below cost in all but two or three instances. Mr. Havelt took the State's specifications for the bids in question (exhibit N) and prepared his detailed computation, exactly following the State's specifications, and not only testified in detail on the same, but made up a detailed computation (exhibit C), showing the cost of each item based on respondent's own declared costs in these proceedings, which cost is in almost every instance materially higher than the actual bid made by respondent, and said exhibit C sets out both respondent's costs, as figured by this witness, and respondent's bid on each item.

Respondent's president, George S. Tracy, when first testifying was asked, "Have you your figures on cost on which you based your bids?", answer, "Yes, sir" (p. 25). At no time were these produced by respondent, and as a matter of fact when respondent came to put in its evidence, the only evidence introduced was that of the witness Lathert, their auditor, who testified about the system he installed as of August 1, after the bids in question were submitted and the State contracts awarded thereon, the witness Craft, an employee of the respondent, who has nothing to do with estimating the cost of printing, and did not estimate the costs on these particular bids, who got up a computation of his own controverting the Havelt costs (exhibit O), not showing the same were based on any actual costs at all or any actual production standards, and the witness Scoggin, who testified generally that in his opinion the respondent can make money on the basis of their bids, but who admitted that that statement is not based upon his own knowledge, but what others told him (p. 347), and who further admitted that he had never estimated any printing work, excepting composition, a number of years previously (p. 346). In other words, the witnesses who would know, or should know, what the actual facts are in reference to cost-finding systems and costs of the respondent were not produced.

It conclusively appears, according to the evidence taken in this matter, that the so-called "hour costs" testified to by respondent were all based on the Lethert audit, which was not made until after the bids in question had been submitted, which shows, on its face, that respondent had no hour costs of any kind, whether properly arrived at, or not, at the time the bids were submitted. It also conclusively appears that the respondent did not have a cost-finding system in accordance with the terms of the code, or, in fact, any complete or workable cost-finding system prior to August 1, 1934; and it is submitted that it conclusively appears that even on assuming that the hour costs given by the respondent are correct, that the bids were materially below cost in most instances, in other words that both code violations set forth in the Complaint were clearly proved.

Respectfully submitted.

HERMAN ROE,
Executive Secretary, Eleventh Zone Federation, for Division A 1, Commercial Relief Printing Industry, Graphic Arts Industries Code, Complainant.

STATEMENT OF NATHAN HAMBURGER, REPRESENTING BALTIMORE CLOAK & SUIT ASSOCIATION, BALTIMORE, MD.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. How much time do you want, Mr. Hamburger?

Mr. HAMBURGER. As long as you will give me.

The CHAIRMAN. We have requests from hundreds and hundreds of people. I wish you would try and finish in 10 minutes if you can, and you can put your statement in the record, which will be read by the experts and then they will report it to us. Proceed then for 10 minutes. Give your name and address to the stenographer.

Mr. HAMBURGER. My name is Nathan Hamburger, address 213 North Calvert Street, Baltimore, Md. I am a member of the firm of Rome & Rome, attorneys, and we represent the Baltimore Cloak & Suit Association. It is composed of ladies' coat and suit manufacturers in Baltimore.

Our complaint, if you gentlemen please, is one that arises from the very inception of the code. This is a tremendous industry. I think the statistics as of June 1 last year showed that the value of the output in this industry is in excess of $234,000,000.

Senator KING. Where is it principally located?

Mr. HAMBURGER. They did $191,250,000 of that manufacturing in New York. That includes of course Manhattan, Brooklyn, and so forth. That is, 81 percent of the coat and suit manufacturing in this country comes out of New York. Baltimore hardly runs as high as $4,000,000, which would make it less than 2 percent of the country's output.

In the very beginning of the code, when everything was in more or less an excited state, Baltimore and some of the other smaller industrial centers were not consulted at all. I have here correspondence which, because of the limited time, I will not read, in which we communicated with New York, where the Administration had sent a deputy administrator to attempt to formulate the original code.

Senator KING. You may have it put in the record. Just hand it to the reporter when you get through.

Mr. HAMBURGER. We were met with continued correspondence saying that it was not yet ripe, that they would advise us when they would have these various hearings, in fact the last letter we wrote told us that the man in charge would communicate with us, that he was in some other conference, and the very next day or 2 days later we received a telegram saying that the code had been formulated and presented to Washington.

Senator KING. Do you know who formulated it and presented it?

Mr. HAMBURGER. It was formulated in New York by the New York manufacturers, contractors, jobbers, and union officials, with the aid of Dr. Earl Dean Howard, deputy administrator, sent from Washington.

Senator KING. Do you know whether the manufacturers in this industry outside of New York had any chance to be present or were they treated as you were treated?

Mr. HAMBURGER. I cannot authoritatively say, but I do believe that perhaps only one man outside of New York was consulted, and that was a manufacturer from Cleveland. So far as I know, no one else was consulted at all.

This was the fifth code that was signed, and I have been in this matter from that very beginning. I have attended hundreds of conferences, meetings, hearings, and am thoroughly familiar with the workings of this code from that time on. In accordance with the rules of the Government——

Senator KING (interrupting). You mean the rules of the N. R. A.?

Mr. HAMBURGER. Of the N. R. A., I beg your pardon, sir. After the code was presented they called a public meeting for the purpose of discussion.

Senator KING. Who called it?

Mr. HAMBURGER. That was called by the N. R. A. The only notices which people would receive would be through the medium of trade papers; there was no actual notice sent to each of the members of the industry at all.

We attended that meeting in Washington. We presented our names and asked for the opportunity to discuss it, in accordance with the rules formulated by the N. R. A. in that the names must be presented 24 hours previous to the hearing, and to my dismay, I was not given the opportunity to talk.

I attended the hearing for 2 days. Finally I sent a written request up to Dr. Earl Dean Howard in person and insisted that I be given an opportunity to speak and present our problems, because the entire thing was in the hands of this tremendous industry in New York without an opportunity for us to say anything. Finally, I was given 10 minutes in which to present my case.

As I attempted to show what our reasons for objecting to the code were, and show that it was oppressive, and that it did not fit our situation, because in that code Baltimore was placed in the so-called "eastern area." There were two areas provided in that code—an eastern area and a western area. The eastern area was at one wage scale and the western at a differential, and Baltimore was included in that eastern area.

I was then stopped and told by Dr. Howard that I could discuss the matter with him, file a brief and discuss it informally in his office.

I have a telegram here, which is not long, and I think it presents our entire side with respect to the origination of this thing better than I can say it. This was addressed on August 4, 1933, to Dr. Earl Dean Howard, Deputy Administrator, National Recovery Act, Department of Commerce Building, Washington, D. C.:

[Telegram]

AUGUST 4, 1933.

DR. EARL DEAN HOWARD,
Deputy Administrator, National Recovery Act,
Department of Commerce Building, Washington, D. C.:

You will recall that at the public hearings of the cloak and suit industry held on July 20 and 21, 1933, our representative's name was enrolled on your list of speakers. Notwithstanding that, you did not call upon him to present our case and it was only after a written request that you allowed him 10 minutes, that you called upon him. At the beginning of his talk, you immediately out him short, refusing to allow him to present our case.

On the last day of the hearing, the matter was again called to your attention and in open meeting, you suggested to have private conferences so that the matter could be laid before you and that full opportunity would be given. Thereafter, on the afternoon of July 21, our representative saw you in your office and you specifically said that nothing would be done involving the Baltimore market without a conference with the representative of our association and that our representative leave his address and phone number with you, subject to your call.

Having heard nothing from you, our representative called you on the phone July 23, informing you of his intended absence from the city and inquired whether or not you desired us for any matters pertaining to the code. You then said that a name of another representative should be left with you so that you could get in touch with him and accordingly on July 24, a letter was transmitted to you, giving you the name, address, and phone number of another representative.

Nothing further was heard from you until we were authoritatively advised through another medium that on Saturday July 29, 1933, it was definitely determined that Baltimore was to be included in the western market and an invitation was received by us to associate with the western council. On August 2, 1933, we became aware that a conference was to be held the succeeding day between you and representatives of New York and other markets. Our representatives came to Washington on August 3 and on endeavoring to elicit information from representatives of the other markets, were advised that you had sworn them to secrecy regarding developments of the conference that morning.

Our representatives thereupon came to your office and met you in the hallway. When you were asked regarding conference you had held that morning, you said that they were only conferences of your special advisers, and when you were informed that our representatives had just seen representatives of New York and other markets, you suggested that they speak to the latter if they wanted any information. You were then told that they had been advised that all those in conference that morning had been sworn to secrecy by you, but you refused to comment.

Thereafter, further conversation with you, you assumed an arbitrary attitude and attempted to end the discussion by saying that it was 2 days too late to discuss the matter in spite of the fact that that very morning you were in conference with representatives of New York and other markets. Our representatives recalled to you your previous promises, the phone co versation and the letter forwarded you, but your only response was repeated, "it is too late to discuss the matter. You are now included in the eastern area. I won't say anything more."

In response to the question as to why other markets partook in the conferences and were fully advised of the developments affecting their situation, while we were continuously in the dark and not consulted, you refused to answer. In reply to the question as to whether or not, there was to be any differential granted us, you refused to answer, saying that it was confidential. In reply to the question as to whether or not there were any provisions made for the wages of female section workers, you refused to answer, saying that it was confidential.

You were informed that this matter was very serious, affecting the entire cloak and suit industry in the city of Baltimore, State of Maryland, and that this star chamber proceedings was arbitrary and uncalled for but you waived all objections aside and refused to say anything more.

Your methods as outlined above are contrary to the spirit and letter of the National Recovery Act and certainly not befitting a public official occupying the important office of which you are the incumbent. We expect that you will immediately grant us the right to present our situation and we hold ourselves at all times in readiness to cooperate with you in such matters and conferences as you may desire and that unless a fair and proper hearing is granted, we will be obliged to resort to the courts.

Copy of this telegram is being forwarded to General Johnson.

BALTIMORE CLOAK & SUIT ASSOCIATION, INC.,
Baltimore, Md.

Senator KING. Who appointed that man deputy administrator?

Mr. HAMBURGER. He was appointed, I presume, by General Johnson.

Senator KING. Was he selected by the New York industry?

Mr. HAMBURGER. I would not know whether he was recommended, or not, but I suppose the actual selection came through General Johnson.

Senator KING. What is his name? What is his business?

Mr. HAMBURGER. He was formerly—I do not know whether he would be termed production manager—of Hart, Schaffner & Marx and other clothing industries, and also had some previous connections, I think, in New York.

Senator KING. Is he still deputy administrator of this code?

Mr. HAMBURGER. He is not now. He has not been for the past 6 months, I would say.

Senator KING. Has he gone back to any industry, do you know?

Mr. HAMBURGER. I could not tell you that, sir.

The CHAIRMAN. Are you a member of the code?

Mr. HAMBURGER. No, sir.

The CHAIRMAN. Are your people operating under the code?

Mr. HAMBURGER. Yes, indeed.

The CHAIRMAN. Do you believe this law should be extended?

Mr. HAMBURGER. Not in its present state. I want to say here that our objection is not that the N. R. A. should be totally thrown out. I think that if we could have the N. R. A. under a simplified system, that perhaps some good might be accomplished, but under the manner in which the code, for instance, in this particular industry is composed, with its complex structure and the inability for any reasonable person to understand what is or what is not contemplated by it, with the various trade practices, with the complex scales of wages, and the avoidance of definitions as to skilled and semiskilled workers—something I might say that nobody has ever been able to develop—it has caused a great deal of grief.

I also say that the code authority as composed right now—there has been in our industry, which is solely and completely under the domination of New York, to the exclusion of any other industry, that only means that the industries will eventually be naturally wiped out. It is only a matter of time. That is exactly the way our industry has been affected in Baltimore.

Senator KING. Do you think the board as drawn and enforced tends toward the concentration of this industry in New York City or its environs and to the elimination of the independent units of the industry in Baltimore and in other sections of the United States?

Mr. HAMBURGER. Unquestionably.

Senator KING. Just state how that is brought about.

Mr. HAMBURGER. Since New York does produce 81 percent of the coats and suits, it is naturally the market of the United States. Buyers from all over the country must come to New York to procure the latest styles, the best type of garments; I mean, the situation even prevails in Baltimore. The Baltimore department stores, for instance, buy, I suppose, 98 percent of their requirements out of New York. The other sections must naturally take the leavings or attempt to do business in the South with the small merchants through the medium of traveling salesmen.

We have so much more added cost in attempting to compete with a section that is absolutely the market that has everything, that it is perfectly natural that we are always behind them in fashions, we have the additional cost of freight, and all of the materials, which, by the way, are also in New York, every fabric, every piece of lining, every piece of fur that goes into the makeup of these coats must be brought from New York and the freight paid. And we have not the choice of those materials which the New York manufacturers have.

The situation is simply this. That New York, in attempting to foist a very small differential in the labor scale, merely 10 percent, which means that on the average garment on which the labor cost is $2, that would be 20 cents less for Baltimore, is so insufficient to

take care of all of our additional costs and disadvantages, that it only means that we get no business at all.

I may say that, going further beyond that subject of hearings that we had with reference to determining volumes and allocation——

Senator BLACK (interrupting). Allocation of what?

Mr. HAMBURGER. Allocation of areas, whether it should be allocated to the eastern or the western area. At the time our objections were made, we were allocated to the eastern area. The western area had a substantially higher wage differential, which helped them in some fashion to compete with New York. Even they are dissatisfied and insist that they must have a larger differential in order to exist.

Senator KING. The code authority is all in the hands of the New York manufacturers?

Mr. HAMBURGER. The New York Manufacturers Association has 2 members, the Jobbers Association of New York has 2 members, the Contractors Association of New York has 2 members, the union in New York has 3 members, and all of the manufacturers from Cleveland, west, combined only have 2 members, Baltimore has 1 member, Boston has 1 member, and Philadelphia has 1 member, but each of these 3 only have, I think, a one-third vote.

The CHAIRMAN. How many members are there on the code authority?

Mr. HAMBURGER. There are now about 14.

The CHAIRMAN. And nine of them out of New York?

Mr. HAMBURGER. Yes, sir.

Senator KING. And those outside of New York have a one-third vote?

Mr. HAMBURGER. Boston, Philadelphia, and Baltimore have a one-third vote, and the western manufacturers from Cleveland to the coast have 2 representatives, and that, as a matter of fact, is only recently because up until several months ago there were 6 members from New York, excluding 2 members of the union from New York, which was 8; and there were only 2 other members for the entire United States.

The CHAIRMAN. Is there something else now?

Mr. HAMBURGER. There is a great deal that I would like to bring out with respect to the practices of the code authority, and the manner in which they are oppressing us.

The CHAIRMAN. Won't you do that as concisely as you can, because you will appreciate the situation in that respect with respect to the number of witnesses we have to hear.

Senator KING. Give us the high spots and furnish us with a written statement and we will put it in the record.

Mr. HAMBURGER. All right, sir. As a result of the telegram, there was inserted in this code a provision that while Baltimore would be in the eastern area, a commission would be appointed to determine where we belong. We applied for that commission, and Professor Jacob H. Hollander of Johns Hopkins University was appointed a member of the commission. I was a member of the commission, and there was a representative of labor. We held hearings and gathered statistics showing conclusively that Baltimore could not exist under the eastern area, and a decision was made.

New York immediately hopped on that decision, and the director of the code, who is supposed to be impartial and represent the entire

country, the director of this code, after a conference with only New York representatives and manufacturers, immediately went to the press and attempted to have this decision overthrown, saying that it was arbitrary.

The CHAIRMAN. Who was that?

Mr. HAMBURGER. Mr. George Alger.

Senator KING. Is he still director of the code?

Mr. HAMBURGER. He is still director of that code.

Senator KING. A very unfair practice on his part.

Mr. HAMBURGER. And I have the clippings here which shows exactly what he said.

Senator KING. Put it in the record.

(The clippings referred to by the witness are as follows:)

ALGER ASSAILS CLOAK RULING ON BALTIMORE

IRREGULAR AND UNFAIR PROCEDURE CHARGED IN WIRE TO JOHNSON ASKING HEARING IN OPPOSITION TO REPORT

Recommendation by Dr. Jacob Hollander, deputy of the Baltimore district, that the Baltimore coat and suit market be shifted, as noted elsewhere, from the jurisdiction of the eastern area to that of the western, was assailed today by George W. Alger, director of the Coat and Suit Code Authority, who asserted that the inquiry on which the report was based was "utterly inadequate" and that its procedure was "grossly irregular and unfair."

Mr. Alger's protest was in the form of a telegram to Gen. Hugh. S. Johnson, N. R. A. Administrator, as follows:

"As director Coat and Suit Code Authority, earnestly protest against approval by President of report made this day by Dr. Jacob Hollander, of Baltimore, as commissioner appointed by deputy administrator transferring Baltimore coat and suit business from eastern to western area under our code. Whole procedure and report extraordinary and disastrous. No information given to Coat and Suit Code Authority of Hollander's appointment under last paragraph, section 1, of our code. No notice of meeting by him or opportunity to be heard though requested both directly to him and through Dr. Howard.

"This procedure was grossly irregular and unfair, and the investigation utterly inadequate. This ill-considered report if approved will disastrously affect the earnings of at least 8,000 workers elsewhere in the eastern area, create unfair competitive conditions, and affect upward of 60 million dollars of business, jeopardising the success of the code itself.

"Dr. Howard, deputy administrator, today disclaimed to me responsibility for or power to review report, and has made it public without passing upon its propriety. Imperative that report be reconsidered and disapproved. In view of Dr. Howard's attitude, earnestly appeal to you for a hearing before you in opposition to report, and ask that until that hearing this summary transfer proposed by this report be stayed.

"GEORGE W. ALGER,
"*Director Coat and Suit Code Authority.*"

Baltimore was ruled in the western area under the cloak code, following a report submitted to General Johnson, which was signed yesterday by Mr. Hollander. Under the code that went into effect on August 7, the Baltimore market was allowed a 10-percent wage differential over the eastern area. The transfer into the western market would make this differential considerably higher.

In Baltimore the system is all sectional work. It employs a great deal of unskilled labor. There are about 20 sizeable cloak firms in Baltimore doing an annual volume estimated at $4,000,000.

Mr. Alger sent the wire at the conclusion of an animated session at the office of the code authority, 182 West Thirty-first Street, yesterday. It was attended by Samuel Klein, executive director of the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc.; Harry Uviller, general manager of the American Cloak & Suit Manufacturers Association, and Isidore Nagler, manager of the joint board of the cloakmakers' union.

Mr. HAMBURGER. When the officials would not listen to that, a great deal of pressure was brought to bear on the Administration continuously directed to overthrowing that decision, so that finally the Administration in Washington, for no reason except this continuous pressure, called another hearing to go over the identical hearings, in January 1934. That hearing was scheduled to take place in Washington, but because certain manufacturers in Connecticut had brought an injunction proceeding in Washington and we summoned in Washington all of the members that they had sued as defendants, when they would attend this hearing, the Administration very wisely instructed everyone who was to attend to go on to Baltimore instead of stopping at Washington ——

Senator KING (interrupting). So they could not get service on them?

Mr. HAMBURGER. Exactly. They called the meeting to order in Washington, and adjourned it immediately, to be held in Baltimore, and went to Baltimore to hold the meeting. That meeting lasted some 6 or 7 hours ——

Senator KING (interrupting). Who gave those instructions to those people to avoid coming here to avoid service? Mr. Alger?

Mr. HAMBURGER. I cannot say specifically who did it, but as soon as the meeting came to Washington, the notice came from the Administrator that it was changed to Baltimore.

Senator KING. Try and ascertain that, and we will summon him to come here and testify.

Mr. HAMBURGER. Yes, sir. During this hearing, lasting 6 or 7 hours, during which time we even brought coats and dissected the coats and showed that we could not sell at the price that New York was selling, and no decision was made for a number of months. The coats were given to the Administrator, and the records showed in absolute confidence, and they were instructed not to divulge where they were purchased in New York, because we did not want them to fix up their records and show why it was purchased so cheaply, such as close-outs and so forth, but, nevertheless, within 24 hours, our purchasers in New York were called on the 'phone by the houses where these coats were obtained and told that they knew that the coats had been presented and where they came from. We immediately wrote a letter to the deputy administrator. I have it here ——

Senator KING (interrupting). Put it in the record.

Mr. HAMBURGER. The letter is dated February 2. And I will show how the deputy administrator had divulged information which was supposed to be confidential.

Senator KING. Was that Alger?

Mr. HAMBURGER. No, sir; this was the administrative officer in Washington, Mr. Byres H. Gitchell, who now no longer is with this administration but has a job as a director of the Dress Code.

Senator KING. He has been elevated to the director of the Dress Code?

Mr. HAMBURGER. He has been, as has been a number of other administrators, elevated to other industries, such as Deputy Morris Greenberg.

Senator KING. He has been elevated to what?

Mr. HAMBURGER. He has now procured a connection with some private firm after his service with the Government. That sort of thing continued all the way through until finally ——

Senator KING (interrupting). Did they overturn the Hollander decision?

Mr. HAMBURGER. Finally a commission was appointed to go over the United States, and by the data they received and the report they made, it was determined that Baltimore should be in the eastern area, and overthrown, and that, if you gentlemen please, was done, despite the fact that Deputy Administrator Greenberg admitted to me, and I have my letter here to him, in which I recite that admission, that the figures showed nothing; that from the figures that were obtained by the commission, he could argue in any fashion that he deemed fit, to show that any section of the country should be put in the eastern area.

We had the same experience with this deputy administrator, Mr. Greenberg, and I have that letter also, in which at a hearing he told me that nothing would be done after the commission report, nothing would be done about the reallocation of Baltimore unless he conferred with our representatives, and just what happened with Dr. Howard was the thing that happened in this case.

We called him, we wrote him, we came over to see him, and he continuously said nothing to us until finally through the medium of trade papers we were informed that Baltimore was to be reallocated to the eastern area, and gentlemen, bear this in mind, I attempted immediately to communicate with him in Washington, New York, or any place where I could get him, until finally his secretary in New York informed me that simultaneously with the rendering of his decision to reallocate Baltimore, he departed for parts unknown so that he could not be reached and the matter could not be discussed with him.

That is the sort of thing we have been up against all this time, and we had to again send to the administration the entire history of the case and attempt to sit down and get him to listen to us and straighten himself out despite all of the promises he had made.

One other thing and I won't take up much more time, because I could go on with this thing for a week, but I understand that time won't permit.

Senator KING. Have you any other complaints as to alleged oppression?

Mr. HAMBURGER. Yes, indeed.

Senator KING. In regard to price fixing or limiting production or fair practices or anything of that kind?

Mr. HAMBURGER. There is no price fixing in this code. Here is the main reason in the thing, and it is included in a letter of March 30.

Two Baltimore manufacturers have had for some years plants in York, Pa., Harrisburg, Pa., and also Waynesboro. At the time, I think, of the Hollander decision, the question was brought up whether or not those plants operated by Baltimore manufacturers, the coats and suits produced in those plants and brought back to Baltimore and sold in the usual fashion, should be included in the Baltimore market or if Baltimore should be allocated to the West, those plants should be included also. Dr. Hollander said in the record that they should be included as a part of the Baltimore market. He then added that that was not within his province, he would not make that decision, but that was his own opinion.

From and after that time nothing further was said by anyone, and if I may read this letter in conclusion it will show the entire story.

This is a letter written by one of our manufacturers who is a member of the code, written on March 30, 1935, and addressed to Nathan F. Wolf, secretary of the Coat and Suit Code Authority, 132 West Thirty-first Street, New York City.

(The letter is as follows:)

MARCH 30, 1935.

Re: Louis Marcus Corporation, Harrisburg and York, Pa., shops.

Mr. NATHAN F. WOLF,
Secretary Coat and Suit Code Authority, New York City.

MY DEAR MR. WOLF: In furtherance of my long-distance phone conversation with you on Thursday, after your investigator had been at the above Harrisburg shop for the purpose of procuring data previous to September 14, 1934, to be used in an attempt to force restitution on the above plants, I refer you to your letter of November 19, 1934, addressed to Nathan Hamburger, attorney for the Baltimore Cloak and Suit Association. The complete letter is as follows:

NOVEMBER 19, 1934.

Re: Louis Marcus Corporation, Harrisburg and York, Pa., shops.

NATHAN HAMBURGER, Esq.,
Baltimore, Md.

DEAR SIR: The matter contained in your letter of October 19 was presented to the code authority at its meeting held November 1.

After consideration, it was decided that the Harrisburg and York, Pa., shops of Louis Marcus Corporation must comply with the provisions of the code for the eastern area as of the date of interpretation no. 5–12, September 14, and that they shall make restitution as of that date.

Very truly yours,

COAT AND SUIT CODE AUTHORITY,
F. NATHAN WOLF, *Secretary.*

While you are fully aware of the fact that I do not agree with this decision, and that from time to time, at various hearings, furnished you with more than sufficient information and data to show that this entire case has been a matter of persecution, nevertheless, in view of the above letter, I ask you to advise me by what right or authority you now send your investigators to the above shops for compilation of data as to eastern area provisions prior to September 14, 1934.

While apparently the faction which is pressing this matter is heedless to the facts which have been submitted from time to time, nevertheless, I am again going to relate the entire situation.

Beginning with the commission headed by Dr. Jacob H. Hollander, this commission allocated the Baltimore market to the western area by decision rendered on September 27, 1933. If you will refer to page 66 of that report, you will find the following:

"Dr. HOLLANDER. The Baltimore market includes shops outside the limits of the State when they are under the control of Baltimore firms."

* * * * * * *

"Dr. HOLLANDER. Shops in New York or New Jersey would not be in the Baltimore market, I should say, but a shop in York, Pa., for instance, would be a part of the Baltimore market. I shall not rule on this, however. It is a problem for the code authority or the Administrator to solve."

From the time of this report, there was never any question in anyone's mind, but that the Pennsylvania shops operated by Baltimore firms were included with the Baltimore market in the western area. The code authority and all of its agents, the enforcement division, the enforcement directors and investigators, together with the Administrator and deputy administrators in charge of this industry in Washington, all expressly and tacitly accepted this conclusion to be true, and accordingly, all such Pennsylvania firms operated under the western area provisions, submitted their pay-roll records and other data in the same fashion as the other shops in the Baltimore market. Your own enforcement bureau instructed its local enforcement officers to consider these Pennsylvania shops to be a part of their duties in obtaining enforcement of the Baltimore market. These local enforcement men have, up to this time, periodically visited the Pennsylvania shops and procured records and data in exactly the same fashion as tehy have from the other shops in the Baltimore market.

Suddenly, more than a year after matters had been proceeding as above explained, an interpretation was obtained from Washington, without notice, without hearing, without any opportunity to explain the entire situation, and sometime in October 1934 that interpretation came to the notice of Marcus through the medium of trade papers. The interpretation, I understand, said in effect that the York, Pa., shop should adhere to the eastern area provisions.

There was filed with the code authority, a petition for an extension of the western area provisions until December 15, 1934, both with respect to the Baltimore shops and also with respect to the Pennsylvania shops. The reasons for the extension were exactly alike and the conditions which prompted the petitions were similar in all respects. Nevertheless, while an extension was granted to the Baltimore market, and while thereafter a similar extension was granted to the entire western area, that is, all shops west of Baltimore to the Pacific coast, and also to the Norfolk, Va., market, nevertheless, you informed Mr. Hamburger in accordance with your letter of November 19, above set out in full, that the Marcus, Pa., shops would not be given the same consideration.

Since I was elected a member of the code authority, there have been but two meetings of that body, both of which I have attended. During those two meetings nothing was discussed with respect to the above shops, except during the latter part of the last meeting, when a complaint was made with respect to Marcus' nonattendance at an enforcement hearing in Baltimore, Marcus' objections being that neither a complainant nor one who participates in an investigation could sit on a tribunal such as the enforcement committee.

I took it on myself, with the sanction of the code authority, to straighten out the matter of the attendance, and believe that this has been taken care of to the satisfaction of the enforcement officer. You might refer to the minutes of that meeting of the code authority and see that one of the members of the code authority, whom you well know, openly characterized the attempt to force Marcus to make restitution "as persecution."

You know and the other members of the code authority know that the faction which is persisting in this "persecution" would not allow the issue to come up before that meeting of the code authority, but preferred to keep it in the background and use means such as that which brought about my present writing to you. It is not news to you that another well-known member of the code authority has expressed himself most emphatically that the enforcement of restitution against Marcus would be "real persecution", nor do I have to remind you of the opinion and views of the former deputy administrator, Morris Greenberg, with respect to this case.

It would seem in view of all of the aforegoing that it is and should have been clear to everybody concerned that the Pennsylvania shops were not under the eastern area, and that there is not and was not any reason to harass Marcus for restitution, and that all further action along this line ought to be terminated.

The result of this continuous persecution, which eventually caused Baltimore to be allocated to the eastern area, has been such that it has created chaotic conditions in the entire Baltimore market, to such an extent that Baltimore manufacturers cannot compete with the New York market any more, and that some of the manufacturers have been and are now practically at a standstill. If something isn't done quickly to correct this situation, as small a market as Baltimore has been and is, will in all probability be eliminated in the course of time. You must also bear in mind that one manufacturer in the city of New York does more business than does the entire Baltimore market combined. This, in itself, shows how small this market is and what this continued persecution can and will do to us.

Very truly yours,

———— ————.

Senator KING. Were there any labor troubles in Baltimore and New York?

Mr. HAMBURGER. There is none; no.

Senator KING. On this matter of restitution, they tried to make the rule retroactive?

Mr. HAMBURGER. To the beginning of the code, which I might say might be some $50,000.

The CHAIRMAN. Thank you very much. Any data you want to submit in elaboration of your testimony, we will be glad to receive for the record.

Senator BLACK. I want to ask one question. Where is Baltimore's chief market?

Mr. HAMBURGER. Its chief market is with the merchants in the South.

Senator BLACK. They are the ones Baltimore depends upon to sell its goods?

Mr. HAMBURGER. Absolutely.

Senator BLACK. Through the Southern cotton-growing States.

Mr. HAMBURGER. To the small merchant who cannot get credit from New York, and for other reasons we must cater to them.

The CHAIRMAN. Mr. Irwin is the next witness.

(The following documents were submitted in connection with Mr. Hamburger's testimony:)

FEBRUARY 2, 1934.

Mr. BYRES H. GITCHELL,
In care of Stern Bros., New York City.

DEAR MR. GITCHELL: With respect to the coats and bills produced at the hearing in Baltimore last Monday, you will recall, and the record shows, that these bills were to be kept in the strictest confidence.

Nevertheless, I now understand that when the investigators appeared at Sussman Bros., New York, either through the production of the bill or by their direct advice, Sussman Bros. were given full information as to the purchaser of the coats in question. They, thereafter, with this information, heatedly complained to the resident buyer, through whom the purchase was made, and told him they knew to whom the coats had been shipped, and accused him of purchasing these coats for the specific purpose of using them at the hearing.

There can be no question that the investigators divulged the information which was to be held in confidence, because otherwise Sussman Bros. would not have been able to immediately communicate with the resident buyer who had made the purchase, or be in possession of the name of the retailer to whom the coats were shipped.

This situation may lead to grave difficulties, and the issuance of such information should be stopped. I am prepared to submit additional garments and bills from other manufacturers, and you can realize what may happen if these improper disclosures should be continued.

INDUSTRIAL COUNCIL OF CLOAK, SUIT, AND SKIRT MANUFACTURERS, INC.,
New York, N. Y., July 11, 1933.

Mr. NATHAN HAMBURGER,
Counsel Association of the Ladies' Cloak & Suit Manufacturers,
Baltimore, Md.

DEAR MR. HAMBURGER: In the absence of Mr. Samuel Klein I have noted the contents of your communication of July 10, and will accordingly forward all Baltimore correspondence to you.

Mr. Klein has been away from the office for several days. However, I have been in telephonic communication with him, and he advised me to inform you that he is now busily engaged with the jobbers' and contractors' organizations in the evolving of the New York labor code. As soon as this is completed we shall communicate with you more definitely on the matter. Mr. Klein trusts that by that time your local organization will have been established so that we can proceed with the formation of a national association for the purpose of working out a program for out-of-town market labor codes.

When Mr. Klein will have any further concrete information, he will communicate with you.

Very truly yours,

A. GLUCK,
Secretary to Samuel Klein, Executive Director.

[Telegram]

NEW YORK, N. Y., *July 13, 1933.*

NATHAN HAMBURGER,
Counsel Association of the Ladies Cloak and Suit Manufacturers,
Baltimore, Md.:

New York market labor code submitted to Administrator this morning, copy sent to you air mail tonight. Business code upon which you will be consulted will follow later.

SAMUEL KLEIN,
Executive Director Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc.

OCTOBER 12, 1933.

MEMORANDUM

To: Earl Dean Howard.
From: Nathan Hamburger, attorney,
Subject: Complaint submitted by the Baltimore Coat and Suit Association, Inc.

By decision of the commission appointed under the provisions of the code for this industry, Baltimore was placed in the western area. It has and will continue to comply with the provisions governing that area.

Following the decision, certain members of the code authority made it plain that labels would be withheld in a continual effort to harass and inconvenience the Baltimore market. By said authority's promulgation, labels were to be issued and be used from and after October 9, 1933, and accordingly they issued said labels to the entire market with the exception of Baltimore.

A representative was sent to Baltimore who was furnished pay-roll records and other necessary data to show a complete compliance with the provisions of the code, and compliance forms were also executed. He nevertheless insisted that certain other information be given him, information which was not requested by him for any other section in the country, such as names and addresses of employees, itemized production costs, etc. All this was totally irrelevant and unconnected with any necessary data to show compliance with the code.

The representative in Baltimore has the labels with him, but refuses to issue them until all his demands are complied with. In addition, although, the rules regarding labels provide that while those in the eastern section may receive a 2-week supply of labels, those in the west are entitled to a 3-week supply, the code authority has arbitrarily instructed their representative to issue not more than a 2-week's supply to Baltimore.

By reason of the delay and the urgency which exists, necessitated by the labels in coats in the processes of manufacture and those on hand already manufactured, some disposition should be made of the matter immediately. The representative is in Baltimore today and instructions should be given if there is to be no further delay.

An association has been formed for the western area with its proper enforcement officer and as such, all enforcement should be directed through that medium and there should be no continual agitation arising by those in charge of enforcement in the east.

NATHAN HAMBURGER, *Counsel.*

OCTOBER 17, 1933.

Mr. ERNEST A. GROSS,
Assistant Counsel, National Recovery Board, Washington, D. C.

Subject: Complaint submitted by the Baltimore Suit and Coat Association, Inc.

DEAR SIR: In furtherance of our memorandum of complaint heretofore submitted to Dr. Howard, and of our various telephone conversations, we submit herewith detailed account of the complaint against the action of the code authority for the cloak and suit industry.

As you, of course, are aware, Baltimore, through the findings of the commission, especially appointed, was allocated in the western area. Immediately thereafter, certain members of the code authority expressed their intention to leave no stone unturned in their efforts to harrass and hamper the Baltimore market, and even at that time a certain official definitely said that he would see to it that labels were withheld when the time came for their distribution.

Through the rules promulgated by the code authority with respect to labels, all labels were to be used in coats in the process of manufacture on and after October 9, and while those in the East were entitled to a 2-weeks' supply of labels, those

in the West were to receive a 3-weeks' supply of labels. Accordingly, on or before this date of finality, all concerns in the entire United States, with one or two exceptions, if any, were given their labels, except those doing business in Baltimore. As a matter of fact, a representative of the code authority did not come to Baltimore for the purpose of making distribution until October 10.

This representative at once made it known to the various manufacturers whom he visited that he was seeking not only the information which would definitely show him that Baltimore was maintaining the proper standards required by the code, that is, records showing the hours of work and pay rolls, but that in addition, he would require names and addresses of employees, various records for 8 weeks prior to the decisions of the commission (during which period we were operating under the stay granted), and various production costs. He also said that despite the rules, he would only give Baltimore a 2-weeks' supply and not a 3-weeks' supply of labels. This representative was shown the original pay roll records and was invited to go through the factories and ascertain for himself its correctness. He was also given full access to the books showing the hours of work and given full information regarding the total business done by each concern. Compliance papers were also executed and filed with him, and checks for 3-weeks' supply of labels were also forwarded.

At the time of the filing of the complaint with Dr. Howard, we stated that the unusual, unnecessary, and irrelevant information requested in Baltimore was not sought for any other place in the United States, and the letter submitted to you by Mr. Alger definitely shows the correctness of this statement, because he advises you of a resolution passed to procure production costs from Baltimore only. We maintain that the administration is interested in procuring a compliance with the code, and we are therefore at all times ready and willing to show proper records which will substantiate this fact, and to my mind that, as I discussed with you, implies hours of work and wages and does not carry with it extraneous and irrelevant data and other matter. Names and addresses can serve no useful purpose in determining compliance with the code, and are sought, we maintain for sundry other purposes not disclosed on the surface. The last suggestion contained in Mr. Alger's letter to Dr. Howard that he would not be pressed for addresses, but would be asked to furnish names only, in order to ascertain the uses of apprentices, is a further endeavor to throw a "smoke screen" over the truths involved, because the proper enforcement officer at all times may have complete access to the pay-roll records and may interview the employees themselves in the various factories to elicit any information with respect to wages and hours of employment which he may desire.

We have definitely been advised by Mr. Alexander Printz, of Printz-Biderman Co., Cleveland, Ohio, a member of the code authority, that certain members of said code authority have in his presence expressed their intention to continuously harrass the Baltimore market and to do all in their power to hamper and inconvenience them, and that further, the information sought in Baltimore was not requested in Cleveland, although all received labels before the date of finality. Mr. Printz also said that in his opinion Baltimore's position was a perfectly just one, and that the irrelevant information thus sought served no proper purpose of the code authority. Mr. Printz was also very much surprised when he was told that we did not get our labels.

The concerns in Baltimore who gave the code authority's representative the information, as alleged in Mr. Alger's letter, are practically all of those who have contractual relations with the union, and whose total business in this market amounts to less than 15 percent. Even in these cases, all of the information sought by this representative from the five remaining concerns were not requested from them. The five remaining concerns, namely, Pioneer Cloak Manufacturing Co., Louis Marcus Corporation, Reliance Cloak & Suit Co., American Cloak & Suit Co., and S. Cohen & Sons, do a combined business amounting to more than 85 percent of the Baltimore market.

Since the memorandum was filed with Dr. Howard, one of the above-named concerns, that is, Louis Marcus Corporation, received through parcel post 3,000 labels, although they had requested 17,000 labels in accordance with the business they do. This concern furnished none of the unusual and improper information requested by the code representative and the issuance of these labels to the one concern certainly amounts to an illegal preference over other companies and definitely shows that those in charge are completely confused and uncertain as to their own requirements. Their efforts to befog and becloud the issue without any basic reason is one which, if it will be allowed to continue, will seriously impair and affect the intelligent and unhampered operation of the coat and suit business.

If there is any further information you desire with respect to the western area and its reaction to this issue, you may communicate with Mr. Alexander Prints, in Cleveland, and we are certain that he will give you his frank and sincere expression of his views.

If there is any other information on any point, please do not hesitate to communicate with me and I again assure you that the proper enforcement officers will, at all times, in this market, have full and complete access to time and payroll records and an opportunity to speak in person to the employees, and that they will be given all proper assistance in order that they may ascertain that we are maintaining the proper standards of the code.

Very respectfully yours,

BALTIMORE CLOAK & SUIT ASSOCIATION, INC.

Special delivery, registered mail, return receipt requested.

[Telegram]

SEPTEMBER 18, 1934.

Gen. HUGH S. JOHNSON,
National Recovery Administrator, Washington, D. C.:

Have just noticed in the press that an order is to be passed allocating Baltimore to the eastern area. This decision made on unfounded reports and incorrect figures as proved in the public hearing August 3, 1934. Have set out the matter in detail in letter forwarded today to Deputy Administrator Edwards, copy of which letter is also being forwarded you. In the interest of maintaining the Baltimore industry and preventing the collapse of this market and irreparable damage, would suggest that you review the matter or communicate with Administrator Edwards with respect thereto, or whatever proper action you may deem necessary.

NATHAN HAMBURGER,
Attorney for Baltimore Coat & Suit Association,
Baltimore, Md.

SEPTEMBER 18, 1934.

Re Baltimore status.

Deputy Administrator EDWARDS,
Department of Commerce Building, Washington, D. C.

DEAR MR. EDWARDS: I am sending this letter in compliance with my telephone conversation with you this morning, in which we discussed the proposed allocation of Maryland to the eastern area.

The report of the coat and suit commission alleged that the Baltimore market had the lowest production costs in the country. You will recall that at the hearings held on August 3, 1934, at the Washington Hotel for the purpose of discussing the commission's report, I produced and discussed a report made by Black & Co., certified public accountants, on the Baltimore costs, which showed definitely that for similar types of garments, the Baltimore costs were not only not the lowest costs in the country, but in many instances were as high as various markets in the eastern area. The accountants' figures also showed conclusively that the commission's costs figures for Baltimore were inaccurate, the reason for this being that the commission's figures did not include all of the proper costs and items which were included in computing the costs of the other markets, and which should have been included in arriving at the costs in Baltimore. Upon this allegation, a Deputy Administrator Greenberg, as the record will show, promised to make a further check-up, and at my insistence, said he would send auditors to Baltimore to reconcile and account for the apparent error on the part of the commission.

The commission in its report also stated that not all of the Baltimore concerns were willing to furnish the figures to the commission, and among those which refused were two of the largest concerns in Baltimore. I immediately challenged this statement and stamped it as being incorrect, Professor Brissenden, when called upon by Mr. Greenberg, publicly said that while he had no personal information on that question, he assumed the statement was correct. Mr. Greenberg then publicly announced that he would require an affidavit from the representative of the commission who had made the report as to the alleged refusal.

The figures in Baltimore were obtained by Mr. Jonas H. Glass, code authority representative in Baltimore. Mr. Glass refused to make an affidavit to the effect that any Baltimore manufacturer had refused him information and, further, immediately after the meeting had a consultation with Mr. Greenberg during which he explained that no manufacturer had refused any information, and that the commission's statement therefore is inaccurate and without foundation.

Immediately after the meeting, I also spoke with Mr. Greenberg in the presence of Mr. Linder of Scranton, Pa., and his attorney, Herbert Hall, and several Baltimore manufacturers, and Mr. Greenberg assured me that before reaching a decision in Baltimore's allocation, he would have a conference with me either in Washington or in New York. Since that time, on several occasions, there have appeared articles in the Women's Wear Daily, all statements made by Mr. Greenberg to the press to the effect that no definite decision would be reached on Baltimore's allocation until he had conferred with representatives from Baltimore. (See Women's Wear Daily of Aug. 14, 1934, p. 1, and Aug. 16, 1934, sec. 1, p. 11). Since that time, I have waited patiently for word from him, but to this day have heard nothing.

Today, I noticed in the Women's Wear Daily that the decision to allocate Baltimore to the eastern area has been decided upon and submitted to the code authority for approval. I immediately attempted to communicate with Mr. Greenberg in Washington and was advised he was not expected there. I then spoke with his secretary, Miss Feeley, at the New York headquarters, and was advised that Mr. Greenberg left simultaneously with the filing of this report for his vacation. That he could not be reached and that she would not divulge his whereabouts. He was expected to be gone for perhaps several weeks and that this order would be effective within several days.

I then called you and explained this matter, during which conversation you requested that I submit to you the proof upon which we allege that the Baltimore cost figures set out by the commission were erroneous, and to that end, this communication is addressed to you. You further said that you, of course, had no knowledge of the conversations between Mr. Greenberg, as explained above, and that Mr. Greenberg had never mentioned them to you.

The report of the certified public accountants is herewith enclosed, and reference to the record of August 3 will point out errors in the commission's figures.

Since the commission made its decision upon the allocation of Baltimore's having the lowest costs in the entire country, and since we have conclusively shown that the figures used by the commission are incorrect, and that on the contrary, proper figures show that for the same type of garment Baltimore costs are not only not the lowest in the country but that they are as high as in the East, that therefore the commission's recommendation is without any real foundation, is not based on proper figures, and is totally unjustified.

You will readily see the injustice of this entire procedure when, after these errors are pointed out, no attempt is made to rectify same, nor is any investigation made to determine the accuracy of them, and that notwithstanding the collapse of the whole foundation of the commission's report, nevertheless, their recommendation is accepted and an agreement reached by the officials to allocate Baltimore to the East.

It has been repeatedly shown at numerous hearings and conferences that Baltimore was but a pawn in the hands of the large interests, to be harrassed and shuttled back and forth at their whim and caprice. This last order of allocation, without regard to the equities in the case, and with a total disregard of all proofs submitted, shows a further attempt to continue to sacrifice Baltimore at the pleasure of controlling interests.

You may confirm my statements by reference to the record, by communicating with Mr. Jonas H. Glass, Munsey Building, Baltimore, Md., and by contacting Mr. Greenberg himself, who will necessarily, in all fairness and honesty, reaffirm and admit the promises made to me. We expect that you will give this matter the proper consideration that you assured me you would give it, but are nevertheless simultaneously herewith forwarding a telegram to General Johnson, and a copy of this letter.

Due to the holidays, I will not be available Wednesday, but I am at your disposal any time thereafter, and will be happy to come to Washington and discuss the matter further with you if you so desire.

I will appreciate you advices before the matter is finally adjudicated by your office.

STATEMENT OF PAYSON IRWIN, DEPUTY ADMINISTRATOR, GRAPHIC ARTS CODE NATIONAL RECOVERY ADMINISTRATION

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Mr. Irwin is the N. R. A.'s Deputy Administrator of the Graphic Arts Code.

Be as brief and to the point as you can, Mr. Irwin.

Mr. IRWIN. The questions this morning showed a very great confusion in understanding particularly the provisions in the code on cost-accounting systems.

Senator KING. May I ask first, how long have you been Deputy Administrator of the Graphic Arts Code?

Mr. IRWIN. The code went into effect February 26, 1934. I was concerned in the writing of the code, and then went on as Deputy Administrator.

Senator KING. How concerned?

Mr. IRWIN. Well, I held a great many of the hearings or some of the hearings for the groups within the code. The code has 14 code authorities and 17 product groups and a coordinating committee.

Senator KING. Who selected you to help write the code?

Mr. IRWIN. The officials of the N. R. A., General Johnson.

Senator KING. What was your business before you became Deputy Administrator?

Mr. IRWIN. I have not been in business since 1927. I have been in the past an editor, reporter, publisher in a small way, and conducted business of various sorts.

The CHAIRMAN. Where are you from?

Mr. IRWIN. My home is in Weston, Mass. I am a farmer.

Senator KING. You mean now?

Mr. IRWIN. No.

Senator KING. You are still deputy administrator, though?

Mr. IRWIN. I am still deputy administrator.

The provision in the code, section 26, provides that each national code authority within 30 days after the effective date of this code shall declare for its industry uniform particulars of accounting and cost finding which shall be subject to the review of the National Graphic Arts Coordinating Committee and the administrator and shall prescribe a method of accounting and a method of cost finding each in conformity with such principles and readily adaptable and each of which shall be subject to the review of the National Graphic Arts Coordinating Committee. Each establishment shall use a method of accounting and a method of cost finding, each of which shall conform to the principles declared and be at least as detailed and complete as the methods prescribed, with such variations of application and exceptions as may upon proper showing be approved by such national code authorities.

I want to bring out the point——

Senator KING (interposing). You formulated that?

Mr. IRWIN. No; I did not. The code was written by a code committee from industry selected at a meeting in Chicago in August 1933. It was a meeting called by the United Typothetae, which is the national association of the printers.

The meeting, however, was not confined to the association. It was a call to the industry, and they sent their representatives to Chicago and there selected a code committee which came down here and out of

their own pockets spent thousands of dollars at work in writing this code.

They very efficiently and effectively organized themselves into groups to handle certain phases of it. There was a group that had to do with all of the provisions in the code having to do with the cost-accounting systems and the stabilization methods, and they were the ones that formulated this entire provision under the advice and with the aid of the N. R. A.

But I read that so that you would see that there is not a rigid requirement as to the cost-accounting system that may be used. The principles are laid down, but by application to a national code authority there can be the exceptions and variations that may be necessary to make the adaptation of an individual cost-accounting system to the requirements under the code. It is obvious that it would be utterly impossible to arrive at any ideas of cost unless there are certain similarities in the mechanicism of the cost-accounting system.

Senator CLARK. Does that cost-accounting system as set up under this code provide for the straight saddling of 10 percent a year depreciation as has been testified here?

Mr. IRWIN. No, sir; I believe it is not 10 percent. I must tell you at once——

Senator CLARK. It has been so testified by a man that has been assessed a penalty for not observing it.

Mr. IRWIN. No, sir; I wish to bring out that he was not assessed for that reason. He was not found in violation for that reason. He was found in violation in that he had no cost-accounting system. He never had made an application for a review of whatever system he had to the national code authority, which he might have done at any time in the month previous to this charge of violation of the code.

Senator KING. Let me ask you this. I have here a pamphlet of 76 pages, "Graphic Arts and Industries." Is this your code?

Mr. IRWIN. It is the code.

Senator KING. And a lot of it fine print.

Mr. IRWIN. I must tell you at once it is the most intricate code in the N. R. A., but it represents, as I said before, 14 code authorities and 17 products, and about a half million employees. Also between 40,000 and 50,000 establishments, including newspapers and printing.

Senator CLARK. What is the basis of the suffrage in electing your code authorities?

Mr. IRWIN. The method of election?

Senator CLARK. Yes.

Mr. IRWIN. In some cases—in a good many of the cases in the graphic arts—it was provided that boards of directors of the trade association would become the code authority. Then it was our duty to see that those were all representative of the industry.

Senator CLARK. What I was getting at was this. It was testified here the other day by the representative of the printers' union at St. Paul, that under the Graphic Arts Code in effect in Minnesota and North and South Dakota, the basis of suffrage in electing to the code authority was such that it was possible, and in actual practice it happened that the four large printing companies in St. Paul and Minneapolis were able to outvote in electing members of the code authority, all of the other printers in the States of Minnesota and North and South Dakota combined. That in addition to that, this

Perkins-Tracy Co. against whom this penalty was assessed by the N. R. A. and who were declared outlaws by the N. R. A., paid 100 percent higher wages than the members of the big four who make up the code authority. Do you know anything about that?

Mr. IRWIN. There are several questions there. The first question is of course the charge that four people could elect the code authority. That may have been true in the original set up, because nearly all trade associations have provisions in their bylaws for a weighted vote.

Senator CLARK. On the basis of their gross business, is it not?

Mr. IRWIN. Yes; a weighted vote. However, the N. R. A. reviews the bylaws of trade associations, and constitutions and requires that such provisions be taken out of those bylaws and the constitutions. In the case of the printers, these printer organizations and associations—I want to correct one thing that crept in this morning, and that was the reference to the St. Paul group as a code authority. They are not a code authority, they are an administrative agency appointed by the National Code Authority and given certain powers by the National Code Authority, and the National Code Authority is responsible for their action. That does not mean that we do not exercise a supervision, but it does mean that they are a subgroup under the National Code Authority. There was a reference to the gentleman that went to the hearings as the code authority. He was not. He was the administrative agent for the regional group.

Senator CLARK. Apparently your State compliance director, the official director of the N. R. A. in the State of Minnesota, thought he was the code authority?

Mr. IRWIN. Indirectly, sir. He did represent the National Code Authority. Because all of these groups do represent the National Code Authority, and they often speak of them that way, but I was trying to be technical to point out the mechanicism.

Senator CLARK. As to the other part of my question, do you know whether it is a fact as testified by the head of the local typographical union, that this concern, Perkins-Tracy Co., which were declared outlaws by the N. R. A., actually paid 100 percent more wages than the big four that controlled the local representatives of the code authority?

Mr. IRWIN. No, sir; I do not. Mrs. Olesen testified this morning that she had tried to get the wage rates of the company and had been unable to do so. We have had no occasion to call on that.

I may say that we do intend to make a considerable investigation of the set-up of various facts or statements. Because a great many of them I think, are not quite facts. They are mere statements. On the particular question whether they do pay 100 percent more, of course, I have no direct information.

Senator CLARK. Where do you find authority in the act to assess cost of hearings?

Mr. IRWIN. The authority that we work under in this particular case is the code itself. On page 22, section 2, there is a section there:

> Penalties for violations. The penalties for the violation of any of the provisions of this code shall be as provided in the National Industrial Recovery Act, and the cost of any investigation may be assessed against any establishment found guilty of a violation.

Then there is a second part:

In case the governing body determines that an establishment has filed a complaint frivolously or maliciously, it may assess the cost of the investigation or its reasonable cost against the complaint.

Senator CLARK. Of course, your right to assess penalties and charges must ultimately rest on the National Recovery Act itself and not on any provision of a code. Where in the National Recovery Act is there any authority to allow a code authority to assess charges?

Mr. IRWIN. I am not a lawyer and I cannot answer your question.

Senator BLACK. Let me ask you a question following up what was said. You just read that the code itself provides that you can impose a penalty upon the violation of the code. It was upon that provision that these gentlemen were assessed the $300, was it not? That is correct, is it not?

Mr. IRWIN. Yes, sir.

Senator BLACK. So that they were assessed a penalty for violating the provision of the code. I find in the letter——

Mr. IRWIN (interposing). May I correct that? It is not a penalty. The penalties are provided in the act itself.

Senator BLACK. Here is the letter that contains that. It says it. I have it before me.

Mr. IRWIN. I am not disputing that they made a charge or assessment against it, but not a penalty.

Senator BLACK. That is the penalty. I find also that that was based on a letter by Mr. Pollock in which he made this statement—I will give it to you exactly so that we will get it clear—a letter of Mr. Pollock, dated March 12, 1935:

United Typothetae of America has informed us that the cost-finding system set forth in Lefferts' letter does not conform to that declared by the United Typothetae of America. This determination has been accepted by the N. R. A. Division Administration for the Graphic Arts Division.

It was for a violation of that cost-finding system provision that they were asked to pay the $305.30, was it not?

Mr. IRWIN. That is correct.

Senator BLACK. Let us see what that was. Here is that letter attached to it. Let me read it to you:

The U. T. A. standard cost-finding system which is the effective cost-finding system under the code, requires that depreciation be charged in to the cost at standard rates, based on original cost, manufacturers' sales prices of equipment when new, of the equipment, and such depreciation is to be included in the cost even though the asset has been fully depreciated.

It was because these gentlemen did not adopt a system which required that they continue to charge depreciation after the asset had already been fully depreciated, that they have been assessed this $305, was it not?

Mr. IRWIN. Their failure to adopt a system.

Senator CLARK. It is this system. That is what it says. Do you deny that they were assessed $305 for failing to comply with this provision that Mr. Pollock sent them?

Mr. IRWIN. They failed to provide with the provisions in the code. I pointed out——

Senator BLACK (interposing). Wait just a moment. I have all the letters, and it first refers to the penalty provision. You admitted that is what was in there, did you not?

Mr. IRWIN. Yes.

Senator BLACK. Then I have Mr. Pollack's letter saying of March 12, 1935, that the determination of the fact that they had violated had been accepted by the N. R. A. division. I have the letter from the Typothetae stating here the provision that they had violated and saying that they had violated, and it provides that they must continue to charge depreciation after it has already been completely depreciated. That is correct, is it not?

Mr. IRWIN. He says there, as I recall it, that that is what the U. T. A. set-up in its standard cost system, and I have read you the provision in the code which allows variations and exceptions.

Senator BLACK. Will you look at this letter from Mr. Pollack? He is a lawyer, is he not? Read that paragraph into the record.

Mr. IRWIN. You mean the second paragraph?

Senator BLACK. I mean that paragraph where he says they adopt it.

Mr. IRWIN (reading):

United Typothetae of America has informed us that the cost-finding system set forth in Mr. Leffert's letter does not conform to that declared by the United Typothetae of America. This determination has been accepted by the N. R. A. Division Administrator for the Graphic Arts Division.

That is all presently correct, Senator.

Senator BLACK. Let me have that now for a moment. I want you to read another paragraph. Here is the letter of the United Typothetae which sets up and says right at the end that the Perkins-Tracy Printing Co. do not conform with these requirements. Now, would you mind just reading these two provisions that I have marked? What they say, please.

Mr. IRWIN (reading):

The U. T. A. standard cost-finding system which is the effective cost-finding system under the code requires that depreciation be charged into the cost at the standard rates based on the original cost, manufacturers' sales prices 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.

Senator BLACK. Read the next sentence.

Mr. IRWIN (reading):

The U. T. A. standard cost-finding system is not devised for the purposes of the Internal Revenue Department.

Senator CLARK. It would land him in jail if he used that with the Internal Revenue Department.

Mr. IRWIN. Absolutely.

Senator BLACK. As deputy administrator, do you approve that?

Mr. IRWIN. The code provides, sir,——

Senator BLACK (interposing). I am not asking you that.

Mr. IRWIN. I am coming to it. I shall not answer that question, but I want to explain it——

Senator BLACK (interposing). I will ask you another one if you won't answer that.

Mr. IRWIN. I will answer it.

Senator BLACK. I want to ask you this. Do you believe in the principle which allows a continued depreciation after the matter has been completely charged off?

Mr. IRWIN. I am not, sir, a cost accountant.

Senator BLACK. I do not care about that. You are a citizen and you understand the fundamental principles of honesty?

Mr. IRWIN. It is not a question of honesty——

Senator BLACK (interposing). Let me illustrate it. We examined some shipping companies where they had a subsidy, and they had been showing a loss for a long time. We found that they had been continuing to charge off depreciation of the ships for years after they had already charged them completely off, which resulted in millions of dollars, which showed the company was losing when in reality it was not losing if they had stopped charging off depreciation after they had been fully depreciated. Do you believe that it is an honest method to continue to charge off depreciation after the thing has been completely charged off and had been absorbed?

Mr. IRWIN. It depends on the purpose of your cost system.

Senator BLACK. The purpose of the cost system here is to determine what it costs the man to manufacture goods so that they can say whether he is selling below cost or not, is it not?

Mr. IRWIN. Yes; that is quite true.

Senator BLACK. Do you believe that it is fair or honest to put in any cost charge which has not been a cost charge?

Mr. IRWIN. I quite agree that it is not; yes.

Senator BLACK. Would you as a deputy administrator approve charging up $1,000 wages that had not been paid?

Mr. IRWIN. No; certainly not.

Senator BLACK. Would you as a deptuy administrator approve charging $2,000 depreciation where the machinery only cost $1,000?

Mr. IRWIN. I can only answer you that, Senator, that I discussed the matter with many cost accountants and I find that there are almost as many differences of opinion as there are cost accountants.

Senator BLACK. In other words, you find cost accountants free and unbiased who are not hired by the person who wants to charge that depreciation, who are now willing to stand up and say that they believe it is honest to charge more for depreciation than the machinery costs?

Mr. IRWIN. The purpose of the cost system——

Senator BLACK (interposing). What cost accountant ever told you that he believed that was fair and honest or right? Name one of them.

Mr. IRWIN. I decline to——

Senator BLACK (interposing). Do you know of any?

Mr. IRWIN. Yes, sir.

Senator BLACK. Where do they live? We would like their names and where they live if they believe that to be honest.

Mr. IRWIN. May I say, sir, in regard to this——

Senator BLACK (interposing). The question I asked you is, give me all of these names.

Mr. IRWIN. I shall not give you the names.

Senator BLACK. You decline to give them?

Mr. IRWIN. Yes; because I have not discussed with them officially on this.

Senator BLACK. I am not talking about officially. What cost accountant? We want some expert evidence to show that that is honest. Whom can we summon who has told you it is honest?

Mr. IRWIN. May I say that I would like to say this much, that your characterization on the moral ground of these things makes it rather difficult. This is entirely a technical matter of cost accounting.

Senator BLACK. Very technical?

Mr. IRWIN. I think so.

Senator BLACK. Very technical if a man will charge off in depreciation what he actually paid or more than he actually paid. You consider that to be technical, and not based on the usual principles of honesty and integrity of business.

Mr. IRWIN. When you state it that way, I would say I do not consider it. I would agree with you when you state it that way.

Senator BLACK. What would you agree to?

Mr. IRWIN. I would agree that charging off things that are dishonest would be dishonest, of course.

Senator BLACK. Do you agree that it would be honest or dishonest to charge off more than the machinery cost?

Mr. IRWIN. I certainly would.

Senator BLACK. Then if it cost $2,000 and they charge off and keep on charging off until they charged $3,000, you would think them honest.

Mr. IRWIN. I am rather inclined to think so.

Senator BLACK. How long have you been deputy administrator?

Mr. IRWIN. May I put into the record, however——

The CHAIRMAN. We will have to recess. The bells have rung. The committee is going to recess until 2 o'clock this afternoon when we will continue in the District of Columbia committee room.

At this time I would like to put into the record a telegram received this morning with a request that it be put into the record. This telegram is signed by A. C. Weigel, chairman of the code authority of the boiler manufacturing industry, also member of the council of durable goods committee representing the boiler manufacturing industry.

(The telegram is as follows:)

[Western Union telegram]

NEW YORK, N. Y., *April 4, 1935.*

Senator PAT HARRISON AND MEMBERS SENATE FINANCE COMMITTEE:

I understand that A. J. Hettinger testified adversely to N. I. R. A. It is not clear whether he testified as secretary of durable goods committee or as an individual. If he represented himself as secretary of durable goods committee he is testifying adversely to the desires of the members of the boiler manufacturing industry. A majority of this industry voted to request the extension of N. I. R. A. but they have not been given an opportunity to express themselves openly before the durable goods committee. I ask that this telegram be made a part of your record.

A. C. WEIGEL,
Chairman Code Authority Boiler Manufacturing Industry also Member of Council of Durable Goods Committee Representing Boiler Manufacturing Industry.

The CHAIRMAN. I would like in that connection also to put in the record a letter received this morning from Mr. Leon Henderson, director of research and planning division of the N. R. A.

(The letter is as follows:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 4, 1935.

Senator PAT HARRISON,
Chairman Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: The purpose of this letter is to clarify a misunderstanding which may have arisen by virtue of the testimony given before the Senate Finance Committee by Mr. A. J. Hettinger with respect to a certain report on the operation of the National Industrial Recovery Act which was made available to the members of your committee. Mr. Hettinger evidently proceeded on

the assumption that this report was prepared for the enlightenment of the committee. Such is not the case. This report was prepared entirely by the staff of the Research and Planning Division operating, however, under tremendous pressure of time as a current report from the National Industrial Recovery Board to the National Emergency Council. It was recognized at the time that some of the information contained in this report would be useful to staff members of the National Recovery Administration. Accordingly, it was mimeographed for internal distribution. Requests for copies were received to such an extent that we eventually made it available to the press, Members of Congress, and Government agencies. It has not been released to the general public.

A skeletonized version of the original report which was entitled "Condensed Information Based on the Operation of the National Industrial Recovery Act" was subsequently prepared by those working on legislation for ready reference purposes, and copies were supplied to your committee. The "condensed report" does not purport to be a separate and independent study but is merely an outline of the material contained in the original report, all supporting details being separately furnished in chart and table form in two accompanying booklets.

Yours very truly,

LEON HENDERSON,
Director Research and Planning Division, National Recovery Administration.

(Whereupon, at 12:05 p. m., a recess was taken until 2 o'clock of the same day at the place noted.)

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 PAYSON IRWIN—Resumed

The CHAIRMAN. All right, Mr. Irwin, you may proceed. May I say, make any explanation you desire, Mr. Irwin, and I say to you, and I say to the other deputy administrators that the committee is merely trying to seek your opinion about the matters, and I would give my opinion whether it agrees with the others or not. We can attend to that later. I can appreciate that there are authorities which would like to be sustained on their propositions. But if there are mistakes that are made, it does not hurt anybody to state them, and what we are trying to do is cure mistakes in these different propositions. That is why all this investigation is made here. And it would be very good to the committee if the opinions can be expressed without restraint of limitation, or even fear from any higher ups. I know that that is not your case, but I am merely saying that as a matter of observation, and so when Senators request opinions, I hope if you have an opinion, that we can get it whether or not it is agreeable with the code authorities or not, because I do not agree with them in a whole lot of things, I am sure.

Senator KING. Neither do I.

The CHAIRMAN. And I think there are a number of people who do not, and I imagine there are a lot of them, because I have talked with some of them, and I think we all appreciate that there has been mistakes made. It would have been impossible not to have made mistakes. So what we are trying to do is to cure some of the mistakes.

All right. Now you may proceed.

Mr. IRWIN. To clarify somewhat, the situation, and be as brief as possible, I will make this statement: The Graphic Arts Industries are primarily bidding industires. The members of the industry are in

constant open competition with each other in seeking contracts to furnish their customers with the products of the industry. These circumstances encourage competition to the maximum degree, and in periods of business scarcity may lead to destructive price cutting which is disastrous to the industry. The code makes provision for the use of methods of cost determination which may be put into effect when these conditions arise.

Senator KING. You say competition would be disastrous to the industry?

Mr. IRWIN. Price cutting.

Senator KING. What is price cutting? Simply selling your product a little lower than somebody else's?

Mr. IRWIN. Not necessarily, sir. Destructive price cutting comes when there is an attempt to gain a market, and very often it takes the form of selling far below cost. Then the test of who wins is the surplus back of the company that is doing the selling below cost. It is the method by which monopolies are built up.

Senator KING. It is not your disposition and the disposition of the code authorities to denominate everything as causing destructive price cutting if there is some competition when one man bids below the other and is satisfied with the narrow profit which he makes.

Mr. IRWIN. I can only speak for my own code, and it is not true of that code.

The CHAIRMAN. You have not any price fixing in that code, have you?

Mr. IRWIN. No. We have a price stabilization program.

The CHAIRMAN. Yes.

Mr. IRWIN. I was just going to read that the code attempts to meet this condition by provisions for fair methods of cost determination.

The code provides for three such methods. The first method is the cost-finding system which was discussed this morning. It is the basic method and may be used by members of the industry with the necessary variations and exceptions for a particular establishment.

Senator KING. What?

Mr. IRWIN. The cost system which has been discussed is the basic method but is only 1 of the 3 provided. The second method is economic hourly cost rates and production standards. The third method is cost-determination schedules. These methods may be used in the industry under discussion, but an establishment must use 1 of the 3, in the alternative. In other words, Perkins-Tracy was not obliged to use the cost system. He might have used either of the other two methods which were applicable to a particular part of the contract upon which he bid.

In regard to the decision in this case. The respondent used none of these three methods. He chose to use his own cost system, which was found by N. R. A. to be inadequate. This finding was not based on the fact that the respondent did not set up depreciation according to the standard system, but upon the fact that respondent's so-called "system" was incomplete as to essential details of cost accounting and cost finding, and did not allow him to accurately figure his costs without guesswork. After he had quoted on the State contract, respondent installed a system which he claims conforms to the standard with the exception of the one item of depreciation. N. R. A. has not ruled that he violated the code in this respect because of the

controversial nature of the problem as to the proper basis for setting up depreciation, and because the basis adopted by the National Code Authority has not been given N. R. A. approval. The character of the present system has no bearing on this case. As I have stated above, the finding of violation was made without reference to the method of setting up depreciation used by respondent. The system which he purported to use was inadequate in other important details.

Senator KING. You decided against him, did you not?

Mr. IRWIN. We did, sir.

The CHAIRMAN. And as I understand you, you decided against him on another theory.

Mr. IRWIN. On another point.

The CHAIRMAN. Than on this cost-accounting system, and that was that he did not give you the full facts with reference to the ascertainment of the cost, is that right?

Mr. IRWIN. That is correct. It was not a system which would develop the facts as required by the code.

The CHAIRMAN. Do I understand the code authorities have not taken this 10-percent cost reduction ascertainment theory?

Mr. IRWIN. That is not quite correct. The code authority under the code is allowed to declare one of these systems. The systems must be reviewed by the Coordinating Committee of the Graphic Arts and the Administration.

Senator KING. It is a fact, is it not, that you have set up a different system of accounting from that which prevails in the internal branch of the Government?

Mr. IRWIN. That remains to be seen, sir. We are reviewing these cost systems. We have a great many of them. We have a great many of them, and if we find, as for instance in this item of depreciation that it is not the one we can approve, we will disallow that system.

Senator KING. But you have set up a cost system under the terms of which you are required to deduct 10 percent from a phantom cost?

Mr. IRWIN. No, sir. The code that set that up——

Senator KING (interposing). Then the code set that up?

Mr. IRWIN. May I say I am wrong? The code does not set it up. It merely says U. T. A. system. That system was allowed to be declared by the code authority, but it must later be reviewed to meet the approval of the Administration and we have reviewed it, and we have not given it our approval.

Senator KING. Has it not approved it in other codes?

Mr. IRWIN. No, sir; not this one.

Senator KING. You could not answer that?

Mr. IRWIN. I could not answer.

Senator KING. But N. R. A. has been doing it?

Mr. IRWIN. I could not answer.

The CHAIRMAN. Why has it not been approved? That code has been set up for 2 years, has it not?

Mr. IRWIN. No, sir. It is just a little over a year old.

The CHAIRMAN. In a year, why has not that mode of ascertainment been approved?

Mr. IRWIN. We have been studying them. Some of the things have not been given approval by review. They have been under extended review, because we have tried to develop the basic facts, as, for instance, in some of the economy hourly cost rates, it requires a

great deal of study and development of facts on which those things are based. And it does take a great deal of time.

The CHAIRMAN. May I ask you when the code was promulgated, was the method employed in cost ascertainment by the Treasury Department considered?

Mr. IRWIN. No, sir; I could not say. Those systems were usually written in the code subject to review by the Administration. It merely would be provided in a code that the system used should be the standard system. The system itself so far as I know was never reviewed before the code went into effect. But it was always provided that the Administration could review it afterward when the thing was to be put in. Our duty in writing the code was to see that it was not so rigid a requirement that it would work an undue hardship.

In this particular provision in the code it allows for variations and adaptations as we would make them because of actual conditions in a plant—that is, the actual condition of a cost system already installed. And our efforts in administering the code have always been to be very reasonable about any such requirements whenever the question would come up.

The CHAIRMAN. Did you not state in the beginning of your remarks this afternoon that the cost system was one of the basic foundations upon which to administer the code, and to determine whether the conduct of the persons in the industry was conformable to law and to the code, or was the reverse?

Mr. IRWIN. I said it was one of the basic methods of the stabilization features of the code.

Senator KING. Yes; what do you mean by stabilization?

Mr. IRWIN. In other words, allowing the individual to always be able to prove his costs. And the basic thing in the code in this section, the mandatory thing, is that you must not sell below cost. Any concern that can develop the fact that they were not selling below cost was in conformity with the code.

Senator KING. But you expressly provided, did you not, either in regulation, or in the code itself, or by the whims and caprices of those who enforced the code that in determining the cost they must take into account the original cost of the mechanical contrivance? For instance, in the printing business the original cost of the printing press rather than its depreciation.

Mr. IRWIN. That is required.

Senator KING. Yes.

Mr. IRWIN. In the U. T. A. system, sir; yes.

Senator KING. The U. T. A. system would mean this, that if Mr. Tracy had bought a plant 10 years ago for $10,000, and he charged off each year 10 percent, at the time he came into the code he would have to start back with the $10,000, and that would be the basis upon which to determine cost, would it not?

Mr. IRWIN. That has not been approved by N. R. A., sir, and in such cases the Compliance Division has been requested to take no cases where the violation would be in not using that depreciation.

Senator KING. Has not that depreciation been applied in all of the units of this industry?

Mr. IRWIN. No, sir.

Senator KING. In determining the cost?

Mr. IRWIN. No, sir.

Senator KING. What unit, what method was employed by the four competitors, the big interests which are in the printing business in the Twin Cities?

Mr. IRWIN. That I could not say. I am not familiar with the method of submitting the bids at that time.

Senator KING. Did you not inquire into that?

Mr. IRWIN. No, sir; because we were not reviewing contracts, sir. It was merely a question whether in the specific bid made by Perkins-Tracy on their own cost system, whether they had a cost system that was adequate, or whether they had used any of the three provisions in the code for arriving at their costs.

The CHAIRMAN. All right. Proceed. Is that all you have?

Mr. IRWIN. I might say this, that the reference in pages from Mr. Pollock's letter that was read by Senator Black this morning really referred to the system which was installed after this case was heard and decided upon. The question of depreciation that has been raised by Mr. Tracy was never raised until late in the fall.

The bid was on July 9, and the case was on after that; I have forgotten the exact date. Then Mr. Tracy some months later, the Perkins-Tracy Co., got a cost accountant to install a cost system. And Mr. Tracy now claims that he has installed it in every detail except this method of depreciation. That now is the subject of consideration and has been brought up to the N. R. A. specifically, but has not been decided.

The CHAIRMAN. So you are now considering that proposition?

Mr. IRWIN. Yes, sir. But I want to emphasize the point that that question of the depreciation was not raised in the original case, has nothing to do with the original case, and that it only came up many months later.

Senator KING. Mr. Irwin, your compensation is paid by the N. R. A., is it not?

Mr. IRWIN. Yes, sir.

Senator KING. What is your salary? What do you get?

Mr. IRWIN. I think it is $6,800.

Senator KING. $6,800?

Mr. IRWIN. Yes, sir.

Senator KING. That is rather modest, measured by the compensation paid to some of the others, is it not?

Mr. IRWIN. It is considerably less than I have worked for for a good many years.

Senator KING. That is all.

The CHAIRMAN. Mr. Walter Mitchell, Jr. How much time, Mr. Mitchell, do you desire?

STATEMENT OF WALTER MITCHELL, JR., SECRETARY OF THE FURNITURE CODE AUTHORITY, WASHINGTON, D. C.

(The witness, having first been duly sworn by the chairman, testified as follows:)

Mr. MITCHELL. In order to cover my notes, Senator, I do not think more than 20 minutes, but it depends on the number of questions you want to ask.

The CHAIRMAN. I hope you will be as brief as possible, as we have got a lot of witnesses to hear, and we want to get along. Come down to the points which you want to give, and you can put in writing

anything else which you want to put in the record, and I think we can catch what we are after.

Mr. MITCHELL. My name is Walter Mitchell, Washington, D. C. Mr. Chairman, I think from the evidence you have had before your committee and the requests of the committee are so numerous that one might assume the committee intends to write into the act a prohibition against price fixing. Therefore, I am going to confine myself to trying to outline to you what is price fixing and what is not in the codes, and with particular reference to price filing, which I had the opportunity to study in great detail during the period in which I was in charge of the price-policy research unit in the N. R. A., and since that time outside of the Government as secretary of the Code Authority for the Furniture Industry.

Senator KING. I do not assume as a matter absolutely determined that a new law will be written.

Mr. MITCHELL. No; and I am not making any recommendations and the Furniture Code Authority is not making any recommendations. In coming before you here I am doing it by request, and want to emphasize that it is not the code authority speaking, because the code authority has felt its own code in the aggregate has neither helped nor hurt the industry.

Senator KING. I do not understand what relation, if any, you have had with the code authority.

Mr. MITCHELL. I am secretary of the Furniture Code Authority.

Senator KING. Oh, secretary; who is the chairman of it at present?

Mr. MITCHELL. The chairman is Mr. Robert W. Irwin, who appeared not in that capacity, but who appeared in behalf of the Committee for the Elimination of Price Fixing and Production Control Saturday before your committee.

The CHAIRMAN. How long have you been secretary?

Mr. MITCHELL. Just about a year. I went with them last March.

Senator KING. What were you before that?

Mr. MITCHELL. I was in charge of the price-policy research unit in the N. R. A., assisting Mr. A. D. Whiteside in the first price investigation conducted by N. R. A. from within in January 1934.

Senator KING. Then you have been with the N. R. A. almost from the beginning?

Mr. MITCHELL. I was with the N. R. A. only about 3½ months, having been loaned to them from the Department of Commerce to do this price investigation work in connection with the January hearing in 1934.

Senator KING. That hearing was conducted by the N. R. A.?

Mr. MITCHELL. Yes; but I was with the N. R. A. only during that period. I am now outside of the N. R. A., paid by the furniture manufacturing industry.

Senator KING. And how are you paid?

Mr. MITCHELL. By the furniture manufacturing industry.

Senator KING. By assessments upon the industry?

Mr. MITCHELL. Up until the present, up to January 1, 1934, the code was entirely supported by the four trade associations within the industry by contributions out of their own cash balances. Those associations, however, represent between 75 and 90 percent of the industry.

Senator KING. Of course, the units of the industry pay to their trade associations and then the trade associations pay it?

Mr. MITCHELL. Pay it to the code authority; yes.

Senator KING. What does the head of the code authority get?

Mr. MITCHELL. The chairman of the code authority gets no salary at all. He gets only traveling expenses when coming down on code business only and not on any other business to Washington.

Senator KING. Proceed.

Mr. MITCHELL. The question of price fixing is denied almost universally by industries that have it in their code, and I have not seen that called very strongly to the attention of the committee.

The printing industry, of which you have just been hearing considerable, has in its code a provision for a costing system, which in respect to depreciation is inflated, so that if you actually figure your costs according to that system you will have a profit. In other words, it is a price-fixing system. The minimum-cost protection prices which were set in the lumber code were in almost every instance such as to give a large number of producers more profit than they would have asked for on a competitive market. And we have filed with the Darrow Board last year evidence from the books of the actual cost figures of a veneer producer showing some figures of that sort. We have also accumulated some lumber figures from other mills and factories.

The CHAIRMAN. How about the furniture code?

Mr. MITCHELL. We have no price fixing in the furniture code. And the furniture and automobile industries are, so far as I know, the only two industries who have from the start of N. R. A. maintained a consistent stand against all price fixing as likely to retard recovery and likely to make the N. R. A. an economic and political liability.

Now the distinction I think will be valuable to the committee and possibly may direct some of the investigations of your agents, is what happens when a price-fixing system results in the way industry intends it to. And what happens when it breaks down, as almost inevitably it does. It will ruin prices for you. And why? As we have seen in the lumber industry. If allowed to set minimum prices or to set up a standard of cost on standard-cost percentages, as appears in the printing and other codes, it will inevitably be unjust to some groups who must compete on price, because they do not have service facilities or do not have an established name or advertised trade mark. If you allow certain industries, in which price fixing is permitted, a preferred claim on the national income, for the sale of their products, for instance, food products and basic products like cement and steel, this in turn leaves less income available for expenditure for durable goods, such as houses, automobiles, and furniture, which must wait before you meet your necessary purchases, or until you have met them before you have any money to spend on those. It hurts confidence of users to have it apparent on the face of things or by the way the code is administered, that prices are being fixed. We can find for you examples in the furniture industry where manufacturers bought only their own minimum requirements of lumber all during the period of price fixing, but they opened up and bought six or eight carloads, or $100,000 worth of lumber as compared with the previous purchases averaging around $10,000 worth of lumber, when they felt confident that the prices were fixed by supply and demand and not by a code committee.

I think it can be fairly said in an allegedly competitive economic system the absolute fairness of prices is not really so important

as the confidence purchasers. And if N. R. A. is not to retard recovery I do not see how you can leave price-fixing devices to be used under it in any possible way.

The CHAIRMAN. Would you apply that to natural resources such as coal and iron and coke?

Mr. MITCHELL. I have a discussion in here on production control and price fixing as related to those, because it is specifically mentioned in this draft of the bill. Would you rather have me take that up now or come to it?

The CHAIRMAN. Go ahead.

Senator KING. Would it inconvenience you in the presentation of your testimony to state what are some of the factors or methods or devices employed for price fixing? If you are going to discuss that later I will withdraw the question.

Mr. MITCHELL. Yes; I will enumerate them right now. First is the setting of definite minimum prices such as the lumber prices, the setting of definite differentials in prices, such as resale maintenance devices, the setting of definite overhead percentage burdens to be added to the direct labor cost, or definite percentage depreciation schedule, or anything of that sort, and certain types, in fact I would say all types, of mandatory price filing systems.

Senator KING. Is that compulsory costing systems?

Mr. MITCHELL. No; they are not compulsory costing systems. Those are the affairs in which it is required that you figure your depreciation or your overhead burdens at certain specified rates.

Senator KING. Yes.

Mr. MITCHELL. I do not know of any industry code representatives who have those devices in their codes who will admit they are price fixing. They will call them by some other pleasant name, such as stabilization, or cost systems.

Senator KING. Open-price systems would be one of the devices?

Mr. MITCHELL. Open-price systems would be one of the devices; I am going to deal with them at some length.

Senator KING. You are familiar with discounts, customers classifications, allocation of production, and production control?

Mr. MITCHELL. I am going to deal with all of those in just a moment.

Senator KING. Thank you.

Mr. MITCHELL. I am talking first about price-fixing systems and secondly about price-filing systems. If a definite price-fixing system breaks down you then have that industry more subject to rumors and panic, because it is unlawful to publish the price at which you are actually selling when the news of actual prices is passed by word of mouth it usually lacks adequate data as to discount, terms, and so forth, and consequently the prices of that industry, the price structure in it, is more subject to rumors and panic when it begins to break down than it would have been under the open competitive system.

They are likely to sink too low and likely to sink lower than the actual supply-and-demand condition would warrant. And in that instance, instead of hurting the confidence of the immediate buyer the breakdown of the pricing system back here in material, will hurt the confidence of the distributors and the retailers in the fabricated products. We had definitely that experience with the furniture industry at the time the lumber prices began to break. Every retailer

had heard the rumor and held off from buying in expectation of lower furniture prices. It definitely had a dampening effect not only upon the furniture industry but upon other fabricated products.

Senator KING. Including the building industry if they used lumber in the building.

Mr. MITCHELL. Very definitely. I talked with representatives of the Federal Housing Corporation, who were very much worried about a possible breakdown in their program. The impossibility of enforcing this thing and the unavoidable delay in dealing with violations is a very important factor which I won't dwell on, because I believe your committee plans probably to call Mr. Sol Rosenblatt, who made a very enlightening talk at the price-fixing hearing in January, and although it did not receive much attention in the press, it was one of the most significant statements at the hearing.

Senator KING. I think we will be very glad to get your views.

Mr. MITCHELL. Perhaps a summary of Mr. Rosenblatt's views at that meeting might be interesting.

The CHAIRMAN. We will have him later. I may say to you that we may have to recess at any time because of the work relief bill being taken up. I want to accommodate all the witnesses who appear here, but I want you to give your views briefly.

Mr. MITCHELL. I have my office here in town, and I will be glad to withdraw and return at the committee's convenience.

The CHAIRMAN. You may go ahead and give your points briefly.

Mr. MITCHELL. The second is the price filing. I am giving the items. It should be voluntary and not mandatory. In my opinion all of the legitimate stabilizing effects of a better knowledge of prices can be accomplished by a privilege in the code for a group to file voluntarily the prices at which they have actually sold goods, not have any advance arrangement for filing prices, which would leave a period for intimidation, although any individual should be free, as he has been in the past, to publish his own prices, applicable for as long a period as he wants if he chooses to publish them. That has been a healthy thing for many years.

Now I want to call attention to two arguments which are used in favor of the mandatory price-filing system, and which will come up before your committee without any doubt, The first one is commodity exchanges for cocoa, tin, rubber, and so on, which have been a very valuable sources for the publication of information on prices. Second, there is the practice started years ago by Mr. Stewart, predecessor of Macy & Co. and other pioneer retailers, they marked their goods openly one price in Arabic numerals, and they were not on a code. That was the beginning of the open-price system they claim. There is a grave difference between the working of those precedents and the mandatory system now under the codes. No one was compelled on cocoa, rubber, tin, and so forth to go through the exchange, and many transactions occur only by rumors where the price is known.

Secondly, no retailers, as I have said, coerced any other retailers. It was not necessary for all the retailers to adopt open prices in order for one of them to reap the benefit. He found it quite possible to reap the result of greater public confidence in the values in his store without compelling anybody else to do it.

In connection with the mandatory price system is the second point of consideration, which I think is a very important one. A mandatory price-filing system, in order to operate satisfactorily, must be accom-

panied by 3 or 4 things which I think are economic fallacies. The committee can judge for itself. You must have customer classifications so you will know what sort of customer the price applies to. You have standard quantity discounts, which usually have to be on a customer basis as a matter of practical commercial operation. You must have retail-price maintenance in almost all cases to make a mandatory price-filing system work, because practically any product in which this is attempted goes partly directly from the manufacturer to the retailers, fabricators, or the contractors, but partly moves through the wholesaler or distributor, whose selling prices must match up with those of the manufacturer who deals direct with the contractor, or else the price-filing system is no good to the industry.

It is primarily set up to help create uniform delivered prices, or uniform basing-point prices, because if you should set up a mandatory price-filing system on the f. o. b. factory basis you would find each individual filing prices f. o. b. his factory, and he would find himself losing an order over here at a perfectly good convenient distance away, because somebody else happened to have a different freight rate, even though the f. o. b. prices matched.

In other words, it is not practical, not desirable from the standpoint of the industries, which request the privilege, to file on the very sound basis of f. o. b. factory. Therefore they resort to delivered or basing-point prices about which you have had some information, so I will not go into details of that point.

If a mandatory advance filing system works, I won't say that what happens is the same as I said with respect to rigid price fixing, but it lets the leaders determine the differential which they will permit the small man, and it is quite true that leaders have permitted the smaller members to file lower prices. Take the case of fractional horsepower motors sold by manufacturers for many years for vacuum cleaners and other household equipment. If a small manufacturer of motors gets any business he has pretty near got to do it on price, because three or four large manufacturers can say to the washing-machine firm, "If you buy our motor we have service facilities all over the United States, and you will not have to stock parts or service equipment and machinery, and therefore it is a much better value." And it puts in the hands of those leaders therefore the power to determine, like shutting and opening a valve, how much of the business shall be permitted to go to these smaller members of the industry on the only basis on which they can compete.

Senator KING. Have you discovered from your investigations that the leaders in various industries have availed themselves of that power, destructive in its operation if exercised?

Mr. MITCHELL. I have not in my possession any evidence that would help you, because I have moved out of the N. R. A. and left my files, as it seemed ethical to do. I would suggest that you question Mr. Leon Henderson on that point. He has quite a bit of information from his efforts to correct these things.

A mandatory price-filing system with the prices filed in advance destroys the incentive to reduce prices in most cases. If as a small member of an industry I decide to try to get an order and start by reducing the price with an advance date on it, I know that the bigger members, if they really want that order, will come in and name my price, and because of the greater production or service facilities, will get the order. And if I happen to be a member of that industry and

I have any judgment at all, I will see after the battle is over and the smoke has cleared that I have not gained anything by reducing prices for everybody, and I have not gotten an order. Why bother?

There is only one condition in which that procedure is not against him, and under which the small man can circumvent the price system, and that is when his personal relations with the purchaser are sufficiently good to establish a gentleman's agreement, because as happened in the case of some purchases, I understand by verbal report made by the furniture manufacturers, namely, I as a salesman with my bosses' concurrence believe that prices are too high on this particular item. We will file a lower price and bring everybody down. It probably will bring everybody down. But we will file that lower price and start the parade if you will give us the order dated 10 days from now. But that sort of personal relationship is so rare it is nearly entirely ineffective. I think you culd properly say that mandatory price systems will stabilize prices at a lower level than they would be stabilized by absolute regular price schedules laid out by a committee sitting around a table and saying, "Let us see how much we can get away with". But you will not stabilize the prices at as a low a level as would the free play of supply and demand.

Senator KING. Nor will it destroy the proper working of competitive factors in industry.

Mr. MITCHELL. That is true.

It inevitably will be used to help recoup fixed charges. If I, or anybody else as a manager of a concern, responsible to my directors and stockholders, am filing a price which I know will probably be kept by the rest of my industry, and they are gentlemen enough not to break it down, I will try to make that price cover a little larger proportion of my overhead and depreciation, bond interest and so on than I have previously been able to make it cover.

What you have to have is an indirect machinery by which the Government endeavors to guarantee all or part of the earning power of the investment. Now, as you are probably aware, even in the best of times, not all of industry has earned a profit, or even come out even. It has been said by financial observers that over one-third of the business, of the total investment in United States business was losing money in 1929. It is natural, because somebody has invested unwisely. Under free competition of course there is a certain proportion of that. When the Government either attempts or allows an attempt to guarantee a return to all investment it is attempting an impossibility which is economically and financially too great even for the United States Government.

Senator KING. That would induce unwise investments in the development of industries which were not needed at all.

Mr. MITCHELL. One of the finest examples is the thousands of new little portable sawmills which went into business under the Lumber Code under the attraction of higher prices, which were uneconomic units in a business already badly overexpanded, which never therefore should have been born or set up, and which probably now will be a total loss to the investors since the price fixing has been canceled. And incidentally that price fixing had collapsed several months before it was canceled and 90 percent of the board footage requirements of furniture manufacturers were said to have been bought at subcode prices several months before the thing was canceled. The lumber

merchants themselves began to offer lumber at less than code prices. It is a fine example of the unenforceability of those inherently rigid price-fixing systems.

The next section deals with open-price filing, if it does not work, in other words, if it is so honestly administered and is not backed up by collusion, that it works the way the industry did not want it to, it intensifies competition. It sets up the law-abiding good boys of the industry as targets for the sharpshooter. Apparently that is what happened in the plumbing fixture and carpet manufacturing industries. I think the committee might find it rather interesting to investigate why after the experiences of those code authorities they abandoned their open-price filing systems.

Senator GERRY. Did I understand you to say you were in favor of voluntary filing?

Mr. MITCHELL. Yes, sir; because if a voluntary price filing is permitted for information only and of past transactions it gives a public posting through trade journals, or any other sources, what the prevailing prices are on that product, and it does not mean that anybody has to file a price and be subject to coercion or pressure by his larger competitors. There are certain industries in which that would be very useful. There are certain others that would not want it. Quite a number you would find would not want to pay the cost of maintaining a cost exchange unless it was so arranged that it would act as a shield for collusion and coercion.

Senator KING. But it would be open ipso facto, that is, the prices at which they had sold?

Mr. MITCHELL. Yes.

Senator KING. And not in future.

Mr. MITCHELL. Correct.

The main legal or practical aspect of these future prices, which I believe the committee is aware of from the Federal Trade Commission's statements on the subject, is that it robs the Trade Commission and the Department of Justice of their access to usable evidence. In other words, if you have an advance price-filing system, no matter how much collusion and coercion goes on back of the scenes you can always come into court and prove so and so simply followed the leader price in his filing. But if there is no coercion about it, and if there is no filing of future prices then when the bids all turn out alike, or when there is a concerted increase in prices it leaves the door open to the Federal Trade Commission and the Department of Justice.

Senator GERRY. What you are suggesting is the voluntary prices which they actually have sold for in the past, or the prices they will sell goods at at the present?

Mr. MITCHELL. I think you could safely permit both of those in a great many industries. As I understand it, one of the large makers of cloth bags has for years led that industry by publishing his price list, and there is practically no other price list, and they are very widely circulated, as I understand it. It is probable, however, that under open competitive conditions like that if that retail price list were not fair and equitable competition would creep up on him. In other words, his leadership is bought at the price of being fair in his prices. Such leadership certainly should not be curtailed by legal impairments.

Senator KING. Or inhibitions?

Mr. MITCHELL. Or inhibitions.

Now there are a couple of possible fallacies that I would like to point out in connection with these price-filing systems. Price indexes, such as those of the Bureau of Labor Statistics have in some instances been cited to show that prices did not grow firmer or did not advance in consequence of price filing or other price-stabilization schemes. The fault with those price indexes, the Bureau of Labor Statistics admits it, and does its very best, and it is a very excellent index in the aggregate to show the general trend of prices, but I would be very loathe to trust it in the matter of determining whether the antitrust laws were being evaded on a single item for this reason, that the Bureau must get its price data from the very people who are in collusion on the prices.

And the machinery for preventing the index from getting or showing the actual trend of going prices is this, that many of those prices were reported during the depression at list, but the discounts were increased, and the rebates and allowances increased secretly. That is part of the reason for Senate Document No. 13 which was presented by Mr. Gardiner, Means Which Bears on the Rigidity of Industrial Prices and shows maladjustment of prices. The prices in many instances are not nearly so rigid as his statistical analysis would show, because the discounts and the actual net prices did not appear on the data reported to the Bureau of Labor Statistics.

Senator KING. Did the Bureau of Labor Statistics take cognizance of that fact and give a supplement out?

Mr. MITCHELL. I believe they did.

Senator KING. Showing the possible unreliability of generalization?

Mr. MITCHELL. I am not certain, but I believe they did. And I believe, also, they have made every effort to persuade their cooperating firms to report actual prices and discounts. The fact remains that many business men do not report all of them. I am told the aggregate discounts on window glass at one time during the depression amounted to 90 percent of the list price.

The other point is that it has been urged that most of the evils might have been gotten away from by filing prices with an impartial agency. I think some of the coercion might be lessened by that, and if one is going into mandatory price-filing systems the possibility probably should be investigated. But I do not want to use the time of the committee on that, because I cannot help but doubt that the committee would wish to continue mandatory prices under the new act, if any.

Now, taking the position which has been taken here, brings up the question, What do you propose on the constructive side to allay destructive price cutting and a downward spiral of prices and wages which we did arrest when N. R. A. was started? Personally, I believe that much of the price fixing and other economically objectionable arrangements made under the codes may have been justified by the dire emergency at the time the N. R. A. was formulated, but at the present time, when there is no price panic in industry at large, perhaps a few small spots, when prices have been in a considerable degree stabilized by the labor provisions of the codes, I think it would seem unwise and a way of retarding recovery to permit that sort of provision to be continued any longer in the codes.

May I point out why the experience I have had under the furniture code makes me place emphasis on the labor provisions? The minimum wage is probably the most important price stabilization scheme from the standpoint of a combination of effectiveness and practical workability. The labor is always the quickest place to cut your cost if you want to make lower prices, and the unskilled labor is the quicker place than the skilled labor, because you must keep the skilled labor on hand to maintain morale and to be prepared to expand volume quickly if orders come in. And so you cut the wages of the unskilled labor first. That coincidentally is the very point at which the minimum wage safeguards the price structure.

The interesting thing that I have observed is that about six out of seven of the serious complaints coming to the furniture code authority for destructive price cutting reading, "This retailer is selling so and so's stuff at less than I can put it into the retailer's premises and even pay minimum wages." In six out of seven cases we found the same concern was at the same time being investigated through the N. R. A. for labor violations. And it seems when you arrange for the restitution of back wages where there is a considerable cash outlay in a lump it takes the fun out of that kind of price cutting, which of course is based on taking it out of the hides of labor. This is the kind of price fixing we want to get at in the N. R. A., if I understand the committee's intent, based on the exploitation of labor.

Senator KING. If there is a minimum wage set up must not there be coincident with it provisions for differentials?

Mr. MITCHELL. I think a general provision for proportional differentials above the minimum in proportion to skill is satisfactory. But the setting of actual rates for skilled workers and semiskilled workers should be left, in my opinion, to collective bargaining for the reason that the same degree of skill is not paid the same on all machines. And on the same machines they are not always paid the same rate, because two different men may work on the same kind of a machine and work at different rates in many industries.

I just had the suggestion of an N. R. A. investigator here lately that he thought there was a 30 or 40 percent differential in the output of the men, so it is rather dangerous to set a differential. In other words, in an allegedly competitive system like ours I doubt whether you can safely risk any greater degree of price fixing than is involved in the minimum wages for unskilled labor. Beyond that, I believe all prices should be subject to supply and demand surrounded by certain safeguards to prevent exploitation and unfair practices.

Senator KING. There should be provisions then for piecework, which would perhaps give to the skillful and highly developed worker a little more than the unskilled worker working on the same kind of machine in the same kind of work.

Mr. MITCHELL. It generally does, because piecework has got to be the same throughout the factory for the same kind of job, the skilled man makes more. But there are abuses that should be watched through labor organizations and unions possibly.

Now, the industries under a price-fixing system require a lot of technical and skilled help, high-salaried men for enforcement, whereas the labor provisions have the assistance of every laborer in the country to help enforce them without a charge for his service.

I do not know, but I have heard it said that over 70 percent of the tremendous lumber budget for the code authority, which I believe ran 4 or 5 million dollars, was expended in connection with the price-fixing activities. The furniture code is operated for less than one-tenth of the percentage rate of assessment, and a relatively small part of that has been collected, but certain areas in the industry, which had collected almost 90 percent from association members, have refused to bill other people because they said, "We do not know what we would spend the money for if we got it." In other words, the price-fixing provisions under the codes are unsatisfactory and expensive because they do not command the sympathy of the public the way the minimum wage does.

The question of destructive price cutting is an uneconomic phenomena, is the last point on prices. If your committee through your law or through other action could arrange to strengthen the definition of destructive price cutting, which already appears in section 2 of the Clayton Act, I think you could cover all of the definitely destructive and unfair practices that should legitimately be stopped. In other words, by reinforcing rather than by abrogating the antitrust laws, I think you can accomplish all that is legitimate in that way of cutting out destructive methods.

Senator KING. You think the Clayton Act would especially cover that? As it is now written?

Mr. MITCHELL. I do not think it would as now worded, I do not think the courts have sufficient instruction on which to prevent, or to determine, for instance—

Senator KING (interposing). Have not the interpretations, and there have been quite a number of them given to that particular section to which you have referred by the Federal Trade Commission, blazed a path which is very easy to follow?

Mr. MITCHELL. It would seem so to me. I do not know offhand because I am not a lawyer, but those of the Federal Trade Commission to whom I have talked seemed to indicate to me that they do not think it covers all the ground, nor probably can in the law as worded at present. For instance, there is a vague general statement of policy in a number of codes, including the Furniture Code, to the effect that a manufacturer shall not sell below his own cost, as he figures it, except to meet a lower cost of a competitor, or to close out odd lots.

Now you might think over the reasons that you would care to sell below your own cost. As I see it, you would want to sell out obsolete odd-lot goods and get rid of them and you would want to sell below cost to meet a lower cost competitor or you would want to commit suicide by simply cutting prices of malice, which is very rare, but has been done, or you would be in grave financial difficulties and forced to liquidate. The cases of those in financial difficulties are usually in the hands of a receiver, and a liquidating receiver is not subject to the codes. He can liquidate all he needs to at less than cost. The other provisions can probably be covered in codes or in a general law. It seems to me the principle is so basically sound, that it could be stated in a general act rather than in specific codes.

The thing which makes it doubly difficult in the furniture code, and probably some other codes, is that we have no means of enforcement. The minimum wage provisions are the only enforcement back of it. But its good effect in the code is such that we should hate to see it de-

stroyed. Under the code the industry is permitted to indulge in voluntary exchange of cost figures, by which a man who has an adequate cost-accounting system figures up, for example, an item of his line in detail, and it is sent into a central clearing house. Somebody else figures his in detail and those are simply published to anybody who has subscribed to supply cost figures. Nobody is obliged to use those methods. But in going over those figures, as I understand, he figured the table but forgot the cost of the drawers, or figured the chair and forgot the cost of the coil springs, and the seat. In other words, that educational work is a legitimate stabilizing factor, working primarily against ignorance rather than for price stabilization.

The second thing is that before this thing gravitates to the minimum price level of the lowest cost most efficient producer it involves enforcement of labor provisions, and is protective to that extent, and stabilized by the labor provisions.

Now, the question of production control is the other one which is proposed to be permitted in S. 2445.

Senator KING. In the new bill, so-called?

Mr. MITCHELL. In the new bill.

Senator KING. Does it permit production control?

Mr. MITCHELL. Yes, sir; under certain conditions it is proposed that devices for "controlling prices, production, or distribution may be applied where found necessary and proper by the president (which means the deputy administrator) to protect small enterprises against discrimination or oppression or to deter the growth of monopolies." Now, one of the most interesting things to me is that you will deter——

Senator KING. Monopolies?

Mr. MITCHELL. Yes; monopolies, or that you will prevent a vicious downward spiral of prices and wages by fixing prices.

Senator KING. Or limiting production.

Mr. MITCHELL. Price-fixing and production control in a way are the very antithesis, because if you fix prices at favorable levels which are attractive, you are simply going to bring in a lot of marginal enterprises and create new plants, cause new plants to be set up. The question therefore is: Does the Congress want to entrust to a deputy administrator and his advisers the very serious economic responsibility of controlling production and prices outright? It is my belief from the beginning that N. R. A. has been manned by a very high type of conscientious, able men, and that they have done their best to be impartial in most instances, but the very daily contact with the sob stories of industries, with whom they have been dealing, eventually cultivates a little spot of sympathy in their hearts, and they look with a great deal more sympathy on these pleas for production control and price fixing, which they are told will be absolutely necessary to prevent the destruction of this or that industry.

It would seem, therefore, that a bureaucracy is not properly competent to handle so grave a responsibility as price fixing or production control. If any industry was in such bad condition that such measures are needed for the purpose of preserving natural resources or preserving some of our industries which are indispensable to this country in time of war, the responsibility should rest solely on the Congress to pass specific legislation in relation to that harassed industry, and they should dictate specifications in connection with price fixing and

production control, and not leave it to a few deputy administrators, subjected to high-powered salesmen and attorneys.

In addition to the evidence that has been filed before you, I should like to put in the record, without reading it, evidence of rank prejudice on the part of a deputy administrator defending the price fixing in the lumber code at a time when the furniture industry, after several months of sad experience with it, asked to be heard. In accordance with the terms of a public notice, the request to be heard was filed in the proper form and within the proper time limit of the public notice as to a new emergency price-fixing scheme which they intended to install last July in 1934, since it was found that the previous lumber price-fixing system had been entirely entrusted to the code authority, a delegation of power which was quite obviously unconstitutional. And the effort was made to strengthen that power by installing a new emergency price-fixing scheme, under office order no. 228, which has been mentioned to you here. That order called for emergency price fixing for not exceeding 90 days, but the deputy administrator wrote an order for an indefinite period, and refused to answer as to why he did this.

The CHAIRMAN. Is not the price fixing in the lumber code eliminnated?

Mr. MITCHELL. It has since been eliminated. It has only been eliminated recently, and the only reason I bring this up is to show why and how a probably honest man, and a sincere man, becomes a dangerously prejudiced man dealing with something so important as price fixing or production control, and becomes, instead of a judge or presiding officer, or governmental referee, an advocate for the wants of that industry.

The CHAIRMAN. Is that excerpts from that transcript, or do you want all of that filed?

Mr. MITCHELL. I have marked four excerpts of about one page each.

The CHAIRMAN. That is all right; that may go in. That is pretty costly. That cost's more than a Senator's salary.

Mr. MITCHELL. I think you already have some evidence on that.

Senator KING. Indicate to the reporter the pages you want copied in after you leave the stand.

Mr. MITCHELL. Yes; I will not take the time of the committee to do it now.

Therefore, the specific recommendations which I would like to leave with the committee are that in this bill——

Senator KING. That is in this new bill?

Mr. MITCHELL. In the new bill, the proposal to grant discretion to the administrators to allow price fixing and production control should be deleted, and that in lieu thereof voluntary price filing should be permitted without fear of prosecution by the Federal Trade Commission or other agencies of the law; that educational cost studies on a voluntary basis only should be permitted, and that the permission for those be so worded that no system can be used as a shield for collusion and as a method for preventing the agencies of the law from proving price fixing or monopolistic practices.

Secondly, that more guidance is needed by the courts in interpreting destructive price competition, such as I am told some years ago the Standard Oil Co. practiced, going into one market and lowering prices, simply to drive competitors out of the territory. That is

done today and there can be no excuse for a man going into a new market and lowering prices in order to drive someone else out of business, though he must cut his prices some to establish new customers. There can be no excuse for going in and selling at less than cost simply to raid that market.

Senator KING. Would not that be a violation of the fair-trade practices as permitted and indicated by the Federal Trade Commission?

Mr. MITCHELL. I think it would be a violation of the class B practices in the previous trade-practice agreements, which were declared to be sound and ethical, but did not have support of the law as it stood. I would not want that to be definitely taken without investigation.

And, lastly, full and able enforcement of the minimum wage, which is really the most enforceable and most workable of price-stabilizing influences.

The CHAIRMAN. Is that all?

Mr. MITCHELL. Yes; I believe that is all.

(The excerpts referred to from the lumber and timber products industry are as follows:)

Deputy SELFRIDGE. A general discussion as to the merits or demerits of price-fixing is not pertinent to this hearing. If you have any objections to specific items and classifications, of course the discussion will be unlimited.

Mr. MITCHELL. Mr. Administrator, it does seem to us that it is within the scope of this hearing to object to the application of price-fixing to these particular hardwood and plywood items; is that not satisfactory?

Deputy SELFRIDGE. That is perfectly satisfactory, provided you specify the items and classifications.

Mr. MITCHELL. Without specific mention that each of such of my comments does apply to those items, in other words, we are not maintaining any direct interest in construction materials or soft woods. Is that satisfactory?

Deputy SELFRIDGE. It is satisfactory, but it will be supplemented by the specific items?

Mr. MITCHELL. We can submit that. We did not expect that that technical detail would be required, and we do not come prepared with those items, because I think the items used by furniture manufacturers are well known to all of the timbermen.

Deputy SELFRIDGE. But it is not known to the Administration, and this is a fact-finding hearing.

Mr. MITCHELL. Yes.

Mr. Administrator, you are a lumberman yourself, aren't you?

Deputy SELFRIDGE. Not in this capacity.

Mr. MITCHELL. We would be glad to present such information. Do you require that before we start the hearing?

Deputy SELFRIDGE. It will have to be made a part of the record.

Mr. MITCHELL. We would be glad to present it to the reporters as early as possible, as a part of the record, in such manner as may be specified and agreed.

Deputy SELFRIDGE. You may proceed.

Mr. MITCHELL. My comments here are directed in four particular groups: The commercial aspects of the way the price fixing has been working in these hardwood and plywood items; second, the questions of legal policy or legal background underlying the fixing of prices——

Deputy SELFRIDGE (interposing). That question is not before this body—the legality of it. Prices are fixed by the Administrator in an emergency. Whether it is legal or not is not for this hearing to determine.

Mr. MITCHELL. All right, sir; we will omit that.

The third, the method of determining the prices as we have seen it in conference with our suppliers and how it compares to the actual cost of many of these suppliers.

Deputy SELFRIDGE. That is not pertinent. The Administration has determined and established a reasonable cost.

Mr. MITCHELL. Do you mean to say that the method of establishing the costs is not pertinent to the hearing? The method of figuring the costs?

Deputy SELFRIDGE. I do not think so.

Mr. MITCHELL. I believe that we would have to take issue with you, Mr. Administrator, but probably your ruling is final on what is within the scope of the hearing.

Deputy SELFRIDGE. You may go ahead and present your brief.

Mr. MITCHELL. Regarding the commercial aspects, the public has been robbed of a knowledge of the true prices at which transactions made under this plan as it has worked, since the publication of real prices, since the publication of real prices exposes both the seller and the buyer to both persecution and prosecution and real prices are subject to rumor, which is almost always exaggerated.

We had this spring a very considerable example of how that operates, the terms not being stated thoroughly, and the word passed from mouth to mouth regarding the prices at which people had been buying. Some specific instances of that will be presented by members of the code authority committee. The price structure is therefore more subject to panic than a free market, in our opinion.

Secondly, the market at any given moment is not as solid as a free market. Shipments of the same size and grade, shipping to the same points, have been sold at widely different prices to different buyers, some of whom paid the code figures and some of them, some of their competitors, are paying well under the code. The plan constributes thus to unfair competition in this and other lumber-using industries.

Deputy SELFRIDGE. Just a moment there, Mr. Mitchell. The question of compliance or noncompliance has nothing to do with the reasonableness of cost.

Mr. MITCHELL. Technically, that might be true, but if we are to face facts and realities as to how this thing operates in fairness to the users of lumber, it would seem to me that it would be necessary to consider that. As I recollect it, one of the statements in the notice of hearing and in all N. R. A. notices of hearing is that it is to enable the Administrator to reach a fair and equitable decision, and the furnishing of the facts to do so. It would seem to me the object, therefore, would be to get the practical factual background rather than to make technical limitations.

Deputy SELFRIDGE. No. This is not intended to be in any sense a technical limitation, but the mere fact that a law is not complied with is no test of its reasonableness. * * *

Mr. MITCHELL. Under order 228 a period of 90 days is suggested. The declaration of the emergency should have some permanent relief in sight at the end of the emergency period. A declaration on that sounds in common sense in that an emergency which came to an end without some cessation or relief in sight, would be probably exposing the industry to worse difficulties.

Deputy SELFRIDGE. What was the date of the administrative order no. 228?

Mr. MITCHELL. In July.

Deputy SELFRIDGE. What date?

Mr. MITCHELL. July 10 or 12.

Deputy SELFRIDGE. I mean the emergency order no. 228, which you referred to there which lays down a definition of emergency?

Mr. MITCHELL. That was prior to the administrative order and the amendments to the code.

Deputy SELFRIDGE. Of course you realize that the Administrator is entirely within his rights to issue one order on 1 day and another order 3 days later, do you not? * * *

Mr. COFFEY. Unless we can bring out as to what we are wanting to bring out as regards the increase in the price of lumber, if we cannot make statements that will allow us to do that, of course our hearing is a failure. We cannot get anywhere at all unless we are allowed to present the facts that we have to present as regards the increase in the price of lumber being out of range with the price of the product that that lumber goes into. * * *

Mr. MITCHELL. Mr. Administrator, can I ask a question for the record? Has any public hearing been held on the amendment to the Lumber Code, I believe article IX, which covers the emergency price plan?

Deputy SELFRIDGE. No public hearing was held; no.

Mr. MITCHELL. Do I gather from your position that you are unwilling to hold a public hearing on that order?

Deputy SELFRIDGE. I have no discretion in the matter at all. I am not the person to hold a public hearing.

Mr. MITCHELL. I mean that the Administration is unwilling to hold a public hearing?

Deputy SELFRIDGE. Not at all; not at all. But when a public hearing is held on that all of those affected by the order must have an opportunity to be heard, and manifestly you will appreciate that holding a hearing now on that order would be most unjustly unfair to the large number, the many thousands of operators who have had no notice of any hearing on that order.

Mr. MITCHELL. The reason I ask that, Mr. Administrator, was that we included the number of that order and described the character of it in our protest and asked for a hearing on it, which we did within the required time, and the restriction of this hearing by the technicality of the wording, or by the ruling of the Administrator to exclude the subject on which we asked to be heard, and it has the net effect of putting us in the position where, to quote the Administrator's words, the line of attack which we are adopting will do us no good, and it seems to us not in character with the requirement of the Recovery Act for a free public hearing which will determine the matter.

Deputy SELFRIDGE. I had absolutely nothing to do with the drafting of this proposed hearing, or anything in connection with it. I left Washington on the 20th of July and returned a week ago. Mr. Dixon, who is the deputy in charge of the Lumber Code, is swamped with work. There are some very critical matters coming up affecting the industry, and he asked me to help him out and conduct this hearing. The only knowledge I have of this hearing is this notice I have in front of me.

Mr. MITCHELL. Mr. Administrator, one other question. I believe that you do not believe that the scope of the hearing includes the consideration of the method by which these prices were arrived at, but you did mention that they were determined by the Administrator.

It is our understanding that the prices in the schedules are——

Deputy SELFRIDGE (interposing). I do not want to have any misunderstanding bout this thing at all. Your rights are entirely protected. If you desire to have a hearing on the entire scope of article IX, it is your privilege to ask for it, but at that time you will appreciate that all of the other divisions of the Lumber Code including the hardwood division, will have to have notice and come here to have their appearance certified as well as your own.

Mr. MITCHELL. Mr. Administrator, we made such a request, and it has not been conceded, in the wording of this order. I have here a copy of the latter and just rechecked it by my file to make sure that it did cover the emergency amendment in the Lumber Code, the administrative order dealing with that, and requesting a public hearing on it. * * *

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., August 20, 1934.

In reply refer to Division I.

Mr. WALTER MITCHELL, Jr.,
Secretary Furniture Code Authority, Washington, D. C.

DEAR MR. MITCHELL: Inasmuch as the first paragraph of your letter of August 16 is only a partial statement of the facts and might, and in all probability would give one not acquainted with the circumstances a wrong impression I am stating the situation as I understand it, and sending copies of this letter to the same persons to whom you sent a copy of your letter.

The meeting scheduled for today was arranged with the distinct understanding between you and me that it was informal, was called for the purpose of allowing the furniture people and others interested to give free expression to their thoughts so that the Administration would know their viewpoint, with the further understanding and notice to the lumber industry that it would not be heard in reply at that time, that there would be no argument or debate. In other words, there was to be only one side of the story told.

After these arrangements were made and the Lumber Code authority had notified interested persons that they need not attend the hearing, you attempted either intentionally or otherwise to put me in an embarrassing position by contacting some newspaper people and making a request that they be allowed to attend. If I said "no", I could of course be accused by any who so desired of trying to hold a secret meeting or keep some facts from the public which the public was entitled to have. If I said "yes" then I would be unfair to the Lumber Code authority in that I would have apparently arranged for publicity for one side of the case while denying the other side the right to put in an appearance.

As I told you over the phone I did not think this was either fair or decent, accordingly I called off the meeting with the statement to you that if any hearing is held by me on matters in which you are interested, the meeting would be for-

mal, there would be a transcript of the hearing, and you would be welcome to all the publicity you could arrange for.

Very truly yours,

A. C. DIXON, *Deputy Administrator.*

Mr. MITCHELL (interposing). My letter of August 23, about, refers to it. I remember the import of that letter and can state it for you. I was sorry that I had made Mr. Dixon feel that we had put him in an embarrassing position or had given him an opportunity to feel that we were unfair. I stated to him that it was our confidence in his fairness which we had every reason to believe in, which led us to our understanding, and knowing the character of the N. R. A. hearings, we believed that the representatives of the Lumber Code authority would be present at this first hearing and that their side would be heard as well as ours. It was because of our confidence that both sides would be heard that we did not feel that it was at all an unusuel or unfair request that the public be admitted to such a hearing. I felt frankly that Mr. Dixon attempted to put us in an embarrassing position.

The CHAIRMAN. Mr. Horen.

STATEMENT OF LOUIS L. HOREN, SALES MANAGER OF THE COAL SERVICE CO. OF ST. LOUIS, MO.

(The witness having been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. You are chairman of the Independent Coal Dealers Association?

Mr. HOREN. Yes, sir; and I am sales manager of the Coal Service Co. Mr. Chairman, I would like permission to be permitted to stand, as I have quite a few affidavits here and other papers which I would like to read.

The CHAIRMAN. There is no objection to your standing.

Mr. HOREN. I want to say that I am going to attempt to prove——

The CHAIRMAN (interposing). I wish you would go right to your points and state them as concisely as possible, because these Senators are not going to stay here all afternoon.

Mr. HOREN. Well, sir, I will tell you my case. I have had 10 months battling with the code authority, including a Federal court case, and I have affidavits, briefs, exhibits, and everything else, and in order to get it before this committee, particularly since I understand it is the first coal case before this committee, and in order to do so it will require about an hour and a half.

The CHAIRMAN. I am going to leave myself, and I wish to say to you in that connection that we have got about 500 witnesses who wish to be heard here, and if any legislation is going to be passed before the act expires they will have to be heard very briefly, and of course we cannot hear all the witnesses, and if you want to state the facts of your case just state them briefly and you will make a better impression than by taking an hour and a half of the committee.

Mr. HOREN. Yes, sir. All right, sir. The object of this appearance is to prove that the code authority of the Divisional Solid Fuel Industry No. 32 themselves violated provisions of the code for which they dragged the Coal Service Co. into the Federal court, and they attempted to mulct the consumers of St. Louis out of from 3 to 5 million dollars, which would not have gone to the miners of Illinois, or to labor, and that despite the evils of price fixing as explained by Mr. Mitchell, and as will be proven here in our case, the new National Recovery Board has four members on it who are definitely committed

apparently to insist on price-fixing features in the form of sugar-coated pills, particularly in codes starting out with the bituminous coal industry, and then stating in order to effectuate the purposes of the actit is necessary to have price control.

The CHAIRMAN. You represent the coal dealers, is that right?

Mr. HOREN. I represent my own company, which has had a court test case, but I am also chairman of the coal dealers.

The CHAIRMAN. The coal dealers?

Mr. HOREN. Yes; but I am appearing on behalf of myself and my own company.

The CHAIRMAN. How many members are there in your organization?

Mr. HOREN. There are just 38 or 40, Mr. Chairman, for the reason that this is not an association which has been sent out to organize, solicit, or look for members. This association was violently opposed to us for a time, but after a couple of months experience they voluntarily came to our office and offered to help us fight, because they realized that the code worked in favor of the big coal dealer.

The CHAIRMAN. Because of the outgrowth of the code?

Mr. HOREN. That is right.

The CHAIRMAN. Your organization was born after the code started?

Mr. HOREN. Yes, sir; voluntarily. It was not like one gentleman stated in New York recently, concerning N. R. A. being just as voluntary as a shotgun wedding. This is voluntary.

Senator COUZENS. Are you familiar with the Guffey bill?

Mr. HOREN. Yes; I am fairly familiar with it to this extent, that it attempts to make coal a public utility and use regional divisions for allocation of production and also price controls.

Senator COUZENS. Are you in favor of it?

Mr. HOREN. Am I in favor of it?

Senator COUZENS. Yes.

Mr. HOREN. No, sir; I am not, because I do not believe any body of men alive will ever be able to control coal prices due to a thousand conditions. The chief factor is the weather, which no Congressman or Senator can ever control.

Our case was the first test case in the retail distribution of coal in the Federal courts. The case was unique in that our company defied the code before it went into effect. I do not want to appear as a chiseler apparently doing something in secret. We did not have any one working for us below N. R. A. wages, and for overtime we pay time and a half. None of our coal was mined in nonunion mines. So anything we did was not at the expense of labor.

There were two price schedules fixed by the Coal Code Authority. The first became effective May 21, 1934. This was so outrageous that the N. R. A. authorities in Washington themselves kicked this schedule out 2 months after, and as a result of those prices some of the consumers got refunds and some did not.

And as a result of our bid in the meantime, our company got the board of education public-school contract. And as a result of getting that contract we were subjected to persecution in the form of not being permitted any interdealer discounts, never being permitted to haul any relief coal which is fairly profitable, and on which we could have saved the city of St. Louis $85,000, and I can prove that if any gentleman of the committee wishes me to.

Senator CLARK. In how long a time? I would be glad to have you go into that.

Mr. HOREN. That was for the relief coal which was hauled into the area of St. Louis and county mostly, and also some other territories nearby, and on which we could have saved the relief forces, on hauling alone, $85,000.

Senator CLARK. Just explain that.

Mr. HOREN. Briefly, the coal delivered to the relief recipients is hauled by the relief agencies at $1.85 a ton. The average coal charge from the yard has always been 50 or 60 cents per ton, and I would guarantee to pay N. R. A. wages and keep N. R. A. hours and haul all the coal on earth at 85 cents a ton and make a profit. And those members of the code authority hauled it at 75 cents and they pocketed $1.10, and if you did not conform to their ethics, you were proscribed and had no relief coal to haul. We feel that N. R. A. has been a smokescreen for racketeering, and I want you gentlemen to look at this advertisement where the Federal Government, because the Federal Government has representatives, and a deputy administrator in this case, on every code authority, was a party to misrepresentation and deception.

(The exhibit referred to is as follows:)

[From St. Louis Post-Dispatch, Nov. 28, 1934]

CHISELING COAL PRICES MAKE HOMES LIKE THIS

(Photo taken Nov. 26, 1934, in a nearby Illinois mining town showing shack and family.)

When you buy coal from a chiseler you may save a little on each ton, but in doing so you are really taking bread out of the mouths of many poor miners and their families, who are forced to live in shacks such as this. You can help to correct this condition by refusing to deal with the cut-price coal dealer. These miners and their families are good American citizens. Help them to live as Americans should by paying code prices for your coal.

CODE COAL PRICES MEAN HOMES LIKE THIS

(Photo taken Nov. 26, 1934, in a nearby Illinois mining town showing decent home and family.)

The retail coal dealer who sells at code prices gets enough for his fuel to pay decent American wages, to keep his equipment in repair and to buy his coal from a code-operated mine. The producer then can likewise pay decent wages. His employees can live in decent homes and have money to pay for the necessities of life. In the end this helps you because it means less charity and more business for everybody.

Patronize the dealer small or large who sells coal at code prices.

THE COAL EXCHANGE OF ST. LOUIS—HEAT FOR HALF WITH COAL * * * SAFELY

This picture appeared just 4 days after the Coal Service Co. publicly announced its intention to oppose the schedule of coal prices fixed by the code authority. It purports to show that retail prices in St. Louis would lower the standards of living of Illinois miners to such an extent that they would be forced to live in hovels and shacks such as that pictured in the upper left hand corner of the advertisement. On the face of it, this advertisement was an insult to all people of normal intelligence, because all miners in southern Illinois are union miners, work for the same wages, and the difference between the standards of living as implied in the photographs shown could not be the result of any difference in wage scales.

Doubling the price of coal in St. Louis would not in any case have increased the wages of Illinois miners for 1 cent, because they had an ironclad contract from April 1, 1934, to April 1, 1935, at a definite fixed scale. Therefore, these two photographs, should they represent two distinct types of mining families, afford a splendid argument for birth control.

But this point of wages is not the real issue in this advertisement. This advertisement was paid for by the Coal Exchange of St. Louis. They sent a commercial photographer into southern Illinois with instructions to bring back pictures of the most dilapidated type of hovel he could find and as neat a cottage as he could find. We offer an affidavit signed by Mr. Charles Reynolds, a share-cropper, living on relief, on a small plot of ground north of Coulterville, Ill., in what was formerly a chicken house to which two crude rooms made of crude planks had been added. Mr. Reynolds had been under investigation with reference to his relief status and pictures had been taken of his shack before. On November 26, 1934, as he states, a large car drove up and a man and a boy came over and commented on the dilapidated condition of his home. Mr. Reynolds thought that this photographer had been sent for the purposes of relief records and the man asked his two daughters and his wife to put on the most ragged clothes they could find, promising them 50 cents for doing so.

Senator CLARK. Have you got proof of the statements you have just made, that they were paid 50 cents for doing that?

Mr. HOREN. Yes, sir.

Senator CLARK. Put that in the record.

(The matter is as follows:)

STATE OF MISSOURI,
City of St. Louis, ss:

AFFIDAVIT

I, the undersigned, Charles Reynolds, herewith state that I am 50 years of age, live 1 mile north of Coulterville, Ill., on Highway No. 153, and have been baker and farmer by trade all my life; that I have never at any time been employed as a coal miner, and that I have been on relief during the past year; that I live in a makeshift house which was formerly a chicken house and to which two rough rooms were added. I live here with my wife Mary and my two daughters, Maggie and May, and Maggie's husband. I receive $24 a month from Federal relief.

On or about November 26, 1934, a photographer took pictures of this shack and I thought that these pictures had something to do with letters I had written to the President in reference to investigation of relief, because some pictures had been taken previously which were used in connection with the relief investigation. At about 4:30 in the afternoon, my daughter May came home from school on November 26, and I was working around the house doing chores. A large car drove up before the house and pulled off the pavement. In this car was a heavy-set man who afterwards took pictures, and a 16- or 17-year old boy. The man got out of the car and came up to the house. He first addressed me and said "I want to get a picture of your house and family because it is just the type of a dilapidated shack that I am looking for." I immediately thought of the relief investigation and told the man that the house was in a dilapidated condition. Then the man said "I believe your wife and children are dressed too well and I wish that you would have them put on as ragged clothes as they have."

The oldest married daughter strenuously objected to this because she is quite proud despite the fact that she has not as good clothes as she might wish to have. The younger was dressed in a little French frock and also demurred. The photographer told the girls he would give them 50 cents if they would put on their rags. Then the wife and children all changed their clothes and put on the rags shown in the photograph. Loye Hill and Mr. Osborne, who with Mrs. Osborne and her baby were present, refused to be in the photograph, but Mrs. Osborne and the

small child did stand in the picture. Before the picture was taken the photographer asked that they look as downhearted as they could, but my children are lighthearted and gay despite the poverty in which they live, and I particularly remember this as asking the children to look in a way to which they were not accustomed. After the picture was taken the man paid the children 45 cents, thanked them all, and went back to his car. Before he entered the car I asked him if he was a Federal investigator for the relief board. "No", he replied, "I am a commercial photographer taking these pictures for the coal code business." Whereupon, I said, "Why, man, you couldn't have got this picture for love nor money if I had known that, because I am against this coal code." The man did not answer, but got in his car and drove away. I was furious, but not did know what to do and never at any time dreamed that the picture would be used for advertising purposes and for publication in the newspaper. Two days later, on November 28, in the evening, I was in Lane's Drug store at Coulterville, when Mr. Lane directed my attention to the photograph in the St. Louis paper.

For the next few weeks life was made miserable for me because I was ridiculed at the look of poverty shown by the expression of myself and my children and the rags that they wore. Several miners, some of them who know me, were very bitter because they felt that they were being made sport of and as they are all union miners, they resented what they called my posing as one of them. Several of them told me that I had better get this matter straightened out and their wives told my wife that they were going to get even with me. I also went to see Mr. George Robertson, who is a police magistrate at Coulterville, who owns the second house in the photograph. He said that the photographer had been refused permission so far as he was concerned to make this photograph when he learned the purpose for which it was to be used. I, therefore, want to square myself with my neighbors and all miners by stating that there are none but union miners in this entire district and that they all get the same wages, and that neither I nor my family had any knowledge at all that this photograph was going to be used in the coal-code fight in St. Louis.

CHARLES REYNOLDS.

Subscribed and sworn to before me, this 1st day of April 1935.

[SEAL.] P. L. HUGHES, *Notary Public.*

My term expires January 21, 1939.

Mr. HOREN. The daughters objected because although they were poor, they had some pride, but they were prevailed upon and when they all assembled two members of the Osborne family were thrown in for good measure and the photographer asked the children to look as downhearted as they could. Mr. Reynolds particularly remembers this because, as he says, "poverty has not deprived his children of a gay disposition." As the man was driving away, Mr. Reynolds said, "I guess you are taking these for the relief investigators", to which he replied, "No, these are for the Coal Code fight in St. Louis." Mr. Reynolds shouted, "Why, man, if I'd a known that, you'd never have gotten those photographs, because I am against that code." Two days later the picture of Mr. Reynolds' family and his home appeared in the press as stated.

Mr. Reynolds has never in his life worked in or around a mine, and the owner of the second cottage shown in the advertisement is a Mr. Roberts, a police magistrate of the town. The difference between the officers and members of the code authority and the officers of the Coal Exchange of St. Louis is the exact difference between tweedledum and tweedle-dee. The divisional code authority has representatives of the eight largest coal companies in St. Louis as members of the board. The officers of the Coal Exchange of St. Louis, including the board of directors, has seven members of the code authority in its governing group, including its president and first vice president, members of the board of directors.

Senator KING. Who conspired that despicable piece of trickery?

Mr. HOREN. Here is the advertisement of the St. Louis Coal Exchange.

Senator CLARK. Who is the Coal Exchange?

Mr. HOREN. The president of the Coal Exchange is Mr. Paul E. Conrades, an influential member of the code authority; William A. Schroeter, first vice president of the Coal Exchange, and George Lorius, second vice president of the Coal Exchange are also members of the code authority, and the chairman of the code authority is a director of Coal Exchange. The executive director of Coal Exchange is executive secretary of the code authority. The United States Government is attempting to improve business ethics with respect to our standards of business. They have a deputy administrator who sits in on trickery and deceit of that sort as a representative of the Federal Government.

Senator KING. Are all those names which you mentioned interested in the coal business?

Mr. HOREN. Yes, sir; that particular code.

Senator KING. They are large vendors?

Mr. HOREN. Yes, sir; there are 3,000 small and tiny dealers not represented on that code authority at all. All of the larger companies in size are represented on the code authority.

Senator CLARK. What is the basis of selection of the code authority?

Mr. HOREN. Senator Clark, the N. R. A. itself in fairness felt that the selection was not representative, and when the first cost figures came through they discarded these cost figures and one reason given out that there was not sufficient notice given of the hearings. In other words, they used the cost of 29 dealers out of a known 1,200 dealers, engaged in the coal business. That same code authority elected illegally, was the code authority 4 months later when the new price schedule went into effect and is the code authority today.

Senator CLARK. Does that appear from this testimony?

Mr. HOREN. The election was supposed to be by majority vote.

Senator CLARK. On what basis?

Mr. HOREN. It was supposed to be by vote. But there was nobody there to vote but these big interests.

Senator CLARK. What is the basis of the vote?

Mr. HOREN. The basis of the vote is on tonnage. Inasmuch as the majority of the coal lays right across the river the trucking business is the most efficient way to deliver it direct from the mines to the consumer. The president of the Coal Exchange of St. Louis is an influential member of the code authority, as is the vice president of the Coal Exchange of St. Louis, while the chairman of the coal code authority is a director of the Coal Exchange of St. Louis. The same group controls both bodies and the executive director of the Coal Exchange of St. Louis is the executive secretary of the code authority.

We consider the advertisement to be a very shoddy type of misrepresentation and cheap propaganda, and exceedingly regret that indirectly the United States Government is allied with these noble groups, because deputies appointed by the Government sit in on this type of unethical elevation of business, with which we are being faced every day and at every turn.

We had definite knowledge that the members of the code authority themselves violated code prices with large buyers but fleeced the

small consumers. We not only accused them publicly but filed an affidavit in our Federal court case files to that effect.

In exhibit A here presented, we named the companies and some of the favored buyers, but despite an editorial in the Star-Times, exhibit J, asking them to affirm or deny the charge individually, they all remained silent. These gentlemen were the real plaintiffs in our Federal court test case. It is our belief based on information that as far as the district attorney's office was concerned, the suit was reluctantly entered into.

(Exhibits referred to are as follows):

EXHIBIT A

In the district court of the United States for the Eastern Division of the eastern Judicial District of Missouri. *United States of America, Petitioner,* v. *Julia Rogles and W. E. Dodson, both individually and trading together as Coal Service Co.; and Louis L. Horen,* defendants. In equity no. 11204

AFFIDAVIT IN SUPPORT OF DEFENDANTS' RETURN TO ORDER TO SHOW CAUSE

On this 18th day of December 1934, before the undersigned authority appeared Louis L. Horen, one of the defendants in the above-entitled matter, who being duly sworn upon his oath deposes and states as follows:

1. That firms with which members of the divisional code authority are connected are selling coal as hereinafter described for prices lower than those fixed by orders of the divisional code authority.

(*a*) That the City Ice & Fuel Co. is delivering coal to the public schools of Webster Groves, Mo., in the St. Louis trade territory, on a proposal made on October 15, 1934 to furnish coal throughout the heating season at $3.64 per ton for standard 6 by 2 furnace coal, which is below the prices fixed by the local code authority, and Mr. Muckerman of said authority is president of the City Ice & Fuel Co.

(*b*) That the said City Ice & Fuel Co., while code-fixed prices were supposed to be in effect early in the summer, sold a large St. Louis brewery standard coal at less than code prices.

(*c*) That the said City Ice & Fuel Co. at the same time was selling Mount Olive lump at $3.50 per ton to a certain brewery, which was at least 30-percent below the price fixed at said time.

(*d*) That Mr. Will Miller, chairman of the code authority and chief officer of the Hawthorne Coal Co., permitted his company to contract a Washington Avenue wholesale house during April 1934 to sell coal at less than prices fixed in the order of November 19, 1934, and upon information, affiant states that coal is still being delivered to said party at prices less than those fixed in the order of November 19, 1934.

(*e*) That a certain biscuit company is also receiving coal from the Hawthorne Coal Co. at less than code prices.

(*f*) That a certain real-estate man on Eighth and Chestnut Streets in the city of St. Louis informed affiant that when the first price-fixing order was issued on May 21, 1934, that despite said price-fixing order, he was being delivered coal in June and July from the Seidel Coal Co. and the Hawthorne Coal Co. at far less than prices fixed in said price-fixing order.

(*g*) That Seidel Coal & Coke Co. has been selling standard 1½-inch screenings to Biltmore Hotel, Washington Avenue, St. Louis, Mo., at less than $1.75 per ton, which is approximately one-half of the code price for said type and size of coal.

(*h*) That the said Seidel Coal & Coke Co. is selling to the board of education of the city of St. Louis coal on a guaranteed high British thermal-unit content basis, and said Seidel Coal & Coke Co. outbid 31 other coal outfits in so doing.

(*i*) That on information affiant states that Schroeter Coal Co., 2300 Miami Street, is delivering coal to the Lutheran Hospital on a contract of $4.19 per ton for coal, which according to the price fixed at the time arrangement was entered into was to be sold at less than the price fixed by the code authority for said type and grade of coal.

(*j*) That the said Schroeter Coal Co. also entered into a contract with a certain real-estate dealer on Eighth Street near Chestnut to deliver coal at prices below code prices in the fall of 1934.

(k) That Fleming Young Coal Co. is delivering coal to the main post office of the United States Government, according to information received by affiant, at far below code prices.

(l) Affiant states on information that the said Fleming Young Coal Co. is selling coal to a large real-estate firm at less than prices fixed in the order of November 19, 1934.

2. That certain parties have not been named specifically at their request, for reasons which are more or less obvious.

3. That there is a prevailing market on standard 1½-inch screenings of approximately 40-percent less than that fixed by the coal code, and it is an open and notorious fact that screenings upon which code prices are quoted are not sold at all at that price.

4. That the members of the local code authority and the companies they are connected with are as follows:

William J. Miller, Hawthorne Coal Co., chairman.
George W. Curran, Curran Coal Co., vice chairman.
William A. Schroeter, Schroeter Coal Co., treasurer.
J. J. Harding, Junion Fuel Co., secretary.
Paul E. Conrades, Merchants' Ice & Coal Co.
J. E. Weissenborn, Weissenborn Coal Co.
J. C. Muckerman, City Ice & Fuel Co.
Alex Fleming, Fleming-Young Coal Co.
B. F. Reese, Inland Valley Coal Co.
Louis T. Schultz, Louis T. Schultz Coal Co.
Jerome J. Seidel, Seidel Coal & Coke Co.
C. W. Schroeder, Schroeder Bros. Coal & Ice Co.
R. M. Penning, Granite City Ice & Fuel Co.
W. L. Budde, Alton-Wood River Fuel Association.
George H. Lorius, George M. Lorius Coal Co.

5. That all of the said St. Louis companies have trackage facilities and yards in various parts of the city and trade territory.

6. That there are no members on said code authority who are from the small independent dealers, who aggregate more than 3,000 in the St. Louis trade territory, and who are an indispensable necessity in the coal business to fulfill the requirements of rush orders caused by inclement weather, and who also fulfill the demand for a small supply on a cash basis on the part of people who are impoverished due to low purchasing power or unemployment.

7. That all the foregoing facts are based on information and belief.

LOUIS L. HOREN.

Subscribed and sworn to before me this 18th day of December 1934.

[SEAL] MORRIS J. LEVIN, *Notary Public.*

My term expires February 23, 1935.

EXHIBIT J

[Editorial from St. Louis Star-Times]

PUT AN END TO PRICE-FIXING

Clay Williams, of the National Industrial Recovery Board, in his statement predicting that Congress will put an end to price-fixing in any revision of the N. R. A., cites the exact reasons for that action that were urged by the Star-Times in opposing price-fixing in the St. Louis coal trade. All that is necessary, says Mr. Williams, is to enforce the hour and wage provisions of the N. R. A., and prices can be left to competition. If some dealers want to sell without a profit, or if some can sell more cheaply than others where labor conditions are equal, that is nothing which concerns the Government.

Since Mr. Williams is a conservative business man, his acceptance of this view may definitely be said to foreshadow the end of the price-fixing system in which General Johnson believed so strongly.

Now, if price-fixing is to be abandoned nationally for the reasons cited by Mr. Williams, why should it not be abandoned locally for the same reasons? What reason is there to keep on with coal price-fixing in St. Louis?

At present the charge is being made, and repeated, that St. Louis coal dealers who helped fix prices through the code authority are violating their own official

orders by delivering contract coal at less than the code price. The only reply made to that charge is a statement by the head of the Coal Code Authority that if information is received proving violation the Government will take action. The dealers on the code authority have been invited to make public denial, individually, that they are violating the code. Continued silence, in this case, will be looked upon as an admission that the charges are true.

The code price is supposed to represent actual cost. It is unlawful to include a profit. If the charge is true, that coal is being delivered to certain consumers at less than the fixed price, it is either sold at less than cost, which is unreasonable, or other consumers are paying more than cost, which is unlawful. It may be that Attorney General McKittrick, who has taken quite an active interest in the attempt to fix coal prices in St. Louis, will find this situation worth investigating.

Senator COUZENS. Has the court case been settled yet?

Mr. HOREN. Yes, sir. We won our court case and the code authority, and, like the men General Johnson scared, they are scattered all over and I do not know whether they have come back or not.

Senator KING. What was the violation with which you charge the code authority members?

Mr. HOREN. We had never violated the labor provisions.

Many small basket dealers have been forced to quit work on account of their fear of selling below code prices, and many have gone on relief themselves.

The last stand of the self-respecting poor who attempted to buy their own coal by measuring out their pennies has been frustrated to a large extent by the 50-percent increase in basket coal—this was an expecially admirable group in these times.

The code members then haul coal for the Government relief agencies at $1.85 per ton for hauling alone, although they seldom pay more than 75 cents for the hired haul and pocket the difference. The relief agencies could save at least $85,000 a year in hauling St. Louis relief coal alone if they asked for competitive bids, and the saving would not be at the expense of labor.

Fixing uniform prices permits arbitrary discriminations and unfair restraints upon 3,000 small members of the coal industry for the St. Louis area, who are not on an economic parity with their more strongly entrenched competitors because—

They lack credit facilities both in buying and in selling. Private schools and religious institutions often securing a year or more in terms from the larger companies. They cannot advertise extensively.

They do not have the variety of coal the large firms can offer.

They do not have as attractive equipment.

They do not have the burdensome overhead occasioned by overcapitalization, too many years, and so forth.

They lack established goodwill.

They lack ability to buy stock in enterprises using large amounts of coal.

They lack weighty influence in banks often used to swing large contracts.

They cannot offer free wheelbarrow service and free ash hauling, as has been done by many large dealers in several cities in order to make their "minimum costs" more attractive than the small dealers "minimum costs."

Therefore, N. R. A. would clip the small dealer's wings and hand over their business to large competitors who can give more in the way of attractive service, all of which clearly proves that both Mr. Donald Richberg and General Johnson are either blind to actual facts or guilty

of misstatement of said facts when they aver that N. R. A. and its price fixing has not been harmful to the small business man and the consumer.

Since I charged the members of the code authority were violating their own code and challenged them to deny it, 4 months have passed and there has not been a whimper because there is not a thing that could be disproved. In other words, the majority of the code authority were absolutely violating the code and guilty of the same charges on which they dragged us into Federal court.

Senator KING. Have they been removed?

Mr. HOREN. No, sir. They are still sitting there, high and mighty, and they have the same deputy administrator, and an attorney, who is receiving $10,000 a year, who is attorney for the code authority.

Senator KING. Who pays him?

Mr. HOREN. The code authority. And they have sent out assessments, and I think we got a bill for about 2 months for one thousand and some odd dollars. Of course, as one gentleman said the other day, we have not given them a cigar, because we have entirely lost confidence in them.

Senator CLARK. Did they threaten to take you into court to collect those charges?

Mr. HOREN. Sir?

Senator CLARK. Did they threaten to take you into court to collect those charges?

Mr. HOREN. They did not threaten us, Senator, and I am not saying this in a way of boasting, as I have been through a bitter fight, and if I may appear in this a little aggressive or pugnacious, please overlook it, because I have been on the defensive for 10 months, and when we tried to make a minority report—and at that time they thought they had sold the idea of the code to all the little coal men, who were believing in the dream of the promised land, that they were going to live in prosperity—we were the only ones who raised a voice to try to submit a minority report as to our reasons, and we never got a chance with that minority report. And even though there were three speakers absent that evening, and I asked for the time of one of them, I was refused that.

Senator KING. What was the meeting called for?

Mr. HOREN. The meeting was called to receive the second schedule of price as arranged from Washington.

Senator CLARK. This is the St. Louis code authority you are speaking of?

Mr. HOREN. Yes; it is the St. Louis code authority including adjacent territory.

Senator CLARK. Yes; I know what you mean.

Mr. HOREN. Fortunately, we had some fine newspapers in the city, the St. Louis Post-Dispatch and St. Louis Star-Times, which backed this to the limit.

Senator CLARK. The local consumers' council backed you, did they not?

Mr. HOREN. Yes. The consumers' council, Senator Clark, has some very charming ladies and some very fine men, but the council lacks power.

Senator CLARK. I asked that because they gave me some data.

Mr. HOREN. I remember I sent material to them in January.

Senator KING. Did you have their sympathy?

Mr. HOREN. We had provisions in price fixing, as they thought hours and labor sufficient to maintain the code. They thought price fixing was tending to work against the public. I think that is true, Senator Clark.

Senator CLARK. That is my understanding.

Mr. HOREN. Yes, sir.

Senator KING. Was it the plan of the code authority to pass all increased prices to the consumer?

Mr. HOREN. The plan was to declare an emergency, stating that the purposes in the act could not be effectuated because prices were so destructively low, that they could not pay N. R. A. wages.

Senator KING. Was that true?

Mr. HOREN. Senator, that is absolutely untrue.

Senator KING. You are paying N. R. A. wages?

Mr. Horen. Not only that, but almost double. Let us take for example, one of the large companies the City Ice & Fuel Co., which has yards scattered all over the city, which were erected in the horse-and-buggy days because the horse could not travel so far, and they had to do that to take care of the trade, yet despite that fact and their overinvestment in real estate, they have been able to pay dividends throughout the depression, and they have paid throughout 35 cents an hour, which is the code wage, and we have paid more than N. R. A. wages, and we think that wages are a matter of efficiency, and an efficient employer can pay higher wages and still make money, and if an employer is inefficient, he cannot pay 5 cents an hour and make money.

Senator KING. You did not answer my question.

Mr. HOREN. Yes, sir.

Senator KING. Was the meeting the code authority called for the purpose of stabilizing prices at a higher level or at a level that was unfair to the consuming public?

Mr. HOREN. Well, sir——

Senator KING. You can answer that yes or no.

Mr. HOREN. Yes, sir; it was a higher level. And the St. Louis Post Disptach stated that level was $1.25 per ton higher on an average than competitive market prices, and just before the code went into effect the average price of standard coal was $1.25 below code price, 24 different dealers, exhibit F offer coal at $1.25 per ton below code just before code prices went into effect.

(The exhibit referred to is as follows:)

EXHIBIT F.—*Coal and coke*

Royal Coal Co.: Best coal priced right. Royal 6-inch lump, $3.50; Blue ribbon special (guaranteed), $4.25; Mount Olive (labeled) 6-inch lump, $5.; Old Ben Franklin Co. (guaranteed), $5.50.

Comfort Coal Co.: Coal, shovel loaded, $2.75 per ton, load lots; clean lump coal, $3.50, 3-ton lots; 2 tons, $3.75 per ton; 1 ton, $4; high grade, 2 tons or more, ton, $4.50.

A. B. C. Coal & Coke Co.: Company lump, $3.25 loads, nut, $2.90 loads; economy, $4.25; heat more, $4.75; A. B. C. superior lump egg, $5.25. For more heat, less soot. Discount 3 tons or more on approval. Low yard prices to coal dealers.

White Eagle Coal Co.: White eagle special, genuine Franklin County (our best), $5.65.

O. J. Coal: Cantine, 3 by 2 egg, $3.50; 6-inch lump, $4. standard clean furnace lump or 6 by 3 egg, $3.50; troy 6-percent ash, lump or egg, $4.25, load lots.

Sparta Coal Co.: Southern Illinois coal, grade B, direct from mine by truck economy in the long run, $5 per ton, full loads; terms cash.

Wright Coal Co.: Guaranteed lump, $3.25; 1 ton, $3.75; 2 tons, $7.50; quality lump and egg, $3.50; special $3.75. Call us any time.

Laclede Coal Co.: Large lump, $3.35; furnace lump, $3.

J. D. Gentry. If you want good coal, call. Four tons furnace lump, 4 tons, $16; handle all other grades.

Schneider Coal Co.: Enterprise lump, load lots, $3.25, $3.75, and $4 per ton.

Deep Vein Coal Co.: Genuine deep-vein coal, lump or egg: Money refunded if not satisfactory.

B. S. Coal Co.: Clean furnace lump sent on approval, $3.25; nut, $2.75; screenings, $1.85, load lots.

Star Coal & Fuel Co., track dealer, scales, bonded weigher: Standard mine-run furnace coal, $3; standard screened furnace lump, $3.50; St. Clair large lump or egg, $3.75; all prices per ton in 4-ton c. o. d.

Acme Coal Co.: Shovel lump, $2.85; furnace lump, $3.50; 2-inch lump, $3.75; 6-inch lump, $3.95; 3 by 6 egg, $3.65; delivered on approval.

Larr Coal Co.: Furnace lump, $3; standard, $3.50; 6-inch lump or egg, $3.75; Franklin County grade A, $5.75.

H. Williams: Be a genuine Cantine buyer. Lump, $4; large egg, $3.75; stove egg, $3.50; nut, $3.25.

Thomas Coal Co.: Guarantee special clean lump or large egg, $3.50, load lots; 3-inch clean nut, 5 tons, $17; shovel lump, $2.75, load lots.

Travis Coal Co.: Coal, 5 ton, 6-inch lump, $18.50; 5 ton, 3 by 8 egg, $17.50; nut coal, 5 tons, $14, load lots; 1½-inch screenings, $9.50, 5 tons.

Elliott: St. Ellen, large clean 6-inch lump or 4 by 6 egg, $4.50 ton; furnace lump, $4, ton load lots. Put in free.

Barth: Genuine Cantine large lump or egg, $4; 2 by 6 egg, $3.75; stove egg, $3.50; standard, $3.50; load lots.

Van Mierlo Coal Co.: Absolutely clean best St. Clair Co. large lump $3.50, 4 or 5 ton lots.

Prairie Coal Co.: Coal trucks loaded, no shoveling. Route 12.

Tschudin: Furnace lump, $3.25 clean, large egg or lump, $3.75; loads.

H. & A. Coal Co.: Guaranteed lump or egg, $3.25; special, $3.50; nut, $2.75; 4 tons and up.

Tenant: Shovel lump, $2.75 loads; 1 ton, $3; 2 tons, $5.75; screened lump, $3.25.

Mitchell, Hauler: Standard coal from best mine in St. Clair; egg, $3.85; lump, $4.

R. T. Co.: Standard coal, $2.75 ton and up; why pay more?

Truck haulers: Quality mine, now open. Highway 13, watch for sign at crossroads.

D. & K.: Furnace coal, $2.75; lump, $3.40; loads.

Hilker Coal Co.: Clean lump, $3.25; Franklin, $5.25.

Call Little Joe Coal Co.: $3.50 per ton up, 4-ton lots.

Senator KING. You and the other independent dealers you represent——

Mr. HOREN (interposing). Yes, sir.

Senator KING (continuing). Were willing to sell coal and were selling coal at——

Mr. HOREN (interposing). At $1.25 below the code.

Senator KING (continuing). At $1.25 below the code. What were they attempting to establish as the standard basis?

Mr. HOREN. It was not only the standard basis, but as a minimum, although they have enough lawyers in the N. R. A. to whip Japan, and they sent cost sheets down, which were in violation of the N. R. A. itself.

In other words, in filing costs they added 6 percent for capital investment and the solid fuel provision of the N. R. A. says there shall be no capital return in these minimum costs. We contend these coal companies represented by the code authority never did sell 20 percent below cost, and they would have been selling 20 percent below cost if the code prices were "minimum costs."

Senator CLARK. You mean that is what they had been selling at before they fixed the prices?

Mr. HOREN. They claimed 20 percent below cost, but they paid dividends just the same, and the prices they fixed, of course, were a different matter to the large consumers, who take care of themselves, and this was against the public.

I defy anyone to prove to me that the consumers' council has power anywhere in the United States. They are supposed to be a safeguard to protect the public interests. Usually they go and listen to what is going on, and they do not have the technical information necessary to know what is going on, they go away and the prices are fixed by the powerful groups and there the consumer rests.

Senator KING. Did they attempt to impose upon you the prices which they fixed?

Mr. HOREN. Sir?

Senator KING. Did they attempt to impose upon the independent dealers the prices which they fixed?

Mr. HOREN. That is what——

Senator CLARK (interposing). That is what forced you to go into the Federal court, was it not?

Mr. HOREN. That is what forced us to go into Federal court. We spent a long time, spent months looking after this matter, and I am getting to talk like my lawyer, and my lawyer is beginning to talk like a coal man.

Senator KING. How did they get you in court?

Mr. HOREN. They got us in court by saying they were going to ask for an injunction to prevent us from selling coal, and if they secured that injuction they promised me a fine. As you gentlemen know, some Federal court judges interpret one way and some the other. One man has been fined $17,500 in Cleveland.

Senator KING. For selling, as they claim, below cost?

Senator CLARK. An unfair trade practice?

Mr. HOREN. Yes. If we had been restrained, Senator King, in this case, I am frank to say I would have been in contempt of court. We had $25,000 bond guaranteeing to the school board that we would deliver coal at certain prices, and if the court had ruled we had to sell at code prices, I would have just had to go to jail, one way or the other.

Senator CLARK. The State antitrust act provides, in case of any goods sold in pursuance to a price-fixing agreement, the purchaser is entitled to retain the goods and refuse to pay the purchase price?

Mr. HOREN. Yes. And we have a very fine State act. And many of us doubt whether it is worth abandoning it for an experiment which so far we do not think has been successful.

Senator KING. One moment. In the court proceeding, was there a full presentation to which you have referred here?

Mr. HOREN. It was filed on affidavits and briefs fully.

Senator KING. Yes.

Mr. HOREN. And the court ruled N. R. A. was supposed to avoid monopolies, and briefly here it says this act does grant authority to establish codes of fair competition, but the statute expressly prohibits the approval of any code or any codes tending to promote monopoly, and price fixing does tend toward monopoly. Then the court said the way our coal comes to rest in our yards would be considered not interstate commerce, and that underselling is not, of itself, unfair competition.

Senator CLARK. Who wrote that opinion?

Mr. HOREN. Federal Judge Davis. Then they said I was lucky that judge was a Republican, and if it had been up before Judge Fariss, who was promoted to the appellate court, you would have been hanged. And Judge Fariss delivered an opinion against the N. R. A. which was just twice as strong.

Senator CLARK. Judge Otis decided to the same effect?

Mr. HOREN. Judge Otis and Judge Wham across the river in a mining case also decided as to the effects of the N. R. A.

Senator KING. Mr. Horen, I want to get it clear in my own mind as well as on the record as to the thing which haled you into court.

Mr. HOREN. Price fixing only.

Senator KING. You were selling coal cheaper than the code charge they had set up and prescribed?

Mr. HOREN. Yes.

Senator KING. But you contended and proved at the hearing that the prices at which you sold the coal were remunerative, giving you a profit, and that met all the hour and wage provisions?

Mr. HOREN. Yes, sir.

Senator CLARK. Among other things that you were haled in court for was selling below the prices prescribed by this Coal Code Authority to a public school which is wholly supported by taxpayers of St. Louis?

Mr. HOREN. That is right. And that contract has been completely complied with. Not a man on that contract got less than N. R. A. wages, and there was not a ton of coal delivered on which we did not get a profit.

Senator KING. One moment. Did you call the attention of the Coal Code Authority and the deputy of the Coal Code Authority, the Coal Code Administrator in Washington, to the suit which was brought against you and to the result?

Mr. HOREN. Yes, sir. We wired. We sent a long wire——

Senator KING. Did they answer when you called their attention to it?

Mr. HOREN. No, sir.

Senator KING. Did they do anything?

Mr. HOREN. They never replied.

Senator KING. Did they remove the code administrator or attempt to discipline him?

Mr. HOREN. No, sir. The attorney general, Mr. McKittrick, of the State of Missouri, asked for his removal, and the chairman of the code authority, representing the powerful Peabody interest, declared he was not working for the State of Missouri, and he of course was attempting to form a monopoly in violation of the antitrust act, and no action was taken whatever, and the same gentleman is receiving a salary today from N. R. A.

Senator KING. Who is the deputy administrator of the coal code?

Mr. HOREN. Charles P. Melton. You gentlemen heard the other day from the Federal Trade Commission, that fire hose was 46 cents, and was sold under the beneficent influence of the N. R. A. at 84 cents to the city of Milwaukee and other cities. The deputy administrator of the coal code in St. Louis is a former rubber salesman. In other words, he never had any coal experience except that he is a former salesman of the United States Rubber Co.

Senator KING. He is here in Washington?

Mr. HOREN. He is in St. Louis, a divisional man.

Here is an affidavit of 16 men who were opponents and howled me down when I first talked against price fixing. These gentlemen came to me and said:

We further state that we can sell standard coal at a fair profit, after paying N. R. A. standard wages, for at least $1 per ton less than the price fixed and sponsored by the local code authority, the members of which are to our knowledge selling below their own fixed cost prices.

Then they also state:

We further state that costs of handling coal can neither be standardized nor accurately determined, because of the variable factors over which no man or government has control, such as the weather, quality of each mine's coal, distance of mine from ultimate consumer, type of equipment used, sales experience, goodwill, volume,

And so forth. I want to file that.

(The document referred to is as follows:)

We, the undersigned members of the Independent Coal Dealers Association being duly sworn in open meeting assembled on the 2d day of December 1934, upon our respective oaths state that the prices fixed under the alleged sanction of the Retail Coal Code as minimum costs are false, fraudulent, unreasonable, and contrary to our experience and our knowledge, allowing for National Recovery Administration wages as item for consideration amongst others. We further state that costs of handling coal can neither be standardized or accurately determined, because of the variable factors over which no man or government has control, such as the weather, quality of each mine's coal, distance of mine from ultimate consumer, type of equipment used, sales experience, good will, volume of sales, capital invested, and class of customers sold, who may vary with the contract and the need.

We further state that we can sell standard coal at a fair profit, after paying National Recovery Administration standard wages, for at least $1 per ton less than the price fixed and sponsored by the local code authority, the members of which are to our knowledge selling below their own fixed cost prices.

Courtesy Coal Co., Herbert Kattschnie; H. Williams Coal Co., H. Williams; I. U. Forister Coal Co., A. Forister; May Coal Co., R. Russell; All burn Coal Co., J. F. Long; Roe Coal Co., Gus Roettger; Brown Coal Co., G. C. Brown, manager; Thomas Coal Co., Thomas Gregali; Peoples Coal Co., C. S. Tyler, C. B. Jenkerson; Miller Coal Co., Charles Miller; Norris & Wieters, J. H. Norris; Coal Service Co., L. L. Horen; Ralph H. Niemann; Wright Coal Co., E. E. Wright; Tennant Coal Co., F. I. Tennant.

Subscribed and sworn to before me, a notary public in and for the city of St. Louis, State of Missouri, the day and year above written.

[SEAL] MORRIS J. LEVIN, *Notary Public.*

My commission expires February 23, 1935.

Now, I want to say Mr. Mitchell had many points on which we thoroughly agree. If there is any one thing, one purpose, I can possibly accomplish by appearing here before this committee, it is this; there is a pernicious, insidious, and definite attempt to absolutely control the prices of coal in the future. And I want to state that Mr. Richberg already has one violator for next year if he goes through with the price fixing of coal. My attention has been called to the decision of Chief Justice Hughes in the Appalachian case, when he at that time permitted certain combinations, as I understand, because it might work toward the benefit of the coal industry, and at the same time he showed that there were certain features of the coal industry which could not be controlled or remedied by price fixing, such as unwanted sizes. When you produce coal screenings, 30 percent of it has to be thrown away. Now they are beginning to use that in

stokers. No Government agency can fix prices to remedy that situation.

You have strip mines that bring out the coal at 70 cents a ton, which pay union wages, and mines 2 miles away which pay $1.40 and the Federal Government lays down a rule to sell at $2.25 and says that is your minimum cost. One of them had the backbone to revolt and whipped them in the Federal court.

I am up here making a plea that these things are totally ridiculous because they are calculating average prices based on so-called "average cost", and because it is an attempt to average efficiency with inefficiency, and trying to average economy and waste, intelligence and ignorance, high overhead and low overhead, and we claim that such averages are unsound, and any codes predicated on such ridiculous promises are utterly unenforceable.

Senator Clark, I believe, had presented to him some case where a man was subjected to a half a dozen or more codes, and he was given threat of what would happen if he did not pay.

Senator CLARK. I had a letter from a wholesale grocer who said he was in thirty-some codes.

Mr. HOREN. That is some of the difficulty thrown around business. That is one of the things that I think is retarding recovery.

Senator CLARK. And he said another fellow said his code charges amounted to more than his Federal and State taxes.

Mr. HOREN. As I said, they sent us a bill for $1,000.

Judging from adverse editorial comments in the St. Louis press as the result of coal price fixing, to permit price-fixing groups to tell a consumer what he has to pay, is similar to permitting tomcats to decide what to do with a platter of delicious cream, or the inmates of a jail to tell the warden how to run it.

Not only is this application of N. R. A. unjust and oppressive to small business and the consumer, but it is impossible of enforcement, as there are not enough bloodhounds in the country to track down the thousands upon thousands of N. R. A. "Elizas."

If competition meant rule by tooth and claw, then N. R. A. sharpens the strongest teeth and the longest claws and smites the innumerable small business men in any field who never had very strong teeth and no claws to speak of. Chief Justice Hughes once permitted combination of coal operators because they were going to improve conditions, saying at the time that it did not appear that price fixing would result. Monopolies as such are meaningless without price fixing. Price fixing inevitably tends toward monopoly.

I just want to call the attention of you gentlemen to one little item. Here is a case of a small dealer who wants to sell coal at $3.50, and the code directs him to sell it at $4.79. So he uses this language:

> No small dealer without financial backing can sell at these prices and operate. Our only solution is this, to sell coal on credit with down payment being substantial enough to give me a fair profit, and balance to be in 30, 60, or 90 days to suit your convenience. So use your credit.

That is the sort of bootlegging the Government has forced upon little business. I do not believe that is raising ethics at all. The N. R. A. has very admirable men. I met Secretary Perkins, who was out on a committee in St. Louis, and she is a very charming lady, and I know in some respects this thing is nobly conceived, but practical realities show it has more evils than cures.

We are earnestly convinced that the interests of our business, our city, and cour country were best served by our open fight against any and all N. R. A. price fixing masked as "minimum costs."

Coal prices in St. Louis were raised on the average 20 percent above competitive market prices as a result of code price fixing of "minimum costs." In some instances code prices were double market prices.

Exhibit F, attached hereto, shows 24 ads specifically offering standard egg or lump coal at least $1.25 per ton below the so-called "code minimum cost" on September 17, 1934, and minimum cost data was gathered prior to this date. Scores of small dealers were intimidated and half scared to death as they had no money or means to carry their fights to the courts.

St. Louis Post-Dispatch, in commenting on November 19 schedule, stated that prices on standard coal, which constitutes 85 percent of St. Louis bituminous coal, are about $1.25 per ton above competitive market.

We don't believe there ever was a time when all coal dealers sold 20 percent below minimum cost. How come that these companies prospered if they sold 20 percent below cost? The largest of them paid dividends all through the depression. We don't believe that prices make conditions. We do believe that conditions make prices.

The Coal Code Authority is represented by all of eight largest companies, and by none of the small off-track dealers, of whom there are some 3,000 in this code area.

At least 16 independent coal dealers who voluntarily came to our office to offer their aid in our fight signed under oath exhibit C which states that code prices are "false, fraudulent, unreasonable, and contrary to our experience."

Exhibit B shows ad of Century Coal Co., equipped track dealer, offering to sell coal $1 per ton average below code. Exhibit B shows affidavit of the president of this company that as soon as this advertisement appeared, he received notice cutting him off from hauling relief coal although the spread figured in the haul of relief coal was itself in technical violation of the code.

And these are the gentlemen who are being represented by me, the little business men.

Now, I have shown you these 16 independent dealers who swore that was a fraud.

Here is an exhibit of a coal company who is abiding by the code authority regulations, but they finally got tired not getting the price, so they offer instead of the code price of $4.40, a price of $3. And I want to say right here that the United States Government has a contract to buy this coal at $2.33 that is being offered in violation of the code at $3 and the code price is $4.44, and that contract is on the main post office in the city of St. Louis, Mo. They have a bond, a guarantee that they will get that coal delivered at $2.33.

Senator CLARK. You do not have any idea that the people who are selling the Government coal at $2.33 are losing any money on it do you?

Mr. HOREN. Senator Clark, all business today is on a small margin. Business men face severe competition. I think the automobile industry showed some intelligence last year when they gave more value and sold a lot of cars. I think Mr. Ford is correct in his assertion that the low prices pull out the dollars.

Senator CLARK. If these fellows are selling the Government coal at $2.33 they are not losing any money?

Mr. HOREN. No, sir. They are making 25 or 30 cents a ton, which is nobody's business but theirs.

Senator KING. Why should they sell to the Government at less than they do the consuming public?

Mr. HOREN. That contract was entered into by a member of the code authority, and yet they wrote me a letter to cancel my school board contract, but he did not cancel his contract to the Government.

Senator KING. I want to ask again for information.

Mr. HOREN. Yes, sir.

Senator KING. And I asked a question before and I did not get a satisfactory answer, or that is it may have been satisfactory, but I did not understand it.

Mr. HOREN. I am sorry.

Senator KING. Did you bring to the attention of the code authorities in Washington these things to which you have referred?

Mr. HOREN. Senator, there is not only no doubt about it, but it was given publicity.

Senator KING. You can answer yes or no.

Mr. HOREN. Absolutely.

Senator KING. What response did you get?

Mr. HOREN. Didn't get an answer.

Senator KING. Is the code authority or deputy code administrator stationed in Washington?

Mr. HOREN. Yes, sir.

Senator KING. Have you taken the matter up with a view to removing the code authorities there?

Mr. HOREN. No; despite the fact that I have newspaper clippings from the papers stating there he should have been removed—the Post-Dispatch and the Star-Times which particularly used some very strong language.

Senator KING. I am not talking about that. You have answered the question. Who is the deputy administrator?

Mr. HOREN. Charles P. Melton.

Senator KING. Here in Washington?

Mr. HOREN. No, sir. He is the deputy over that coal division.

Senator KING. Is not that coal division subject to——

Mr. HOREN (interposing). Subject to Mr. Hecht here.

Senator KING. And he is who?

Senator CLARK. He is the deputy administrator who has charge of that division of the Coal Code.

Senator KING. That is the one I am referring to.

Mr. HOREN. That is Mr. Hecht.

Senator KING. Did you communicate with him?

Mr. HOREN. No, sir. I communicated with Mr. Sol Rosenblatt, who is chief enforcement officer.

Senator KING. Did you get any response?

Mr. HOREN. Not a word.

Senator KING. Those code authorities out there are still functioning?

Mr. HOREN. Absolutely; and still drawing their checks. And there has been a budget scandal in Cleveland, I understand, in the coal or solid fuel industry in Cleveland, and the Administration is investigating it.

Senator KING. How many lawyers does the code authority have?

Mr. HOREN. They had Rafferty, Mr. Curran, Mr. Sales, and one more. That makes four.

Senator KING. Who was the one of them that was getting $10,000?

Mr. HOREN. Mr. Curran, who is a coal man's son, had just taken up law, and I want to be fair to him, but I do not think he could make anything like $10,000 a year on the outside, which he gets as attorney for the divisional code authority.

Senator CLARK. Do you know what the budget is for the Regional Coal Code Authority?

Mr. HOREN. $70,000 a year.

Senator CLARK. $70,000 a year?

Mr. HOREN. Yes, sir. Then they have a regional code authority in Cleveland and another one in Chicago.

Senator KING. And what is the budget there?

Mr. HOREN. The budget in Cleveland is $120,000, and so on over the United States.

Senator KING. Lawyers and so on?

Mr. HOREN. Yes; lawyers.

Senator CLARK. When did you make your complaint to Rosenblatt?

Mr. HOREN. I have a clipping here. I do not locate it now, but I think it was around the 9th of December.

Senator CLARK. In 1934?

Mr. HOREN. December 1934. The Western Union has a record of it, because we sent him a long wire.

Senator CLARK. You say you never heard anything from him at all?

Mr. HOREN. Never heard a word. And we sent the President one, and, of course, he is too busy to answer all his communications, but we did expect an answer from the other.

I want to say we could have joined in bootlegging in this proposition and not been dragged into court. They sent a mine operator around as an emissary to see if we would hush up and they would let us alone with our contract, and they promised to form a combine of operators and dealers to crush us if we refused. We sent back word telling them just where they could go, and, of course, the same type of threats are being bandied about concerning next season. Of course, we are not so easy to scare by threats.

Senator KING. I think you might invoke the criminal statute for threats and an attempt to boycott.

Mr. HOREN. I was going to say, Senator, that if that price fixing goes into this new bill, then we will do our fighting, and they have not seen any fighting yet if that price-fixing provision goes in this act.

Here is a significant feature, and I want to say this is something which is incontrovertible.

The miners of Illinois, whence 90 percent of St. Louis coal is derived, had a contract from April 1, 1934, to April 1, 1935, and even doubling the price of coal would not have given them an extra cent in wages. You see the significance of that.

One hearing was in May and the other hearing was in August. The miners had a contract from April to the following April, no matter what prices were charged, or whether the price of coal was doubled the miners would receive no more under their contract.

Senator KING. Did they increase their wages?

Mr. HOREN. They could not do it. They had a contract for a year.

Now, N. R. A. scales were not higher than previous wages and in many cases much lower. Some of our employees who worked for members of the code authority tell us they earned more with us.

Code prices increased the amount of relief coal hauled to the poor at a large profit to the larger companies. And I can prove that.

Senator KING. You mentioned that.

Mr. HOREN. I want to state how and why. The prices on basket coal sold to persons on the brink of relief were advanced 50 percent as a result of code price fixing, from an average of 18 cents per bushel to 27 cents per bushel.

Many small basket dealers have been forced to quit work on account of their fear of selling below code prices, and many have gone on relief themselves.

The last stand of the self-respecting poor who attempted to buy their own coal by measuring out their pennies has been frustrated to a large extent by the 50 percent increase in basket coal—this was an especially admirable group in these times.

The code members then haul coal for the Government relief agencies at $1.85 per ton for hauling alone, although they seldom pay more than 75 cents for the hired haul and pocket the difference. The relief agencies could save at least $85,000 a year in hauling St. Louis relief coal alone if they asked for competitive bids, and the saving would not be at the expense of labor.

Senator KING. We do not think you ought to repeat. You have told us that.

Mr. HOREN. I am sorry, Senator.

Here is something, Senator, I would like to state: I think here I want to answer particularly Mr. Richberg's contention that he helps the small man in fixing uniform prices.

Now, we feel fixing uniform prices permits arbitrary discriminations and unfair restraints upon 3,000 small members of the coal industry for the St. Louis area, who are not on an economic parity with their more strongly entrenched competitors, because they lack credit facilities both in buying and in selling. Private schools and religious institutions often secure a year or more in terms from the larger companies. They cannot advertise extensively. I do not think that will be denied.

The man who has the advertising reserve funds, naturally has the advantage over the smaller dealer who does not have the variety of coal. A lady appreciates that when she goes into a department store having a large variety and she is willing to pay a little more than if the price is the same and she naturally does not have the variety.

It has been estimated that the fight against coal-price fixing saved St. Louis consumers $3,000,000 this winter; the miners have not lost one cent in wages as the result of this; we, who were considered the arch violator of the code in this area, were able to pay N. R. A. wages and more, as shown in sworn affidavit by our employees attached hereto as exhibit D. (Left in the possession of the clerk of the committee.)

Senator KING. You mean in that area, in the St. Louis area?

Mr. HOREN. In the St. Louis area in one year without being at the expense of the miners, who have the same schedule, we were able to pay them N. R. A. wages.

I have here an affidavit, if anybody is interested, a sworn affidavit of 33 of our employees at the end, you might say of the entire winter season, up until March, at the end of 7 or 8 months, that they have always received more than N. R. A. wages, a schedule of which is posted in the office.

We are here because we see all around us a pernicious tenacity in holding on to coal price fixing no matter what happens to price fixing in other fields. Mr. Donald Richberg intimated as much before this committee and the new N. R. A. bill, assumed to have been designed to a great extent by Mr. Richberg, contains the same emergency clauses for the natural resource industries, so that the boys can immediately declare new emergencies and fix "minimum costs." The same powerful group are now in Missouri's capital, trying to set aside our splendid State antitrust act and pass a State N. R. A. act. Under Federal leadership, they are trying to influence State legislation. They are also in Illinois, State capital trying to pass an atrocious discriminatory law which would place an excessive tax of several hundred dollars on every truck doing business in Illinois. This is aimed chiefly at the numerous small coal dealers who truck coal direct from the mines in the most economical and efficient manner. With Mr. Richberg evidently having a sweet tooth for coal price fixing, and with Mr. Murray, Mr. Hillman, and Mr. Witherow—a director of the Mellon Coal Co.—and Mr. Lewis and Senator Guffey, all seeming to stay awake nights in order to insure price fixing in coal, we hereby serve notice on them that if they succeed in again establishing "minimum costs" at the expense of the consumer, they already have a violator for next season.

We pledge ourselves to again oppose any and all such attempts to gouge the public, and will continue to do so unless restrained by a court of proper jurisdiction. We ask relief from the shackles of this un-American law.

An analysis of the net increase in the earnings of large corporations contrasted with the earnings of small businesses, and a comparison of wage increases with the much greater increases in the prices of such absolute necessities as food, fuel, and so forth, should convince all but N. R. A. satraps and their chief beneficiaries that the consumer has been completely deprived of his section 7 (a); that he can no longer bargain for fair prices, but must take what is served him at prices controlled by past masters in the art of price-fixing.

I will finish up right here and then I am through with all of it.

The divisional code authorities, draped in patriotic togas, in most instances, controlled by the strong and powerful interests in each industry, have been "ploughing under" their small competitors who dare to oppose them. They are trying to pass the same price fixing in new garb, again using strikes and threatened strikes as a weapon. Do not be panicked right in the teeth of this disastrous experience which has undoubtedly delayed recovery for most people because it has reduced their purchasing power.

As a small business, we honestly ask this committee to protect us from the protection of price-fixing. Let us be honest with the consumer—he really learns what emergencies are soon after code authorities declare them to exist.

I want to enter here this cost sheet from the N. R. A. in which they add on 6 percent in investment in large property which is contrary to the N. R. A. law.

(The document referred to is as follows:)

Cost determinants of code authority, 1933

Dealer's annual sales	Number of dealers	Yard cost	Cost on delivered fuel
0 to 2,000 tons	53	$1.13	$3.43
2,000 to 5,000 tons	44	.83	2.98
5,000 to 10,000 tons	31	.56	1.87
10,000 to 20,000 tons	26	.61	2.64
20,000 to 40,000 tons	8	.50	1.78
40,000 to 80,000 tons	3	.36	1.26
Over 80,000 tons	6	.62	2.23
	171		
Average per dealer			2.75

NOTE.—To bring the above costs up to present date add the increases that have occurred over average 1933 costs (about $0.23 per ton increase).

(Notation in pencil)

Straight average under code condition	$3.01
Weighted average under code condition	2.49
Total	5.50
Average of the 2	2.75
Average expected to be realized	2.70

Cost per ton of handling coal submitted by ——— ——— (for the year 1933)

Yard expense:
- Salaries and wages
- Taxes
- Depreciation (yard E)
- Insurance
- Repairs
- Miscellaneous
- 6 percent investment in yard property
- Degradation (estimated)

Total

Selling expense:
- Salaries and commissions
- Auto expense
- Auto depreciation
- Salesmen's expense
- Advertising
- Miscellaneous

Total

Delivery expense:
- Salaries and wages
- Horse and wagon expense
- Auto truck expense
- Depreciation (trucks, etc.)
- Insurance
- Rent (stable or garage)
- Licenses and taxes
- Hired hauling
- Miscellaneous

Total

Cost per ton of handling coal submitted by ——— ——— (for the year 1933)—Continued

Office and miscellaneous expense:	
Salaries of management	
Other salaries	
Bad debts	
Contributions	
Legal and professional	
Taxes and licenses	
Rent	
Miscellaneous	
Total	
Tonnage classification (1933 sales):	
To dealers	
Delivered	
To domestic	
To commercial	
Total	

(Included in above total was ..... tons delivered direct from mines.)

NOTE.—All reports should be mailed to Torbert Vickroy, C. P. A., 406 Paul Brown Building, St. Louis, Mo., and will be held strictly confidential.

AFFIDAVIT

STATE OF MISSOURI,
City of St. Louis, ss:

I, Ewald Smith, a citizen of the State of Missouri, being duly sworn on my oath, state that I am president of the Century Coal Co., a corporation of the State of Missouri and the city of St. Louis, engaged in the retail solid-fuel business.

I further state that the Century Coal Co. was in full compliance with all provisions of the Code of Fair Competition for the Retail Solid-Fuel Industry on the 19th of November, 1934, at which time a schedule of minimum selling costs was put into effect by Divisional Code Authority No. 32, and that the Century Coal Co. complied with this schedule in every way until the day of December 18, 1934. It became apparent at that time that the Century Coal Co. was losing business to competitors who were not complying with the schedule as published by the Divisional Coal Code Authority, and in order to protect itself against further losses, the company was forced to publish a list of prices below those determined by the said code authority.

Before the publication of this list of lower prices on fuel, copy of which is attached to and made part of this statement, the Century Coal Co. handled a certain amount of business from the relief agencies, but upon obtaining knowledge of the willingness of my company to sell at less than code prices, the relief agencies, acting through their representative, Mr. Berber, discontinued the practice of giving my company any more of this business. This action is a part of the records of the relief agencies and Divisional Coal Code Authority No. 32.

I further state that the Century Coal Co. was receiving a margin of $1.85 per ton for delivering relief coal while the margin provided for 1-ton lots by the schedule of costs of Divisional Code Authority No. 32 was $2.49 per ton, and that the list of prices issued by this company on the 21st day of December 1934, copy of which is attached, yielded a margin of $1.85 in 1-ton lots.

(Signed) CENTURY COAL CO.,
EWALD C. SMITH, *President.*

Dated March 11, 1935.

Subscribed and sworn to before me this 11th day of March 1935.

[SEAL] P. L. HUGHES, *Notary public.*

(My term expires Jan. 21, 1939.)

CENTURY COAL CO.

Coal—Special offer! Save the difference!

	Our price	Code price
	Per ton	*Per ton*
Shovel loaded (load lots)	$3.00	$4.44
St. Clair lump and egg (mixed) (load lots)	3.50	4.79
St. Clair lump (load lots)	3.75	4.79
Burnwell	4.50	5.54
Williamson County	5.25	6.14
Franklin County Grade A	5.75	6.29
Semi-Smokeless (Indiana block)	6.25	6.59

DOMESTIC COAL CO.

YOUR CREDIT IS GOOD HERE

Effective November 19, retail coal industry went under a code. Prices on all grades have raised considerable and all small independent dealers are faced with credit accounts at 25 cents per ton charge over code prices.

No small dealer without financial backing can sell at these prices and operate. So my only solution is this, to sell coal on credit with down payment being substantial enough to give me a fair profit and balance to be in 30, 60, or 90 days to suit your convenience. So use your credit.

Freeburg clean lump coal. Code price, $4.79. Deep-shaft, clean burning with small ash and little soot. You pay on delivery $4 per ton. Balance later.

Standard stove size nut coal, 3 by 2 inches, $4.54. Clean shaker screened, no dirt. Code price, —. To pay on delivery, $3.50. Balance 30, 60, or 90 days.

Shiloh Valley lump egg, $4.99 plus 25 cents. Picked lump or egg size. Code price, —. Pay on delivery $4.25 per ton. Balance 30, 60, or 90 days.

Cantine lump or canteloupe size, $5.26. Well-known brand of fuel, hard, soft coal. Code price, —. You pay $4.50 per ton. Balance same as above.

Duquoin white ash, lump, $5.94 plus 25 cents. Delivered at $5 ton down. Balance later. Code price, —.

Franklin County. Code price, $6.54. Lump or furnace. Pay $6 down. Balance later.

These prices are on lots of 2 tons or more. On 1-ton lots add 50 cents to above prices. All coal sent on approval and is guaranteed to give complete satisfaction or money refunded. Reference is 5,000 satisfied customers. All white help.

Mr. HOREN. I also want to show, Senator King, you may be interested, very briefly, all the little fellows from zero to $2,000, they showed an average cost of $3.40. It is just the same way as a small business man who figures so much for his bookkeeper and does not get it. The large firms figure $1.26, and they figure $2.70 as representing the "minimum cost" and throw in all sorts of tremendous profits, which would increase the spread for handling of these large firms so that they would get 150 percent increase in this item alone. In other words instead of $1.26, which is their own cost, they would be forced to get $2.70. The whole thing is ridiculous, and it is not only forced upon the small man to sell above his cost, but the larger man to swell his cost.

Senator KING. It is not necessary that the affidavit of those employees showing that they had larger wages than provided for by N. R. A. go into the record. You might leave it with the secretary of the committee in the event it is controverted.

Mr. HOREN. Yes, Senator. I will leave it.

Senator KING. The committee will stand adjourned until Monday at 10 o'clock.

(Whereupon, at 4 p. m., the committee adjourned until 10 a. m., Monday, Apr. 8, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, APRIL 8, 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, Clark, Byrd, and Gerry.

The CHAIRMAN. The committee will come to order.

Senator KING. Before we proceed with the first witness, I would like to read the following into the record:

ADVANCE ENVELOPE CO.,
Atlanta, Ga., April 1, 1935.

Hon. WM. H. KING,
United States Senator, Finance Committee,
Washington, D. C.

DEAR SENATOR: Reference is made to the concerted effort, on the part of the Envelope Manufacturers' Association, to have members bombard the National Congress with letters and telegrams approving the tactics of the industry, by extending the present National Industrial Recovery Act code beyond June 1, 1935.

The present code has not in any way been of benefit to our company, but is seeming to help out the larger companies, in squeezing out the small business, and allowing no new companies to get a start.

We heartily approve the hour and wage regulation of the National Recovery Administration, and if consistent, we will appreciate your support of the new National Industrial Recovery Act set-up, governing the hours and wages of labor, but eliminating any price fixing whatsoever.

Respectfully yours,

ADVANCE ENVELOPE CO.,
H. F. ZOTTI, *Owner.*

The CHAIRMAN. Mr. Abram F. Myers.

Mr. MYERS. Yes, sir.

The CHAIRMAN. I may say to all of the witnesses today that you must be brief. We have quite a list and we must get through. Mr. Myers, how long do you want?

Mr. MYERS. I have a very large amount of ground to cover. I think that 45 minutes ought to be enough.

The CHAIRMAN. It is impossible to give you 45 minutes. We have a great many others. But go ahead.

Senator KING. This is a rather important industry, Mr. Chairman. It has been provocative of a great deal of controversy.

Mr. MYERS. I have some extra copies of the code itself, if the members of the committee would care to have them.

STATEMENT OF ABRAM F. MYERS, CHAIRMAN AND GENERAL COUNSEL OF ALLIED STATES ASSOCIATION OF MOTION PICTURE EXHIBITORS

(The witness, having been first duly sworn by the chairman, testified as follows:)

Mr. MYERS. I appear here as the chairman of the board and the general counsel of the Allied States Association of Motion Picture Exhibitors, a national federation, composed of regional organizations of independent motion-picture exhibitors. There are 19 of these regional organizations, reaching into 35 States, and I will be very glad to file with the stenographer a list of those organizations.

I might say that in addition to this list, within the past 48 hours, the Independent Theater Owners of Wisconsin have wired me asking me to represent them at this hearing, and we have received an application for membership from the Intermountain State Association of Salt Lake City, Utah, covering the States of Utah and Idaho, and I am also authorized to speak for them.

(The list submitted by the witness is as follows:)

Independent Exhibitors of New England, Inc., 69 Church Street, Boston, Mass.
Allied Theaters of New Jersey, Inc., Hotel Lincoln, New York, N. Y.
M. P. T. O. of Western Pennsylvania, Inc., 425 Van Braam Street, Pittsburgh, Pa.
M. P. T. O. of Maryland, 531 North Howard Street, Baltimore, Md.
Allied Theater Owners of the District of Columbia, Inc., Princess Theatre, 1119 H Street NE., Washington, D. C.
Georgia-Florida-Tennessee-Alabama Independent Theatres Association, 162 Walton Street NW., Atlanta, Ga.
Allied Theatre Owners of Texas, 312½ South Harwood Street, Dallas, Tex.
Associated Theatre Owners of Indiana, 444 North Illinois Street, Indianapolis, Ind.
Allied Theatre Owners of Illinois, 910 South Michigan Avenue, Chicago, Ill.
Allied Independent Exhibitors of Wisconsin, Inc., 627 North Sixth Street, Milwaukee, Wis.
Allied Theatres of Michigan, 607 Fox Theatre Building, Detroit, Mich.
Allied Theatre Owners of the Northwest, 509 Pence Building, Minneapolis, Minn.
Allied Theatre Owners of North Dakota, Rex Theatre, Valley City, N. Dak.
Allied Theatre Owners of New York, Eagle Theatre, Albany, N. Y.
Allied Theatre Owners of Louisiana, 908 Canal Street, New Orleans, La.
Independent Theatre Owners of Ohio, 39 West Broad Street, Columbus, Ohio.
Rocky Mountain Theatre Owners' Association, 100 Broadway, Denver, Colo.
Allied Theatre Owners of Oregon, 8106 North Denver Avenue, Portland, Oreg.
Allied Theatre Owners of Montana, care Johnnie Griffin, Chinook, Mont.

Senator KING. If I understand you, you speak for the independent exhibitors?

Mr. MYERS. Motion-picture-theater owners, and by "independent", Senator, I mean theaters not owned or controlled or in any manner affiliated with any of the major producers known as the "big eight" of motion pictures.

Senator KING. Do the "big eight", so-called, own theaters?

Mr. MYERS. Most of them do; yes. The Paramount, Warners, R-K-O, Loews—that is Metro-Goldwyn-Mayer—are all very large owners of chains of theaters.

Senator KING. And those organizations which you represent are dependent upon the big producers for their pictures to exhibit in the houses which they own?

Mr. MYERS. Exactly so. They are often in competition with the houses owned, controlled, and operated by those same producers.

Senator KING. Proceed.

Mr. MYERS. I want to state for the record what my position is here today.

I speak only on the motion picture code. We regard it as entirely separate and apart from the run of N. R. A. codes, having distinguishing features wholly unlike other codes. Therefore, we feel that even the best friends of N. R. A. should be anxious to ferret out inequities of this particular code as being the best way to establish the fairness of the entire program.

The code authority here was not elected by the industry, but was appointed, named in the code itself, by N. R. A.

The "big eight" were in complete domination of that code authority. The iniquity of that is that this code, unlike most others, does not merely administer the mechanical features of the code, but has conferred upon it quasi-judicial authority over controversies involving the rights of the independent members of the industry.

Senator KING. That would mean the exhibitors?

Mr. MYERS. Yes, sir.

Senator KING. To which class your organizations belong?

Mr. MYERS. The independent exhibitors; yes, sir.

Other distinguishing features of this code are that the code committee which fought to negotiate the code in the first instance was named not by the industry but by the deputy administrator of N. R. A., Mr. Sol Rosenblatt.

Senator KING. Who authorized him to do that?

Mr. MYERS. I do not know.

Senator KING. Proceed.

Mr. MYERS. The first information we had that there was to be such a meeting was when we were asked to meet in New York to attend a hearing or a public meeting, and the code committees were named from the rostrum on that occasion.

There were three code committees, so-called; one for the exhibitors, one for the distributors—who incidentally are the same as the producers, because the producers distribute their own pictures—and finally one for the motion-picture exhibitors.

It goes without saying that the producers' and distributors' committees were dominated by the same "big eight", because that was their business. There were very few others engaged in it.

The exhibitors' committee also was dominated by them by this device, namely, that there was an equal number of the representatives of the Allied States Association, an equal number of representatives of another so-called "Exhibitors' Association," which is composed mainly and almost entirely financed by the theaters of the "big eight" producers, and then direct representatives of theaters of the "big eight" producers, so that there was a two to one vote on every major issue that came before that committee.

Being unable in those circumstances to get an agreed code, we were notified that the code would be drafted for us by the deputy administrator, Mr. Rosenblatt, and after a length of time, we were presented with a draft of the code, ostensibly prepared by Mr. Rosenblatt.

To show the efforts, the good faith efforts of the independent exhibitors during that time to cooperate to get a fair code, I will file as physical exhibits, not to put in the record, because they are ob-

viously too lengthy, the briefs that were filed with the N. R. A. at that time.

It appears that we were not the only ones who protested against the codes——

Senator KING (interrupting). Let me interrupt you, Did you find out who actually did draft the code?

Mr. MYERS. I have never known who actually drafted the code. I sincerely believe that Mr. Rosenblatt did not draft it, because through my association with him at that time I do not think that he had the grasp of the industry problems or perhaps the subtlety to have drafted a code quite like unto this one.

I will say this, that immediately after the code committee assembled in New York, there entered into our deliberations, Mr. Nathan Burkan a lawyer who just prior to that had been Mr. Rosenblatt's employer, and while I do not say that Mr. Burkan drafted the code, I think it is a fair inference that he exercised some influence. He appeared before that committee representing the "big eight" producers.

Senator KING. Your contention is that the "big eight" producers were the power that drafted the code or had it prepared?

Mr. MYERS. Exactly so.

Senator KING. And they were the power which administers it?

Mr. MYERS. Exactly so.

The CHAIRMAN. How many people are in your organization?

Mr. MYERS. Between 4,500 and 5,000. They belong to the regional organizations which compose this national.

The CHAIRMAN. How many belong to the other group?

Mr. MYERS. I have no knowledge.

The CHAIRMAN. Have you any idea?

Mr. MYERS. I have seen the testimony of the secretary of that group in a case in the New York courts a couple of years ago in which he testified that the majority of the members are of the affiliated group, that is, theaters belonging to the "big eight" producers. If a majority are of that class, we can assume that there are very few independents, because, as I understand, there are only one or two thousand of the affiliated theaters, the producer-owned theaters.

The CHAIRMAN. I merely wanted to get at about the proportion of the theaters that belonged to one group and the other. You say that between 4,000 and 4,500 are in yours. How many in the other?

Mr. MYERS. Of my own knowledge, I do not know.

The CHAIRMAN. Do you know how many theaters there are in the United States?

Mr. MYERS. There are operating in the United States about 14,000 to 15,000 theaters.

The CHAIRMAN. Then you would say that all of the balance of them belong to the other group?

Mr. MYERS. Oh, no; not by a jugful. On the contrary, there are many theaters in this territory covered by our associations that do not belong to our association. That is a dues-paying proposition.

The CHAIRMAN. Proceed.

Mr. MYERS. At the Darrow Board hearing it was disclosed that after the code was drafted, the Department of Justice filed a protest with the National Recovery Administration against it. Naturally, I do not have it. I do not know the contents of it, but it was referred to and adverted to at the hearing. I assume that this committee will

if it is interested, obtain it from the National Recovery Administration.

Following the presentation of the code by Mr. Rosenblatt, representatives of independent exhibitors, producers, and distributors drafted a letter to him saying that the situation had reached such a critical state that they wanted time in which to prepare a brief. That request was denied.

He proceeded with those remaining, and one of the briefs which I file here is the brief that was filed at that time.

Thereafter we were treated as outcasts, we were given no information as to the progress of the matters, were not invited to sign the code did not know when it was signed, as a matter of fact, or by whom it was signed. It was signed in secret and transmitted to the President at Warm Springs for approval.

During that time there was a protest, a mass meeting in Chicago.

Senator KING. By whom?

Mr. MYERS. The independent theaters. Following that, a committee was received by General Johnson, and they at that time filed a memorandum with him, and that memorandum dated October 1, 1933, I will add as a physical exhibit, assuming that you do not want to cover the record with it.

Senator KING. Does that give the grounds for the objections?

Mr. MYERS. Yes, sir.

Senator KING. I think it ought to go into the record.

Mr. MYERS. Just as you like.

The CHAIRMAN. How voluminous is it?

Mr. MYERS. It is about 10 typewritten pages.

The CHAIRMAN. Very well. It may go in.

(The same is as follows:)

MEMORANDUM FOR GENERAL JOHNSON IN RE OPPOSITION OF INDEPENDENT THEATER OWNERS TO DRAFT OF MOTION PICTURE CODE PRESENTED BY DEPUTY ADMINISTRATOR SOL ROSENBLATT

This memorandum has been prepared for presentation to General Johnson at the conference in his office on this day.

The invitations to attend were sent to the chairman and general counsel of Allied States Association of Motion Picture Exhibitors and to the men who served on the resolutions committee at the mass meeting of independent exhibitors held in Chicago on October 24.

In addition to the foregoing, the vice president of Allied States Association, who presided at the Chicago meeting, has been included in the group.

Since the members of the resolutions committee of said meeting, rather than the board of directors of Allied States Association, were requested to attend, we assume that the purpose of the meeting is to consider the resolutions adopted at the Chicago gathering, which resolutions were duly transmitted to the President of the United States.

Copies of those resolutions are attached hereto, marked "Exhibits A and B."

The purpose of this memorandum is to substantiate the allegations of the preambles to said resolution and to justify the action requested in the body of the resolutions.

This entails not merely a consideration of the conduct of Deputy Administrator Sol Rosenblatt in handling the code situation, but also consideration of certain of the more vicious features of Rosenblatt's code itself.

I. POSITION OF THE RESOLUTIONS COMMITTEE

The resolutions committee, with the single exception of Col. H. A. Cole, of Texas, was composed of men who had not served on the various code committees functioning in New York and Washington. Those men had no personal knowl-

edge of many of the matters recited in the preambles. Their information on those subjects was derived from the addresses of members of those committees who spoke from personal knowledge.

A stenographic record was kept of the proceedings and a copy of this transcript, including the addresses in question, is herewith placed at the disposal of the Administrator, marked "Exhibit C."

The members of the resolutions committee, in subscribing to this memorandum, record their belief in the truth of all the allegations of the said resolutions.

II. MAJORITY—MINORITY INTERESTS

1. As regards investment: There are two principal economic divisions in the motion-picture industry, namely, the major producer-distributors and their owned, controlled, and affiliated theaters, on the one hand, and the independent exhibitors, on the other.

Mr. Rosenblatt, according to the trade papers, has obtained the signatures of the major (Hays) producers and the Motion Picture Theatre Owners of America (which will be dealt with later) to his draft of code.

The major producer interests have always claimed to represent the preponderance of investment in the industry and Rosenblatt in ignoring the representatives of the independent exhibitors, evidently is acting on this theory.

The claim is open to serious question. Unfortunately there are no exact figures. But at the public hearing on the code, Sidney R. Kent, president of Fox Film Corporation and chief spokesman for major producers, made the assertion that he was speaking for $650,000,000 of investment. He did not take this apart and tell us how much represents production, how much affiliated theaters and how much represents investment in foreign fields. Mr. Kent's own company has poured millions into the British Gaumont Co. and the other producers have large foreign investments.

The only estimate of total investment in the motion-picture business that we know about is the Department of Commerce figure of $2,000,000,000. Accepting the two figures as approximately correct, it would seem that there are some $1,350,000,000 unaccounted for.

While the assertion that the major producers actually represent a minority interest in the industry may come as a shock to some, it will appear quite reasonable to more thoughtful observers. Obviously, the overwhelming proportion of the combined investment is in theaters. Of approximately 12,000 theaters now open, not more than 2,000 are owned, controlled, or operated by the major producers. Now let us examine a survey recently made in the State of Michigan.

In that State the affiliated chains do not own a single one of the theaters they operate. In Detroit they operate on lease and in a few instances own their own equipment. In this manner they control 11 theaters in Detroit, seating a total of 32,500. Their combined investment in Detroit is not in excess of $1,040,000.

Independence in Detroit own outright 83 theaters which represent an investment of approximately $10,381,000. The total seating capacity of all independent theaters in Detroit including those leased, is 122,000.

In the State a similar condition exists. The Butterfield Circuit, which is affiliated with Paramount and Radio and possibly others, controls 83 theaters of which it owns 12. The independents in the State own outright about 110 theaters. The investment of the independents in the State exceeds the circuits by a least $500,000.

Of course, it may be contended that the leased buildings of the affiliated chains should be included in computations of investment represented by them. If there was an open market for film (the right to which has been denied by Mr. Rosenblatt) there might be merit to this contention. But the monopolistic practices of the industry deprive such leased houses of all potential value. The owners cannot operate them independently because of their inability to buy product. The chains are thus firmly entrenched, and are able to beat down rentals, by dint of the monopoly they enjoy, and the landlords, the actual theater owners, are in reality victims.

2. As regards numbers: When it comes to counting theaters instead of dollars the independents outnumber the affiliated chains 6 to 2—probably more. Bearing in mind that these thousands of struggling individuals should receiv even greater consideration than the few chains which now dominate the business by control of product and monopolistic practices.

The following is a statement showing the number of theaters embraced in the affiliated units of the Allied States Association; and cooperating groups:

Allied Theatres of Southern Ohio, Kentucky, and West Virginia	104+
Allied Theatres of Illinois	143
Allied Theatres of Michigan	264
Allied Theatres of New England	88–150
Allied Theatres of Louisiana	52
M. P. T. O. of Maryland	60
Allied Theatres of Minnesota, North and South Dakota	202
M. P. T. O. of Western Pennsylvania and West Virginia	349
Allied Theatres of Texas	167
Allied Theatres of Iowa	336
Allied Theatres of Nebraska (branch of the Iowa association)	325
Allied Theatres of New Jersey	241
Montana Theatre Owners' Association	28
Allied Amusements of the Northwest	47
Rocky Mountain Association	258
Northern Ohio Exhibitors' Association	482
Wyoming Exhibitors' Association	26
Allied Theatres of Oregon	73
Allied Theatres of Wisconsin	50
Allied Theatres of Central New York	127
Associated Theatres of Indiana	369
Total	3,790

In addition, the Motion Picture Theater Owners of Connecticut, with a membership of 60, the Independent Theatre Owners of Kansas City, representing 43 theaters, and the Motion Picture Theatre Owners of New Mexico, with a membership of 23, have given power of attorney to Allied States Association to represent them, bringing the direct representation to 3,916 independent theaters out of a possible total of around 6,000.

As shown under the next heading, the majority of the outstanding 2,000 theaters are on record as opposed to the code, although not directly represented by Allied.

As a matter of fact, many of those theaters are in Allied territory, usually follow the lead of Allied and, but for the depression, would be dues-paying members.

3. Motion Picture Theater Owners of America not a representative group. According to the trade papers one Ed. Kuykendall, president of the Motion Picture Theater Owners of America, has signed Mr. Rosenblatt's code, claiming to represent 4,000 theaters. The absurdity of this claim is easily exposed.

Mr. Rosenblatt has been furnished with ample evidence, knows full well, and has admitted that the Motion Picture Theater Owners of America is a producer-controlled, producer-subsidized organization, the membership of which consists mainly of producer-owned theaters. In this connection reference is made to the briefs filed with Mr. Rosenblatt, as follows: Exhibit D, pages 5, 76; exhibit E, page 2.

Reference also is made to a letter sent Mr. Rosenblatt on September 26 enclosing a sworn statement by the executive secretary of the Motion Picture Theater Owners of America to the effect that the membership of the Motion Picture Theater Owners of America is mainly of producer-controlled theaters and that it derives practically all of its revenue from the producer. A copy of the letter is attached as exhibit F.

The organization has a few units with independent members, the principal ones being in Philadelphia, St. Louis, and Milwaukee. These units have not approved Mr. Rosenblatt's code and Mr. Kuykendall has no authority to sign for them.

According to the trade papers the St. Louis Association refused to approve the code until copies of the final draft were supplied and could be studied. Exhibit G is a telegram from Fred Wehrenberg, president of the St. Louis unit, certifying that they have not approved the code.

Exhibit H is a telegram from David Barrist, head of the Philadelphia unit, certifying that they have not approved the code, that Kuykendall has no right to bind them, and that they favor further revisions of the code.

Exhibit I is a telegram from W. A. Steffes, president of the Allied Theaters of the Northwest, quoting one from Fred Meyer, head of the Motion Picture Theater Owners of America unit in Milwaukee, certifying that his unit will not act on the code until its forthcoming convention and not then unless completed.

Much has been made of the fact that the Independent Theater Owners of Southern California have approved the code. Exhibit J is a telegram from L. L.

Bard, former president of said organization, certifying (*a*) they acted on representations that code represented the best that could be gotten (*b*) that further protest would antagonize Rosenblatt and the Government, (*c*) that the grievance boards would solve all problems. Further, that the association has less than 50 percent of the theaters in the territory and that there are many exhibitors in sympathy with Allied's stand.

In addition, the Independent Theater Owners' Association of New York, with several hundred members, has not approved the code and is awaiting certain modifications promised by Mr. Rosenblatt.

From the foregoing it will be seen that aside from a few producer-dominated units in the South, Mr. Rosenblatt now has no exhibitor support whatever for his code.

The producer-controlled theaters do not count since they are in the same economic division as the producers themselves, and since by the proposed code they are given control of the industry, they naturally favor the code.

The code, however, is a minority code.

III. ALLEGATIONS OF THE RESOLUTIONS ARE TRUE

The allegations of the resolutions adopted at the Chicago meeting of independent exhibitors (exhibits A and B) will be taken up in order.

Mr. Rosenblatt cannot dispute the assertion in paragraph 1 of the resolution no. 1 that the representatives of the independent exhibitors have been engaged for more than 2 months and a half looking to the formulation of a code. They were designated by Rosenblatt and started to work on August 8.

The next three paragraphs will be considered together. They recite, in substance, that Rosenblatt repeatedly acknowledged the existence of certain evils, that he promised exhibitors that such malpractices would be corrected in the code, and that he informed representatives of the distributors that such practices would have to be corrected.

The undersigned members of the code committee give the Administrator full assurance that they never would have devoted the time, energy and money to the work that they have had it not been for the frequent assurances given them by Mr. Rosenblatt both in private conversations and in open meetings that he was going to give the exhibitors relief in the code.

These assurances covered such vital subjects as "the right to buy" (see exhibit D, p. 7, and exhibit E, p. 38), and "unfair discrimination" (exhibit D, p. 41, and exhibit E, p. 35). And as regards the latter, when Mr. Samuelson in the exhibitors' code committee started to speak on the proposal, Rosenblatt said "I'll give that to you, and more"; but it was not included in the code.

At the open meeting in New York on August 8 Rosenblatt stressed the need of reform in industry practice and particularly mentioned the lax enforcement of the Hays Morality Code. The exhibitors were encouraged by this to ask for a proposal which would relieve them of the necessity of playing pictures made in violation of said code. It might be added that many representatives of the public also were encouraged to expect action along this line. (See editorial in the Christian Century for Oct. 25, exhibit K.) But the code only contains a wholly inappropriate and meaningless gesture on this vital subject which has such an important bearing on the good will of the industry.

That Rosenblatt immediately following the close of the public hearing delivered a scathing rebuke to the representatives of the producers, pretending to speak in the name of the President of the United States, and informing them that their practices were "a stench in the nostrils of the Administration," is now public property. At least a dozen were present at the interview and the story has been many times told and retold. It has appeared in the trade papers. (See Motion Picture Daily for Oct. 23, pp. 2, 6, exhibit L to this memorandum.)

We are not unmindful of the fact that in these statements we reflect very seriously on the frankness and candor of Mr. Rosenblatt. This we do with the greatest reluctance and only because of deep conviction that, unless Mr. Rosenblatt's course of conduct is carefully examined and corrected, he will involve the Administrator and the whole National Recovery Administration in needless embarrassment. In this connection we call attention to the fact that in the above-cited article in the Motion Picture Daily (exhibit L) the editor paints a picture of the deputy administrator in action which puts a much lower estimate on his candor than we have undertaken to do.

We also invite attention to the editorial in the Motion Picture Herald for October 21, entitled "Eagle Feathers" (exhibit M, p. 9) which will further enlighten the Administrator as to the impression made by his deputy on all branches of the trade other than those which would profit by his code at the expense of the others.

The next two paragraphs recite that Rosenblatt suddenly reversed himself and presented a code, alleged to be his own writing, which "not only contained none of the provisions promised to correct such evils, but on the other hand embodied a complete system that would perpetuate and extend the domination which the members of the Hays organization now exert over the industry, and would sanction and legalize many of the monopolistic practices foisted on the industry by those interests, and would work to the detriment of the public."

The justification for these assertions is to be found in the printed analysis of the code (exhibit E) and in the addresses at the Chicago meeting of Messrs. Myers, Richey, Samuelson, Steffes, and others.

We need cite only a few provisions. The power to regulate "protection" or "clearance" (i. e., the time which elapses between the showing of a picture in a first-run house and its presentation in a subsequent-run house) carries with it the power to put out of business any theater by subjecting it to unreasonable protection.

Mr. Rosenblatt's code would vest this power absolutely in the major producers to be exercised in the interest of their owned and controlled houses and against their rival independent houses.

Not only that, but the schedules thus worked out are made law, any deviation therefrom being punishable as a violation of the code.

Heretofore when the producers and their chains have borne down too hard on protection the independent exhibitors have been able to get relief in the courts. Numerous decisions and decrees attest this. (See especially the findings and decree in the Youngelaus case, exhibit D, pp. 74–78.)

We, therefore, contend that we are justified in characterizing the code as a "Hays code", and in doing so we go no farther than other impartial observers. (See exhibit K, p. 1327.)

The effect of it is to turn over the industry bag and baggage to the small group of men comprising the Hays Association.

In denying the proposals of the independent exhibitors for the inclusion in the code of "the right to buy" and provisions against "block booking", "forcing shorts with features", and in omitting the antidiscrimination clause, Mr. Rosenblatt indicated that he did not share the view of the Joint Committee of the National Recovery Administration and the Department of Commerce as to the six basic principles of unfair competition. In one respect his code specifically violates these principles in that on page S–26 of the third revision of his code, E., part 3, section 3, he deliberately authorizes a boycott, whereas the statement of principles provides:

Coercion: Under this caption are the forced purchase of one article by the purchase of another and the discrimination known as a black list.

The allegation that a copy of the printed analysis of Rosenblatt's code was sent General Johnson and never acknowledged is borne out by the carbon copy of the letter of transmittal, dated October 18, exhibit N.

The allegation in resolution no. 2 that Deputy Administrator Rosenblatt "has expressed determination to press for approval" of his third revision, or one in substantially the same form, cannot be open to question. Although the undersigned had pending request for information as to all developments, our information is that Mr. Rosenblatt, on Friday last, after notifying the press and others that he was confined to his room by a bad cold, secretly met with Will H. Hays, Ed Schiller, of Loew's, Inc., and other representatives of the Hays members and obtained the signatures of these men to his draft of code and thereafter transmitted his code to the Administrator with recommendations for approval, without notifying those most interested, and known to be in opposition, of his intentions to do so.

If we are not correctly informed about this we would appreciate having the Administrator advise us.

We would also appreciate knowing whether, in transmitting the code to the Administrator, Rosenblatt advised the latter of the nature and extent of the opposition to his draft in exhibitor circles.

Exhibit O is a letter to Mr. Rosenblatt signed by all representatives of independent producers, distributors, and exhibitors at the time Rosenblatt presented his "first revision" of the code. This demonstrates that our characterization of the code was shared by all independent interests and that our version is comparatively mild.

IV. ROSENBLATT'S PREJUDICE AGAINST INDEPENDENT EXHIBITOR REPRESENTATIVES

In the Motion Picture Code the National Recovery Administration is attempting to reconcile differences between buyers and sellers of film. This calls for arbitration and conciliation by one possessed of a judicial mind. We regret that Mr. Rosenblatt has not exhibited the talents called for in such a situation. He has shown a conniving rather than a judicial mind. As regards the representations of the independent theater owners. Mr. Rosenblatt has sought to make their opposition to his code a personal issue, and has sought to meddle in their affairs in an effort to punish them for their loyalty to the interests depending on them.

Exhibit P is a recent statement of Allied States Association on this subject.

Further details regarding Mr. Rosenblatt's efforts to foment trouble in the Allied organization in Detroit, are in attached telegram from H. M. Richey, general manager of said organization, marked "Exhibit Q."

Visitors at Mr. Rosenblatt's office during the past few weeks have repeated statements attributed to Rosenblatt which constitute the basest slanders on the good names and reputations of the exhibitor leaders.

Nowhere is this bias more manifest than in the designation of exhibitor representatives to the code authority. When the coalition that signed the letter dated October 5 (exhibit O) were in session Rosenblatt attempted to disrupt it by sending in the meeting room for various members and offering them places on the code authority. He has, however, not made public the actual names, thus withholding information of the most vital character from the exhibitors. The trade papers, however, have published lists from time to time and as these have not been denied, and exhibitors have been allowed to act in reliance thereon, they must be accepted as correct.

Only one representative of a truly independent association has been mentioned and his name has disappaered from later lists. The exhibitor representatives now figuring in the lists are all of organizations largely made up of and financed by producer-controlled theaters. Exhibits F and R, being part of the record in the case of *Quittner* v. *Paramount* in the United States District Court in New York, tell the story.

CONCLUSION

The foregoing record speaks for itself. It is amply borne out by the exhibits. It justifies the resolutions adopted by the mass meeting an Chicago on October 24.

We, therefore, renew the request made in resolution no. 1 that, before Mr. Rosenblatt's draft of code is approved, an impartial representative or representatives be designated "to inquire into and report" on all the facts and circumstances surrounding the negotiation and writing of the proposed code, as well as the provisions of said code, and the probable effect thereof on competitive conditions in the motion-picture industry.

Respectfully submitted.

ABRAM F. MYERS.
H. A. COLE,
BENJ. BERGER.
RAY BRANCH.
SIDNEY E. SAMUELSON.
M. B. HURWITZ.
FRED J. HERRINGTON.

Mr. MYERS. Furthermore, a memorandum, a much briefer memorandum, was sent to the President at Warm Springs in the last effort to call his attention to some of the features of the code. This is dated November 23, 1933. I will file that subject to the will of the committee.

Senator KING. It duplicates the points made in the other memorandum?

Mr. MYERS. It is a very much condensed version.

Senator KING. Which of the two would you prefer to go into the record?

Mr. MYERS. The memorandum to General Johnson, I should say.

Following the filing of the memorandum to General Johnson, the code was temporarily turned over to Col. Robert H. Lea, an assistant

of General Johnson, who met this committee that waited on General Johnson, and when the code was transmitted to the President and signed by the President, it was accompanied by an Executive order which gave us much of the protection that we thought we were entitled to.

It is right in the beginning of the printed code, and I want to advert to it very briefly. This undoubtedly was drafted by Colonel Lea; in fact, General Johnson later admitted it was, and it shows the efforts on the part of Colonel Lea to give us some protection against this set-up.

The Executive order recites:

(1) Because the constituency of the code authority is named in this code, the Administrator shall have the right to review, and if necessary, to disapprove any act taken by the code authority, or by any committee named by it, and any act taken by any board named by it; and

(2) If, in the administration of this code, any member or temporary alternate of any member of said code authority, or any member of any board appointed by the code authority shall fail to be fair, impartial, and just, the Administrator shall have the right to remove such member or temporary alternate from said code authority, and to remove such member of any such board, and, if he deems necessary, to name another member or alternate from the general class represented by such removed member or alternate to replace such removed member or alternate upon said code authority or upon any such board and

(3) If, in the administration of this code, it shall be found by the Administrator that there has not been sufficient representation of any employer class in this industry on the code authority, the Administrator shall have the right to add members from any such class to such code authority.

Senator KING. Did the President sign that order?

Mr. MYERS. Yes, sir. As soon as the code appeared with that order with those assurances to the minority, the interests representing the members of the code authority—I am speaking now of the "big eight" members of the code authority—accompanied by Mr. William H. Hays, came to Washington, sought General Johnson and Mr. Rosenblatt, and obtained an interpretation by General Johnson of this Executive order, which I submit was not an interpretation but a contradiction and an emasculation of those protective provisions. I would like to read very briefly the interpretation which General Johnson gave to this Executive order [reading:]

The Administrator construed paragraphs 1, 2, and 3 of the Executive order of the President on the Motion Picture Industry Code as not creating any right of appeal from the determination of the code authority under article II, section 4, article II, section 10 (a), article V, division D, paragraph 9, and article VI—

you will recall, Senators, that the President said that there should be an appeal. The administrative construction is that there shall not be an appeal in individual cases—

or from the determination of the Board set up in article VI, or in any sense creating the Administrator as a board of review of the action of those boards or the code authority in individual cases. The paragraphs referred to the right of the Administrator to inquire into the general course of conduct of the mechanism of the code.

The Administrator will exercise his discretion under paragraphs 2 and 3 of the conditions incorporated in the Executive order in accordance with the recommendation of at least a majority of the voting members of the entire code authority and the successor of any person removed under the conditions in said paragraph 2 shall be appointed in the manner provided in article II, section 2, subdivision (f) of the code.

In other words, the right which the President asserted to replace a member or to add to the code authority in order to balance it, under

the interpretation of the Administrator, can only be exercised in accordance with the recommendation of a majority of the code authority.

I would ask the committee to turn to page 221 of the code and look at the code authority for just a minute. You will see that it is divided into two branches. First, we have those representing the affiliated producers, distributors, and exhibitors. Here we have Merlin H. Aylesworth, of R. K. O.; Sidney R. Kent, of Fox; George J. Schaefer, of Paramount; Nicholas M. Schenck, of Loew-Metro-Goldwyn-Mayer; and Harry M. Warner, of Warner Bros.

They are properly classified by the heading. They are representatives of the affiliated producers, distributors and exhibits; no question about that. Incidentally, they are all sellers of film.

The next class representing unaffiliated producers, distributors and exhibitors, the first name Robert H. Cochrane, is the vice president of the Universal Film Co., which like all of the others, mentioned are members of the Hays organization—the Motion Picture Producers and Distributors of America—colloquially known as the "Motion Picture Trust." He is a seller of film, and notwithstanding the heading, Mr. Shine of the Shine circuit of theaters is on his board of directors. His company owns the Rialto Theater in Washington, D. C. I have reason to believe that they are interested in others, and the trade press only lately has reported——

Senator BARKLEY (interrupting). Do you think that they are glad they own the Rialto at this time?

Mr. MYERS. No; I think they would be glad to give that theater to almost anyone who would accept it.

The CHAIRMAN. I think it is a very fine theater; so go ahead.

Senator BARKLEY. It is a fine theater, but it is empty.

Mr. MYERS. It is hard to get into; it is exclusive.

Robert H. Cochrane, as I say, is all of these things and certainly is not properly classified.

W. Ray Johnston is representative of a company of independent producers of motion pictures without theater affiliation. He is not a member of the Hays organization. He is a seller of film.

Mr. Ed Kuykendall is president of the Motion Picture Theater Owners of America, which as described before, is largely composed of affiliated theaters, and according to the sworn testimony of its secretary, largely financed by the affiliated theaters and found by Judge Munger of the United States District Court in Omaha, in the *Youngclaus case*, to be subsidized by and a subsidiary of the Hays organization.

Charles L. O'Reilly is of the Theater Owners Chamber of Commerce of New York. That organization is largely composed of affiliated chains of theaters.

Finally, Nathan Yamins, of Fall River, Mass., who is in every respect a bona fide and independent exhibitor.

It has worked out in practice in this way, that the representatives of the "big eight"—there are six of them on the board—plus Mr. Kuykendall, have voted together on every major issue affecting the independent exhibitors. Mr. Ray Johnston, the independent producer, and Mr. O'Reilly and Mr. Yamins have clung together pretty tenaciously, so that you have a fixed division of 7 to 3 in the code authority on issues which arise between sellers and buyers of film,

sitting in a judicial capacity, as between the different classes of theaters.

Mr. Yamins is a very high-grade man, a graduate of Harvard College, Harvard Law School, and a very successful exhibitor, and I think, intellectually and ethically the superior of any man on the code authority.

I would like to read a letter which I have received from him which tells the story of the operations of the code authority. This is from one of the men named in the code authority itself by N. R. A. as a representative on this board.

The CHAIRMAN. Where is Mr. Yamins from?

Mr. MYERS. Fall River, Mass.

Senator KING. What connection did you say he had with Harvard University?

Mr. MYERS. I say, he is a graduate of the college and the law school. I merely say that in order that you may see the type of man that he is:

DEAR MR. MYERS: As requested in your telegram, I am enclosing herewith a copy of my protest filed with the code authority in regard to the appointment of members of local boards. Briefly, the producer-distributor members of the code authority were permitted to name the members of the local boards who were to represent their interests, without any objection or even suggestion on the part of the exhibitor members of the code authority, but the exhibitor members of the code authority were not permitted to name the exhibitor members of the local boards, and no exhibitor was named to membership on the local boards until he had been investigated and approved by the distributor members of the code authority.

Let me elaborate on that for just a moment. This code sets up a scheme for settling disputes between buyers and sellers of film in the different classes of theaters. The code authority appointed in this way was authorized to appoint local grievance boards and local clearance and zoning boards which were the courts of first instance in this judicial system. The membership of these local boards as provided in the codes was an unbalanced as between the affiliates and independents, as was the code authority itself, but in addition, the code authority—the unbalanced code authority—selected the members of these local boards, selected not only the representatives of the distributors and affiliated with them on those boards, but the majority of the code authority selected the representatives of the independents of these local boards.

I have Mr. Yamins' protest filed with the code authority against this procedure. It sets out in detail just how the matter was handled. It consists of about 8 or 9 typewritten pages, and I will file it, subject to the desire of the committee.

The CHAIRMAN. Very well; it will be put in the record as part of your testimony.

(The same will be found at the conclusion of Mr. Myers' testimony.)

Mr. MYERS. Proceeding with Mr. Yamins' letter:

I am also enclosing a copy of my protest over the attempt to evade provisions of the code by the insertion of provisions into the exhibition contract that nullified provisions of the code. This matter was referred to the legal committee, of which I am a member, but was out-voted by the distributor representatives on this committee, and the majority report of the legal committee was accepted by the code authority by the preponderance of producer-distributor votes. When I requested that the matter be sent to the legal division of the National Recovery Administration for an opinion, my request was denied and the matter shelved, so that the producer-distributors through their majority control of the code authority became the sole judges of the legality of their action.

I will file, subject to the wish of the committee, Mr. Yamins' file in that respect.

Senator KING. I think that may go in.

Mr. MYERS. It shows that while the code itself provided for a uniform standard contract, the majority of the code authority have nullified that contract by writing in provisions contradictory to it.

The CHAIRMAN. That is very short, and may go into the record.

(The same is as follows:)

THEATRICAL ENTERPRISES,
Fall River, Mass., August 1, 1934.

JOHN C. FLINN,
Rockefeller Center, N. Y.

DEAR MR. FLINN: I am enclosing a brief to be presented to the members of the legal committee for their consideration and report at the next meeting of the code authority. In order that there may be no delay, I suggest you have a copy of this made and sent to each member of the committee for his individual consideration, in the event it is impossible for them to get together and hold a formal meeting.

With kind regards, I am,

Yours sincerely,

NATHAN YAMINS.

At the last meeting of the code authority held on Thursday, July 26, I stated that in my opinion the contracts being offered by distributors for the 1934–35 season were in violation of the Code of Fair Competition for the Motion Picture Industry in that first, they violated certain provisions of the code and secondly, in that they were not the optional standard license agreement which the code imposed upon the industry, and at my request was granted the privilege of filing a brief to be considered by the legal committee before the next meeting of the code authority. I am herewith submitting briefly, because of lack of time, my thoughts in this matter for the consideration of the legal committee, reserving the right to file a more complete argument after a more thorough study of the situation.

Article V, F, part 6, of the code of fair competition gives to the exhibitor the privilege of excluding 10 percent of the total number of motion pictures licensed without payment therefor, providing he has licensed all that has been offered, and providing that the average license fee is not in excess of $250.

This provision of the code was inserted for the express purpose of eliminating some of the alleged evils of block booking, in order to enable an exhibitor to dispense with the exhibition of a motion picture that he did not think was suited for his audience, and also to serve as a cushion to absorb the usual overbuying that an exhibitor is compelled to make because of the customary failure of distributors to release the number of pictures promised. This provision is nothing new to the industry. It was contained in the standard uniform exhibition contract adopted by the industry in Chicago in 1928, and a similar provision was contained in the optional standard license agreement agreed to in the Atlantic City conference in 1930. In the latter agreement, the privilege to exclude was restricted to 5 percent without payment, 5 percent by paying one-half of the license fee, and an additional 5 percent by paying in full, but securing extended playing time on features that the exhibitor did show. However, the exhibitors' privilege of excluding was permitted in all cases where the average license fee was not in excess of $400, so that it can readily be seen that the code gave the exhibitors nothing new that they did not enjoy before, but on the contrary, in the opinion of the undersigned, by reducing the average license fee requirement from $400 to $250, the code actually deprived many exhibitors of a privilege they formerly enjoyed.

This privilege of exclusion has therefore been in the motion-picture industry at least since 1928. Distributors and exhibitors had experience with its workings from 1928 to 1930 when at the Atlantic City conference the 5–5–5 formula was agreed upon as a compromise to the demand of a straight 15 percent cancelation privilege. From 1928 to 1930 percentage picture selling was in vogue in the industry, yet in the formulation of the 5–5–5 plan of cancelation, it was contemplated that the exhibitor could, if he desired, cancel a percentage picture, and it was recognized that it was optional with the exhibitor to cancel any picture he desired without restriction, providing the average license fee, including distributor's share of percentage pictures, did not exceed $400. The wording of the cancelation clause in that contract shows beyond shadow of a doubt, that

the exhibitor could cancel a percentage picture, and in the actual operation of this clause, this was recognized as a matter of practice, and cancelation of percentage pictures was permitted, providing all requirements inserted for the protection of the distributor were compiled with. No one can dispute that the wording of the code provision permits the cancelation of percentage pictures. Subsection E provides, "If the rental of any motion picture excluded is to be compiled in whole or in part upon a percentage of the receipts of the exhibitor's theater, the sum to be paid by the exhibitor as provided in paragraph (b) (5) hereof, shall be determined as follows:" Nowhere in the code is there any restriction as to the right of exclusion other than the requirements of part 6. It is clear, therefore, that it was the intent of all parties in the industry from 1928 to 1934 that the exhibitor should have an arbitrary unhampered right of 10 percent exclusion, providing he met with all requirements stipulated, and it is equally clear that the code of fair competition intended to preserve this right to the exhibitor.

How do the 1934–35 form of contracts offered by the distributors deal with this situation? They have all bodily grafted that provision of the code and inserted it into their contracts, and then inserted other clauses which nullify that provision of the code. Metro, Paramount, Universal, Columbia, Fox, expressly provide in substance that if an exhibitor has exercised his right of exclusion under the code, the distributor may arbitrarily rescind the allocation of the picture excluded and designate another picture to be exhibited under the terms applicable to the picture excluded. In all probability the same thing can be done under the R. K. O. and Warner contracts (United Artists has not been available for examination). In other words, if an exhibitor contracted for out of 50 on percentage with a guarantee of $200, 16 at $100, 20 at $50, and 10 at $25, and if the exhibitor seeks to exclude picture X, a percentage picture, which he always could have done prior to the code, the distributor may arbitrarily move picture X into the last classification, and the exhibitor is relieved of playing a $25 picture, and now one of the other inferior pictures miraculously becomes worthy of securing preferred playing time on percentage.

To my mind this is chiselling of the worst sort. It shows an indication on the part of the distributor that they never did and do not now want the code, that they seek to take advantage of the monopoly they enjoy to impose upon helpless exhibitors conditions and terms utterly unfair, but which the power of might gives them an opportunity to impose. It shows a lack of willingness to cooperate with the Government in the administration of the code and an utter disregard for everybody except themselves.

I submit without further argument that this provision of their contracts is illegal, because it violates the spirit and letter of express provisions of the code and because it is inconsistent with provisions of the optional standard agreement that the code has adopted. I request immediate action on the part of the distributors, withdrawing these provisions from their contracts, and urge them to do so to prevent an aroused exhibitor body from demanding that the code be opened for amendment to prevent such practices.

There is the second matter that I wish to discuss briefly. Article V, F, part 1, provides that the so-called "optional standard license agreement" shall be the form of license to be used by distributors. This is the form of agreement that every major distributor, with the exception of Warner Bros. agreed at Atlantic City to use. It was arrived at by conferences between exhibitor representatives and distributor representatives. Every clause in it was carefully considered and adopted, and certain optional clauses agreed to, but it was agreed that nothing new could be inserted in the contract and only those clauses agreed upon could be used, with the single exception that the schedule could contain provisions peculiar to each company's policy, but which would not be inconsistent with other provisions in the contract. It was recognized that the distributor had certain valuable rights in his film, and the matter of price, run, terms of sale, whether percentage or not, were for him to decide. But it was recognized also that the exhibitor had certain rights, he had his theater and the distributor could not interfere with him in the operation of his theater. The rights of both parties were carefully considered and provision made to take care of every situation conceivable. The provisions as to midnight shows and road shows indicate the care with which all problems were considered. It was intended to be an all inclusive model contract, and not something that could be added to at the whim of one party.

It is true that the distributor has a copyrighted film and is entitled to every reasonable form of protection, but it is equally true that the exhibitor has a right to determine the policy of his own theater and operate it in his own way. They

have so agreed by the adoption of the optional standard license agreement. The distributor may ask what he wants for his film, but I submit it is an interference with the right of the exhibitor to operate his own theater if the distributor exacts an agreement against double featuring. In my opinion such clauses now appearing in Paramount, Warners, Metro, and R. K. O. contracts are illegal because the contract used is not the optional standard license agreement imposed by the code—they are inconsistent with the general provisions of the optional standard license agreement. If it was intended that distributors were to have the right to arbitrarily prohibit double featuring it would have been provided for in the form of an optional clause for use by those who care to use it. The fact that it was not framed as an optional clause proves that it was never the intent of the parties to the Atlantic City conference to give that arbitrary power to anyone.

I also submit that the provision in the Warner contract for the compulsory licensing and exhibition (even to the point of demanding that trailers must be exhibited 14 days in advance of exhibition) is absolutely illegal, because their contract ceases to become an optional standard license agreement. There is no more room in a standard exhibition contract for Warner trailers than there would be for a requirement in the same contract that the exhibitor must also buy so many shares of Warner stock. The Atlantic City conference adopted a form of contract to be used for the sale of features, shorts and newsreels, and not for anything else. Warner Bros. therefore is not using the optional standard license agreement.

I submit these thoughts solely from a desire to be constructive. I take my duties as a member of the code authority seriously, and I feel it an obligation on my part, particularly in view of the great number of independent exhibitors whom I represent on the code authority, to point out what I believe to be in error. If I am correct in my views, the code authority should take immediate steps to correct the situation.

Respectfully submitted.

Senator KING. Was there not some suit recently instituted by the Government of the United States in the Federal court in Missouri against the alleged illegal practices of the code authority?

Mr. MYERS. Senator, I have here a copy of an indictment lately returned in the Federal court in St. Louis against three of the "big eight" represented on the code authority, and two individual members of this code authority, Mr. Warner of Warner Brothers and Mr. Schaefer of Paramount. It relates to matters outside of the code, but it shows possibly, I might suggest, a predatory tendency, or something of the sort. At least, two of the members of the code authority have been indicted under the Sherman law.

The CHAIRMAN. Leave that with the clerk.

Mr. MYERS. I will leave that as a physical exhibit.

Senator KING. What became of that suit that was instituted when Colonel Donovan was acting in the Attorney General's office of the United States? Did that not involve some of the practices to which you refer?

Mr. MYERS. There were two.

Senator KING. Of course, that was before the code?

Mr. MYERS. Yes, sir.

Senator KING. It may not be germane to this inquiry.

Mr. MYERS. It probably is. But my recollection is that the Federal Trade Commission made an investigation at that time and made representations to that effect.

Senator KING. That this "big eight" or numbers of them were violating the antitrust laws and recommending prosecution by the Federal Government?

Mr. MYERS. That involved the compulsory arbitration clause of the former standard exhibition contract, and secondly, the operations of a certain credit bureau established in the Hays organization.

Both were condemned by the Supreme Court of the United States and enjoined as a boycott because what happened was that once these tribunals set up by the industry made a decision, then the distributors, and the producers of motion pictures agreed that they would not supply a theater with pictures except on certain of their onerous conditions and until he had met the requirements of that board.

Senator KING. Was the judgment of the court carried out?

Mr. MYERS. Yes.

Senator KING. Was it followed or enforced?

Mr. MYERS. Yes, sir; by a decree. I will come to this a little later. I will show you where it ties into the code.

Senator KING. Your time may be limited, so you had better address yourself to the most pertinent matters.

Mr. MYERS. Proceeding with Mr. Yamins' letter [reading:]

Another matter that I wish to call to your attention is the failure of members of the code authority to attend meetings even though in New York when meetings are held. We have had 42 regular meetings of the code authority, Messrs. Warner and Schenck attended only the first two and have never been seen since. Mr. Aylesworth attended perhaps six meetings and then dropped out of the picture. Mr. Kent was quite active at first but has not attended a meeting for about 6 months. Mr. Schaeffer has also dropped out of sight, and recently Mr. Cochrane has been absenting himself regularly. When these members are absent they are not represented, with the exception of Mr. Warner, by a regular alternate, but by any subordinate who is convenient, so that continuity of thought and policy is impossible. This has another great objection, in that men acting as temporary alternates and occupying a subordinate position, are disinclined to assume responsibility on any important question, and either vote wrong, or ask that the matter be deferred, presumably until they can confer with the higher-ups, so that there is always delay and delay.

Senator KING. Are those subordinates who represent the higher-ups appointed by them?

Mr. MYERS. Oh, yes. This is an hierarchy. Each man names his subordinates and successors. It is very much like the College of Cardinals.

One of the great justifications for this method of appointing the code authority was that these great men, these great leaders of the industry would give it personal attention, that they would be fair because of their distinction and power, that they would lean over backwards, but the fact is that they have not attended to their business, they do not come to the meetings, and it is entirely left to the subordinates, most of them lawyers.

Continuing with Mr. Yamins' letter:

Another matter that to me is unfair is that when a matter comes up in which a member may be disqualified to sit because his company's interests are involved, he nevertheless is permitted to sit at the table and enter into the discussion, thereby influencing other members of the code authority, although he himself does not vote. I have protested that this is utterly unfair, as for example, when a matter comes up on appeal involving an independent exhibitor and an affiliated exhibitor. The case has been closed, both sides fully heard, yet the independent is barred from the room but the affiliated's voice is heard in the code authority through his representative, and additional new evidence and argument is offered by one side to the controversy without equal opportunity to the other.

Curiously enough, Senator, the code says that an interested member of the code authority shall not sit in such a case, but the word "sit" has been interpreted to mean "not vote", but he can sit and participate.

Senator KING. But they do sit and argue?

Mr. MYERS. Yes.

Senator KING. And they give their views?
Mr. MYERS. Yes, sir. [Continuing reading:]

It is obvious that this set-up is unfair to the independent exhibitor. Moreover, my conclusion, after over 1 year's service on the code authority, is that when the independent receives little or no consideration when his interests conflict with those of an affiliated theater, the tendency is for the "boys" to stick together, because their own interests are involved. With few exceptions members of the code authority (i. e., those now serving) seem to view matters solely from the viewpoint of how their own interests would be affected, rather than from the viewpoint of a broad industry problem.

Lack of time, since this letter must go out now to reach you in time for use at 10 a. m. tomorrow, prevents me from going into greater detail. With full realization that you are to use the data as well as this letter before a Senate committee, I say emphatically that the present code is unfair to the small exhibitor interests, and that the code itself even in its present state, is being administered, and interpreted against the interests of the independents and in favor of the interests of the producer-distributors. This is due to the overwhelming majority that they control on the code authority. Our code is over a year old, it has mandatory provision for the publication of schedules of zoning, yet to date not one schedule has been approved by the code authority though many were submitted months and months ago. To my mind there is only one remedy, and that is a revision of the code with equal representation on the code authority of the two economic divisions of the business—buyers and sellers of film—with Government representatives in the event of a stalemate. I am certain that Mr. Charles O'Reilly's views coincide with mine.

Mr. O'Reilly is another member of the code authority. [Continuing reading:]

Approximately 2 months ago Administrator Sol A. Rosenblatt appeared at a meeting of the code authority and recommended that the code authority make a study of the code and submit recommendations for revisions, and suggested that a committee be appointed for this purpose. Not one thing has been done about this—no committee appointed; and when the matter is brought up by the executive secretary it is immediately dropped, evidencing that the producer-controlled majority wants to keep the code as is in its own control.

The code authority's extraordinary powers include the exclusive power to recommend changes and amendments in the code. We have several times written the National Industrial Recovery Board, Mr. Williams, suggesting that the code be reopened to go into these matters. We have always received the most evasive replies, and I think we can save time by just putting them in the record, if that is convenient to you.

(The same are as follows:)

NOVEMBER 21, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: The enclosed resolution demanding a congressional investigation of the negotiation, writing, and administration of the Motion Picture Code has been adopted by the following organization of independent motion picture exhibitors:

1. Eastern Regional Conference of Independent Motion Picture Exhibitors meeting at Atlantic City, N. J.
2. Motion Picture Theatre Owners of Western Pennsylvania meeting at Pittsburgh, Pa.
3. Allied Theatre Owners of New York meeting at Albany, N. Y.
4. Independent Motion Picture Exhibitors of New England meeting at Boston, Mass.
5. Allied Theatre Owners of Michigan meeting at Flint, Mich.
6. Allied Exhibitors of the Northwest meeting at Minneapolis, Minn.
7. Directors of the Georgia-Florida-Tennessee-Alabama Exhibitors Association meeting at Atlanta, Ga.
8. Allied Theatres of Wisconsin meeting in Milwaukee, Wis.

9. Motion Picture Exhibitors of North Dakota meeting in Mandan, N. Dak.

These meetings were for the most part held prior to the retirement of General Johnson as Administrator and when it appeared useless for the independent motion-picture theater owners to expect any consideration at the hands of the National Recovery Administration. Representations to a committee of the House or Senate appeared to be the only way in which to bring the situation to the attention of the responsible heads of the Government.

Since the formation of the National Industrial Recovery Board the independent exhibitors have been waiting to see if this body would take up and consider the report of the National Industrial Review Board, headed by Clarence Darrow, and put into effect some at least of their recommendations.

It comes as a shock to learn that the National Industrial Recovery Board, instead of giving consideration to said report, proposes not merely to promote Divisional Administrator Rosenblatt, whose removal was recommended by Mr. Darrow, but also to leave him in charge of the Motion Picture Code, for the unfairness and defects of which he is solely responsible.

This is an affront to many thousands of independent motion picture exhibitors which we do not believe the Board would have given had it had knowledge of the situation

The board of directors of this association, consisting of representative exhibitor leaders from all parts of the United States, will meet at the Roosevelt Hotel in New Orleans on December 11 and 12. A definite policy in reference to the Motion Picture Code will be formulated at that meeting. It would be greatly appreciated if, prior thereto, you would be kind enough to advise the undersigned, for the information of the directors, whether the Recovery Board has decided to ignore the report of the Darrow Board and the protests and complaints on file in the Recovery Administration, or whether the way is open for the consideration thereof by the Board.

Assuring you of our desire to cooperate fully in amending the present code or in formulating a new one so as to bring about a condition of equity and fairness which will command the enthusiastic support of all branches of the industry, we are,

Very respectfully yours,

S. E. SAMUELSON,
President.
ABRAM F. MYERS,
Chairman of the Board.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., December 17, 1934.

ALLIED STATES ASSOCIATION OF MOTION PICTURE EXHIBITORS,
Washington, D. C.

GENTLEMEN: With reference to your letter of November 21, I beg to advise that no policy has been formulated by the National Industrial Recovery Board with respect to the report of the Darrow Board.

Yours very truly,

S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board.

FEBRUARY 6, 1935.

MR. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

MOTION PICTURE CODE

DEAR SIR: On November 21, 1934, this association sent you a resolution adopted by a number of regional associations of independent exhibitors protesting against the Motion Picture Code. Reference was made in this communication and in the enclosed resolution to the report of the Darrow Review Board. You replied that the National Industrial Recovery Board had not formulated any policy in reference to the Darrow report.

The directors of this association meeting at New Orleans on December 11 and 12 adopted a report outlining the specific changes in the set-up of the code authority and the various local boards which they deem necessary in the interests of justice and fair play. A copy of this report is attached hereto.

Since this association has heard no more from you, and the activities of Sol A. Rosenblatt appear to have been ratified by the action of the National Industrial Recovery Board in retaining this man in charge of the Motion Picture Code, we assume that it is the policy of your Board to continue the present code in effect as long as there is statutory authority for this course. However, we feel that we are entitled to a frank statement as to your policy, so that we may proceed advisedly.

The board of directors meets again in Washington on the thirteenth of this month and the members would greatly appreciate having a definite statement as to whether you propose to reopen the Motion Picture Code with a view to amending it in the manner they have suggested.

Yours very truly,

ABRAM F. MYERS.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., February 14, 1935.

Mr. ABRAM F. MYERS,
Allied States Association of Motion Picture Exhibitors,
Washington, D. C.

DEAR SIR: This will acknowledge receipt of your letter delivered on February 13, with enclosure.

Neither the Board nor I have formulated any policy with respect to the proposals submitted by you to reopen the Motion Picture Code at this time with a view to amending it in the manner suggested.

Yours very truly,

S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board.

Mr. MYERS. The code authority with these judicial powers as provided in the President's Executive order should have three representatives of the Administrator. Dr. A. Lawrence Lowell, former president of Harvard University, was first named, and after thoroughly considering the matter he declined the appointment on the ground that it was a monopolistic code, that his presence on the Board could not effect any change and that he would in effect be granting his support to that sort of a thing, and that he declined the office. I have his correspondence with General Johnson in the form of a clipping. It gives a very interesting study of the code by a disinterested and very able gentleman, and I would suggest that it be inserted.

Senator KING. It may be inserted in the record.

(The same is as follows:)

LOWELL GIVES CORRESPONDENCE ON WHY HE DECLINED N. R. A. POST

SAYS WASHINGTON STORY GAVE ONLY "A PART" OF HIS REASONS—JOHNSON SENT HIM APOLOGY

Declaring that only "a part" of his reasons for declining an appointment to the Moving Picture Code Authority had been disclosed in a Washington press release, Dr. A. Lawrence Lowell today summoned Boston press representatives to his home at 171 Marlborough Street and made public the entire correspondence between himself and Washington code officials.

Another reason for his refusal of the post, it appeared, were his objections to "block-booking" methods by which exhibitors are obliged to contract for groups of films without being allowed to discriminate. The Washington story released yesterday implied that the position's lack of an executive vote was his primary reason for refusing it, and it was to this implication that Dr. Lowell responded by publishing the letters in full.

It was the first time that reporters had ever been invited by Dr. Lowell to come to his home for an official statement from him, and although he chatted freely with a half dozen newspaper men while his statement was begin prepared, he resolutely declined to be "interviewed."

Among interesting aspects of Dr. Lowell's dealings with the Washington officials was the revelation, brought out by the correspondence, that his first official knowl-

edge of his appointment to the code authority came from Sol A. Rosenblatt, deputy administrator of the National Recovery Administration, who wired him on December 12 to attend a meeting of the authority at New York, December 20. The other members of the code authority appointed were Eddie Cantor, stage and screen comedian, and Marie Dressler, now a Hollywood actress. Dr. Lowell declined the appointment despite an apology from Gen. Hugh S. Johnson to the effect that through "an oversight" the appointment had not been personally signed by President Roosevelt, who requested it. The statement given out by Dr. Lowell was as follows:

DECEMBER 22, 1933.

The press having obtained a part of the reasons for my declining to accept an appointment on the Moving Picture Code Authority, I feel justified in giving out the rest by publishing the whole correspondence as follows:

[Telegram]

WASHINGTON, D. C., *December 12, 1933.*

Dr. A. LAWRENCE LOWELL:

As a member of the Code Authority for the Motion Picture Industry as a representative of the Administration you are requested to be present at its first meeting to be held at the Association of the Bar Building, 42 West Forty-fourth Street, New York City, on Wednesday, December 20, at 2 p. m. Kindly advise of your attendance.

SOL A. ROSENBLATT,
Deputy Administrator National Recovery Administration.

DECEMBER 13, 1933.

MY DEAR SIR: Your telegram is the first official notice I have received of an appointment on the Code Authority for the Motion Picture Industry, and I feel that I ought to notify you at once of my reasons for believing that no useful purpose would be served by my accepting this appointment.

The five large producing companies have, by their business methods, obtained a controlling grip upon the business and are able to put forth upon the community any films that they please. This monopolistic practice, based on block booking and blind buying many of us asked to have checked by the Motion Picture Code; but, instead of that, it has been given a certain legal sanction; and hence the position on the code authority, which I feel constrained to decline, is virtually that of a powerless onlooker at conduct which he can neither change nor improve. Moreover, it is expressly provided that he has a voice but no vote.

Yours very sincerely,

A. LAWRENCE LOWELL.

SOL A. ROSENBLATT, Esq.,
Deputy Administrator National Recovery Administration,
Washington, D. C.

GENERAL JOHNSON'S LETTER

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., December 15, 1933.

Prof. A. LAWRENCE LOWELL,
Boston, Mass.

DEAR DR. LOWELL: Replying to yours of December 13, addressed to Deputy Administrator Rosenblatt, is a matter of extreme regret to me.

In the first place, the President himself requested your appointment and it was an oversight for which I am to blame that the request was not signed by him. That, of course, does not go to the merit of the case. The important thing is your opportunity to render a great public service.

I must accept full responsibility for the principle of Government representation with the power to veto but not to vote.

What is the use of a vote against a certain majority? But if governmental representatives are alert they can absolutely prevent abuse. If action is persisted in over our protest, the President can always withdraw the whole code. Speaking from a rather intensive experience, I am sure that this is better than a futile vote.

The practices of block booking which you say are monopolistic have been specifically held not to be by a Federal Circuit Court of Appeals. We cannot impose through codes a surrender of the advantages vouchsafed by the Constitution under the copyright laws, and unless we can obtain agreement to such surrender in whole or in part, there is nothing to be done by us about it.

But this code does give exhibitors a right to cancel up to 10 percent of the product which they have contracted for. It is the first time that such a concession has been made. In the opinion of practical men this will go far to remedy the evils complained of.

The movie code was the best that could have been had by agreement, and far better than anything that could possibly be imposed by law without agreement.

You are the distinguished leader of a particular point of view antagonistic to certain aspects and provisions of this code. Surely you will agree that the President's selection of you was not "to hold the candle" for the proponents of practices and ideas which you oppose; it was to "hold a candle" to expose them if they exist. Surely also in such circumstances you will not deny us your great ability and mind in our effort to achieve the very ends and aims you seek. If the weapon is not altogether to your liking I can assure you that it was the best weapon we could get and we don't want to give up the fight just because we do not like the weight and edge of the sword.

Sincerely,

HUGH S. JOHNSON, *Administrator.*

MR. LOWELL'S REPLY

DECEMBER 18, 1933.

Gen. HUGH S. JOHNSON,
National Recovery Administrator, Washington, D. C.

DEAR GENERAL JOHNSON: Your letter has just come; and, first of all, I want to thank you for taking the trouble of writing to me, overpressed as you are with the enormous labors of your office.

That the practice of block booking is a monopoly illegal at law, I do not mean to assert, but that the whole object of it is monopolistic I think one would hardly deny; and I am very much interested in your statement that you had no legal power to prohibit it in the code, because it would seem to follow that, no matter how much the representatives of the Government on the code authority should condemn it, there would be no legal power to stop it by any further amendment of the code.

The right of exhibitors to cancel 10 percent of the product is, they tell me, futile; because it is perfectly easy for the producers to put in 10 percent of films which the exhibitors are certain to reject before reaching the objectionable ones. Nor does this avoid the abuse of compelling them to take 90 percent of an unknown block of films, including objectionable ones.

I am very much struck by your explanation of why the representatives of the Government on the code authority are not given a vote. You say, "What is the use of a vote against a certain majority?" This assumes that a member of the code authority whose only interest in the matter is clean films, will find himself necessarily in opposition to the producers. I fear this is only too true, judging by the history of the great producing companies; but it is certainly impressive that such an attitude on their part should be taken for granted by the Government, and that they are given absolute control in carrying out the code.

Your letter confirms my impression that the position on the motion-picture code authority which you offer me would give no opportunity for exercising any useful restraining upon the production of films demoralizing to the youth, and especially the children, of our people; and that any report of existing evils would encounter as insuperable obstacles as did our position against block booking and blind buying.

Everyone, I suppose, has a claim to give the reasons for his action; and, therefore, no doubt you see no objection to my stating why I feel constrained to decline this appointment, by giving to the press my letter to Mr. Rosenblatt. May I not also assume that you would not object to the publication of this correspondence?

Thanking you again for so courteously writing to me, I am,

Yours very sincerely,

A. LAWRENCE LOWELL.

Mr. MYERS. It will no doubt be contended that a large number of theaters have filed the assents to the code, and that therefore there is not very much fault to be found with it.

The facts are these, very briefly: In an obvious effort to drive the exhibitors into acquiescence in the code, it was provided therein that in order to be eligible to file complaints before these boards, one must have assented to the code.

Senator KING. So that an independent producer could not make any claim unless he assents to the code with all of the interpretations and implications?

Mr. MYERS. Yes, sir.

Senator BARKLEY. In other words, he could not take any advantage of any benefits of the code unless he became a member or assented to it, and therefore, of course, acquired the right to protest.

Mr. MYERS. Assent is one thing, and approval and waiver of rights is another. If you will let me develop this I will be glad to.

Senator BARKLEY. All right.

Mr. MYERS. The unwarranted form sent out by the code authority with the approval of the deputy administrator, said: "The undersigned hereby approves, adopts, and assents to the code."

The Congress Theater Co. of Newark, N. J., brought a suit in the district court in New York against the code authority to test this position, and that resulted in a ruling by General Johnson, countersigned by General Counsel Richberg, to the effect that the filing of this assent did not involve the waiver of any right to further contest the code, nor to sue anyone operating under it for arbitrary or other illegal action, and it was not until after that that the exhibitors in any considerable number assented to the code in the form stated.

I believe that to date, that approximately half of the exhibitors of the United States have filed their assents. Of course that half includes all of the affiliated chain houses.

Senator BARKLEY. Have you the exact figures?

Mr. MYERS. I have not.

Senator BARKLEY. In order that that might be exact I will put into the record here that there are 10,143 motion-picture theaters in operation in the United States, or were on February 1 of this year. Of that number 9,169 voluntarily assented to the code. Of those, 6,500 were independent operators.

Mr. MYERS. These figures are so at variance with those I have had that it is a little startling to say the least.

Senator BARKLEY. You said you did not have the figures. What figures are they in variance with?

Mr. MYERS. I have heard the statement made by a member of the code authority that they had approximately 7,500 assents.

Senator KING. Were those assents after General Johnson's interpretation?

Mr. MYERS. A great majority; yes sir. Moreover, there may be this possible explanation, Senator, also. There was a right, a very much restricted right to cancel pictures where a block had been forced, and the code authority ruled, and I think properly, that if any one took any advantage under the code, they should contribute to the code authority. So I think there were quite a number of theaters which were put on the paying list by reason of having sought to cancel pictures which, however, did not sign the formal assent.

Senator BARKLEY. It is not your contention, is it, that the evils which have existed and which now exist in the motion-picture industry did not exist prior to and independent of the N. R. A.?

Mr. MYERS. That is true; but that is not the point, sir, if you please. Prior to the code an exhibitor was privileged to defend himself by going into court, and if you just glance through the lawbooks, it will disclose that there are probably more proceedings, private cases as well as Government cases, under the antitrust laws involving the motion-picture industry than any other industry in the United States. What the code did was to take each of these practices and without materially remedying them at all, incorporated them in the code, and as you know the N. R. A. Act says that anything done in pursuance of the provisions of the code shall be exempted from the antitrust law, so that the code has had the effect to immunize these acts.

Senator BARKLEY. These practices had existed prior to the N. R. A. and for years, and they even existed while you were a member of the Federal Trade Commission, did they not?

Mr. MYERS. Many of them have existed for years; yes.

Senator BARKLEY. Did the Federal Trade Commission do anything about it, and did you do anything about it as a member of the Federal Trade Commission?

Mr. MYERS. Oh, yes. I think the motion-picture industry has been under attack by the Department of Justice and the Federal Trade Commission almost continuously.

Senator BARKLEY. The practices were not discontinued.

Mr. MYERS. Some of them were and some were not.

Senator BARKLEY. So far as block buying, overbuying, short buying, or short selling or short forcing, they all existed prior to the N. R. A.?

Mr. MYERS. So far as short forcing is concerned, I will say this, that the industry had a trade-practice conference held in 1927 renouncing it, the code renounced it and it is still being pursued.

Senator BARKLEY. But the point is—I did not hear the first part of your statement—are you advocating the discontinuance altogether of the N. R. A.?

Mr. MYERS. Oh, no; quite the contrary. I expressly disclaimed that in my opening statement.

Senator BARKLEY. I did not hear your first statement. I am trying to get at your attitude.

Mr. MYERS. I am complaning of only one thing, and that is the Motion Picture Code and its present set-up, and since I cover that I will suggest a remedy for it, if I may, in the way of an amendment to the act.

Senator KING. Some of the 4,500 or 5,000 independents whom you represent assent to the code in the sense that you have expressed the assent following General Johnson's statement?

Mr. MYERS. Oh, yes; some have and some have not. I imagine that in our particular organization, the majority have not.

I will say furthermore, and I think the clerk may have received a telegram from Minneapolis lately with a copy of resolution adopted by 200 theater owners of the Northwest, in which they resolved they would withdraw from all cooperation in this particular code unless and until there was an amendment giving us an evenly balanced representation on these quasijudicial boards.

Senator BARKLEY. Are you familiar with the operations of grievance boards that were set up in the code with reference to overbuying?

Mr. MYERS. Fairly so; yes.

Senator BARKLEY. What was the result of that?

Mr. MYERS. So far as I know, no exhibitor has received any adequate assistance through that method.

Senator BARKLEY. If it should be true that they had more than a thousand complaints over a year ago, and all of them were filed by independent exhibitors to secure relief, would you say that that was any accomplishment with regard to these matters?

Mr. MYERS. Senator, if that should be the fact, and we would have to analyze it a little carefully to see just exactly what the facts are, because in this busines , the facts are very queer sometimes, I would say unquestionably tha as an accomplishment, but I do not believe that is the fact.

Senator BARKLEY. No such means of relief existed prior except to go into court in an individual case?

Mr. MYERS. Oh, yes; go in court.

Senator BARKLEY. There was no remedy, no mass remedy, for the independent picture exhibitors?

Mr. MYERS. There was the overhanging fear of prosecution under the antitrust laws which I think was ever present.

Senator BARKLEY. Did the method provide for a maximum of short sales, by which I think you mean in order to get a good picture, you have got to take a bad one?

Mr. MYERS. You are confusing two things, Senator. One is perhaps block booking, where you force bad pictures with good ones, and the other is short forcing, which means you have to buy short subjects and comedies in order to get these features.

Senator BARKLEY. They are sometimes short and bad as well. In order to take a long picture, you have to take a short as well?

Mr. MYERS. Yes.

Senator BARKLEY. The code did undertake to authorize the method to obviate that practice?

Mr. MYERS. The code says that if an exhibitor has bought all of the pictures that were offered to him, then he may cancel 1 picture out of each group of 10. If you would like to go into that, I will analyze that for you to see what it means. That means that if in that group of 10, there are 3 bad pictures, he can cancel 1 of them or he can cancel all 3 of them by paying for them and applying the money he pays against a picture to be canceled out of a subsequent block group of 10. That is in the code.

It has been availed of to some extent by the exhibitors and that is what I think has brought them into technical conformity or assent to the code.

Senator BARKLEY. I have in mind a small town in my State that had three motion-picture theaters. Two of them were owned by one of these big companies you speak of, and the other one did not get any pictures at all except very poor pictures, and they were not fresh new pictures. They usually had been run until they were old and possibly had been run at the other theaters. For 2 or 3 years they tried to get a remedy of that situation and could not.

Of course, that was prior even to the passage of the N. R. A. Act. I would not say or intimate that the code had anything to do with the

remedying of that situation, but the third theater has, for last year or two, been able to show pictures which could not be obtained prior. That is one case that has come under my personal observation and knowledge.

Mr. MYERS. Of course, I have an extraordinarily large file from exhibitors all over the United States, many of whom have attempted to get relief before the grievance boards, but almost without exception they have failed.

I have in mind one very conspicuous case down in Texas where a man was in very bad shape, and he finally got an allowance from the local board, and I was told within the last 48 hours that had been reversed by the code authority.

Senator KING. Is there anything else you want to say Mr. Myers? Pardon me, Senator, are you through?

Senator BARKLEY. Yes, sir; I am through.

Senator KING. You referred a moment ago to the telegram which was sent from the Secretary of the Allied Theaters of the Northwest. I will read it into the record now. [Reading:]

MINNEAPOLIS, MINN., *April 5, 1935.*

SENATE COMMITTEE ON FINANCE,
Washington, D. C.:

The following resolution was unanimously adopted at convention of Allied Theater Owners of Northwest held in Minneapolis Tuesday April 2.

"*Resolved by the independent motion picture exhibitors of the Northwest assembled at Minneapolis this 2d day of April 1935,* That we condemn the Code of Fair Competition for the Motion-Picture Industry in its entirety and pledge ourselves not further to cooperate in said code unless and until the same has been amended or a new code has been approved in harmony with the resolution of Allied States Association of Motion-Picture Exhibitors adopted at New Orleans on December 13, 1934, providing for a code authority consisting of an equal number of representatives of the two economic divisions of the industry for evenly balanced local boards and for a new schedule of trade practices to be drafted and proposed to National Recovery Administration by such newly constituted code authority we also authorize Abram F. Myers counsel of Allied States Association who is to appear before the Finance Committee of the United States Senate in the near future to present a copy of this resolution to said committee for its guidance in the consideration of proposed legislation to extend the National Industrial Recovery Act."

ALLIED THEATRES OF NORTHWEST,
R. L. EVANS, *Secretary.*

Mr. MYERS. Now, Senator, I have only one more thing I want to do before I close and that is to get before the committee the official position of the association. I do not want to appear that is a dog in the manger policy or unfair to that extent and I will read a report made to the board of directors by a committee at its meeting in New Orleans last December, which was unanimously adopted by the board and is the official position of the association:

YOUR COMMITTEE RECOMMENDS

That the National Industrial Recovery Board be petitioned to amend the Motion Picture Code to give equal representation on the code authority to the two main groups in the industry—buyers and sellers.

That the group known primarily as "sellers" include all film production and/or distribution companies, together with the theaters which they own or control, or with which they have affiliation. That we suggest no special machinery looking to the nomination and election of the representatives from this group as we feel that such a plan should emanate from the group itself.

That the group known as "buyers" include all independent theaters not affiliated in any way with the group known as "sellers", either in a direct business connection or indirectly through associations or organizations financed or controlled by the

group known as "sellers." That selection of representatives from this group be made as follows: The present code authority shall mail out to every theater in the United States included in this classification, after 30 days' notice, blanks for the vote of each such theater, such blank to include a certification in full detail as to whether such theater comes under this classification. Those receiving the highest votes cast, up to the necessary number for appointment to the code authority, shall be deemed elected. Alternates shall be nominated by each member, subject to approval of his group. In addition to the above groups, three Government men with votes.

Let me interject by way of explanation to Senator Barkley. The reason for this is that these boards exercise a quasijudicial authority over the conflicting rights of buyers and sellers, and we thought that if we had equal representation and an umpire in case of a stalemate, you have no more than the ordinary commercial arbitration such as is practiced in business commonly every day. [Continues reading:]

That the above basic division apply to local boards also, and that the grievance boards be made up of two representatives of "buyers" and two of "sellers"; and that the clearance and zoning boards be made up of three representatives of "buyers" and three of "sellers." Selection of these to be made by the code authority when duly constituted as above, each group in said code authority selecting the corresponding group on local boards.

We feel that the code itself is sadly lacking in its supposed purpose to promote fair competition and prevent monopoly. We believe that there should be no avoidable delay in correcting such conditions as can be reached through a liberal, forceful, and honest administration. We feel, however, that there are a number of amendments and additions to the code that are both desirable and necessary; but that the quickest and best way to arrive at such changes are through recommendations of a truly representative code authority.

We, therefore, recommend that the new code authority be instructed to bring to the Administrator, within 90 days of its selection, and any time thereafter when deemed necessary suggested changes in the code; and that a hearing on same be held within 30 days thereafter.

In case action on this report is refused or delayed, that Congress be petitioned that, in providing for the continuance of National Recovery Administration after June 16, next, provisions be made for amending the Motion Picture Code as above.

As I pointed out in the record, petition was made to the National Industrial Recovery Board for consideration of that recommendation, and that has been in effect denied, therefore it is suggested that the committee consider for incorporation in any legislation it may draft to extend N. R. A., something as follows, and I will say for Senator King's benefit that the petition having been made to open the code as provided in this resolution, and nothing having come of it, I am now carrying out the duty imposed upon me by the Board to suggest an amendment for the consideration of the committee:

All codes which authorize the code authority or other board or agency created thereunder to hear and determine controversies between concerns engaged in different branches of the industry affected shall as a condition to their lavidity provide that such code authority or other board or instrumentality shall be composed of an equal number of bona fide representatives of each branch of the industry embraced in said code, and shall also provide for a representative or representatives of the Government with power to cast the deciding vote in any such controversy in case of a tie; provided that any concern embraced in any such code which is engaged in the manufacture or production of any commodities or products or in making the initial sales or leases thereof, and is also engaged directly or indirectly, through holding companies, stock ownership, interlocking directorates or otherwise in the buying or exhibiting of such commodities or products may be represented on any such code authority or other board or agency only in its capacity as a manufacturer, producer, or original seller or lessor thereof.

One more physical exhibit and I am through. After the independent exhibitors, at Atlantic City last summer, had gone on record as

favoring an investigation of the code because of their failure to get consideration from N. R. A., the so-called "impartial members" of the local clearance and zoning boards were circularized by the code authority; as we thought a bit of window dressing to prepare for this sort of an inquiry. That might not be justified, but that was the feeling we had.

These impartial members were appointed by the deputy administrator and responsible to him. We have here a summary of the replies of these men, and of course in very many instances they did say, and as might be expected, that the boards are sincerely doing their best, and one thing and another.

On the other hand, an extraordinary number of them point out the very inherent weaknesses that I have spoken of here, namely, that these boards considering controversies, judicial controversies between different branches of the industry, and there is unequal representation of those branches, so that each man influenced by his own connections naturally votes that way.

I do not know that the committee will want all of this in the record, but there may be an animadversion later, and I think we should have the facts.

The CHAIRMAN. Give it to the clerk.

Senator BARKLEY. How long were you on the Federal Trade Commission?

Mr. MYERS. About 3 years.

Senator BARKLEY. From your experience as a member of the Federal Trade Commission and your experience as Assistant Attorney General, I believe in charge of the antitrust litigation in a former administration, do you believe that the Federal Trade Commission or the Department of Justice or any other bureau or department that has to go through long-drawn-out litigation in order to decide a case between two people, has been or can be effective in eliminating the unfair practices and cut throat methods by which business and groups of business have sought to injure their competitors?

Mr. MYERS. No, sir; on the contrary I think that with fair boards and with proper safeguards for the public interest, it can very much better be done by the code system.

Senator BARKLEY. By a code system which can act immediately with respect to mass situations, rather than to deal with an isolated case?

Mr. MYERS. That is my belief, and I would be in a queer position if I did not hold that belief because as a member of the Federal Trade Commission I advocated this very thing.

The CHAIRMAN. All right, Mr. Myers.

(The following is in connection with Mr. Myers' testimony.)

MINORITY REPORT FOR COMMITTEE ON NOMINATIONS AND RECOMMENDATIONS FOR MEMBERSHIP ON (A) CLEARANCE AND ZONING BOARDS AND (B) GRIEVANCE BOARDS

The committee on nominations and recommendations for membership on the local clearance and zoning and grievance boards was appointed by the code authority of the Motion Picture Industry at a meeting held in the city of New York on December 20, 1933, and consisted of the following members of the code authority: Sidney R. Kent, George J. Schaefer, W. Ray Johnston, Nathan Yamins, and Charles L. O'Reilly, chairman, subsequently, and at his own request, Ed Kuykendall was added to this committee. During the sessions held

by this committee on January 26, 27, and February 8, sincere efforts were made to secure a list of recommendations on which all members could agree unanimously. There were, however, several instances on which the committee was hopelessly divided, and it became necessary in the case of the Boston territory to take a formal vote. The personnel of the Boston grievance board was agreed upon unanimously. On the clearance and zoning board the members were in accord on R. C. Cropper, of Radio Keith Orpheum representing affiliated distributors; on Herman Rifkin, of Monogram representing unaffiliated distributors; M. J. Mullin, of Paramount Theater, representing affiliated exhibitor; and Max Levenson as a subsequent-run exhibitor. The members could not agree on the first-run independent exhibitor, and by a vote of three to two Edward M. Fay of Providence became the majority choice of the committee over Edward Ansin of Boston. The vote was as follows: George J. Schaefer, Mr. Clarke, alternate for Sidney R. Kent, and Ed Kuykendall for Fay; W. Ray Johnston for Reed; and Charles L. O'Reilly and Nathan Yamins for Edward Ansin. On the recommendation for the other subsequent-run exhibitor, there was a deadlock when the formal vote was taken, Messrs. Schaefer, Clarke, and Kuykendall all voting for Philip Smith; and Messrs. Johnston, O'Reilly, and Yamins voting for Walter L. Littlefield.

The undersigned was appointed by the President of the United States as a member of the code authority to represent the independent exhibitor branch of the industry. This places a tremendous responsibility on him to safeguard the interests of the independent exhibitor on all matters coming before the code authority and particularly in the creation of committees on boards that are to deal with exhibitor problems. The undersigned is fully cognizant of this responsibility and has pledged himself to execute it to the utmost of his ability, and he now feels that he would be derelict in his duties if he did not bring this matter to the attention of the code authority and to the Administration by means of this minority report.

It is the opinion of many who have made a study of the problems of this industry that the most important part of the code, especially from the point of view of the exhibitor, is the creation of fair and impartial clearance and grievance boards. The exhibitor is not much concerned with the portions of the code that pertain to production. He has by this time adjusted himself to the labor provisions of the code, and it is only in a few scattered instances that an exhibit is harassed by unfair business practices on the part of a competitor. What he is concerned with vitally is securing an adequate supply of motion pictures of sufficient quality and newness as to attract the public to his theater in sufficient numbers to cover the cost of operation and give him a livelihood. Without this, he cannot endure and the industry as a whole must suffer. This involves problems of overbuying and problems of zoning and production that are dealt with by the grievance board and by the clearance and zoning board. It is, therefore, extremely important that the boards consist of "reputable representative citizens, of highest repute and enjoying the confidence of those they are selected to represent." (I am quoting from telegram from Deputy Administrator Rosenblatt to me, a copy of which is annexed hereto, marked "A".)

The code provides for the appointment of six men from within the industry to the clearance and zoning board, and specifies what interests they are to represent. It provides for a distributor with theater affiliations, and I feel that I am correct in saying that he is to represent the affiliated distributors on this board, acting fairly and impartially and unselfishly, with his attention focused to protect the affiliated distributor branch of the industry. To do this he must be a reputable citizen, of the highest repute and enjoying the confidence of those he is selected to represent. It follows, therefore, that he should be the selection of the affiliated distributors whom he is to represent on the board, for which he has been selected, and to my mind exhibitors should have nothing to say whatsoever about the selection of a man on the clearance board who is not there to represent them, unless they know of something definite that would disqualify him because of his not being a citizen of the highest repute. By the sheer force of logic, I am led to the conclusion that the independent exhibitors of an exchange center should be the ones to select the independent first-run exhibitor member and the two subsequent-run exhibitor members of the clearance board. These three members are on the board to represent respectively the first-run independent exhibitor and the subsequent-run independent exhibitor, they must be representative citizens of the highest repute and enjoying the confidence of those they are selected to represent; and, therefore, the other branches of the industry should have no voice

in the selection of the independent exhibitors unless they can show that the men proposed do not measure up to the high standard set by the administration.

It was because of this fundamental principle that the undersigned has stated repeatedly in committee meetings that he had nothing to say, no recommendations or suggestions to make about places other than those to be occupied by independent exhibitors. My only concern has been to ascertain whether the names suggested came within the classifications for which they were designated by the other branches of the industry.

Let us now turn our attention to the Boston situation. This is a large territory, with a great number of independently owned and operated theaters. There is also in this territory a large number of affiliated theaters, the biggest chain being that of Paramount; and this chain has been for several years arbitrarily imposing a schedule of protection that has aroused the independent exhibitors. Several years ago the Paramount representative, Tom Bailey, at the suggestion of the Hays organization, called a mass meeting of exhibitors for the purpose of electing a zoning board. The board was duly elected, and the representatives of the independent theaters elected by ballot were, I believe, Max Levenson, Edward Ansin, Stanley Sumner, Walter Littlefield, and the undersigned; and when the independent representatives refused to agree to the demands of the Publix representatives, the meeting was adjourned, never to meet again; and Publix continued to impose protection schedules detrimental to the interests of the small independent exhibitors.

There are at present in this territory two exhibit organizations, one called the Independent Exhibitors, Inc., having a membership of approximately 200 independent exhibitors and to which affiliated theaters are not admitted, and the other called Allied Theatres of Massachusetts, which is primarily an affiliated theater organization, as it has only four paying independent members, and the funds necessary for its support come by direct check from the Hays association.

The undersigned submitted as the recommendation of the board of directors of the Independent organization the name of Max Levenson or Edward Ansin for the independent first run. Objection was immediately made to Max Levenson, because he has just opened a first-run theater in Brookline, which is in direct competition with two Publix houses in Allston and, in the opinion of Mr. Schaefer, he was disqualified because of this personal interest in the situation. If this be so, by what line of reasoning is Mr. M. J. Mullin, the Publix representative, qualified to serve when he represents personal interest in over 50 theaters? In view of this objection, the name of Edward Ansin, treasurer of the Interstate chain of theaters, was presented, and then the point was made that Mr. Ansin's partner's father, a Mr. D. S. Stoneman, a practicing attorney, had brought various suits against distributors and was a man of questionable character; and this disqualified Mr. Ansin. I quite agree with a statement attributed to Mr. R. H. Cochrane of this board, that members on the grievance or zoning board should be, like Caesar's wife, above suspicion; but I did not know that the ancestry tree had to be searched to ascertain if there has been any blemish in the reputation of a candidate's mother-in-law or father-in-law. At a subsequent meeting of the committee, held on February 8, this line of attack was not used again, and the name of Edward M. Fay, of Providence, was submitted by Mr. Schaefer, who stated that Providence was a big city, which should be represented, that Mr. Fay operated a large first-run theater, and that there were 16 theaters who followed Mr. Fay's theaters; and that, therefore, Mr. Fay was a typical first run who understood the yroblem of protection, and by a vote of 3 to 2 he was named.

The undersigned is personally acquainted with Mr. Fay, has known him intimately for many years, and regards him as fully qualified by character to serve on any board. But I regret that I am compelled to take the stand that I must object to one whom I regard highly and as a friend; and my grounds for objection is, first, that he is not the nominee of any group of exhibitors, but is the nominee of Paramount Publix, who desire to perpetuate an unreasonable set-up of protection that they have imposed in New England, that the wishes of the great number of truly independent exhibitors should be carried out, and also on the ground that Mr. M. E. Comerford has a 50-percent interest in the Fay Theatre in Providence, and Mr. Comerford is a partner of Publix in many situations. May I respectfully ask, Can Mr. Fay have the confidence of the independent exhibitors when their greatest trouble is with Publix and when Mr. Fay's partner is a partner of Publix? I insist that it would be a terrible mistake to permit this situation to arise, for not only would the clearance board be attacked, but even the code authority would be attacked for knowingly permitting such a situation to arise.

Mr. Ansin is a man of education, high standing in his community, enjoys the confidence of his fellow exhibitors, and is the head of a company operating 14 theaters and is thoroughly conversant with the problems of protection, both from the point of view of a first-run exhibitor as well as that of a subsequent-run exhibitor (annexed hereto marked "B" is a list of his operations). He has a typical first-run situation in the city of Brockton, a city of 64,000 population, operating this theater on a double-feature policy, week run, in direct competition with the Publix first run and charging the same admission prices. That he has the confidence of exhibitors was indicated by his election by secret ballot to serve in a similar capacity at a public meeting held under the auspices of the Paramount representative. I am compelled, therefore, to object strenuously to the selection of Mr. Fay over Mr. Ansin.

The undersigned, at the first meeting of this committee presented the name of Walter Littlefield as a subsequent-run independent exhibitor. Mr. Littlefield is a graduate of Harvard and Massachusetts Institute of Technology and a former instructor in the latter institution, a man of high character and high standing in his community. He had previously been elected to serve on the same committee as Mr. Ansin and therefore has the confidence of his fellow exhibitors. But Mr. Schaefer raised the objection that Mr. Littlefield couldn't serve because "he writes letters to Senators." Is this industry, through its code authority, a Government instrument, going to set up the principle that a man is disenfranchised because he exercises his constitutional right of free speech and petition to his own selected representative in the United States Government? I have no word of criticism of Mr. Phil Smith. In fact, he is a man of high character, a friend of mine and of my family, but when objections were raised to Mr. Littlefield on the ground stated, I am forced to overlook friendships and to insist upon Mr. Littlefield's selection, in order that it may be determined once and for all whether the right of free speech and petition is gone from this industry.

I am filing this minority report on the Boston situation because, to my mind, it is a typical case that indicates to me just what is the attitude of certain members of the code authority. The objection raised to names offered by the undersigned and the procedure adopted in naming men to these boards lead me to believe that underneath it all is a desire on the part of special interests to perpetuate practices that they have imposed that react to the detriment of exhibitors and keep this industry in a constant turmoil.

Meetings of this committee held since the Boston situation was discussed have convinced me that the affiliated distributor members are seeking to establish boards that will be friendly to their interests. They have assumed the prerogative of naming every member of the board, including the exhibitor representatives, and placing the burden on the exhibitor members of the committee to object to men proposed by the affiliated group and to show why they were disqualified. I cannot escape the logic of the situation that the affiliated group are overstepping the bounds of propriety when they undertake to name exhibitor representatives. This belief, that the affiliated group were attempting to set up boards favorable to themselves, was strengthened by the discovery that confidential tentative lists of appointments to the board were discussed at a meeting of business managers of the various producing companies and the work of the committee censored and revised with the result that the ultimate appointments would be the work of managers not members of the code authority.

Moreover, discussions during committee meetings, votes taken, and a personal examination of some of the data of one member of the committee lead me to believe that there is a defensive and an offensive alliance between the affiliated distributors and the representative of the M. P. T. O. A., an organization largely composed of and financially supported by affiliated theaters. It is significant that on every vote taken Mr. Kuykendall lined up with the producer representatives. It may be argued that this is just a coincidence and that the distributor representatives were right in so voting and, therefore, Mr. Kuykendall was right. How, then, explain the vote on A. W. Lilly, of Texas? This man was agreed upon by all members of the committee as a member of the grievance board.

Subsequently, probably at the manager's meeting, Mr. Schaefer discovered that in one of his three theater operations Lilly was a partner of Colonel Cole, and at the next meeting of the committee his name was removed because in the words of Mr. Schaefer, "He is Colonel Cole's partner and that's enough to disqualify him." I have known Colonel Cole personally for several years and have found him to be a man of character, and the only basis for Mr. Schaefer's antagonism to him that I can see is because Colonel Cole has been active in exhibitor organization affairs.

It is a foregone conclusion that the other distributor representatives will vote exactly as did the distributor members of the committee, except when they dis-

agree among themselves as to who shall be their own representative in parceling out protection where their own theaters are involved. The undersigned is, therefore, convinced, in view of what has happened in committee meetings and in view of the votes of distributor members on the code authority on the 10 percent elimination matter, that the independent exhibitor has very little that he can hope for out of the present set-up which gives the distributor representatives an overwhelming majority, and, therefore, his only course is to keep his record clean by making this written protest to the code authority and to the administration in the hope that out of it will come whatever revisions of the code and the set-up of the code authority that will be necessary to adequately safeguard the interests of the independent exhibitors.

NATHAN YAMINS.

FEBRUARY 16, 1934.

DECEMBER 13, 1933.

Your wire received. Respectfully suggest your advising exhibit or units you contact to forward to you or to me recommendations for local boards with description of personnel recommended. As I have heretofore publicly stated the membership of such boards must be of reputable representative citizens of highest repute and enjoying confidence of those they are selected to represent.

Kindest regards,

SOL A. ROSENBLATT,
Deputy Administrator National Recovery Administration.

State Theater, Milford, Mass.: 14 days after first run Providence and usual protection which is 30 days over second run and 30 days over Nipmuc Park, Mendon, Mass., and clearance over Uxbridge, Holliston, Hopkinton, Millis, Hopedale, and Franklin, Mass.

Old Colony Theater, Plymouth, Mass.: Availability on national release date and usual protection which is 90 days over second run, 30 days clearance over Kingston, Mass,, and Mayflower Grove, Pembroke, Mass.

State Theater, Stoughton, Mass.: 14 days after first run Brockton and clearance over Sharon and Canton, Mass.

Mahaiwe Theater, Great Barrington, Mass.: Availability on national release date.

Opera House, Bellows Falls, Vt.: Availability on national release date.

Strand Theater, Southbridge, Mass.: Pictures become available immediately after first run Worcester, Mass.

Scenic Theater, Rochester, N. H.: Pictures become available on national release date, and ahead of Farmington and Somersworth, N. H.

Revere and Boulevard Theaters, Revere, Mass.: Some contracts read 7 days after first run Chelsea. Majority of them read 45 days after first run Boston. The usual protection over second run.

Bradley Theater, Putnam, Conn.: Pictures become available on national release date. Clearance over Pomfret, Conn.

Orpheum Theater, Danielson, Conn.: Pictures become available on national release date. Clearance over Moosup and Plainfield, Conn.

Palace Theater, Rockville, Conn.: Some contracts read 7 days after first run Hartford. Others read immediately after Hartford. All contracts have clearance over Stafford Springs, Conn.

Colonial Theater, Brockton, Mass.: This situation is quite well known to you. At the present time we have under contract Warner-First National, Universal, some of Columbia, United Artists, and half of R. K. O. Our clearance in this situation is as follows: Ninety-day protection over subsequent runs in Brockton including Campello and Montello, 14 days clearance over Whitman, Randolph, Rockland, Bridgewater, East Bridgewater, and Stoughton, Mass. As you understand, the Colonial is strictly a first-run theater and charges the same admission as the two opposition Publix houses which are the Brockton and the Strand.

STATEMENT OF CROSBY FIELD, REPRESENTING FROZEN LIQUID RIBBON ASSOCIATION, BROOKLYN, N. Y.

(The witness, having been first duly sworn by the chairman testified as follows:)

The CHAIRMAN. Mr. Field, it is impossible for the committee to go into every detail. We have a staff of experts here for that, but if you can just get right at the point, how much time do you require?

Mr. FIELD. I would like 12 to 15 minutes.

The CHAIRMAN. We will give you 10 minutes. You represent the Frozen Liquid Ribbon Association?

Mr. FIELD. Yes, sir, a very small organization.

Senator BARKLEY. I would like to know what frozen liquid ribbon is before you get started.

Mr. FIELD. Ice has been manufactured for 50 years in the form of large blocks, usually approximately 11 inches by 22 inches by 44 inches long. It is made by taking cans of those dimensions, putting them in a large brine tank, filling it with water, holding them at the temperature of the brine tank below freezing by means of an expanding ammonia, and when the water has become frozen in 35 to 58 hours, taking those cans out, immersing them in warm water, which loosens the ice, placing the cans on the side and letting the ice fall out of the can, and then taking that to storage and then crushing it.

Senator BARKLEY. In other words, the process is just the same as you make little ice cubes in the refrigerator?

Mr. FIELD. Yes, sir; that is the standard practice.

Frozen liquid ribbons are the result of a development that has taken some 20 years, and they are produced by an automatic machine by placing on a flexible metallic cylinder, a thin film of water, changing the configuration of that so that the ribbon automatically loosens itself from the cylinder and comes out continuously in that form.

As it comes out, it breaks up into small fragments and is stored and handled that way.

If the Senator would like, I have some pictures to show the process.

Senator BARKLEY. I understand.

Mr. FIELD. I am a professional engineer and inventor. Since 1914, with the exception of the time spent on active duty with the United States Army, I have been engaged in professional activities, which have dealt, in part, with the production, sale, and use of natural and manufactured ice. I have manufactured and handled as much as 500 tons of ice in a single day.

Twenty years ago I undertook an investigation to discover the most useful form of a solid refrigerant, particularly ice. The result of considerable research was a crisp subcooled, thin, arched ribbon of frozen water, in which the "form factor" could be controlled. This could not be produced by any process or equipment known at the time. A long development was therefore undertaken, necessitating much research as to the manufacture of thin noncorrosive metals, attachment of rubber thereto, and the manufacture and consumption of refrigerants, with the result that 15 years later, in 1930, there was offered to the public a completely new process, product, and equipment. Water is frozen into a thin, crisp, brittle ribbon continuously and efficiently on an automatic, relatively small-space-requiring machine, entirely unlike anything ever before seen in the ice or any other industry.

My purpose here this morning is to show you gentlemen how a small young pioneering industry can be throttled under the N. R. A. by a large, established, and in the opinion of many, an obsolescent industry.

The ration at the present time can be expressed by amount of the tonnage sold. The best statistics I have show that the ice industry today manufactures and sells something of the magnitude of

40,000,000 tons a year. The frozen liquid ribbon tonnage today is 100,000.

The product met a most favorable reception from the public, until at the present time, less than 5 years after its introduction in times of depression and in spite of the handicaps due to the N. R. A., over 300 tons per day capacity is in operation, which means between 75,000 and 100,000 tons per year consumed. As an example of the public reception, consider the sales record of a single small plant, the Brooklyn Bridge Freezing & Cold Storage Co., which had never made or sold a single pound of ice prior to the installation of its small flakice frozen water ribbon plant in August 1932.

Year:	*Sales (tons*
1932 (5 months)	1,669
1933	6,273
1934	10,084

The technical merits of the product are amply attested by the record of increase in use by leading concerns and the affidavits attached to my statement before the National Recovery Review Board, April 5, 1934, signed carbon copies of which are available for your inspection.

The reaction of the ice industry to this new product could have been predicted from the history of any invention. An executive of one of the largest ice companies orally informed me in 1931 that because of their invested capital they would oppose the invention in every way; the same year another large ice company installed one machine, and in 1932 tripled their plant capacity. Their plans to continue expanding flakice water ribbons suddenly changed in 1933, the year of the adoption of the ice code. The Ice Bureau, an organization subsidized by the large ice companies, issued in 1932 a bulletin in which flakice (frozen water ribbons) are declared to be"* * * a superior refrigerant for the preservation and shipping of food products" and "* * * of advantage in developing new markets for ice, such as air conditioning and cooling, fruit precooling, etc." In 1933, however, after the N. R. A., the representatives of the same companies, serving as members of the committee of arbitration and appeal, with the same director of the ice bureau as secretary of the committee, issued a report which denied the facts and opposed their previous bulletin. This report was issued after several months determined onslaught on our customers by salesmen and other representatives of the large ice manufacturers, acting as investigators for the Ice Code Authority. These paid spies, whose bread and butter depends upon their success in selling block ice, acting in a quasi-public official capacity, become deponents in affidavits condemning by hearsay our product, quoting amongst others several as having abandoned our product who never did so abandon it, and who continue to use it until this very day. At the present time it may be added, the following approximate number of establishments buy our product for their daily use: 100 restaurants, 50 fish trawlers, 100 fish wholesalers, and retailers, 100 variety, meat and fish chain stores, 5 large packers for manufacture of sausage, and refrigeration of approximately 100 meat trucks, 7 chemical plants, several drug, soda fountain, ice cream and beverage-dispensing stores.

This situation may be summarized by saying that before N. R. A. the general public was supplied with flakice frozen water ribbons from 3 small though growing sources; 1 large long-established ice company, 2 companies not before in the ice business. Since N. R. A. organized, business terroism on the part of the Ice Code Authorities has prevented others from coming into the ice business, and those in the ice business don't have to meet the possible competition, so why put in any new equipment? No more of our machines have therefore been installed to supply the general public since the adoption of the Ice Code, but in the same period large users of ice, not subject to the Ice Code, and for their own use only, have installed 17 machines with a capacity of about 170 tons a day. The small ice user, whose requirements are too small to install one of our machines, must use what the Ice Code Authority members decide to sell him. Last Saturday a man who is buying and reselling several thousand tons of ice a month, and who wants to put in Flakice equipment, informed me that he did not dare apply for a permit under article XI of the Ice Code, because even if he eventually got it, during the long time required by the obstructionist tactics of the Ice Code Authority, his entire business would be in jeopardy, due to the ability of his present source to cut off his supply of ice in revenge.

That his fear of delay is well grounded, is proven by the experience of one company, the Surburg Ice Products, which did apply for such a permit. The history of this situation is, in brief, as follows:

August 29, 1933, I wrote the N. R. A. Administrator, asking him under which code our new products should go. Then, after suitable delays, several letters were interchanged, but we received no notice of any hearings for the Ice Code nor any suggestions that we were in any way affected thereby. October 3, 1933, the Ice Code was signed by the President, containing article XI, and some other features that were obviously our economic death warrant. Were we really under that code?—an unbelievable viewpoint to us. Correspondence proving futile, I went to Washington October 19 and 20, 1933. Nobody seemed to know definitely what to do, and I found to my surprise that I had no standing as an individual, but would have as a representative of a group. Following the suggestion of one of the N. R. A. legal department, I returned to New York, reported to the users of our machines, formed the Frozen Liquid Ribbon Association, and submitted our code of fair competition. Voluminous correspondence, with several trips to Washington, followed, with the net result that we reached an agreement with the N. R. A. to operate temporarily under the Ice Code while our own proposed code was under consideration by the N. R. A.

Because of this agreement the following episodes took place in connection with our first and only application to erect a new plant for production of flakice frozen water ribbons, a new product by a new process.

October 25, 1933: Application in accordance with article XI of the Ice Code for a certificate of public necessity and convenience filed by Surburg Ice Products.

November 1–26, 1933: Numerous telephone calls to secretary of Ice Code Authority demanding action on application of the undersigned.

November 28, 1933: Hearing before the Committee of Arbitration and Appeal, New York District, including as members thereof Gabriel Heatter (chairman), formerly attorney for Rubel Ice Corporation; Albert W. Conklin, Long Island Ice Co.; Gerald Cousens, Westchester Service Corporation; Wm. B. Kirkpatrick, Greater New York Ice Co.; Louis Hertzberg, formerly Rubel; Wm. B. Johnson, Knickerbocker Ice Co. (all large block-ice interests).

The meeting started off by J. W. Scott, regional "public" adviser, interrogating me on matters having nothing to do with the matter of the permit, and attempting to bulldoze me, assuming to himself the authority of a public official, and laying down to me, as he called it "the law of the land, signed by the President, under which he had been appointed". The stenographic report of this meeting was mysteriously lost!

November 29–January 10, 1934: Numerous requests for action, trips to Washington, interviews, and so forth, resulting in decision that we must refile the application.

January 10, 1934: Hearing on the refiled application.

January 11–February 15, 1934: Extreme activity of block-ice salesmen acting as "investigators" of a new and competing product, submitting their own affidavits, quoting what they said our dissatisfied customers (some of whom still use our product) thought of our product. (Note the affidavits of users attached to our statement before the Darrow Board.)

February 23, 1934: Naive report by Committee of Arbitration and Appeal, New York district, recommending denial of the application for permit on grounds that we had failed to establish to the satisfaction of our competititors on that committee eight separate things they set up in that report, but not before.

Senator KING. The same persons who heard it?

Mr. FIELD. Yes, sir. They took unto themselves the authority of judging the merits of a new product, regardless of public use or acceptance, just as the Coopers Guild in Florence in 1285 A. D. prosecuted a cooper who bent his staves with water. Let me quote their seventh reason why they recommended denial:

> That flakice has in the past been used in direct competition with manufactured cake ice and any increase in the production of flakice would be further used in attempted competition with the product of existing ice plants.

That is the crime. Enthrone obsolescence, erect a legal bar against technical experimental progress, and although deducting depreciation from income when paying income tax, yet endeavor to emulate the Middle Ages, and by guild statute in favor of invested interests, hold back technical progress for a thousand years. This evil was finally overcome only when in the time of James I British jurists began to rule that guild statutes could not be applied against nonmembers—that if you please, the Block Ice Code Authority cannot rule against members of the frozen liquid ribbon industry.

March 28, 1934: N. R. A. notifies me of unfavorable action of the regional committee and code authority.

March 30, 1934: Request for personal appearance before N. R. A.

April 6, 1934: Personal appearance before deputy administrator, N. R. A.

Senator KING. Who was he?

Mr. FIELD. Earl W. Dahlberg, a very fair-minded gentleman.

April 10, 1934: Permit granted by N. R. A.—too late this season. As you know, the ice business is a seasonal business.

Senator BARKLEY. Have you been operating under that permit since then?

Mr. FIELD. No, sir; we were unable to go ahead with it. In order to build a plant in the ice business, you have to start about November or December to get it going.

Senator BARKLEY. When was that permit granted?

Mr. FIELD. April 10, 1934. We have been unable to proceed further. After these onslaughts, our capital has just diminished. We cannot get people to go ahead with us.

Senator BARKLEY. You could do it if you had the money?

Mr. FIELD. At the present moment we could.

Senator BARKLEY. And could have since last April?

Mr. FIELD. Yes, sir.

Senator BARKLEY. In the last year you could have gone ahead if you had the money?

Mr. FIELD. Exactly. And I would like to show the Senator why other things prevented our going ahead at that time.

Senator BARKLEY. I just want to know.

Mr. FIELD. I am trying to get through in 10 minutes. I am going ahead, but I do not want that point to be explained further.

Senator BARKLEY. You can charge that up to my time.

The CHAIRMAN. You are not the only one who, because of lack of money, could not go ahead.

Mr. FIELD. I can only say this, that the head of that company after the permit was granted and before we could get busy this season, found that his capital mysteriously disappeared, with the result that we had to investigate him and we found that the Knickerbocker Ice Co. at the present time held certain notes of his for business in another line in which he was. That is as far as we have been able to go with that investigation. The terrorism, I believe, was extended last Saturday night. This man said:

> I am afraid to go ahead with you because even if you do go ahead, you have to remember I cannot take the chance on losing my business during the next few months.

Throttling our growth is not the only way the Ice Code Authority oppresses us. Take the matter of price. To obtain crushed ice from block ice, the blocks must have an additional operation, such as machine or hand crushing. The higher prices set by the code authorities, such as the schedules of January 22, 1935, and September 17, 1934, may be justified for crushed ice. Frozen water ribbons, however, are manufactured broken and ready for use in one single operation, hence the reason for higher price disappears. Code authorities have always tried to include water ribbons in the higher-price category, but appeal to N. R. A. has so far always resulted in decision on the merits in our favor.

I believe acknowledgment should be made to the individual officers of the N. R. A., who on each minor detail have finally ruled favorably, and, I believe, fairly. The system is such, however, that normal business is impossible, the major questions of policy are adverse to us, and the expense involved in appealing each little episode through N. R. A. renders it out of our reach. In addition thereto, the time element involved in such an appeal stifles the weaker, and the final

favorable ruling usually has been reached after the business had already been lost to us, the smaller and weaker.

Senator KING. I want to interrupt you. I understood you to state that a large number of business enterprises were using your ice?

Mr. FIELD. They still are, but they are using it——

Senator KING (interrupting). By reason of machines which you have shipped?

Mr. FIELD. Yes, sir.

Senator BARKLEY. They make their own ice?

Mr. FIELD. Yes. I have invented a machine, and the company in which I am interested makes them. They sell or lease those machines to two classes of customers. The first class of customer is the commercial ice plant. He makes his ice and sells it. Before N. R. A. we sold machines to that type of plant.

Since N. R. A. we have been unable to sell any.

The other class of customer of our machine is a man who puts it in and uses ice himself, and he has the advantage. I could name, for example, such firms as the Calco Chemical Co., that have 100 tons capacity; Schrafft, the big restaurant chain in New York that has four complete machines. The Gertel Packers in Chicago, and another packer in Chicago who use it themselves.

Men of that type, who do not sell, and the code has no authority over them.

Senator BYRD. What is the price of your machines, approximately?

Mr. FIELD. That is a very fair question, Senator. I am afraid I would not be able to sell you one right now.

Senator BYRD. I am in the ice business, you know.

Mr. FIELD. The machines are leased to men who are in the ice business and wish to sell it. Our average rental is $614 per year on a machine which will turn out 10 tons. On the other hand, we will sell the machine. The machines are serviced by us.

The CHAIRMAN. What do they cost to build?

Mr. FIELD. Approximately $3,500 each.

The CHAIRMAN. What is the life of a machine?

Mr. FIELD. Being a newer thing, we can only tell by accelerated tests, but our accelerated tests indicate they will last 15 to 20 years.

Senator BARKLEY. How much do you get in rental for a $3,500 machine per annum?

Mr. FIELD. $600.

Senator BARKLEY. So that it pays for itself in 6 years?

Mr. FIELD. If it were not for the fact that we have to give a service which must be deducted from the rental. We give a service of repair and maintenance.

Senator BARKLEY. If you put one of these machines in a soda-water stand——

Mr. FIELD. We have none so small as that. People who are using our product include the soda-water stands to buy the product itself from these ice manufacturers.

Senator BARKLEY. You have a patent of course, which gives you a monopoly?

Mr. FIELD. A limited monopoly. Limited as to time.

Senator BARKLEY. All patents are limited as to time; all of them run out after the patent period.

Mr. FIELD. Our fundamental patents were issued in 1922 and it is now 1935. Of course, we shall very frankly attempt by improvements on the machine, to carry on this patent monopoly of one man by constant improvement.

The CHAIRMAN. You may proceed.

Mr. FIELD. The public officials I have found fair, though often misguided; the entire N. R. A. as set up, fundamentally unfair and iniquitous.

Again, a matter of privilege is involved, concerning which more will be said later.

Under date of July 20, 1934, N. R. A. informed the Frozen Liquid Ribbon Association that it could not have its separate code, that it must operate "* * * within the jurisdiction of the code for the ice industry." In other words, the business racketeers, now legally organized as a code authority, have us in their grasp, subject only to appeal, to appeal to the N. R. A. in case of, to quote N. R. A. "any injustice on the part of the code authority or their agencies."

My files are, of course, at your disposal and I believe you will find in those I brought with me full substantiation of the above statement.

The National Association of Ice Industries sneers at us as "alleged competition" (for example, see their Bulletin No. 174, dated May 24, 1934, signed by Leslie C. Smith, secretary), yet took good care through its creature, the Ice Code Authority, to obtain our economic death warrant through the N. R. A. We have appealed time and time again to each and every agency of the N. R. A. and to the Darrow Board, but the answer is always the same; no longer have we a right to engage in business; as in the middle ages, business is a privilege to be granted at the whim of officialdom. It is a mere step before we get to that stage again where this whim is to be influenced by consideration foreign to the justice of the case. No longer may the public benefit by invention, if that invention be antagonistic to the best interests of a large well-organized business group.

Out of professional earnings my associates and I invested $300,000 in this development, most all of which has gone into labor and fabricated materials during the depression, and which in turn during the same period put to work a much larger sum for equipping these new plants, all of which has reemployed workers and thus helped toward recovery. Maintaining obsolete plants at relatively high-fixed product prices does not maintain proportionately total country-wide employment, but does tend to maintain individual obsolete plant profit. By the oppressive tactics stated the N. R. A. has become for us not an agent of recovery, but in reality a national repression association.

I have made quite a study of the small versus the large manufacturing establishment, and have been employed for many years in each type. I prefer the small, not only as a way of living, but also because I believe it is the only safeguard of a democracy. I beg you, gentlemen, therefore, to make the continuance of the small plant possible by eliminating all class legislation such as the N. R. A. Let us have laws that govern us as individual citizens, not laws for the benefit of privileged, organized "pressure groups." Let us not abandon the principles that have made us a great industrial Nation, and leave our democracy for a worn-out form of guild state.

Senator BYRD. Suppose a new plant were established, a new plant that was not a member of this code authority, would you have the right to sell them a machine?

Mr. FIELD. No, sir, I would have to apply for a permit.

Senator BYRD. It is true, as I understand it, from a complaint that came to me from down in Norfolk County, that a farmer down there wanted to put up his own ice plant and was unable to do it. Is that correct?

Mr. FIELD. I am not an authority on anything that does not affect my own business. All I know is that we have succeeded in selling the machines to the larger companies who used them only in their own business, but we have been unable to interest any new party in putting up one of our plants, or to interest one of the ice dealers or manufacturers to put up a plant since the code. Before the code, we did not have that difficulty.

Senator BYRD. The only ones you can interest are those who use it exclusively for their own use?

Mr. FIELD. Yes, sir. I thank you for the opportunity of presenting the matter to you.

(Exhibits, in connection with Mr. Field's testimony, are on file with the clerk of the committee.)

The CHAIRMAN. The next witness is Harry Brandt, representing the Independent Theatre Owners' Association.

Mr. MELVIN ALBERT. Mr. Brandt could not be here. I am fully authorized and qualified to testify in his behalf.

The CHAIRMAN. You represent the same interests as Mr. Myers?

Mr. ALBERT. Yes, sir.

The CHAIRMAN. We will give you 5 minutes.

STATEMENT OF MELVIN ALBERT, INDEPENDENT THEATRE OWNERS' ASSOCIATION, NEW YORK, N. Y.

(The witness was first duly sworn by the chairman and testified as follows:)

Mr. ALBERT. Mr. Chairman, may I say this, that the surface has only been scratched by Mr. Myers, and we respectfully request at least 15 minutes.

The CHAIRMAN. We will give you 5 minutes and turn you over to the experts, and you can talk to them. We have a world of witnesses and have to move along. Give us the high spots, and then talk to our experts, Mr. Whiteley and these gentlemen here, and you can elaborate and extend your remarks any way you want.

Senator BARKLEY. Let me just make this suggestion. I realize the difficulty of the committee reading everything that probably ought to go into the record, and yet I do think it is extremely dangerous to shovel things into the record. It is the committee that is making this investigation and not any group of experts, and I think we should see or hear what goes in.

The CHAIRMAN. I think we can expedite matters considerably by having the witnesses go over details with our staff, having the witnesses present the salient feature to this committee. I want to give everybody an opportunity, but we cannot possibly get through if we just permit witnesses to speak ad infinitum. Proceed, Mr. Albert.

Mr. ALBERT. Mr. Chairman, the Motion Picture Code is designed to spread the monopoly of the Big Eight which they now have over the producing and distributing elements of the industry, to the exhibition branch.

Two factors, undisputed, bear that out. Of over 600 codes that have been written in the United States since N. R. A., the Motion Picture Code is the only vertical code that has been written. By that I mean that the local clearance, the local grievance and the code authority boards in the Motion Picture Code pass upon the manufacturer, the jobber and the retailer in the motion-picture industry, respectively in motion-picture terms, the producer, the distributor and the exhibitor. The producer and the distributor are one, so that on all local clearance boards, local grievance boards and on the code authority, if there is any exhibitor representation at all—and by that I mean independent exhibitor representation—he is outnumbered by 2 to 1.

It took the Legion of Decency to clean up the quality of pictures in the motion-picture industry, and as far as the independent theater owners of New York, 350 theaters, representing an investment of $150,000,000, we believe that it will take a legion of big sticks to clean up the monopoly in the motion-picture industry, and with all due respect, they are not very hopeful that this committee has been furnished with this stick.

The Darrow committee was appointed and they made their investigations. They unequivocally found that Mr. Sol Rosenblatt was biased and prejudiced in favor of the producer and distributor elements in the motion-picture industry as against the independent exhibitor. Testimony before the Darrow committee was given to the effect that Mr. Rosenblatt had on one occasion admitted that bias and prejudice, and yet despite the report of that committee, Mr. Rosenblatt is still the head of the Motion Picture Code and no further investigation of any kind whatsoever was made to determine that finding of fact by the Darrow committee.

The only answer to it is the power of the monopoly that exists today in the motion-picture industry as against the independent exhibitor.

The independent exhibitor of New York has not signed the Motion Picture Code. Ninety percent of our members have not signed it. They have defied the code since its inception; they have defied the Regional Labor Board since its inception.

In December 1933 the Regional Board in New York ordered us to put back 55 motion-picture operators that we had discharged. Those men have still not gone back and the Regional Labor Board has feared absolutely to take us into the criminal courts, despite the fact that we begged to go in there, because they know that the Motion Picture Code cannot withstand judicial investigation.

As far as the boards are concerned, we appear there just as little as possible. I want to cite one example of how little the code has helped us, despite the fact that we say that the only savior of the industry will be a code that is fair to the independent exhibitor.

During the past year I have handled 150 cases, roughly, speaking, with the attorneys for the film board of trade. One of the greatest evils of the motion-picture industry is the forcing of shorts, by which an independent exhibit is forced to buy more shorts than he can use for 2 or 3 years, in order to get features.

The code attempted to remedy that evil by providing certain standard proportions of shorts that are to be purchased in proportion to features. The section of the code in no way helps or remedies it, but we have not even attempted to make use of the remedies that are in the code.

Of those 150 cases that were brought in the judicial courts where exhibitors were unable to pay for those shorts because the tariff was too high, every one of them had to be settled. We could not go into the clearance or zoning boards because no relief could be gotten there, and statistics show that only two cases have been brought before the clearance and zoning boards and before the grievance board—I am not familiar with which one has the jurisdiction—only two cases have been brought since the code was in force by independent exhibitors for relief on forced shorts.

Senator BARKLEY. In other words, this forcing of shorts had existed for a long time prior to the N. R. A.?

Mr. ALBERT. Yes, sir.

Senator BARKLEY. And in the code an effort was made to remedy that by fixing a maximum of short subjects that could be forced on any exhibitor, is that true, and set up a board?

Mr. ALBERT. No. Let me say this, Senator, the provision in the code says that no exhibitor shall be required to take a greater percentage of shorts to the features that he purchases from a particular distributor, than the proportion of the total number of shorts bears to the total number of features that he purchases.

Senator BARKLEY. And you say that you have not and the others have not sought to take advantage of the remedy that was set up in the code?

Mr. ALBERT. Only two cases have appeared before any local board in the country since the inception of the code.

Senator BARKLEY. You are an exhibitor, are you?

Mr. ALBERT. Yes, I am——

Senator BARKLEY (interrupting). How many theaters have you?

Mr. ALBERT. I am an attorney. We represent 350 theaters in the city of New York.

Senator BARKLEY. Who is Mr. Brandt?

Mr. ALBERT. President of the Independent Theater Owners of New York City.

Senator BARKLEY. How many theaters does he own?

Mr. ALBERT. I could not say.

Senator BARKLEY. Have you any idea?

Mr. ALBERT. I would say, roughly, perhaps 20 or 25.

Senator BARKLEY. You do not know whether he owns, or his corporation—is it a corporation?

Mr. ALBERT. I imagine he has various corporations, for each theater.

Senator BARKLEY. You know; you do not imagine. You know what he has.

Mr. ALBERT. He has various corporations for each theater.

Senator BARKLEY. Then say that you know. How many?

Mr. ALBERT. I say, he has different corporations for each theater. I do not know how many, precisely, he owns.

Senator BARKLEY. You do not know whether it is 40 or 45?

Mr. ALBERT. I could not say.

Senator BARKLEY. It might be?

Mr. ALBERT. It might be.

Senator BARKLEY. Do you know whether he has increased his number of theaters in the last 2 or 3 years?

Mr. ALBERT. Yes, he has.

Senator BARKLEY. He has increased his ownership of theaters right along since 1932?

Mr. ALBERT. I will say this: Perhaps it should be put this way, that the independent exhibitors in the city of New York have found it necessary for their protection to join with him and give him an interest in their theaters and have him operate them for them.

Senator BARKLEY. I am not speaking of associations. I am speaking of the actual ownership of theaters.

Mr. ALBERT. That is what I am speaking of. They have been unable to bottle themselves, and they need the resources at his command. I am not familiar with his personal situation, though.

Senator BARKLEY. They are all in operation, whether it is 20 or 30 or 40?

Mr. ALBERT. Yes, they are all in operation.

With respect to clearance, there is one provision in the code which I think demonstrates beyond doubt the producer-inspired nature of the code. There is a section there which says that no exhibitor may complain that a distributor has given advantage to a theater operated by a distributor despite the fact that that advantage given by a distributor in distributing films to his own theather may be unfair to the independent exhibitor.

Senator BARKLEY. These conditions, these evils, that everybody recognizes as having existed in the motion-picture industry long antedates the N. R. A.?

Mr. ALBERT. Yes, sir; they long antedate it. There has been a great deal of battling in the industry to try to remedy them, and all that the Motion Picture Code does is to perpetuate them.

Senator BARKLEY. Where did you go to get any relief prior to the adoption of the code?

Mr. ALBERT. The only relief that we could get would be to bring an action for conspiracy.

Senator BARKLEY. Did anyone bring such an action?

Mr. ALBERT. Yes; a great many of those actions have been brought. The *Youngclaus case* held that there was a conspiracy in one of these cases. The difficulty is that the independent exhibitor has not the resources at his command to battle the "big eight."

Senator BARKLEY. In spite of that decision, the practice has gone right along?

Mr. ALBERT. The practice has gone right along unabated. Block booking is still in force, preferred playing dates are still in force, and according to the code at the present time the independent exhibitor cannot advertise ahead of an affiliated exhibitor, despite the fact that the provision in the code or its interpretation permits an affiliated exhibitor to advertise ahead of an independent exhibitor who may have a right to display the film ahead of him.

Senator BARKLEY. What is your suggestion as to what we should do about it?

Mr. ALBERT. The code should be entirely rewritten. I think it is worthy of note—I don't know, I am merely guessing now, but there is

not a single producer or distributor down here at the present time who is protesting against any section of the code, and if there be one here, I also predict that it will be a very unessential protest against any provision of the code. I have not seen the calendar; I do not know whether any of them are down here.

The distributors and producers were the first to consent to the code. The exhibitor knew nothing about it. The code was rammed down their throats, just like a bandit could ram his sword down your throat.

Sol Rosenblatt, when the exhibitors walked out, said, "I am going to get out a code, and you are going to like it and you are going to take it." I am merely paraphrasing now. I do not know what his exact words were.

He wrote the code himself, no doubt. The code was not written by the industry. There is no record of what was said before Sol Rosenblatt. No notes were taken of this hearing, and on one occasion when an attorney for one of the independent exhibitors who writes shorthand wanted to take down what was said there, the threat was made that until he ceased doing that the hearing would stop until he stopped.

Senator BARKLEY. Was there any trade organization of exhibitors?

Mr. ALBERT. They were all down there, and they walked out. They refused to cooperate.

Senator BARKLEY. Was there any trade association or organization such as contemplated by the law at the time of the passage of the act or at the time of the adoption of the code?

Mr. ALBERT. Yes.

Senator BARKLEY. Through whom the exhibitors could speak as an organization?

Mr. ALBERT. Yes; your honor.

Senator BARKLEY. What was that?

Mr. ALBERT. There was the Allied States Association represented by Mr. Weisman, and the Independent Theatre Owners' Association was there.

Senator BARKLEY. When were they organized?

Mr. ALBERT. Some months previous. I cannot speak for the Allied, but the Independent Theatre Owners' Association had been organized in April 1933.

They refused to listen or abide by the terms of the code as proposed because of their manifest unfairnesses to the independent exhibitors in perpetuating all of the monopolistic practices of the producer and distributor, and they walked out and attempted to write their own code.

A brief was submitted. I am speaking not from hindsight but from foresight. A brief was submitted to Mr. Rosenblatt pointing out every single defect in the code, which I will show in the brief that I will submit, that it has worked out just that way in practice. Despite, that, nothing was changed to protect the independent exhibitor throughout the country.

Senator BARKLEY. Did you appear personally at these hearings?

Mr. ALBERT. No, I was not down there. Mr. Weisman, counsel to the I. T. O. A. was down there during all of that time.

Senator BARKLEY. You did not hear any conversation which you can speak of?

Mr. ALBERT. No, Senator, I was not present at the hearings. However, I have appeared before the local clearance and the local grievance boards in about 150 cases since the inception of the code authority, and if there are any questions you desire to ask about the practice there, I feel qualified to answer them.

The CHAIRMAN. Is there something else Mr. Albert?

Mr. ALBERT. I want to say this, Senator, the proceedings before the clearance board and the zoning board and the grievance board and the code authority, at all of those proceedings there is an attorney present who represents the Film Board of Trade for the City of New York. He represents the Big Eight and is their counsel.

Senator BARKLEY. I thought when you came up you were Mr. Brandt.

Mr. ALBERT. No, sir.

The CHAIRMAN. He is substituting for Mr. Brandt.

Senator BARKLEY. I am just going by the calendar.

Mr. ALBERT. I am sorry, sir. I informed the chairman of the substitution.

In what I am about to say I do not in any way mean to impugn the integrity of this attorney before the board. I am merely stating a condition that exists there.

He represents the Big Eight in all of the suits against exhibitors for breach of film contracts, and he represents the Film Board of Trade. His partner, I believe, is house counsel to Paramount.

The members of the local clearance board and the grievance board are all appointed by the producer elements or the distributor elements. They all know this attorney, are familiar with him, and have the highest respect for his opinion and for his ability, as I also have. As a result of that connection with the Film Board of Trade, his presence there usually elicits a query from some member of the board as to what his opinion is of the particular case at hand.

During all of the time that I have appeared before those boards I cannot recall a single instance in which those boards handed down a decision contrary to the curbstone opinion of this attorney. I have objected repeatedly to his interjecting himself into the proceedings, and he has been sustained by each board in interjecting himself into those proceedings upon the theory there might be some interest, some right of a producer or a distributor affected by the case in hand.

As a result of that, I can generally say that this attorney, not actually and not physically, but figuratively writes the opinions for the lower boards.

Senator BARKLEY. Let us see just what you mean by that. If the man does not actually or physically or intellectually write an opinion, how can he do it figuratively?

Mr. ALBERT. Because they have such a respect for his knowledge of the industry, which I freely admit, and these men being business men, unskilled in the law, respect him so highly that when he gives an opinion with respect to clearance, overbuying, premature advertising or the like, I have found that they usually follow it. It might be that they reach an independent conclusion upon the subject, but I feel that they are very much influenced by his opinion.

That arises from a provision in the code which says that anybody who may have an interest in the proceeding can appear and take part in it. If that were eliminated and only the parties actually

concerned, complainant and defendant, were permitted to appear before those boards, that particular condition would be eliminated.

Senator BARKLEY. If a decision rendered between Bill Jones and Tom Smith is going to affect the general industry and others interested in the decision, it seems to me that it is proper that they should be given the right to appear. If it only means that the effect of the decision is going to be upon two people, one on one side and one on the other, then no outsiders should come in, but if it is such a decision as will affect the whole industry, it seems to me that everybody who has an interest in the result of that decision should be allowed to come in.

Mr. ALBERT. I fully agree with you, but in 90 percent of the cases where this element has been interjected, it has usually been only a dispute between the two parties, without any interest whatsoever of a producer or distributor.

I would like to point out one further thing, to show the absolute fear of the local clearance boards of the Big Eight, and illustrate by one case how this procedure operates.

Warner Bros. in Newark own the Goodwin Theater. The Rialto Theater is owned by an independent exhibitor. The Goodwin Theater had previously been permitted protection of 14 days on the Rialto Theater, which means that the Rialto Theater could not play a picture which the Goodwin Theater had played until 14 days have elapsed. That is known as "clearance." They learned that the Rialto Theater was about to bring a complaint before the clearance board protesting at this clearance.

Knowing that they could not sustain a clearance which had been given them by the various distributors, they immediately applied to the distributors and asked that the clearance be increased to 30 days, and by this maneuver, in appearing before the clearance board where the Rialto Theater was to now ask for a reduction of clearance from 30 days, they were in a better bargaining position, and the clearance board was given the opportunity of saving its face by reducing the clearance back to 14 days.

On the hearing before the clearance board, the Warner Bros., representative personally came in and admitted on the record that not a single element of clearance laid down by the code authority to determine how clearance should be fixed, was in favor of the Goodwin Theater. He admitted on the record that the Goodwin Theater, to use his own words, was a "can" in comparison with the Rialto Theater, and that the Rialto Theater was a deluxe theater. I then asked on cross-examination, "What element is in your favor? Why is it necessary that you have clearance over the Rialto Theater if the Rialto Theater is a deluxe theater and yours is a can; what is in your favor?"

And the answer was, "Well, if we are not given clearance over the Rialto Theater, we will have to close our door. We cannot compete with the Rialto Theater."

That is absolutely the most brazen statement that has ever been made before any clearance board as to why a clearance should be given. I have attempted on the part of independent exhibitors to argue that before clearance boards and have been shown the door and have been told, "Mr. Albert, we are very sorry, that is not an element of clearance. If you have to close your door, you have to close it."

Despite that admission, the clearance board permitted them 14 days' clearance over the Rialto Theater.

The eyes of every independent exhibitor is on that case.

We feel that we need a code. The code is the only thing that can clean up the industry, but if we are going to have a code of that kind, the independent exhibitors of New York will haul down their Blue Eagle and let the code authority do their darndest to force us to comply with the code.

The CHAIRMAN. The committee will recess until 2:30 o'clock this afternoon.

Mr. ALBERT. Mr. Chairman, I would like to present for the committee, the Darrow Board report on the motion-picture industry.

The CHAIRMAN. We have it.

Mr. ALBERT. I would also like to file this brief.

The CHAIRMAN. Yes, it will go in with your testimony.

(The brief is as follows:)

INVESTIGATION OF N. I. R. A.—SENATE FINANCE COMMITTEE

(In the matter of the Code of Fair C mpetition for the Motion Picture Industry)

BRIEF SUBMITTED BY INDEPENDENT THEATRE OWNERS ASSOCIATION, INC., OF NEW YORK CITY

STATEMENT

This brief is submitted by Independent Theatre Owners Association, Inc., of New York City, an organization whose members own or operate approximately 350 theaters in the metropolitan district of New York, representing an investment conservatively estimated at $150,000,000.

While the problems herein discussed and the objections made generally and specifically to the Code of Fair Competition for the Motion Picture Industry, hereinafter designated "Code", represent the experience of such independent exhibitors with the code in the metropolitan area of New York, the objections and criticisms herein made are pertinent and relate to the problems of independent exhibitors throughout the United States.

HISTORY

The Motion Picture Code, as authorized by the National Recovery Act, became effective December 7, 1933. The code does not represent the combined thought of the various elements comprising the industry, but was written and promulgated by the Deputy Administrator Sol Rosenblatt, when the various elements in the industry, producer, distributor, and exhibitor had found it impossible to write a code.

It is significant to note that of the more than 600 codes promulgated pursuant to N. I. R. A., the Motion Picture Code is the only one which embraces manufacturer, retailer and purchaser, in motion-picture terms, producer, distributor, and exhibitor. Despite the fact that the economic disharmony in the motion-picture industry is illustrated by the fact that 47 different groups submitted proposed codes, Deputy Administrator Sol Rosenblatt, when these groups could not iron out their differences, took it upon himself to force a code upon the industry.

The national-industry meeting took place August 8 in New York City, when Mr. Rosenblatt called a meeting and inaugurated the work of code drafting. To assist him in the drawing of such code, he appointed three committees. Sidney R. Kent, president of Fox Film Corporation, supervised the producer group and Charles O'Reilly, the exhibitor-distributor elements. Charles O'Reilly was appointed to act as the champion of the exhibitor, despite the fact that his predominant connection with the motion-picture industry is as the head of a company which sells candy-vending machines in theaters, the greatest proportion of the business of which is done with the large producer, exhibitor, and distributor-exhibitor companies. These committees were unable to agree on a code and

Rosenblatt selected September 12, 1933, for public hearings in Washington to attempt to iron out the difficulties.

Despite constant application to the task by September 25, Rosenblatt announced his conviction that it was impossible for the groups to reach an agreement and announced that he would write the code himself. The delegates were disbanded and dismissed and summarily instructed to return to Washington the following week, at which time Rosenblatt would announce his code.

One week later Rosenblatt announced his first draft of the code and immediately all independent elements, both producers, distributors, and exhibitors, broke out in open revolt thereat, refused to deal further with Rosenblatt and formed their own association. Rosenblatt announced his intention of revising the draft and on October 10, produced his second draft, which was practically identical with the first and was met with the same revolt. After continuous attempts to iron out the differences, Rosenblatt's code was promulgated, the major companies in the industry being the first to acquiesce to it.

OBJECTIONS

As will hereinafter more specifically be shown, the Motion Picture Code is designed to eliminate small enterprises engaged in the motion-picture industry, and tends to discriminate against them. It is designed to and in practice does promote a monopoly in favor of the large producers and distributors, popularly known as the "Big Eight." The "Big Eight" is comprised of Warner Bros., R. K. O., M. G. M., Paramount, Fox Film, United Artists, Columbia, and Universal.

It is earnestly urged that if the code is not amended the independent theater owner will force out of business entirely or else will be dominated and controlled by the large producers, distributors, and affiliated theater owners.

1. *Administration.*—The code functions through the code authority, which is the governing body of the whole industry and which, through its subsidiary administration, agencies, local grievance boards, and local clearance boards, passes upon and makes decisions and gives orders with respect to alleged violations of the code.

Obviously therefore, the local boards which hear complaints in the first instance, and the code authority to which appeals are taken from the decisions of the lower boards, should have as members, representatives from each division of the industry, producers, distributor, and exhibitor. The judicial tribunals of the code are packed with producer, distributor, and affiliated exhibitor groups and the independent exhibitor, who has no connection with producer or distributor as distinguished from an affiliated exhibitor, has not adequate representation on these boards.

Of the 10 members of the code authority, which is the supreme judicial body, the investigations conducted by the Darrow committee reveal, and the finding cannot be contradicted, that 5 represent the Big Eight and that of the remaining 5, only 2 were in no way connected with affiliated producers, distributors, and exhibitors.

The most damning indictment of the code is that its highest judicial tribunal, which appoints the lower bodies is not constituted as a result of election or selection of the members of the industry whatsoever. Upon what basis or by virtue of what authority these men were appointed to the code authority is not apparent.

An equally peculiar provision of the Motion Picture Code makes the code authority a self-perpetuating body which cannot in any way be changed.

By article II, section 2, paragraph D, of the code it is provided that upon the absence, resignation, ineligibility, or incapacity of any member of the code authority to act, his alternate is to be designated by himself.

By reason of this provision, the code authority appointed by the Administration will control all subsequent code authorities.

The unfair representation hereinabove pointed out will continue indefinitely since it cannot be open to question that the present members of the code authority, in appointing their alternates or successors will name someone from their respective companies or associations.

Not only, therefore, did the industry have no voice in the selection of the men to administer the code and to rule over them, but they have no right in the future to select the successors of these men.

The aforesaid article, section 4, permits the code authority to appoint committees, the members of which may include its own members or others not members of the code authority and permits the delegation to such committee of any and all powers possessed by it. Nothing in the code requires the code authority

in the appointment of such committees to see to it that each branch of the industry is adequately represented. As a result thereof, the committees which have been appointed in practice have had no independent members whatsoever, but in all events whenever an independent man has been present, he has been outnumbered on such committee or on any board by the inclusion of producer and distributor elements.

The matter hereinabove criticized and objected to arises from a fundamental fallacy upon which the Motion Picture Code, unlike any other code under N. I. R. A. is predicated. That manufacturer, retailer, and purchaser can be ruled by a single code. Such a philosophy of codification is incapable of doing justice to the purchaser in the motion picture industry, to wit, exhibitor. This arises from the fact that the producer and distributor are practically one in their interests. That both are naturally allies against the exhibitor, and the theoretical division of the industry into three branches by the code, actually results in a line-up of two elements protecting and advancing their own interests as against the third.

In addition, unlike any industry in the country which caters to the public at large, the motion picture industry is concentrated in the hands of eight producing and distributing companies, the "Big Eight." In the distribution of product and in making the same available to exhibitors, practice throughout the industry has shown that all of these companies make common cause against the independent exhibitor in order to protect the exhibition of motion pictures in their affiliated motion picture houses.

In no other industry, except in rare instances, does the manufacturer compete directly and aggressively with his purchaser. In the motion picture industry, through the chains of theaters set up by producing companies during boom times, theaters owned by producers who sell product to independent exhibitors compete for public favor with independent exhibitors to whom they sell their product. The provisions of the code are designed with the evident purpose of protecting and building up for the producer units these chains of theaters owned or affiliated with the producer. This is shown by the set-up of the administrative bodies of the code, as heretofore adverted to, and as will hereinafter be specifically shown by reference to the provisions and to what has actually been practiced under the code. The answer to how this was accomplished is a simple one keeping in mind the fact that the code was not agreed upon by the various elements in the industry, but was promulgated by Sol Rosenblatt, the deputy administrator. The code was promulgated not by members of the industry, but by Sol Rosenblatt.

Rosenblatt was charged with having deliverately and designedly fashioned a code which favored the producer-distributor elements in the industry as against the exhibitor, which extended the monopoly which they had in the production field to the exhibition field and which gave no protection therefrom to the independent exhibitor. This charge was predicated upon the fact that Sol Rosenblatt while actively engaged in the practice of law, was associated with the office of Nathan Burkan, who was a member of the board and attorney for Columbia Pictures Corporation and also a member of the Board of United Artists, both of whom are among the Big Eight. This bias and prejudice against independent exhibitors was admitted by Sol Rosenblatt in a meeting with independent exhibitors.

It is significant to note that not a single note was taken of any of the hearings before the Administrator of the matters which were discussed and that upon one occasion, when an independent exhibitor's attorney attempted to take notes, the Administrator refused to proceed with the hearing.

The Darrow committee found as a fact that Rosenblatt was prejudiced and biased and recommended that he be removed. Rosenblatt was given every opportunity to answer the charge against him and was twice present before the Darrow committee, but refused to testify.

The stranglehold that the Big Eight have upon the code authority and upon the industry is amply demonstrated by the fact that despite this finding and recommendation of the Darrow committee, no further investigation of the qualifications of Mr. Rosenblatt was ever had by any authority and Mr. Rosenblatt is today still the head of the Motion Picture Industry Code.

Another salient feature demonstrating the favoritism and partiality shown to producer and exhibitor is the fact that there is no provision in the code whatsoever, for the punishment of producer or distributor who violates any provision of the code, where an exhibitor is injured, but yet on the other hand, if exhibitor is found guilty of a breach of the code, the code authority has the right to order producers and distributors to refrain from supplying him with product, which means he must close his theater.

UNFAIR PRACTICES

1. *Forcing shorts.*—One of the most detrimental practices in the industry, costing exhibitors millions of dollars without any return whatsoever, is the practice indulged in by the "Big Eight" of forcing the exhibitor to purchase an exorbitant amount of shorts before they will sell him feature pictures.

A well balanced program in a motion picture theater will consist of one or two feature pictures, a short educational picture, a newsreel, and in addition perhaps, a short comedy. The latter three types of pictures are denominated shorts in the industry, and are usually one real or two reels in length. All of the major producers, in addition to their feature length pictures, make shorts. The practice has grown up in the industry indulged in by all of the Big Eight to refuse to sell their feature pictures unless the exhibitor also purchases their shorts.

It must be kept in mind that a motion-picture exhibitor has only a definite and fixed time and medium for the releasing of his product. Unlike a merchandise retailer, he cannot enlarge his premises to provide for additional stock, nor can he store merchandise and gradually eliminate the same. His product changes at most three times a week and in most cases only twice a week, and the time element involved permits him to exhibit in one show, one or two features and two or three shorts. By reason of the uneconomic practices in the motion-picture industry, which are a byword to the public, the production of shorts in the industry far exceeds the capacity to exhibit in theaters.

As a result, by each producing company insisting that an exhibitor to obtain features must purchase shorts with them, the anomalous situation is presented of an exhibitor being forced to buy so many short subjects and newsreels that he cannot possibly exhibit the same, and despite having to pay for them, is unable to use them.

The records demonstrate that exhibitor after exhibitor has been forced to purchase hundreds of shorts which he cannot possibly play. This additional burden is not placed on the theaters owned and operated by the producing companies or upon the chains of theaters which are affiliated with them. Not only does this practice increase the overhead of the independent exhibitor, but it also makes it impossible for the independent exhibitor to purchase shorts from the independent producer. It is manifestly unfair to the exclusive producer of short subjects who has no feature pictures to sell, since obviously when the time card of the exhibitor is filled by short subjects purchased from the Big Eight, he cannot possibly purchase shorts from the independent short producer. Thus, by this practice, both the independent exhibitor and the independent producer are injured.

This evil was too prevalent and too well known to be passed over by the framer of the code. In recognition of it, article V, section D, part 5 of the code was enacted, which provides that no distributor shall require as a condition for the purchasing of features that the exhibitor purchase a greater number of short subjects in proportion to the total number of short subjects required by such exhibitor than the proportion of the feature pictures bears to the total number of feature pictures required by the exhibitor.

The provision, does not more than recognize the existence of an evil and in no way remedies the same. In the first place, it exempts newsreels from the operation of the provision and practice has shown many exhibitors overstocked in newsreels having been forced to purchase four to five newsreels from different companies. With respect to this type of short, the evil is even greater since only one company's reels can be used under any circumstances, as they usually cover the same important news points. In addition thereto, the provision is impractical in requiring the revelation by the exhibitor of the contract which he has with other distributors and involves the necessity of intricate mathematical computations in order to reach a result.

That any such condition and burden should be imposed upon an exhibitor is self-evident manifestation of the unfairness of the provision and of the partiality toward the producer distributor. Under all circumstances, the provision still allows the distributors to force upon the exhibitors more short subjects than they can use.

The attorneys representing the Independent Theater Owners' Association of New York City, have since the institution of the code handled in the neighborhood of 150 cases for independent exhibitors, all of which involved this very practice in the industry. The distributors are still forcing shorts and these cases all arose by reason of the shorts forced upon him and his inability to pay for them.

This arises first from the impractical nature of the provision with respect to shorts, and secondly, by reason of the fact that there is no punishment contained

in the code in the event that a distributor disobeys this provision. Upon contracting for features, the exhibitor is told exactly what he was before this provision was enacted in the code: "Buy our shorts, or you can't buy our features." Out of these 150 cases, every single one was settled with the distributors and not a single one has gone to trial since the code has been enforced by reason of the inability of the independent exhibitor to antagonize the distributor.

Statistics reveal that out of 1,020 complaints tried before the grievance boards in the first 8 months operation of the code, only two complaints were filed complaining with respect to forcing shorts. This undoubtedly is due to the well-founded belief that no relief can be obtained from the code by reason of any such complaint, because of the nature of the boards as heretofore referred to.

It is significant that both these complaints were dismissed. Although counsel for the independent theater owners of New York have vigorously prosecuted and defended many cases before the grievance board and the clearance board of New York, and, as before stated, have defended approximately 150 court cases, all of the subject of forcing shorts, it was thought a waste of time to bring any of these to the attention of the code authority in New York.

Only one provision can remedy this evil in the industry. An absolute prohibition against any requirement that an exhibitor be forced to purchase shorts in order to receive features from a distributor and the levying of severe punishment upon any distributor who refuses to abide by such provision.

PERCENTAGE BASIS AND PREFERRED PLAYING TIME

The independent exhibitors protest against a custom which had been slowly developing at the time of the formation of the code and which has been now sanctioned and aided by the code. The custom has slowly grown by which a distributor leases pictures on a percentage basis, providing that a percentage of the gross receipts of an exhibitor shall be the rental for a picture and also providing a minimum guaranty.

The records in the industry will show that for subsequent runs of a motion picture, independent exhibitors pay a much higher percentage than do affiliated exhibitors, an independent exhibitor paying at times as high as 35 and 40 percent of his gross receipts for a picture. This, taken with his flat rentals, for the other pictures on his program, leave him practically nothing as his profit.

As if this were not bad enough, superimposed upon this custom, distributors now demand that such percentage pictures which are usually the best pictures, be given preferred playing time—usually Saturday or Sunday. This actually nets the distributor an even greater return, by reason of the fact that these 2 days are equal to two or three times the value of the other 5 days in the week as far as receipts are concerned.

Another evil of this practice is that it forbids in many cases the independent exhibitor showing these features to the best advantage. Many exhibitors would prefer to play these exceptional pictures during the week in order to attract patrons who might not otherwise attend and play their other pictures on Saturday and Sunday when they did not need such strong pictures to attract their customers.

In addition thereto, a great many of the pictures released by the distributing company on this basis cannot be played on Saturday and Sunday ordinarily, by reason of the great number of children which attend the movies on Saturday and Sunday and for whom these pictures are not suitable.

By this provision, the control and operation of his theater is taken out of the hands of the independent exhibitor and placed in the hands of the distributor. This provision also works a hardship on the independent distributor, who may have a worth-while feature but who cannot have it played on these preferred days since the Big Eight monopolized them.

This provision of the code, article V, part 9, should be entirely eliminated as being solely for the benefit of the distributor and to the actual detriment of the exhibitor.

Not satisfied with permitting a distributor to determine when a picture shall be played, the code also permits the distributor to force the exhibitor to charge a certain admission price for a particular picture.

Article V, subdivision E, part 3, section 1–B, forbids an exhibitor from lowering the minimum price of admission specified in his contract with respect to a particular feature. Patently, this permits producers and distributors to force an exhibitor to raise his price of admission for a particular feature.

Aside from the injustice of any regulation of the exhibitor's business by the distributor, it is generally the custom for a theater to have a special scale of admission and since his admission price obviously would never be lowered by

the license contract, the provision would undoubtedly alienate many of his patrons who would object to paying an increased price over the ordinary scale of admission to see a successful picture. The result sought and which has actually been accomplished is to induce patrons to see the picture in the first instance at the higher price affiliated theater.

REBATES

A provision aimed directly at the independent exhibitor is section 2 of article V, subdivision E, part 3. This section forbids an exhibitor from attracting patrons by giving gifts to him.

It is usually the independent exhibitor who thus attempts to attract patrons to make up for the fact that he is forced to play pictures after they have been played at the affiliated theater in his neighborhood.

Independent exhibitors protested vigorously against any inclusion in the code of any such provision, and by virtue of such protest and realizing how patent was the intent of the provision, the propounder of the code provided that such provision shall only be effected in the vent that 75 percent of the exhibitors in a territory consent thereto.

It is worthy of note that this provision is practically a nullity, since so very few territories, if any, have consented to its enforcement.

PUNISHMENT

Is it not queer that with all the injunctions and prohibitions placed upon producers, distributors and exhibitors in their mutual relationships, that the only provision in the code providing punishment for disobedience should provide such punishment only in the event of its disobedience by an exhibitor.

In addition thereto, the punishment is so excessive as to be confiscatory and to bludgeon exhibitors into obedience of the code for fear of consequences. As an example, if an exhibitor fails to comply with his contract with the distributor calling for a certain admission price, by article V, subdivision E, part 3, section 3, the local grievance board may prohibit distributors not only from selling him pictures in the future, but from delivering to him the feature to which he may be entitled under existing contracts.

Called upon to defend himself before a board packed with producer and distributor interest, and if containing an independent exhibitor, one who of necessity is in competition with him, what chance has such vidating exhibitor of receiving fair treatment.

This section should absolutely be stricken from the code. It is there only as a weapon to distributors and for no other purpose. It is believed that this section has never been made use of, since it obviously is vilative of the constitutional rights of a defendant. However, when and if used, is capable of such swift execution and such vast injury that its presence is a potent threat against and exhibitor forcing him to comply with the code provisions.

The attorneys for the Independent Theater Owners of New York City, when forced to do so, have defied the local boards to exercise the authority given by this section, but it is also known that many independent exhibitors who belong to no association, appear before these boards without counsel and terrorized by this provision, have complied with the code rather than permit the closing down of their theaters for the period of time which it would take to obtain an injunction in the courts against the use of this weapon, at an expense far greater than the cost of complying with the provision.

PREMATURE ADVERTISING

A section of the code which is aimed solely to protect that affiliated exhibitor is article V, subdivision (E), part 5, providing that no exhibitor shall advertise the exhibition of a motion picture prior to its exhibition by any exhibitor who shall have the right to play the picture before him. This section is obscure, and in practice at least the local grievance board in New York has had a very difficult time in attempting to exactly interpret its meaning.

In practice, this section has been used by affiliated exhibitors—in particular, Loew's—to harass independent exhibitors who indulge in the practice of advertising films in a manner that has been recognized since the inception of the industry. No better criticism of this section can be here given than to incorporate the minority opinion of one of the members of the grievance board of New York, William Yoost, in a complaint brought by Loew's Rio against the Heights Theatre for premature advertising. The opinion follows:

"CASE No. 80

"AUGUST 16, 1934.

"*Loew's Rio* v. *Heights*, in the matter of premature advertising.

"It is my belief that this provision of the code is harsh, unfair, and works a particular hardship upon independent exhibitors who run subsequent run pictures.

"The practice of advertising 'coming films' at any period of time has been a long-established custom in the industry, acquiesced in and engaged in by all alike, and recognized as one of the fair methods of competition. The lot of the subsequent run exhibitor in attracting patrons is difficult enough without imposing the burden upon him or attempting to attract patrons solely by informing them on the spot of the immediate picture playing at the theater.

"However, the greatest inequity and hardship of the section is the favoritism it unwittingly permits to the large chain theaters. This arises by virtue of the fact that the first-run theater in a large chain can waive, and it has been brought out in this case that in the case of Loew's has waived the provisions of this section as against the violation thereof by its own subsequent-run theater. In this manner the subsequent-run theater of a large chain is permitted to unfairly compete, by premature advertising, and have an undue advantage over the independent exhibitor who competes with said subsequent-run exhibitor.

"It may be that in other parts of the country this particular section can work more equitably, but in the metropolitan district where clearance is very short and where chain and affiliated exhibitors bitterly compete with independent exhibitors, each soliciting the same neighborhood, the section is incapable of working justly.

"The result will be and has been that it will be honored more in the breach than in the observance, which will tend to a disrespect for the code generally with the attendant evils thereof.

"It is respectfully submitted that this section should be stricken from the code, or considerably modified in its application and that in all events the exceptional situation existing in the New York metropolitan district should be taken into consideration by the section.

"Respectfully submitted.

"WILLIAM YOST."

As pointed out in this opinion, a relative advantage is given to the affiliated exhibitor, since one theater in the chain may waive this provision with respect to another theater in the chain, thus permitting this second chain theater to advertise while prohibiting the subsequent run independent theater from advertising.

It is respectfully submitted that this section should also be eliminated from the code.

CLEARANCE

The most vital and important element in the success or failure of a motion-picture theater and the greatest source of revenue to a theater is its ability and right to display motion pictures as soon as possible after their release. The industry is run on the proposition that the finer theaters have the right to play the pictures first, and the inferior theaters later.

This differential in playing time, before the inception of the code, was known as "protection." The de luxe house ostensibly paying more for the films, charging a higher admission price and having finer appointments in the theater received the films first for exhibition. Its contract provided that the house competing with it should not be permitted to play such films within a certain time after he shall have completed playing the film. Therefore, the second run of a picture had to wait 7 days for the film, and subsequent runs were set back accordingly. The greater the length of time that an exhibitor could play the picture ahead of his competitor, necessarily resulted in greater profits to such exhibitor, for it is undisputed in the industry that the public will go to the theater first playing a picture, no matter what the condition of the theater, rather than wait to see the same picture later on at a finer house.

Under such circumstances, before the inception of the code, affiliated exhibitors by reason of their association with distributors and producers gradually widened the amount of protection given to them until the independent exhibitor was forced to play a picture weeks after the affiliated exhibitor. Affiliated and large circuit theaters were able to secure such protection against subsequent run theaters as resulted in the independent exhibitor having to wait to show pictures until all affiliated and circuit theaters in his particular neighborhood had shown such pictures, this despite the fact that statistics reveal that in a great number of cases, the independent exhibitor had the finest house in the section.

Before the inception of the code, the only relief which was obtainable by independent exhibitors—and which relief was in certain cases obtained—was to sue civilly to reduce such protection upon the ground that the producers and distributors were acting in conspiracy with affiliated theaters.

Independent theater owners subscribed to the code mainly by reason of the fact that on its face it seemed to attempt to remedy this situation. By reason of the publicity to which the code would be subject, and again demonstrating the leaning toward producers and distributors, the harsh word "protection" in referring to this situation was changed in the code to "clearance."

The only solace that the independent exhibitor could get from the code was the anticipation that the clearance boards would clear up this situation. In actual practice, however, the situation has become even worse than it was before. By reason of the fact that the code authority is not representative of the exhibitor, but is dominated by producer-exhibitors and distributor-exhibitors, by virtue of which the voting strength of these boards is marshaled in the interests of those directly opposed to the independent exhibitor, the independent exhibitor has been able to get no relief before these boards.

It is an open secret in the city of New York—and many members of the clearance board in New York will not deny it—that an independent exhibitor can obtain no relief from unfair clearance given an affiliating exhibitor.

The most flagrant example of what the independent exhibitor must face who appears before a local grievance board is manifest in the case of the Rialto Theater in Newark against Warner Bros.' Goodwin Theater, now on appeal to the code authority, being Appeal Case No. 379. In that case it is unnecessary to go into the facts, by virtue of the brazen admissions made by Warner Bros. at the trial of the case. The theaters are within 2 blocks of each other and are competitors. Each charges the same admission price. Warner Bros., at the trial of the case before the local grievance board, admitted that the Rialto Theater was a de luxe house in comparison to its (Warner's) theater and that its theater was a "can", to use the words of the Warner Bros.' representative. Said representative also admitted that every element laid down by the code authority for the fixing of clearance was in favor of the Rialto Theater. Warner Bros. claimed that by virtue thereof, unless its theater was given protection over the Rialto Theater, the Goodwin Theater would have to close its doors.

The Rialto Theater was opened by its operators after having previously been closed for some time. When it was opened, the Goodwin Theater was given 14 days' protection over it. Learning that the Rialto Theater intended to file a complaint against it, the Goodwin Theater asked the distributors for 30 days' protection, and despite the fact that no such protection between two theaters was anywhere existent in New Jersey nor had ever previously been given, such protection was granted to Warner Bros. upon its demand. It is obvious that 30 days' protection was asked for in order to place Warner Bros. in a bargaining position with the clearance board, and to enable the clearance board to save its face and reduce the protection. Despite the fact that no element of clearance was in its favor, the clearance board voted to grant 14 days' protection to the Goodwin Theater.

While it may be unbelievable, a representative of Warner Bros. sat upon the board in judgment of a case in which Warner Bros. was involved, over the objection of the Rialto Theater. That Warner Bros. wanted to maintain only the 14-day protection is manifest from the fact that this representative of Warner Bros. concurred in the opinion. The decision of the local board is incapable of comprehension, though its bias and prejudice is manifest by virtue of the fact that when Warner Bros. owned both the Rialto and the Goodwin, the Rialto had protection over the Goodwin.

The only reason that can have permitted the local clearance board to render this decision is the fear of the members of said board that to remove this protection from Warner Bros., Goodwin Threater might result in retaliatory measures by the powerful Warner Bros. circuit or producing company.

Another flagrant example of the strangehold which producer-exhibitors and affiliated exhibitors have on the code and the industry is evident from the following:

The Scarsdale Theater in Westchester County was erected at a cost of $470,000 and is a deluxe house. This theater is 10 miles from New Rochelle, 6 miles from White Plains, and 10 miles from Mount Vernon. The theater charges admission prices higher than the affiliated circuit houses in these cities, by virtue of the fact that it caters to the very exclusive clientele which resides in Scarsdale, a wealthy suburb of New York. Despite that fact, this theater is forced to purchase film

and to give protection to the Loew and R. K. O. houses in these cities and to other affiliated exhibitors' hours which are as far as 16 miles from the Scarsdale Theater. The house is so fine a house that it is enabled to provide automobile service for such of its patrons as request it.

Despite the evident superiority of this theater, however, it is forced to play pictures after the Loew and R. K. O. houses, in order that the inferior theaters operated by these affiliated exhibitors might have their revenue enhanced by being permitted to play pictures at the earliest opportunity.

The provision in the code providing for the fixing of clearance between theaters is a good one, if in practice the true purposes were enforced and carried out. The actual result, however, has been to inspire in independent theater owners a contempt for the code and a disinclination to have anything to do with it. Future assent of independent exhibitors to the code is dependent solely upon a fair and just application of the provisions with respect to clearance. This cannot be in the least assured if the present set-up of these boards is to be continued.

APPEAL

A provision of the code which upon first reading seems eminently equitable and fair is article VI, part 1, section 7, which provides that on appeal from a decision of the clearance board the parties may present additional evidence. In practice this has worked to the complete disadvantage of the independent exhibitor. In every case the independent exhibitor, cognizant solely of the facts with respect to his own theater, has exhausted his evidence before the local board. Upon appearing before the code authority to argue his appeal, he is usually met with a great barrage of additional evidence and facts amassed by the affiliated exhibitor which he has had no opportunity to contest or prepare for.

This provision in the code is unique in the extreme, in permitting additional evidence to be presented before an appeal body. Its utter and obvious unfairness is apparent with respect to exhibitors located far from New York, where the code authority meets, who travel perhaps thousands of miles to argue their appeals, only to find that they must combat additional evidence not submitted below.

It can safely be said without fear of contradiction that affiliated exhibitors have designedly taken advantage of this provision to hold back evidence before the local boards, since the decision is stayed pending appeal.

MEMBERSHIP OF THE BOARD

Article VI, part 2, section 6, provides for the appointment by the code authority of the members of the local boards. It provides that the local boards shall consist of 2 representatives of distributors, and 2 representatives of exhibitors—one an affiliated exhibitor and one an independent exhibitor—and 1 person representing the code authority, not connected with any branch of the motion-picture industry.

Inasmuch as the distributors' interests are identical with those of the affiliated exhibitors, the set-up of the board results in actual practice in a vote always 3 to 1 against the independent exhibitor. The insurmountable difficulty of the independent exhibitor in obtaining a favorable decision from a board so constituted is obvious.

PARTIALITY TO AFFILIATED EXHIBITORS

Article VI, part 2, section 7, of the code demonstrates beyond cavil the preference and partiality shown by the proponents of the code to the affiliated exhibitor. This section prevents an exhibitor from making any complaint to a local grievance board arising from the fact that a distributor has licensed its own motion pictures to a theater under its own operation. Thus, if a distributor in licensing its pictures distinctly, deliberately and confessedly favors its own theater, even unfairly, the independent exhibitor has no redress. There is no rhyme nor reason for such a provision in the code except to unduly and illegitimately protect the affiliated exhibitor.

FUNCTIONS OF THE BOARD

Article V, subdivision (E), part 4 of the code provides that no exhibitor shall transfer the ownership or possession of a theater or theaters operated by any such exhibitor for the purpose of avoiding uncompleted contracts for the exhibition of motion pictures at such theater or theaters, and that any disputes or controversies with respect to any transfer shall be submitted to and determined

by the local grievance board and the findings of such board shall be binding upon all parties concerned. The weaknesses of the code in attempting to codify all matters with respect to producers, distributors, and exhibitors are manifest in this section.

In elementary form, this section provides that an exhibitor may not make a fraudulent transfer of his theater or theaters to avoid his film contracts—yet, as shown by the foregoing, after making such transfer his act will be passed upon by producers and distributors so affected or most likely to be affected by such transfer. Such an act as here prohibited is one of the most difficult to prove in a court of law; and yet such power is given to biased persons in the industry.

Attorneys for the independent theater owners of New York found it necessary to defend an independent exhibitor on such a charge. The only evidence that was submitted was the oral testimony of the attorney for the distributor, who testified to what his beliefs were and to the bare facts showing change of ownership of a theater from one corporation to another. Over protest of counsel at such a travesty of justice (the records of which are available to this committee) the local board found the independent exhibitor guilty of such transfer. On appeal the finding was sustained.

In a court of law, voluminous briefs as to the legalities of the use of the corporate structure would have taxed a judge to determine the merits of the case—and yet, after a short presentation which would constitute a summing-up in a court of law by the attorney for the distributor, the independent exhibitor was branded as a fraud.

The counsel herein advised the exhibitor to completely ignore the decision, and upon information and belief nothing has resulted from such decision.

The matter is mentioned for two purposes: First, to demonstrate another bludgeon which has been placed in the hands of producers and distributors; and second, to show the type of proceedings before the local boards.

Words cannot describe the conduct of these proceedings. Anything that a witness may wish to say is permitted to be presented before the board. All evidence of any kind, nature, or descriptions—however irrelevant, flimsy, or inferential—is permitted to be presented. But the most outstanding abuse which is prevalent in the New York local board—and which probably is also true of other local boards—arises from the following statement of facts:

An attorney who represents the film board of trade (the Big Eight) is present at practically every hearing before the local clearance and grievance boards. Literally, he is counsel for all of the members of the boards, by virtue of his relationship with their companies. On practically all cases his advice is asked for and given; and his opinion in cases which do not directly involve affiliated exhibitor against affiliated exhibitor or distributor against producer is taken without question or qualification.

By no means is this meant to convey that this attorney attempts to influence the board or force his opinion upon it; but by virtue of his knowledge of the industry, his connection with the Big Eight and his probity and the respect which is felt for him by members of the board, his opinions are taken as matters of law.

It was this attorney's "testimony" that resulted in the decision with respect to the transfer above referred to, which, if given by any other attorney, would have received no weight whatever, as being hearsay. Upon objection being raised to his interjecting himself into practically all cases, the answer is that distributors and producers are concerned in all cases and have a right to be heard as they may be affected.

The code should be amended to provide that only such parties may be heard as are actual parties to a complaint.

THE RIGHT TO BUY

One of the most important problems of the film industry, which is in no way treated in the code, is the right to buy. The motion-picture business is the only one in which persons of creditable standing, with large investments and unimpeachable finances, are unable to purchase products necessary in the conduct of their business.

The existence of this situation was recognized and continually discussed at the preliminary code hearings. The neglect to in any way refer to it, perhaps more than anything else, reflects how much the code is producer-inspired. That this situation exists, attests to the monopoly in the field of the Big Eight.

To propose as a code, which has as its philosophy purported attempt to impose conditions which shall insure fair competition without even treating of this sub-

ject, is farcical. It must be admitted that a remedy for this situation makes necessary a revision of the present sales methods and policies of distributors and producers, but that is precisely the purpose of the code.

BLOCK BOOKINGS

An evil in the industry so patent and so obviously wrong as to have been the subject of public comment and censure by organizations of patrons is block booking. By this practice, an exhibitor is forced at the beginning of the season, without any knowledge whatsoever of the type of picture he is purchasing, to contract for the entire output of the distributor for that season. As a result, an exhibitor is required to purchase from 40 to 60 pictures from a distributor; and by reason of the excessive cost, must play these pictures, whether they be good or bad.

Aside from the fact that this violates every principle of bargaining and adequately demonstrates how much at the mercy of the distributor an exhibitor is, the short-sighted continuation of this particular practice has led to injury to the producer and distributor branch also.

Confident that an exhibitor must of necessity blindly buy his entire product, producers have been able to cater to any of their whims in the production of pictures, with the result that the quality of pictures, except in rare cases, has fallen to mediocre level. The best evidence thereof is the fact that even so enormous an inertia and apathy as exists in the American public was finally aroused and led to the formation of the Legion of Decency as a weapon to enforce the improvement in the quality of motion pictures.

This problem was handled with the same clever psychology as all others were in the code, where advantage to a producer had to be maintained but where some gesture had to be made to the exhibitors. Instead of the content of the applicable provision (art. V, subdivision F, pt. 6) declaring that an exhibitor must continue to buy all the product of a distributor, and without using the opprobrious term "block booking" the writer of the code worded the section in such a manner as to create an impression that exhibitors were getting a great boon in being permitted to cancel 10 percent of the pictures which they had purchased.

The section in question permits an exhibitor seemingly to eliminate 10 percent of the product contracted for, but only upon so many conditions that the permission is practically valueless.

The first condition, dear to the heart of producers, is that the exhibitor must have purchased all of the product. In this manner block booking is assured and perpetuated. Second, before he can avail himself of the privilege, he must first prove that he has fully compiled with all of the provisions of the contract. Thus another aid is given to the producer, in that the film board of trade is constituted a collecting agency to insure an exhibitor paying for his product.

In addition, the privilege is extended only to exhibitors whose film rentals average $250 or less per picture. This insures the "benefits" of the clause to the smaller independent houses, but denies it to the larger independent houses who pay more for film and who actually compete with the affiliated theaters. Thus are perpetuated the advantage of producer and affiliated theaters.

Since all 60 pictures of a distributor are not released at once, but seriatim, the remaining condition of the privilege, that 1 in 10 may be eliminated as released, practically nullifies the whole privilege. Out of the first 10 pictures released by a distributor, 3 may be in the class which an exhibitor might seek to eliminate: yet by the code, he can only eliminate 1. He is therefore forced to play the remaining

Only one provision can adequately protect the exhibitor and also protect the producer from his own folly—an entire elimination of the necessity to book the total output.

LABOR PROVISIONS

That the drafter of the code is concerned only with great and powerful interests and their protection is evident from the provisions of the code dealing with labor, and particularly that section thereof as refers to the employees of exhibitors, article IV, subdivision C.

The code sanctifies the American Federation of Labor and fixes as the standard of wages and hours that which exist in the American Federation of Labor unions in particular territories.

This one section of the code has cost exhibitors, since its inception, hundreds of thousands of dollars, not only in salaries but in damage to their theaters, by reason of the terroristic activities of the American Federation of Labor unions in seeking to enforce this provision of the code. In New York City the theaters

of the independent exhibitors have been the battleground of three different unions, contesting for supremacy in the field.

With the New York situation in mind, a section was written into the code, intending to provide that a scale should be fixed in the city of New York by arbitration. In the 2 years since the code has been in force, no such scale has been fixed.

Fearful of the power of the American Federation of Labor and contrary to his express promises to the independent exhibitors and to the very intent of section 6–B of the article, Sol Rosenblatt, by cryptic and deliberately evasive language, has muddled the motion-picture-operator situation in the city of New York beyond cleaning up.

Local 306 of American Federation of Labor in the city of New York is a racketeering union, whose terroristic activities have been repeatedly enjoined in the courts of New York State. By reason of these activities they have successfully forced upon the New York territory in a great number of theaters the principle that the operation of a motion-picture machine requires the attendance of two men at one and the same time. This was accomplished solely for the purpose of swelling the coffers of the union by reason of the increased possibility of assessment and taxation upon the members who obtained excessive salaries by virtue of this overmanning of the booths.

Despite the facts that riots have occurred, that theaters have been bombed, that persons in the industry and the public at large have been assaulted, the code authority has done nothing to remedy the situation. Despite the fact that the matter has been called to the attention of the Department of Justice, nothing has been accomplished toward bringing the racketeering elements in 306 to justice. This, although the American Federation of Labor has twice found it necessary to remove two different presidents of the local when the books of the union showed with respect to each that millions of dollars were unaccounted for.

The instant matter would, of itself, require a full brief for proper explanation and enlightenment. The independent exhibitors of New York have successfully been able to resist the guerrilla tactics of local 306 without any aid from the code authority or from the police force of the city, State, or Nation, and will continue to do so. They will continue to resist such terroristic activities with the weapons at their command, having long since given up any hope that help would be forthcoming from city, State, or Federal police commissioners who take orders from politicians, who must look to the American Federation of Labor for votes to continue them in office.

CONCLUSION

The foregoing brief intends only to call to the attention of the committee the malodorous provisions of the code, its sympathy with the "big eight", and the big American Federation of Labor. To adequately cover all the various phases herein contained would require a brief far beyond the scope of this hearing.

The only praise that can be given to the code is that it has solidified independent exhibitors throughout the country by clearly showing to them that their very existence is threatened by the "big eight."

Unless relief is granted to independent exhibitors, it is predicted that within a short time thousands of independent theaters throughout the Nation will be forced to close their doors.

It is again respectfully pointed out that the evils herein complained of are not the result of hindsight, not a realization that provisions of the code were faultily or mistakenly drafted (for the code is the work of Sol Rosenblatt and not the industry). All of these evils were pointed out to Sol Rosenblatt in a brief submitted to him by the independent exhibitors and the predictions made in such brief have been borne out in practice.

The future of the industry rests with this committee.

Filed herein is a copy of the proceedings and of the report of the Darrow committee. Despite the protests of the independent exhibitor having been sustained by the Darrow committee and recommendations made with respect thereto, the report of the Darrow committee has resulted in no cure or even attempt to cure the vices shown.

It is urged that since this committee is a legislative body and not a political appointment, that if the contentions of the independent exhibitors here set forth are sustained, that this committee militantly act to remedy the same.

Respectfully submitted,

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Attorneys for Independent Theatre Owners' Association, Inc., of New York City.

MILTON C. WEISMAN,
MELVIN A. ALBERT,
Of Counsel.

(Whereupon, at 12 noon, a recess was taken until 2:30.)

AFTER RECESS

(The hearing was resumed at 2:30 o'clock in the committee room of the Committee on the District of Columbia in the Capitol Building.)

Senator BARKLEY. The committee will come to order. Is Mr. Harrison present?

TESTIMONY OF ROBERT E. HARRISON OF PHILADELPHIA, PA.

(The witness was first duly sworn by Senator Barkley.)

Mr. HARRISON. I took oath, I think several times, to defend the Constitution against all of its enemies, and I feel that time has arrived when I must try to fulfill that oath.

The history of this country shows that it has been built up upon the individual initiative and strength of character; that our Constitution grants everyone born the right to exercise this initiative, no matter how poorly born from a material standpoint, to rise to the greatest of heights.

That due to the influx of the lower classes of European immigration, which were and are unfit to irk out an existence in their native country and realizing the advantages to be derived from this country have brought with them the contamination of the mistakes of European ideas.

We have only to look at the dole system of England and its effects. We have only to look at Switzerland with its labor laws (which are very similar to the N. R. A.) which leaders generally are agreed is the cause of the stagnation of Switzerland, and which you are endeavoring to enact today.

Can we not, therefore, take serious consideration of and profit by the mistakes of these older countries. Instead of allowing them to drag us down to their level, we should strive to maintain our high American standard of liberty and living conditions.

That the psychology of the N. R. A. is toward a form of degeneracy.

The following observations are personal views of not only myself, but of other small manufacturers and are based upon close association of our businesses, which with others, we believe to be the foundation of this country.

I am a patriotic citizen and a veteran, and I do not want this country to go to socialism, fascism, or a dictator. I am for a country of law and order with justice to all. My views of the N. R. A. are briefly as follows:

The N. R. A. is a class legislation in that it favors one class of labor over another class.

That there are many small business men who are just able to keep the doors open without the sheriff walking in.

That he, through his native American ideas was able to save a small amount and start business in a small way and gradually grow according to his ability and that his reward for developing a strength of character was the success that he achieved.

Today, the N. R. A. wants every worker guaranteed a certain salary, no matter as to his ability, his initiative, whether he be lazy or ambitious, careful or careless in his work and these workmen can go out after receiving their pay, waste it and have no sense of responsibility.

Whereas the small business man is not guaranteed a drop of ink on a piece of paper. He gambles with his life's savings, he is a man of repute and responsibility. I am safe in saying that 80 percent of the small business men of this country today do not feel justified in taking any extra money above the absolute need of existence. They are not given consideration; in fact my observation has been that because he is a business man, he is an oppressor of the poor and the downtrodden workman and many other things not fit to mention just because he is part of the class of people who make up the backbone of the country and because he is not a waster and spendthrift but has ambition, and it is that ambition that is making this country the leading country of the world.

He, having invested his earnings, is not guaranteed one cent of return on his money. He is not even guaranteed one penny of a living wage. He sends his goods out (which is another form of money) depending upon the moral responsibility and honesty of the man he ships it to, that it will come back to him in the form of money. Those in favor of the N. R. A. say he is to be paid within 30 days or 60 days according to the form of the different codes. Is it being done? I say no!

One man is asked to sign he compliance agreement. Different threats were made if he did not. When he told the man he was talking to that he would consider signing it if they investigated the facts that he could lay before them; that his competitors, the biggest one in the industry were permitting their salesmen to give out graft in order to get business, the man replied that that was none of his business and that he had nothing to do with it, but still one business man was only asking for protection to enable him to comply with the so-called "regulations."

I mentioned in the prologue that the N. R. A. is leading to a form of degeneracy. At the same time I wish to quote from the Scripture "that every man be paid according to his hire or worth."

This is from actual talk with different workmen and is not imagination. One man takes a pride in his work, is ambitious, wants to make more money to buy some of the luxuries of life for himself and family. As in the case of one instance, a boy has an invalid mother, of whom he is the sole support. The boy has initiative, is ambitious and a hard worker, and also a willing and cheerful worker. Under the N. R. A. he is put to work on a certain job and due to these characteristics produces 50 percent more work than 2 or 3 others doing the same work. The employer would like very much to raise him and encourage him, but can this be done? No; because it would breed discontent among the others; at the same time the others feel that the boss is oppressing them while his cost is based on a certain production and when it does not come up to that it must average itself out. The boy has talked with the employer, is naturally disgruntled and says "what the hell's

the use", he might as well do as many others are doing, go on the relief for all the appreciation that is shown. Here is a boy that has an aptitude, for his work is a valuable adjunct to the small business and would develop into a valuable employee.

This is just an illustration out of many noted, but all of which have the same effect.

Quite a number of business men feel that inasmuch as they are not given consideration and are being the scapegoat, that they also feel "what is the use of trying to develop a business and not even being able to take home as much as some of the employees receive" and with the cloud hanging over his head that he is a potential criminal.

You might ask "why couldn't he"? You have the general overhead to pay, the volume of business done is not sufficient over and above the marginal profit that can be made over labor and material cost. The orders are small and the profit is cut down so that there is nothing in it. He has to pay supervision for a half dozen workers, while competitors may have 50, and so forth, details to numerous workmen.

Bear in mind that the codes were made by the large firms and industries. For an example; one man was turning out work on a small hand turrett lathe and due to the N. R. A. regulations could not afford to pay the wages required. He had to leave five men go and went to a firm in another section of the country that had automatic lathes and bought this material at about the same price as he had produced it without having to pay the increased wage labor cost.

Regarding price fixing, the so-called "code authority" of my business in trying to get me to sign said that the list he handed me was the prices that my large competitors were getting and suggested I file a list made up of the same prices. Gentlemen, I have stopped making new items, if it was not for my patented stuff I would have to shut my doors. Many are criticising the fact that the so-called "code authority" is only interested in the soft livelihood he is getting and are parasites living on their efforts.

Under the regulations of the N. R. A. anyone who holds a grudge or malice toward an employer can give either an anonymous letter or an anonymous telephone call to the N. R. A. with the result that a so-called "field inspector" makes a visit to this man and says that he has a complaint and that he is not doing this or not doing that. He then goes around among the employees, asking how long they have been working there; what wages they have been getting, and so forth, and tells them if they are not getting the wages they say and not getting the "code" wages that he will drag the ——— out of the place and make him pay it.

There is no judge in the land that will allow his court to be ruled by the popular opinion of the spectator of the court and he will, at all times, maintain order. It has gotten so that the employee feels that with the N. R. A. that they have the "boss" in the palm of their hands and that they can cause him all sorts of embarrassment by making up some trumped-up charge and have the N. R. A. come around. That is their idea of revenge if he does not let the employees run the place as they see fit to run it. Would any judge allow this in his court?

Another characteristic of the N. R. A. is that they will not divulge who makes these accusations, which under the laws of this country state specifically that anyone making an accusation against another is

forced to reveal his identity but under the regulations of the N. R. A., which reads the same as those of the Spanish inquisition and the workings of the Czaristic secret police, and which I said in my prologue, is one of the corrupt evils that have been brought into this country from Europe.

There is an instance of one manufacturer who would not sign a compliance agreement. They threatened him with arrest, sentence in jail, but if he would sign it that the charges against him would be forgotten. I believe every judge in the land will protect a person against blackmail, and if this is not a form of blackmail, I don't know what is.

If this is building up the morale of a country by blackmailing their responsible citizens into doing something that they feel is against their personal liberties and rights guaranteed to them under the Constitution, I don't know what it is.

Another angle of the thing is that all of these employees in the set-up of the N. R. A. are naturally interested in maintaining their meal ticket and only by making trouble can they hope to keep it and it is to their advantage to antagonize the employer and the employee toward one another. It is just as much a racket with them to do this as anything else, as they are getting a nice meal ticket out of it and it is with resentment that we have to support such parasites.

Quite a few small business men, as well as myself, personally feel that unless we are given consideration that it will be more profitable to shut down instead of being the support of a lot of parasites and being pestered with this N. R. A. business, and I was not surprised to learn just last Friday that the LaFrance Tapestry Mills of this city, employing about 1,500 hands, had shut down with the rumor about that it was due to having some trouble with the N. R. A. As several men had said, it would be a good thing for the small manufacturer to go out on a strike as the employees are doing or are allowed to strike under the N. R. A. and others have said they might as well go on the relief also as put up with the nonsense that they have to. This is certainly a fine spirit for the businessman to conduct his business in.

Nothing has been said about the monopoly angle. It is plain to be seen that the leaders of the different industries, which are members of these so-called "code authorities" boards are the main leaders and they drafted up codes for their own benefit with the idea of freezing out the smaller competitor and having the field to themselves, which is proving itself every day and in this enactment of legislature, it does not permit a small man to start up any business and grow according to his ability and is crushing out the initiative of character that the American is known for and in time it will only be the large firms that will be in control of things. In going among the workingmen they are all complaining that it is rapidly coming to a point where there will be the extreme rich and the extreme poor and the enactment of recent legislature is bearing this out.

I may mention that from even the lowest walks of life that the people are starting to worry as to the taxes they will have to pay for the experimentation of the different legislative acts.

As said previously, the small manufacturer has not been given any consideration whatsoever, his credit is shut off, 9 out of 10 are busy paying off loans which they have made from the bank and all

spare money they can get is used for paying off. They are liquidating material off their shelves to pay off loans.

The manufacturers' shelves are empty, the merchants' shelves are empty, and there is no credit around.

The officer of one of the largest banks in the city confidentially admitted to me that they were only granting 1 loan out of every 2,200 applications received.

The farmer has been given relief, the ne'er-do-well, the down-and-outer, the waster, the spendthrift have all had a Santa Claus who has put silver or gold spoons in their mouths. It is a known fact from the relief agencies that not only those who have been always living in the poorest strata of life, but those from the middle strata of life have applied for relief and, of course, obtained it. I know of instances where those receiving it would not care to go to work again. They say "let the Government keep us," and I ask you, gentlemen, who is the Government? As Abraham Lincoln said "It is a Government of the people, for the people, and by the people", and there cannot be any class legislation as there is at present.

We only have to look to the dole system of England, which if you are not acquainted with I will refresh your memory. A certain amount of dole was given to the family asking for it and dole for each additional child was given. The birth rate increased so much that England today with her "poor house" doesn't know where to turn. Our birth rate is increasing.

There are many who use the relief as a racket. I know of a case where one colored man in New York was living with four different colored women with children in different parts of New York and obtaining relief at each location and who after dividing up with each of the women had an income for himself amounting to over $30 each week.

I know of innumerable examples where they are working and getting relief at the same time and others won't work when offered to them.

Senator BARKLEY. Just let me make this statement, this is an investigation of the N. R. A., and not of the relief, nor of the promiscuous habits of colored people in New York.

We have many witnesses and we must confine them to the N. R. A., and not all of the activities of the Government.

Mr. HARRISON. I will just end my statement then, by saying this: This is being resented by the men of responsibility and many have said that they would like to get out of their business and get out of the country where such conditions exist. Again, there are many whose self respect won't let them ask for relief and they want to be upright, honorable citizens. They are willing to work, they want to work if they can get the work.

Has it occurred to you that by giving relief to the small business enterprise in this way; that the banks make the loans on a certain percentage of the man's invested capital, to be repaid over a long period of time (2 or 3 years) on monthly installments; the Government to underwrite these loans to perhaps 60 to 80 percent of their value. Even if a man is insolvent by his value, the machinery, and so forth, though banks consider machinery no asset, how can we put men to work if there is no machinery.

That it is my contention that 99 percent of the business men of this country are upright and honorable and morally responsible and that the loss would be nothing and through this agency the small manufacturer would have money to work with, put merchandise on his shelves and give increased employment, thereby reducing the terrible drain of the relief cost, which is eating the country up. That by loosening up of such credit that will stop the antagonism that this administration seems to try and further between labor and capital, for, bear in mind, gentlemen, that the capitalist would prefer to invest their money in this country rather than send it to other countries, which they are now doing.

There was a convention in Washington of bankers in which they promised to ease up on credit, but from my observations as a small business man, they have failed to develop and in which I cannot blame them because if they feel that the present administration is antagonistic to capital and that their money is not secure, you cannot blame them anymore than you would blame a business man to ship goods to an unresponsible man from whom he would not get paid.

For your information many manufacturing plants today are badly in need of repair to their machinery and in many cases need new machinery. They have not the money nor can they beg, borrow, or steal the money to make these repairs or to buy new machinery and they just struggle along, whereas the issuance of the credit I suggested would overcome this and allow the wheels to turn by issuance of credit and allow manufacturers to put people back to work and stop being a drain on the resources of the Government as at the present time, with nothing to show for it. The loans to the manufacturer would not only permit the interest to be paid, but the principal would be returned and as you know, even the workingman now is worrying over the taxes that will have to be paid through all of this experimental work.

I feel, in these difficult times, we must all patriotically work for the betterment of our country which means the preservation of our Constitution and the Bill of Rights.

Senator BARKLEY. I neglected to ask you for whom you are speaking.

Mr. HARRISON. Myself; I have a small business of my own.

Senator BARKLEY. What business is that?

Mr. HARRISON. The button-manufacturing business.

Senator BARKLEY. I assume from your remarks that you are opposed to the N. R. A.

Mr. HARRISON. I am, very much. It is class legislation, and I am a worker the same as anybody else.

Senator BARKLEY. How many people do you employ?

Mr. HARRISON. In that department I am employing 4 to 5, where I formerly employed 30 to 40.

Senator BARKLEY. When did you employ 30 to 40?

Mr. HARRISON. About in 1927.

Senator BARKLEY. How many did you employ in 1933 and 1934?

Mr. HARRISON. About the same amount.

Senator BARKLEY. About the same amount you have now.

Mr. HARRISON. Yes.

Senator BARKLEY. Thank you, Mr. Harrison, for your statement. Will Mr. Flanders please come forward; we will hear from you next.

TESTIMONY OF R. E. FLANDERS, REPRESENTING JONES & LAMSON MACHINE CO. OF SPRINGFIELD, VT.

(The witness was first duly sworn by Senator Barkley.)

Senator BARKLEY. Will you please give your full name, your residence, and whom you represent?

Mr. FLANDERS. I live in Springfield, Vt., and am president of a machinery-building firm, Jones & Lamson Machine Co. I also served 5 or 6 months on the Industrial Advisory Board of the N. R. A., and I speak from experience both as a member of the board, and as a manufacturer working under the code.

Senator BARKLEY. You are now connected with the N. R. A.?

Mr. FLANDERS. No, sir; I am not connected with the N. R. A. now.

Senator BARKLEY. How long since you were connected with it?

Mr. FLANDERS. I left there just about a year ago.

Senator BARKLEY. While you were connected with the N. R. A., did your duties bring you to Washington or were you on a board at your home?

Mr. FLANDERS. It was on the main board in the Department of Commerce Building in Washington.

Senator BARKLEY. Is that the board of which Mr. Kendall is now chairman?

Mr. FLANDERS. I was on Secretary Roper's Advisory Council, of which I am still a member, but the Industrial Advisory Board of the N. R. A. is the board I was previously connected with here in Washington.

Senator BARKLEY. That is the board selected by General Johnson?

Mr. FLANDERS. Yes; but he chose to select them from Secretary Roper's council.

Senator BARKLEY. All right; you may proceed, Mr. Flanders.

Mr. FLANDERS. Senate bill 2445, extending the National Industrial Recovery Act, makes two important declarations in section 1 (a). It declares that a national emergency exists, and by inference justifies thereby the extraordinary measures which it extends and develops; and it refers to an impairment of standards of living of the American people, thereby justifying a reference to the effect on the general standard of living as the measure of desirability for the policies established by the act, or actions permitted by it to industry or to the President.

In basing the act on the national emergency, account seems to have been taken of a decrease in the extent of that emergency; and there is proposed a corresponding simplification of the code structure, particularly by reduction in the number of codes and by withdrawing from relations with purely intrastate business. The latter provision presumably strengthens the constitutionality of the act as well.

My criticisms and suggestions will be based on the desirability of this simplification of the act, and of the activities required to carry out its provisions.

Furthermore, I deem the real, sole purpose of the act to be improvement of the standards of living of the American people, and consider that all other objectives must be taken as explanatory to this, or as supplementary and incidental.

This is important. It is not and should not be the purpose of this bill either to permit business to escape the rigors of antitrust legisla-

tion, on the one hand, or to foster labor union organization on the other. The material well-being of the American people is the objective.

In general the criteria defined in items (1) to (14), inclusive, of section 1 (c) conform to this major purpose; but they should, in my opinion, be more closely tied to it, so that there may be no excuse in the minds of industrialists for believing that they are given privileges for any other purpose; and so that there shall be no slightest justification for the assertion by labor leaders that unionization is a primary purpose of the act, or of the administrative policies which effectuate it. Both beliefs, and their corresponding activities, have been serious deterrents to a recovery measured in terms of a rise in the standard of living.

In general the provisions of the act seem to permit what I conceive to be the desirable policies for this stage of recovery; but they do not, in any sense, prescribe those desirable policies.

My principle suggestion on policy is that industries be permitted to enter either one of three groups, graded as to the degree of privilege or control desired by the industry and required for recovery.

In the first group would be those businesses which ask no special powers or protection of government, being so circumstanced that the maximum of reemployment and business expansion can take place under free business enterprise. This class should come under the requirements of section 7 (a) and of the maximum hours, minimum wage, and child-labor provisions, but should not be subjected under this new act to any measure of governmental supervision or control not required for the policing of these minimum features.

The limited codes provided for in section 3 (d) apply, in a general way, to this situation but are too broad in permitting imposition of codes of business practice which, if undesired by the industry, should be left to the action of courts administering the common and statute law. Section 3 (d) is likewise too broad in providing for such cases the furnishing of information, the keeping of books and records, and the making of examinations for effectuating the standards of the act as a whole. Such provisions should relate to the policing of the labor clauses only in this first class of industrial codes.

I may say, sir, that my copy of this bill was the House copy, and I am assuming the sections are numbered in the same way in your bill as in the House bill.

Senator KING. You are addressing yourself to the new bill rather than to the present law?

Mr. FLANDERS. Yes; I am addressing myself to the new proposed bill.

The second class would be composed of those businesses which need for progress toward recovery no privilege, except that of open prices, with or without a waiting period. In this case the governmental supervision, in addition to that for the first class, will consist in the assurance that open prices are not used to cloak actual price fixing. In general, when any special provision for insuring fair competition is written into a code, the Government's additional authority and responsibility should be limited to assuring itself as the trustee of the public interest that the privilege granted is, in fact, used in that public interest.

Pursuing the same principle to its extreme practical application, we come to the third group of industries, those who feel themselves to be faced with serious disorganization and consequent decrease of employment, unless prices or output or both are brought under some measure of control. The granting of such extreme privileges implies a corresponding breadth of examination and control on the part of Government. This should be provided for and should be reckoned with as a matter of course by industries putting themselves in this third category.

If the tremendous complication and expense of N. R. A. is to be diminished as the emergency disappears, it is essential that there be established this principle of a correspondence between the degree of industrial privilege asked and the degree of governmental supervision imposed, so that governmental action will gradually disappear as the emergency diminishes and industry requests withdrawal from special privilege.

As stated earlier, it would appear that the administration could operate on the above principles under the act as written, but it is by no means sure that it will do so. It is within the province and power of Congress to write this principle into the act in the form of mandatory provisions, and I believe that it is the duty of Congress so to do.

While the establishment of the above principle is my main concern in appearing before you, there are two or three more points on which I wish to touch.

If recovery is to continue at an accelerated pace, the maximum hours written into the blanks in section 3 (d) must not be set too low, or the workers' interests will be jeopardized and recovery prevented, for reasons clearly set forth in the minority report of the Committee on the Judiciary regarding the 30-hour bill (S. 87). Furthermore, the principle should be established of freely permissive overtime above the maximum, provided time-and-a-half overtime is paid. In fact, this maximum should be a normal, enforced by overtime pay. This will permit that flexibility of operation essential to the interests of industry and worker alike, will insure an automatic raising of wages in good times, and an automatic sharing of work when business is poor.

The provisions for suit of employee against employer in section 12 (d) appears to be a novel one, but is perhaps largely a restatement of rights otherwise inhering in the act. On this I am uninformed. Certainly if the provision is an extension beyond inherent or existent rights, the corresponding right of suit by a business concern against organized labor should be assured. In other words, any difficulties in the way of effectively suing a labor union under section 4 (a) (6) should be removed. It is safe to say that the workers' interests have suffered as much in the past from inability to enforce agreements made by unions as from similar difficulties in the opposite direction. This problem must be solved.

A few words relating to the principles underlying N. R. A. may not come amiss. Its principal effectiveness to date has lain in (1) preventing business competition when under severe stress, from cutting wages below the subsistence level; (2) in bringing competitors together and by acquaintance and consultation improving business practices in ways which lie within the letter and spirit of the antitrust laws; (3) in giving temporary support by extraordinary measures for

protecting certain hard-pressed industries from disorganization; and (4) in generating at the beginning a large measure of reemployment. These are valuable achievements, and they can be preserved and extended under the terms of the new legislation here proposed.

Senator KING. Even so, they are hard pressed by the use of obsolete machinery, inadequate methods, waste, and high salaries.

Mr. FLANDERS. Even that may be true, but it may be the thought back of it is unwise, and let nature take its course in a period of emergency, supposing nature will take its course after the emergency was over.

On the other hand, there has been a body of harmful practice which has sought to get a foothold in code making and practice, and in other activities of N. R. A. as well. There was on the part of industry, organized labor, and the administration, from the first beginning of the original act, and idea that recovery, reemployment, and a raised standard of living would result from a carefully balanced increase in prices and wages. That idea was falacious and has delayed recovery.

There is no man, no group of men, having the supernal intelligence or ubiquitous power required so to manipulate a rise in wages and prices as to produce a recovery. In all past times recovery has come when lowered prices stimulated consumption and the reappearance of profits stimulated expansion and reemployment. The rise of wages and prices has come as a natural result of recovery, not as an impossible cause.

The higher standard of living we are looking for is one that is higher even than that of 1929, which was pitifully low as an average for the mass of the population. A rise in the standard of living means that prices and wages move in opposite directions—not together; and in the face of foreign competition and of the remaining disparity between agricultural income and prices of manufactured goods, our choice—if we have a choice—will be for prices to move down rather than for wages to go up. This is the direction that stimulates sales and employment. We are suffering from the inherent difficulty of trying to expand business with a price level raised in advance of demand and recovery, rather than because of demand and recovery.

The lowering of prices is as good for the wage earner as a rise in wages. It is better, for it makes more work. A rise in wages tends to raise prices and make less work if work is already scarce.

This may seem difficult of comprehension to the worker, but it is no less incredible to the industrialist who has not given the matter some attention. Business as a whole being on a profit margin of insufficient breadth, it has had to raise prices with wage raises. It would like to raise prices further so as to insure itself a safe profit by which warrant extension of business and increased employment are alike jeopardized. The industrialist is impaled on a dilemma, and a drop in prices seems the most unlikely way of escape that can be imagined.

To summarize, present prices do not give the desired standard of living to the worker on the one hand, nor on the other do they furnish a broad enough market or a sufficient profit to the employer to expand operations and employment. Raising prices without raising wages is not feasible, since it still further diminishes sales for the employer and lowers the standard of living for the worker. Improving the

standard of living by raising wages without raising prices is impossible in view of present narrow profit margins. Improving profit by lowering wages without lowering prices is so evidently impossible that it is unnecessary to consider it.

The only remaining possibility is to lower prices without lowering wages. This raises the standard of living and will greatly stimulate the demand for goods. But how is it possible to do this in view of the aforementioned narrowness of the profit margin? It may be conceived that this narrow margin might be preserved by the larger scale of operations and the consequent economies, but to most industries that will seem to be a forlorn hope indeed.

The real answer to the problem of a simultaneous increased business output, increased profit, increased employment, and a generally raised standard of living is the answer that shallow theorists deride, short-sighted labor leaders combat and timid industrialists avoid. The real answer lies in a renewed and continued application of more efficient labor-saving machinery.

This has been the answer of the past. This alone has raised the mass of the population above the level of primitive agricultural subsistence. This alone has given millions of workers the bathtub, the radio, and the automobile. This alone will continue to provide this and newer comforts, and to extend them to millions of families now deprived of them. An immediate return to our former enterprise in the application of improved machinery will make possible that necessary decrease in prices without decrease in wages, will raise the standard of living, will raise the volume of business production, and will raise profits to the level required to support the industries producing these capital goods, whose workers are still largely unemployed.

We need have no fear of thus returning to our old confidence in labor-saving machinery. We have never yet on a 50-hour week produced goods in a great enough profusion to give a decent standard of living to the average worker. The best of modern equipment will have to be built and installed and put to work on an enormous scale if the desired standard of living is to be possible on a 40-hour week.

Nor need we fear that the profits resulting from the installation of new equipment will themselves interfere with our health progress. Business profits—that is, profits from the production and distribution of goods and services—have never yet been too great for the needs of financing the equipment for our rising standard of living. It is "profits" of another sort which have repeatedly thrown us into business confusion and social disintegration. What we have to fear and control is speculative profits, and particularly the inflated bank credit (that is, unpayable debt) on which such profits are based. Here lies the major problem of business stability, and it is quite outside the realm of N. R. A.

The original hopes behind this legislation were indeed false and incapable of realization. Industry, labor, and government were alike self-deceived. History observes the first stage of that experiment and writes its verdict: "Weighed in the balances and found wanting."

But time has enabled us to see the true as well as the false. It would be unfortunate to throw the good away with the evil. We must not do so, unless we are willing to run serious dangers. Business has adapted itself to the codes. Certain great industries are for the

moment dependent on it. In general the disappearance of the harmful elements has been long since discounted. The disappearance of the whole institution has not been counted on and cannot be permitted.

I trust that you will find in this brief some useful suggestion for eliminating some of the evils of the old N. R. A., for preserving and rendering more effective its good elements, and for liquidating the institution in an orderly way as the emergency decreases and disappears.

Senator BARKLEY. Thank you very much, Mr. Flanders, for your statement.

We will now hear Mr. Fisher, if you will come forward.

TESTIMONY OF WAGER FISHER, OF BRYN MAWR, PA.

(The witness was first duly affirmed by Senator Barkley.)

Senator BARKLEY. Will you please give your full name and address, and for whom you speak?

Mr. FISHER My full name is Wager Fisher, my residence, Bryn Mawr, Pa., and I am appearing as a citizen and for other citizens of my town.

Mr. Chairman and members of the Committee on Finance of the Senate of the United States, while I am not a manufacturer or a signatory to any of the codes under the N. R. A., I have an interest in common with all other citizens in conserving the liberties and the privileges which we all should enjoy in effecting or accomplishing our maintenance.

It is a grave question to me whether the maintenance of the people is improved or can ever be improved by any form of interference in their maintenance producing relations by any outside agency attempting to accomplish adjustments in their trading relations and the interchanging of their services.

Conditions are so constantly varying, and influences and vagaries injecting themselves, such as foreign competition and the varyings of nature, that it is practically impossible to fix any hard and fast rules, prices, or levels to which the people must conform.

It can hardly be questioned but what an attempt to do so seriously interferes with quantities of objects of common use which are produced in that it interferes with their marketability and free exchange and distribution for use among the people. It also cuts off in many instances the opportunities for people to earn portions for their maintenance by exchanging their services, even though these opportunities might be looked upon with disfavor from the angle of a competent wage.

It is my notion that this is the case with large numbers of our citizens who are actually precluded by the operation of the N. R. A. from effecting a moderate maintenance even though such would be of their own choice and preferred by them to being thrown on the relief rolls.

It is my firm belief that such a condition as this is actually existent and while on first view as we look around and observe those who may have apparently been benefited by increases in wages under the N. R. A.—I believe it can be safely stated these apparent advantages are offset in a large measure by an increase in the cost of products which are of daily and common use by them.

The increase in the cost of such products, of course, severely reduces their acquisition by those who must accept such straggling and meager opportunities as are afforded for even the small use of their services and are thus restricted to greatly reduced income.

I believe that the foregoing presents a fairly good picture of conditions in our Nation at this time and that this is due in a large measure to interference under this act.

And I believe also that our people considered as a whole, each separate from the other, and each confronted with his maintenance, would be in a much better position to support themselves and employ each other, were they free from any interference and if their service efforts were left solely to the normal economic domination which should properly control them.

While the effects of the N. R. A. on the average citizen are so numerous and affect me equally in common with all other citizens I shall not attempt to go into deatil owing to the limited time which has been allotted to me.

It has been a pleasure to me to appear before you and I wish to thank the chairman and members of the committee for the privilege which they have accorded me and I ask that the further privilege be given me to submit a short brief setting forth at a little greater length some of the points which I would like to place before the committee that I may be of some assistance and possibly helpful to them.

(The brief referred to appears at the conclusion of Mr. Fisher's testimony.)

I again thank the committee for this opportunity.

Senator BARKLEY. Do I understand from your statement that you are opposed to the continuation of the N. R. A. in any form?

Mr. FISHER. Absolutely, yes.

Senator BARKLEY. Have you had any business experience under it, or are you just speaking as an observer?

Mr. FISHER. I have had business experience under it, yes.

Senator BARKLEY. In what capacity?

Mr. FISHER. Well, I own considerable property which I have to maintain.

Senator BARKLEY. Are you interested in any business or engaged in any business that operates under a code?

Mr. FISHER. No, sir; but the property owners of the United States employ 25 percent of the population in various capacities, and the unemployment amongst them is about 5,000,000 and upward, I believe. We pay $90 to the Government for the privilege of paying $10 in wages; while, on the other hand, we used to pay $10 to the Government for the privilege of paying $10 wages. The difference in those figures, I take it, is between 5 and 7 million persons unemployed, and it is somewhere between 10 and 20 billion dollars in depreciation or loss of income and other items.

Senator BARKLEY. Do you charge that up to the N. R. A.?

Mr. FISHER. I charge part of it to the N. R. A., and part of it to the maladjustments which have taken place in accordance with the depression.

Senator BARKLEY. Do you oppose the increase in wages as has been brought about by reason of codes or for any other purpose, or by any other means?

Mr. FISHER. Senator Barkley, that is a pretty hard question to answer. All I can say is that in the building trades we only have $10 per hundred to pay in wages out of $100, the other $90 going to the Government.

I am not opposed to persons having good wages, of course.

Senator BARKLEY. That situation is due to the fact of nobody building anything for the past 5 or 6 years.

Mr. FISHER. We cannot build anything because the Government collects the money value, and when the Government is paid it leaves only $10 out of every $100 for wages.

Senator BARKLEY. What business is it that the Government collects $90 out of every $100?

Mr. FISHER. The housing business. The New York Real Estate Board stated in the New York Times that it was that much, and my personal observation as a property owner has taught me so that I think that is a fair average.

Senator BARKLEY. In what form does the Government of the United States take this $90?

Mr. FISHER. We have to look upon taxation as a unit, Federal, State, and local.

Senator BARKLEY. You mean the whole volume of taxation collected by all forms of government represent 10 times as much as you spend on wages?

Mr. FISHER. In the housing industry, yes.

Senator BARKLEY. At the present time?

Mr. FISHER. Yes.

Senator BARKLEY. You are judging by the abnormal conditions that exist at that time, or are you judging by conditions that have existed over a period of time?

Mr. FISHER. Prior to the depression it is hard to get at the figures, but I would be under the impression that prior to the depression, of the money flowing in the housing industry, the Government took $50 out of every hundred and now it takes $90 per hundred.

Senator BARKLEY. Of course, the more employment there is, the more building and construction there is going on; and the larger the number of men employed, the larger the proportion of wages to taxes will become?

Mr. FISHER. Yes.

Senator BARKLEY. If you take the total taxes on real estate that have already been improved, upon which there is no further construction to be made, and judge that by a comparison with taxes, of course, you would get a very low proportion of employees on completed real estate.

Taking it on farms, dwelling houses, apartment houses, business buildings or office building, or anything that is constructed and finished, of course the proportion of money paid for employment on those finished units compared to the taxes paid on them, naturally the proportion of employment would be very small, so that it is rather an unfair comparison, it seems to me, to take all taxes on real estate and draw a comparison with employment, or with the amount of dollar that goes to employment, in the depression period when there is no construction going on.

Mr. FISHER. That is a pretty hard question to answer, but if I might state, it is my opinion, of course, that we have to consider the

maintenance of houses or shelter of the people and to include new buildings, and if the same conditions are favorable for maintenance of buildings, which is a very considerable item, then those conditions are favorable for new buildings; and the people cannot build new buildings where the finished real estate is taxed $90 out of a hundred.

Senator BARKLEY. Are you friendly toward or do you oppose the activities of the Government in its attempt to stimulate construction by the act known as the "Housing Act" passed last year?

Mr. FISHER. It is hard to answer, but off-hand I would say I do not know whether I would be opposed to it or not. It of course depends on the extent of it.

Senator BARKLEY. If there is no building going on by private initiative and the Government by any method that is regarded as economically sound undertakes to stimulate construction, you still would doubt the wisdom of it?

Mr. FISHER. I am inclined to believe I would.

Senator BARKLEY. You do not believe the Government should do much about that anyway?

Mr. FISHER. That would be my opinion.

Senator BARKLEY. Just let nature take its course.

Mr. FISHER. Well, no; I do not say I would let nature take its course. I think the Government ought to cure the depression in the way depressions always have been cured, by the repeal of appropriative and restrictive legislation, because as to the money flow of the Nation there are no words or comprehensive terms to express the wage flow or the money flow. Mr. Mills in his writings in 1848 said there was not, and I have not been able to find the word.

But, the money flow depends upon the amount of the people's income which is not taken by the Government and goes back into the same channels where it was earned.

When we divert 10 percent more than usual the income of the people goes down roughly 20 percent, or nearly twice, and passing from the 10 or 11 percent tax rate preceding the depression to our present tax rate which I think is about 40 cents per dollar, and being increased, there is a loss of 50 percent in the standard of living.

That is as nearly as I could figure and checks very well with the Federal Reserve Board's charts and such other information.

After the panic of 1920 when the war borrowings were stopped and taxes taken off, business increased at the rate of $1,000,000,000 a month and quickly came back to the ceiling fixed by the taxation, and in the depression it went down faster than a billion dollars a month because taxes kept rising on a progressively smaller income.

I would not have the Government not do anything, but I would not have the Government do it the way they are.

Senator BARKLEY. You say they are not doing it right?

Mr. FISHER. Certain things I would approve and certain things I would not.

Senator BARLKEY. I was just trying to get your attitude generally on the Government's efforts to stimulate business and industry.

Mr. FISHER. I think the Government has within its power, but it would have to be by joint action of the Federal, State, and local Governments, and if you want to rehabilitate the housing industry you would have to untax real estate, or take off other taxes. You cannot tax real estate and tax nothing else.

Senator BARKLEY. If you have a certain amount of revenue to raise to carry on the Government, if you take the taxes off of real estate you have got to substitute some other tax.

Mr. FISHER. That would not reduce your tax rate. The Government would have to live within its means. You have the unemployed and you would have to spread the taxes you are taking from the people now to keep the unemployed. And if you put on more taxes you make another bunch of unemployed, and other burdens on us.

Those on the outside of the Government enclosure have an average income of $800 to $1,000 a year, and we did have an average income of about $1,800 a year and the same money value.

Senator KING. As I understand your position there are certain things the Government ought to do and may do, and certain things it ought not to do?

Mr. FISHER. Yes, that is correct.

Senator KING. There are certain things for private capital and certain things that may be done by the Government legitimately within the functions of government?

Mr. FISHER. Yes.

Senator KING. And I gather from your remarks that the Government ought not to expend large sums it gets from taxation for the purpose of building?

Mr. FISHER. Yes, sir; I would think that.

Senator KING. I assume from your statement that the burden upon real estate particularly, the State and municipal taxes, have been so heavy that real estate has not been very profitable to the holders of it.

Mr. FISHER. Not only not very profitable, but it has not been profitable at all. There is a capital loss in depreciation and lack of maintenance or I should judge, somewhere between 10 and 20 billions of dollars a year.

I suppose half of the people in the country would be on the street if it were not for the real-estate owners. I hardly know any people who have several houses who are not keeping one or more relief families. I have been keeping one for 4 years, and we have all been doing it, it is not a question of profit, it is a question of how long we are going to last, because it is affecting the banks, and the savings companies and everything else.

Wages are set so high that property cannot be repaired, and you can only do the most necessary repairs. I am not saying that the men who are doing the work are overpaid or anything of that kind, because a man is entitled to a living, but it only provides a living to a very small number of people.

In addition, we have involved in that question probably 6 or 7 million men whom you cannot put back to work under the N. R. A. and the N. R. A. prevents them from entering other industries.

Senator KING. I do not want to be inquisitive, but what did you say your business was, so that we may have an appraisal of the testimony you are submitting? Are you a business man, or an owner of property in Pennsylvania?

Mr. FISHER. All of my life I have been a professional engineer, a civil engineer. Of course, although I have my shingle out as a professional man, I am unemployed, if that answers your question. I do own considerable property.

Senator KING. You are speaking as an owner of property and as an engineer?

Mr. FISHER. Yes, sir. My ancestors and my family have held property in the township in which I live for 250 years, and we have been renting properties I will say for 50 years, and I think I am qualified with knowledge through that, and through the fact that I own property in three different States, so that I am fairly familiar with that situation.

Senator KING. You have also consulted with other people?

Mr. FISHER. Yes. I asked if I could put in a brief, if I could get it in within the next 10 days.

Senator BARKLEY. Could you not get it in sooner than that?

Mr. FISHER. I will try to do so. I was at a loss in preparing the brief, this bill (S. 2445), I suppose I should address the brief to the bill.

Senator BARKLEY. That is one of the things we are supposed to be considering. It is only offered as a basis for consideration for the reason we have to have some concrete bill to work around, and this has been introduced by Senator Harrison for that purpose. Nobody is committed to it, for or against, but we are using it as a sort of hitching post for everybody to tie to.

Senator KING. This also carries the McCarran resolution.

Senator BARKLEY. That is correct.

Senator GORE. I have seen a statement that taking into account the probable wages in the building trades and the probable prices of material, when a house is finished, new, it is not worth as much in the market as it cost to build it. Have you any opinion on that or not?

Mr. FISHER. That would not be 100 percent true. A certain type of small houses is being sold at the present time at just about what they cost, but I would say on the average that would be true with certain exceptions. That is true now, because of a very limited market.

Senator BARKLEY. As a matter of fact all real estate has slumped deplorably in the last 5 or 6 years, including farms and all types of real estate as an average, have they not?

Mr. FISHER. I would say that the shrinkage has been from 60 to 70 percent.

Senator GORE. The value of the real estate would not figure in my hypothetical question, because, assuming it to be the same before and after construction, it is the cost of the building I had in mind.

Mr. FISHER. Your hypothetical question, was whether you can build a building at the present building costs and sell it for more than it cost, provided, the lot it is built on has the same value.

Senator GORE. Yes; that is the question.

Mr. FISHER. That is right; I think that is quite true, the market is limited.

Senator BARKLEY. The slump in the market has not been substantially or materially because of the cost of reproducing it if you wanted to.

Mr. FISHER. Not at all. The slump in real estate, in my opinion, is due to the fact that as the spendable income of the people shrinks, they purchase the major necessities. The surplus that we have for better housing is over and above the other things which take precedence, such as food, clothing, and absolute necessities. The value of real estate depends on a livable spendable income.

Senator BARKLEY. And the ability to make payments on the real estate that has been bought on the installment plan, the ability to pay taxes on it. All of which may throw it on the market at distress sales, and all of these things have caused this slump in the value of real estate.

Mr. FISHER. Yes, sir.

Senator BARKLEY. Many of the States, including my own, have taken taxes off of real estate except for State purposes, so that there is not any tax of any kind on real estate except a very nominal tax which they had to leave on under the constitution, but they have reduced it from 50 cents to 5 cents, which is a very nominal tax.

It may be there has been some sort of imperceptible improvement in real estate value due to that, but it is so imperceptible that you cannot put your finger on it.

Senator GORE. And also add to the fact that real estate values depend to some extent on the income it will yield, and the fact it will not produce income makes it lose its marketable value largely.

Senator BARKLEY. Have you anything further, Mr. Fisher?

Mr. FISHER. No; except that I would like to file a brief, as I have stated.

(The following brief was subsequently submitted by Mr. Fisher:)

BRIEF OF WAGER FISHER, IN PROTEST

[74th Cong. 1st Sess., re S. 2445]

IN THE SENATE OF THE UNITED STATES

(Before the Committee on Finance on N. R. A. Investigation)

In reference to the National Industrial Recovery Act and its extension for a further period, as under consideration by bill S. 2445—

Brief and argument of Wager Fisher, citizen, a resident of Bryn Mawr, Montgomery County, State of Pennsylvania, in his own behalf and in the interest of other citizens;

IN PROTEST

To the Committee on Finance of the United States Senate:

In reference to the above-titled bill and in protest against its enactment into law. It is respectfully submitted.

Historically.—The maintenance activities of men are of such profound ascendancy, that to assume to impose the instinct of one upon another is to presume upon the endowed direction of man by his Creator, and deny him the liberty to follow his own instinct and apply it to his existence.

There is nothing visionary to this. It is a grave reality. Human intervention in the substructure which underlies the fundamental existence of man, may easily, if ill advised, shake the foundations of his organized state.

Those who founded our Nation had a high appreciation of this. In their wisdom they saw fit to reserve from and keep apart from those employed in Government any right or authority to interfere with, or between men, respecting their maintenance and the right of each to follow his own instincts and conclusions.

There is a growing appreciation of this among our citizens.

A venture by legislation, directed to the common welfare, is confronted with what is little less than an inflexible truth. A benefit conferred by legislation upon one is invariably accompanied by a corresponding burden upon another.

To step into the reserved area of the people's liberty and exercise authority in dictating to them as to their efforts to effect their maintenance is well freighted with gravity. Those whose maintenance is adversely affected by such interference may rightfully complain, and the factor must be squarely faced, that their rights are being unlawfully invaded. This places the venture upon none too solid ground, as there arises the question: Do these whom the people employ in Government possess such authority? The people of this Nation exist under

a social compact, each with a reserved area as to himself, to direct and ply his maintenance, according to his instinct.

Under the stress of an emergency this conceived plan has come into existence and its theories put into practice among the people. The wisdom of its conception may well be questioned. The sincerity of it need not, except as to the lawful authority to impose it.

The maintenance activities of the people are encompassed within the protective sovereignty of each State. To assume that this sovereignty has been surrendered to the Government of the United States, is true only in the measure clearly indicated by the precise language of the constitution, with notice (tenth amendment) that no more may be presumed.

Under this reasoning this legislation must be viewed in its true light—an innovation, an experimental venture into prohibited territory as a temporary expedient, in order that a normal status may be the more quickly attained. Those whose rights have been impaired or maintenance infringed, are marking time awaiting this result, and in reality doing so with their rightful activities to effect their maintenance suspended, either in entirety or sharply restricted.

Sound reasoning would suggest that maintenance activities of the people must have the greatest freedom if the greatest number of the people are to participate in them, and in the final analysis this is the true picture of the people's welfare. In this respect and the right of each to effect his maintenance, all of us are on a parity.

Does not this act, as contra to this, by stopping competition, set up a higher level for a group, and automatically preclude from competitive participation in maintenance pursuits, large numbers of the people? If this is true, this act is ill advised as citizens may not be so precluded by law. That is not a proper function of government.

It would seem that restrictions placed upon efforts of private initiative is one of the largest factors which at this time actually force a resort to public works.

It might well be anticipated that those who are now operating plants may in many instances, where prohibitions are placed upon the coming into existence of new and competitive plants, favor the continuance of this measure. This may be equally true as to those who are employed and are enjoying higher wages, as a result of similar restrictions. The gesture of these latter are significant and threats of strikes whould suggest an inclination to consolidate their advantage, as for the most part these come from those receiving ample compensation, and it would seem that this is not involved.

The primary objective of Government is the maintenance of order. This is enjoined upon it. If this fails, individual rights fall. The specter of disorder arising from strikes, should have no influence in respect to this act. The rights of some millions of people set apart from, and, with no opportunity to compete for their maintenance, should take front place in the picture.

If, after due trial of this experiment, which has been given a 2-year period, the welfare of the people as a whole has not measurably improved, then its restrictions and its interferences in the maintenance activities of the people as a general benefit, has failed and they should cease.

In a large sense, if we consider public expenditures and the unusual increase in the public debt, improvement has been negligible, proportionate to sacrifices involved. The number of those unemployed has not measurably decreased, while public borrowings, which lay as a burden directly upon the people's maintenance efforts, has, during the same period, greatly increased. It has in fact increased to such an extent that were such borrowings applied to the number of unemployed, it would have afforded an ample competence to all of them. What is the answer to this? Is there not some connection between public borrowings and unemployment? If there were no restrictions upon business ventures and the people's maintenance activities, and these borrowings were available as private capital, would it not flow to the people in the way of wages for employment rather than in the way of doles?

As to the effects of this act, the main objective of it seems to be to raise prices. To attempt this is but to combat economic law, and this can have but one end—that of failure. A curtailment in use of products by the people can but result in lower prices, nothing can frustrate this. It is inexorable law, that of supply and demand. Sense and reason would indicate that such an attempt would cause unemployment, and we may go still further; that to persist in it this unemployment will become permanent. This interest of the people and the duty of their Government would appear quite plain.

The fixing of wages and the prohibitions laid upon employers shuts off millions of citizens from competing for employment.

The restriction on new industrial ventures shuts off thousands from entering industry; countless numbers from employment, and destroys the demand for products of every conceivable sort, including buildings, machinery, and equipment, as well as those who would be employed in such industries. It is no answer to this to say that those so employed would have to come from other industrial plants. The construction of the new plants; the new machinery and equipment would create new purchasing power in itself, and this inclination should be allowed its natural course rather than left to the dictation of any one.

To allow manufacturers of products or labor to fix arbitrary prices in strangling the use and distribution of them among the people to an alarming degree. The owners of houses unable to meet high prices are forced to allow them to go into decay, and in this manner their properties, coupled with the high taxes, are slowly being confiscated. Additional work of many sorts are being held up as prohibitive prices prevail.

The practical confiscation of all forms of invested capital in industry, by arbitrary rates of wages which actually gives the buildings of industrial establishments; their machinery and tools over to the free use of workers, without any return to those whose savings they represent, is but a suicidal policy to the workers themselves as they shut off this purchasing power for their products.

It is common error to assume that the great mass of our people are all engaged in producing objects. This has never been so. Those engaged in producing objects in one year may in the next year be engaged in collateral pursuits, and vice versa. It needs the buying power of all to absorb the products of labor. Just the sums saved by those producing objects, and not applied to purchasing products, is a considerable sum in itself, which must be offset by purchasing power from other sources.

This measure from its inception has been faulty. It is not the product of wisdom, and in the fitness of things, it has no rightful place in our statutes.

Respectfully submitted.

WAGER FISHER.
JOSEPH A. KEAN,
Attorney.

APRIL 17, 1935.

Senator BARKLEY. Will Mr. Ackerman please come forward and we will be glad to hear you.

STATEMENT OF CHARLES ACKERMAN, REPRESENTING THE UNITED INDEPENDENT RETAIL GROCERS & FOOD DEALERS ASSOCIATION OF THE STATE OF NEW YORK

(The witness having been duly sworn, testified as follows:)

Mr. ACKERMAN. Mr. Chairman, I represent here what is known as the "forgotten man", the retail grocer and the retail food dealer, and we are here to express our views.

Senator BARKLEY. Where is your residence?

Mr. ACKERMAN. New York City.

Senator BARKLEY. Do you represent any organization?

Mr. ACKERMAN. I represent over 10,000 retail merchants in New York State, retail grocers and retail food dealers.

Senator BARKLEY. Do they have an organization?

Mr. ACKERMAN. Yes; it is an association known as the "United Independent Retail Grocers & Food Dealers Association of the State of New York."

Senator BARKLEY. It is a New York organization?

Mr. ACKERMAN. Yes, sir; it is.

Senator BARKLEY. How many members do you have?

Mr. ACKERMAN. We have 6,400 members, and together with the affiliates, the delicatessen stores, and so forth, it is over 10,000.

We are in favor of the N. R. A. and the code, when and where this particular code at the present time shall be modified, and we shall be separated from the manufacturers and the jobbers, and also be supervised by the Federal Government.

Here are the reasons why we ask that: The retail grocers throughout, not only New York State, but throughout the entire country have been discriminated against, first, with the market provision of 6 percent, which prohibited a manufacturer to give any allowances to a retailer, and no advertising allowance and any free goods, while on the other hand it permitted him to give allowances for quantity purchases to a chain store or a larger jobber, and permitted the wholesaler to give them on special contracts advertising allowances which amount to approximately 10 and 15 percent.

Prior to the code the retailer used to receive what is known as the "five-case deal," or one case free, and advertising allowance for his window display and so forth, and at the present time under the code the manufacturer is prohibited to give such an allowance to the retailer.

The big merchants who are in a position to buy a carload of merchandise, they can offer their merchandise with 6 percent market provision, and put the small man out of business because the small grocery man cannot receive that advertising allowance under the special contract.

Again, the code authority at the beginning in Washington have been working in such a way that all of their politician friends and relatives have been put on a salary basis on the strength that the grocer will be compelled to pay assessment. To show you this, let us take at the beginning in Washington, the chairman of the national code authority is Mr. Charles Jansen, who was the secretary of the National Association of Retail Grocers, and he resigned his position as secretary of the association, and accepted the position as chairman of the code authority.

Senator KING. Is he chairman of the code authority?

Mr. ACKERMAN. He is chairman of the National Food Code Authority. He in turn sets up machinery and either appointed men, or made it so that they could be elected on the code authority job.

For instance, in New York City, as one example, there was the editor of the Journal of Commerce, Mr. Cochran, who received the reward of secretary of New York City code authority; in Brooklyn the secretary is a wholesale grocer, and he put on as assistant secretary, his son-in-law. From the beginning, it is the wholesalers and the jobbers and the small independent retail grocers do not have any chance to participate in the activities of the code.

We have tried continuously from the very beginning, asking for representation, in order to protect our interest, but we do not have any chance. They had an election in New York City, supposed to represent the interest of the retail grocer, and at that election, among others, they elected a fellow not even in the grocery business, but who was a beer salesman. We have submitted affidavits that he is not in the grocery business, and they came down here and were ignored just in the same way all of our objections and all of our affidavits have been ignored.

We discovered that the man in charge of the grocers and food distributors code in the Government end here was our friend Mr.

Whiteside, and his assistant Mr. C. W. Smith, and Mr. Smith was received at the same time Mr. Charles Jansen was, and at the present time is in his office.

Senator KING. Who is Mr. Jansen?

Mr. ACKERMAN. He is chairman of the code authority of the retail food.

Senator KING. Who elected him?

Mr. ACKERMAN. He claims he is elected by the wholesalers, the retailers, and all, but we do not know who elected him.

Senator BARKLEY. The chairman of the code authority is supposed to be chosen by those in the industry, and not appointed by anybody.

Mr. ACKERMAN. We had an election in New York City, and what happened to the election, they had it in three different boroughs of the same day, and they put up a lot of salesmen who were outsiders not in the food business, and they did not give us time enough to be at the meeting, and the retailers were not represented.

The chairman of the code authority, as I say, was the secretary of the national association, and in spite of that, we thought we did not have anybody to represent us, but that we might get somebody. I am sorry to say we did not get anybody whatsoever.

Senator KING. Going back to the election of the code authority, did these retailers, the 10,000 whom you represent have any voice in the selection of the code authority.

Mr. ACKERMAN. We had that right, but we were not given opportunity.

Senator KING. Did you vote?

Mr. ACKERMAN. No; we came to vote, then they broke it up, and we came to the second meeting to vote, and they gave us only one day's time. We came from one particular area.

Senator KING. Where did you come to?

Mr. ACKERMAN. To where there was supposed to be an election.

Senator KING. Where was the meeting?

Mr. ACKERMAN. One in the Bronx, one in Manhattan, and one in Brooklyn; all in one day.

Senator KING. Were they for the purpose of electing the code authority for the State of New York, or the code authority for the whole industry throughout the United States?

Mr. ACKERMAN. Throughout the United States they had held an election in Washington.

Senator KING. Did you have any part in that election?

Mr. ACKERMAN. We did not.

Senator KING. Who are the code members of the national organization?

Mr. ACKERMAN. Charles Jansen, who was secretary of the National Retail Grocers Association; Mr. Peterson, who resigned from his position, and took Charles Jansen's place as secretary, and he is on the code authority from the manufacturers; and Mr. Paul Lewis.

Senator BARKLEY. Who chose Mr. Jansen?

Mr. ACKERMAN. He claimed the retail grocers elected him, but we don't know anything about it.

Senator BARKLEY. The National Association of Retail Grocers is a real association?

Mr. ACKERMAN. Well, they claim they are.

Senator BARKLEY. Don't you know for years it has been a national organization like the National Association of Dry Goods Merchants, and they have conventions once a year somewhere.

Mr. ACKERMAN. They have; yes.

Senator BARKLEY. So it is a bona fide association.

Mr. ACKERMAN. They are a bona fide organization; yes.

Senator BARKLEY. Are they made up of bona fide retail grocers?

Mr. ACKERMAN. I would not say they are bona fide retail grocers, because on the board of directors are wholesalers, jobbers, and wholesale grocers. Nobody is permitted to be in the Retail Grocers Association unless he is a retailer.

Senator BARKLEY. Is there not also a National Wholesale Grocers Association?

Mr. ACKERMAN. Yes, sir.

Senator BARKLEY. And that is separate from the Retail Association?

Mr. ACKERMAN. Yes.

Senator BARKLEY. So that they have 1 for the retailers and 1 for the wholesalers?

Mr. ACKERMAN. Yes.

Senator BARKLEY. The wholesalers have a different code from the retailers?

Mr. ACKERMAN. No; they are on the same code with the exception the manufacturers were separated recently.

Senator KING. In the beginning it was all one code, manufacturers, brokers, jobbers, wholesalers, and retailers.

Mr. ACKERMAN. It was all one code; yes.

Senator KING. How many were present at the meeting in Washington when the code authority was selected?

Mr. ACKERMAN. I do not know; neither of our representatives were here.

Senator KING. How many retailers are there in the United States?

Mr. ACKERMAN. The retailers in this particular code?

Senator KING. No; how many retailers are there?

Mr. ACKERMAN. In the retail grocers' code?

Senator KING. How many are there engaged in the retail business? The same business you are in.

Mr. ACKERMAN. I suppose about 175,000.

Senator KING. How many of those were represented directly or indirectly when the code authority was selected?

Mr. ACKERMAN. I have no knowledge. The information I have is they were just representatives of the national association. We asked for representation to General Johnson, and Mr. Smith at that time, the same man who is now employed by Mr. Jansen that they only recognized the retail grocers' association.

Senator KING. Were any retailers placed on the code authority?

Mr. ACKERMAN. Not so far as I know; not in our State.

Senator BARKLEY. Your organization is not a national association, but just a State association?

Mr. ACKERMAN. Yes; it is a State association.

Senator KING. Does it participate with the national association?

Mr. ACKERMAN. No; we never have.

Senator BARKLEY. When was your association organized?

Mr. ACKERMAN. It was organized ever since 1921.

Senator KING. Do you know whether any of the code authorities now are retail grocers?

Mr. ACKERMAN. We are contending they are not.

Senator KING. I want to have the record clear; they are all manufacturers?

Mr. ACKERMAN. Manufacturers or jobbers, and the one supposed to represent the retail grocers is not engaged in the retail grocery business; he is called the representative of the trade.

Senator KING. What is his name?

Mr. ACKERMAN. A fellow named Mr. David Opper. We have affidavits to support he is not in the retail grocery business.

Senator BARKLEY. What business is he in?

Mr. ACKERMAN. He is a salesman, selling coffee today; he may be selling coffee today and something else tomorrow.

Senator BARKLEY. Does he sell coffee for some wholesale grocer?

Mr. ACKERMAN. Yes; he sells coffee for a wholesale grocer.

Senator BARKLEY. Does he sell it to the retail trade?

Mr. ACKERMAN. Yes; he does.

Senator BARKLEY. Has he been at any time engaged in the retail grocery trade?

Mr. ACKERMAN. He used to be.

Senator BARKLEY. How long ago?

Mr. ACKERMAN. Several years ago.

Senator BARKLEY. So he graduated from a retail grocer to a salesman of coffee to the retail grocerymen.

Mr. ACKERMAN. Yes, sir.

Senator BARKLEY. What brand of coffee does he sell?

Mr. ACKERMAN. He claims to sell the best.

Senator BARKLEY. Are these retail grocers engaged in interstate commerce, or in the most part engaged in selling to the local trade?

Mr. ACKERMAN. It is just selling to the housewife.

Senator BARKLEY. Assuming there will be a new act, if it provides it shall only apply to interstate commerce or to such intrastate commerce as might vitally affect interstate commerce, would that let most of you retail grocers out?

Mr. ACKERMAN. It would let them all out.

Senator BARKLEY. Do you want that done?

Mr. ACKERMAN. No; we would like to see the retail grocers have a code and to protect their interest.

Senator BARKLEY. You are in favor of the law as it applies to the retail trade?

Mr. ACKERMAN. If and only when it is distinct and separate from the wholesaler.

Senator BARKLEY. You want it separated and to have your own representatives on the code authority.

Mr. ACKERMAN. No; we very much favor that the Federal Government would take it over, rather than by the association.

Senator BARKLEY. You want the retail grocery business regulated by the Federal Government?

Mr. ACKERMAN. Yes; because we have our business experience that all of the associations have their friends and their relatives in there, and expect the money should be paid for their job by paying these assessments, and they forget the retail trade entirely.

Senator BARKLEY. You want us to go further in the retail grocery trade than Congress or the Government has gone, and would you apply that same doctrine to all retail business?

Mr. ACKERMAN. Yes; all separated. The food industry is a separate and distinct industry.

Senator BARKLEY. What sort of regulation would you favor on the part of the Federal Government of the retail grocery trade?

Mr. ACKERMAN. Well, in order to give opportunity to the small business man to remain in business, to regulate operating hours, and not permit the manufacturers to interfere with the retailer, and if there is any advertising allowance given to a bigger man, the small man should have the same.

Senator BARKLEY. Then you would abolish the wholesale purchases and advertising?

Mr. ACKERMAN. No, we would not; we will simply have the same recognition. There should not be any distinction between the bigger man, and the smaller man.

Senator BARKLEY. You would not make any allowance for purchasing anything in carload lots, but the price would be the same as if it was in a single package.

Mr. ACKERMAN. Yes, we would but we want the advertising allowance, if any is given in addition to the property purchased.

Senator BARKLEY. Of course, you realize more than I do that in business the larger quantity theory has always prevailed in the purchase of goods from distributors, and that has enabled large concerns to sell cheaper than the small independent units.

Mr. ACKERMAN. No, I would not say that from experience. I have 36 stores, growing two or three stores at a time, and my experience does not show that. One particular jobber in the State of New York signs the N. R. A., then he gives dividends of a couple of million of dollars to his men employed and interested in his company. He did not give that merchandise away to the retailer in order they could return it to the consumer.

The chain stores all offer leading articles and its cost price in order to induce the consumer to come into the store, and the minute the consumer comes in the store they pay for four or five additional articles that they have to purchase for the home, and pay good prices. They have loss leaders, but they do not give it away to the public; they keep it, all right.

Senator BARKLEY. Let me ask you about that—take the Piggly-Wiggly or the A. & P., or the Sanitary Grocery, which is here in Washington and does not operate anywhere else; you say they induce the public to come in by holding out some leader at a reduced price, then gouge them on everything else.

Mr. ACKERMAN. That is right.

Senator BARKLEY. How long do you suppose it would take the housewife to discover that, when she goes to the corner independent store and sees the price on these articles?

Mr. ACKERMAN. She cannot discover it.

Senator BARKLEY. Why?

Mr. ACKERMAN. Because, in the chain store, or in any other store, there are certain well-known brands, say, Del Monte peaches, or Maxwell House coffee—they are nationally known. She knows she can buy that at 31 cents, and it costs 31 cents to chain stores, but at

the same time the chain store has 10 different brands under its own brand that no other store has; and therefore, when the same customer goes into the neighborhood store she cannot tell how much more she paid for this item than she can buy it for in her own neighborhood store.

Senator KING. Do you want the Government to fix the price for which the grocer can sell it?

Mr. ACKERMAN. We would not say that, but we say the Government has codes set up under the special bargaining provision, and it should protect the small retailer, and we would prefer a code and would prefer to have the Government step in and regulate the code.

Senator KING. How do you think the Government can supervise 200,000 retailers in the United States—fix their prices and watch them?

Mr. ACKERMAN. It is very simple, because we know if there will be true representation, the retailer is out to make a living, and the prices can be regulated just the same as in any other instance.

Senator KING. Would you want the same price fixed for the man in San Francisco as the man in New York, and the same price fixed for the man in New York as the man in Savannah, Ga.?

Mr. ACKERMAN. No; it would depend on the articles, where they come from, and how you regulate it.

Senator KING. Who will determine that?

Mr. ACKERMAN. In the same way as the butter and egg market is, because you know we have a market in New York and a market in Chicago.

Senator KING. What department do you think would do that?

Mr. ACKERMAN. The Agricultural Department regulates that.

Senator BARKLEY. They do not fix the prices.

Mr. ACKERMAN. They tell us that is the market price today.

Senator KING. Do you think the market price should be the same in Savannah, Ga., as in San Francisco or New York?

Mr. ACKERMAN. No; it is not the same, but it could be regulated.

Senator KING. You want everything regulated, every industry?

Mr. ACKERMAN. I would not say every industry, but I am talking in behalf of the food industry, because it is in need of regulation, when you see about 200,000 grocers—which does not include every food merchant, like the delicatessen shop and the others—there is at least 65,000 more of those—and you will find there are 60 percent of them in bankruptcy.

Senator BARKLEY. That percentage of the delicatessen stores?

Mr. ACKERMAN. No; including all of the small food merchants.

Senator KING. They are in bankruptcy now?

Mr. ACKERMAN. They are not actually bankrupt, but if they had to pay their bills they would have to go into bankruptcy.

Senator KING. Your principal complaint, as I understand, is that the manufacturers give some preference to the brokers that they do not give to the retailers, and they give preference to large purchasers.

Mr. ACKERMAN. Yes; the chain stores.

Senator KING. They give preference to them over the smaller one, and you are objecting to that.

Mr. ACKERMAN. We are objecting to that, and we are objecting to the code representatives, because they are wholesalers, and we have paid assessments, and we have not derived any benefit since the code.

Senator KING. Do you pay any assessment yourself?

Mr. ACKERMAN. Yes; I personally have paid them.

Senator KING. How much do you pay?

Mr. ACKERMAN. Our members?

Senator KING. Yes.

Mr. ACKERMAN. Well, they have paid thousands of dollars. The members have probably paid over $20,000 or $25,000 in New York City.

Senator KING. Who gets that?

Mr. ACKERMAN The secretary of the code authority; and it has been divided—60 percent goes to the State authority, 20 percent to the regional authority, and 20 percent to the National Code Authority in Washington.

Senator KING. You have a code authority in New York, have you?

Mr. ACKERMAN. Yes; and they have a representative on the National Code Authority.

Senator BARKLEY. This contribution of assessment goes toward paying the expenses of compliance, enforcement, and all of the things going along with it?

Mr. ACKERMAN. Yes; but nothing has been done for us, because they are not interested in the retail grocers.

If there are no further questions, I will ask the privilege to file a brief if I may.

Senator BARKLEY. You may hand it to the clerk of the committee.

That completes the testimony today, and the committee will recess until 10 o'clock tomorrow morning in the committee room.

(Whereupon, at 4:15 p. m., the hearing was recessed until Tuesday, Apr. 9, 1935, at 10 a. m., in the committee room in the Senate Office Building.)

(Mr. Ackerman subsequently submitted the following brief:)

SUPPLEMENTARY BRIEF

In accordance with our knowledge and in my personal opinion, the small independent retail grocer did not benefit under the National Recovery Administration. Some of the reasons are as follows:

1. He received no true representation. The National Food and Grocery Distributors Code Authority, charged with the duty of also representing the interests of the independent retail grocer, was captured and dominated from the very start by men supposedly representing the trade, but in reality agents of manufacturers and packers of food products. Through the activity of the National Code Authority these men formed a strong political alliance in the various States, cities, and areas, where through various manipulations men, supposedly elected by the independent retail grocers and charged with the duty of representing their interests, turned out to be representatives of the large interests, and the independent retail grocer was left out.

The State and the local code authorities are supposed to consist of men representing various branches of the food industry, five in all. But in order to deprive the independent retail grocer of true representation, men owning warehouses and doing a large volume of business, and having their own welfare at heart, rather than that of the small retailer, found their way into the code authorities under the guise of the various classifications of the industry. The retailer's representative thus always found himself confronted with four men, each of them in reality a wholesaler with warehouses, and having no real interest in the independent retailer.

Furthermore, even where a representative of the retailers was supposedly "elected" to the local code authority by his fellow independent rtailers, he frequently turned out to be either not a grocer at all, or a person not actively engaged in the retail grocery business.

An interesting phenomenon also took place in the case of the New York State Code Authority. Its secretary was a former newspaper man, who gave a great deal of publicity to the present chairman of the National Code Authority, and was apparently rewarded with a job for his efforts.

In view of the composition of the State and local code authorities, nothing was ever accomplished for the independent retail grocer's benefit. His problems were ignored. As a result the independent retailer is today discouraged, and as far as he is concerned, the National Recovery Administration is a forgotten thing of the past.

The code authorities, under the National Recovery Administration, penalized the independent retail grocer by compelling him to pay the assessment of $1 per every person on his premises. There were a great many retailers who felt the assessment was not justified, that they received nothing in return. They felt that as long as the job-holders of the code authorities showed an interest in their job only, they, the independent retail grocers, were obliged to pay no assessments. But as a result they received threatening letters from the local code authorities, and were involved in litigation.

Now, as to the so-called "reorganization" of the code authorities, which has recently taken place.

The local code authorities, having collected thousands upon thousands of dollars, apparently cared little about how much they paid their jobholders, politically influenced by the National Code Authority. But then an ever-increasing number of retailers refused to pay assessments. A financial crisis developed. And so, to institute a new scheme of collecting moneys, they created the so-called "district" code authorities. Again they made certain that a lone representative of the retailers would be placed against four representatives of the larger interests—plainly speaking, the wholesalers. The men elected to the district authorities came, furthermore, from the old local code authorities. No new elections had taken place.

Although the local code authorities collected many thousands of dollars in assessments, the promises made in the code were never carried out. The independent retail grocer kept on paying. But today, in my personal opinion, he is wondering whether the national and the local code authorities had been created for the sole purpose of collecting assessments and keeping up their jobholding system.

However, grocers believe in National Recovery Administration principles. If and when the code of fair competition is actually enforced and properly supervised by the Federal Government, and all private ambitions and political jobholding are eliminated, grocers will wholeheartedly be in favor of the National Recovery Administration.

2. According to our knowledge, big business did much better under the National Recovery Administration than the small retailer. Through their bigger representation on the code authorities, wholesalers, jobbers, etc., were able best to serve their own interests. They stabilized their prices. Furthermore, as prices of foods rose, they increased their price to the independent grocer, but the independent grocer did not pass the increase on to the consumer public. The independent retail grocer is in a worse financial position than ever before. His profits are lower. We know, however, that jobbers and the large enterprises earned better profits last year, and are in a better financial position.

3. The code itself is not enforced by the code authorities. This, of course, is because no one on the local code authorities is really interested in the independent grocer's welfare. The men are merely jobholders, interested in themselves only. They did, however, as above stated, cooperate with the bigger enterprises, again displaying their interest in retaining their jobs.

The uniform operating hours provision of our code, of vital importance to the independent retail grocer, was never brought into being. In spite of the independent retail grocers' protests and demands, no real action was ever taken, although several gestures were made. The mark-up provision was never enforced.

In summing up, may I therefore state:

The National Recovery Administration did not benefit the independent retail grocer; abuses under the National Recovery Administration have not been eliminated; administration of the National Recovery Administration by the code authorities has been a sad disappointment.

Unless the small merchant is given separate and distinct recognition by the Government, is separated altogether from packers manufacturers, wholesalers and jobbers, doing a big volume of business and having their own welfare at

heart, he will continue at a disadvantage under the National Recovery Administration, and will be further discriminated against. Separate code authorities must be set up for the independent retail grocer. This should be done to really protect the small retailer against further abuses and injustice.

May I add that we continuously called these various abuses and acts of discrimination to the attention of the National Recovery Administration officials at Washington. But the Washington code machinery, above referred to, always found ways of stopping us. They have always succeeded in discovering ways of blackmailing us before the National Recovery Administration and of ignoring us. We did not lose courage. We still have hope that some day the Government will realize the importance of the small independent merchant, will put a stop to the attempts of his enemies to drive him out of business, and will discover that in the food industry particularly he is the most important factor.

We had brought these facts to the attention of the Darrow Board, before which we had appeared. Our friends of the grocery-code machinery, incidentally, resented our appearance there.

May I, in conclusion, make the following specific suggestions:

1. A separate and distinct code for independent retail grocers and food merchants, including all stores where food products are sold, with the exception of stores where cooked, prepared stuffs are sold for consumption on the premises.

2. The independent retail grocers' representatives on the code authorities shall be grocers actively engaged in the retail grocery business. They shall serve in an advisory capacity only, under the supervision of the Federal Government. The Federal Government shall enforce the code.

3. We favor the mark-up provision of our code, but are opposed to special price concessions and advertising allowances under special contracts to large buyers.

4. We favor the uniform operating hours provision of our code, as per article 5, section 9, which reads as follows:

"In any retail trade area, town, or city the retail food and grocery establishments may, by mutual agreement of 75 percent of such establishments, subject to the approval of the Administrator, establish uniform store-operating hours which shall be binding upon all retail food and grocery establishments within such area, town, or city for a period not to exceed 1 year, subject to renewal by similar mutual agreement."

5. We recommend that the collection of assessments be under the supervision of the Federal Government.

Respectfully submitted.

UNITED INDEPENDENT RETAIL GROCERS AND FOOD DEALERS ASSOCIATION OF THE STATE OF NEW YORK,
CHARLES ACKERMAN, *General Secretary.*

APRIL 9, 1935.

SUMMARY OF OUR CORRESPONDENCE WITH THE N. R. A.

1. On August 21, 1933, we submitted for General Johnson's consideration a code drafted by the United Independent Retail Grocers & Food Dealers Association of the State of New York.

The code contained provisions in respect to: labor, maximum working hours, minimum wages, unfair competition, and administration of the code.

2. On August 31 we received a reply from Allen Bennett Forsberg, of the National Recovery Administration control division, asking for duplicates, since documents were not received.

3. On September 2, I. Hurewitz, president of the Association, received a letter from A. Heath Onthank, chief of the control division, acknowledging receipt of our code.

Mr. Onthank pointed out that "In order to simplify the administration of the National Recovery Administration Act, primary consideration must be given to those codes coming from an association which is representative of a substantial part of an industry, except in extraordinary circumstances".

4. On October 19, 1933, we wrote to D. K. Whiteside, deputy administrator in charge, National Recovery Administration. We said: "Enclosed herewith please find statement of the United Independent Retail Grocers & Food Dealers Association of the State of New York, having to do with hours of labor, rates of pay, and other conditions of employment. "The statement enclosed herewith is in the nature of protest, as requested, and is filed with the hope that in accordance with your request it will be given due and favorable consideration."

5. On October 27, Mr. Smith, assistant to Mr. Whiteside, wrote to our Mr. Certilman that full consideration will be given to the change in minimum salary rate from $20 to $28, and also to the changes in the hours submitted in our code.

6. On November 18 we wrote to the President. We enclosed resolutions passed by our members at a mass meeting held at the Hotel Pennsylvania on October 29, 1933.

We said, in part: "After General Johnson's announcement that codes might be submitted for trade practices and the elimination of unfair competition, we also submitted our State code, which is now on file with the National Recovery Administration. We were informed that no city or State codes would be considered, but national codes only. We are fully convinced that our code has been ignored, and the National Code which is for the benefit of the chains, manufacturers, and brokers, is being considered. A master code has been submitted on same to your Excellency".

7. On November 25, 1933, we received a reply from Louis McHowe, referring our letter to the Administrator for Industrial Recovery for consideration.

8. On December 2, 1933, we wrote again to General Johnson. We referred to a resolution of our association, which was put into the record of the proceedings (vol. 1, p. 198).

The resolution urged the appointment of a representative for the grocers of the State of New York, and repudiated the representation accorded them through the National Association of Retail Grocers. We said: "In construing article 7, section 1 of the code, the retail grocers of the State of New York should be classed as an 'important branch' of the retail food and grocery trade, and thereby it should be made possible for them to elect a representative to the National Food and Grocery Distributors Council. Only in that way, we think, can the code be properly administered and enforced among this large group of retailers."

9. On December 12, 1933, we wrote to the National Recovery Administration Retail Food and Grocery Code objecting to advertising allowance to chain stores provision of the code, whether direct or indirect.

10. On December 14 we received a reply to our letter of December 12. Mr. C. W. Smith said, in part: "We can only recognize national associations to be represented on the National Council." He also said: "Although all elements in the food and grocery trade must be represented on your local council, we shall certainly insist that you be represented."

11. On February 19, 1934, we were notified by the New York State Food and Grocery Distributors Code Authority of an election on February 27, in all five boroughs of this city.

12. On March 1, 1934, we wrote to P. C. Friese, New York State Food and Grocery Distributors Code Authority, protesting against the delay in rechecking the ballots of the election in the five boroughs.

13. Following the elections we wrote to General Johnson on March 12. We pointed out the history of the entire proceedings. We said that:

"We gave our full support to the National Recovery Administration since its very beginning. We submitted a code for New York State grocers to eliminate the evils of the trade. We were informed that it was impossible to create a separate code. We worked with the national elements which claimed to represent the retail grocery trade throughout the country, although the grocers felt that they would never look out for the interests of the small dealer, but would protect the interests of the larger enterprises.

"We foresaw that the code of fair competition, granting more justice to the larger enterprises because of the representation of the national authorities would result in job seekers attempting to win prestige for themselves, rather than helping the retail grocers.

"C. H. Janssen, secretary of the National Association of Retail Grocers, who claimed to have the interests of the grocers at heart, was willing to give up his position to become chairman of the National Food and Grocery Distributors Code Authority. His associate, Hector Lazo, accepted the position of assistant.

"Mr. Janssen appointed his men throughout the country as chairmen and secretaries of State code authorities. He then recommended them to General Johnson for approval. In our belief this was done for the sole purpose of showing that the National Association of Retail Grocers had the influence and power to make such appointments.

"Numerous State association presidents had become chairmen of State code authorities.

"In New York State, Mr. Arnot, president of the New York State Retail Grocers Association, acted as chairman of the State Code Authority."

"Mr. Friese, their secretary, was sent from another State to act as Secretary of the New York State Retail Grocers Association. He then named himself secretary of the New York State Food and Grocery Distributors Code Authority. He made definite statements that they were the power in New York City. Claiming to be the State Code authority, they misled our association, asking us to affiliate with the New York State Retail Grocers in order to receive recognition.

"On January 30 the State code authority held an election at the Hotel Pennsylvania, which was declared void by the National Recovery Administration.

"On February 26, Mr. Hector Lazo announced elections for seven code authorities, instead of one. The election was conducted through misrepresentation and we protested against it."

14. On March 19 we wrote to the National Recovery Review Board, acknowledging the information that Senator Nye had requested investigation of our complaint, and enclosing a copy of our brief to General Johnson.

15. On March 25 the National Recovery Review Board acknowledged receipt of our brief to General Johnson.

16. On March 30 we received a letter from B. H. Stonebreaker, enclosing Mr. Janssen's reply to our protest against the New York City elections.

17. On March 29 the National Recovery Administration advised us that the code submitted by us has been carefully considered and that action has been suspended since our proposals are covered in the code approved by the President.

18. On April 12, 1934, we wrote Armin W. Riley, division 6, the National Recovery Administration, protesting against the high-handed manner in which Mr. Janssen replied to our letter.

19. This association has subsequently repeated its complaints against the abuses above mentioned before the Darrow Board. In a brief submitted to the National Industrial Recovery Board we urged the retention of the mark-up provision of the code.

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

TUESDAY, APRIL 9, 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, Barkley, Gerry, and Metcalf.

The CHAIRMAN. The committee will come to order.

Mr. W. E. Fenner, of Rocky Mount, N. C., is the first witness this morning.

STATEMENT OF W. E. FENNER, ROCKY MOUNT, N. C., REPRESENTING AUCTION AND LOOSE LEAF TOBACCO WAREHOUSE CODE AUTHORITY

(The witness having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. You represent the Auction and Loose Leaf Tobacco Warehouse Code Authority?

Mr. FENNER. Yes, sir.

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

Mr. FENNER. My business is the operation of auction warehouses for the sale of leaf tobacco. On June 30, 1934, upon the recommendation of Hon. Henry A. Wallace, the Secretary of Agriculture, and Hon. Hugh S. Johnson, Administrator of the N. R. A., the President of the United States approved the Code of Fair Competition for the Auction and Loose Leaf Tobacco Warehouse Industry. Immediately thereafter a code authority was elected to administer the code, and I was named by the code authority as chairman of that body, and am now acting in that capacity.

The industry has conducted its business and has handled the 1934 crop of tobacco under the labor provisions and standards of fair competition as set out in the code.

The auction loose-leaf tobacco warehouses handle practically all tobacco grown in the United States excepting cigar leaf tobacco and Maryland tobacco. Nearly all of the domestically grown tobacco used in the manufacture of cigarettes, smoking tobacco, chewing tobacco, and snuff is sold by the grower in the auction warehouses. During the 1934–35 selling season the industry will handle approximately a billion pounds of tobacco, valued at approximately $250,000,000.00.

Our business as warehousemen consists in providing a market place and the facilities for displaying the farmers' tobacco for sale at auction to the highest bidder. The tobacco is not sold by samples or grades, but the actual product is sold after inspection and examination by the buyers. The farmers carry their tobacco to the warehouses, where it is bought by the buyers, and are immediately paid the proceeds of the sale, less the warehouse charges. In many States these charges are fixed by State law, but in some States they are fixed by custom. Auction warehouses are located in the States of Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and one in Missouri.

Most of the auction tobacco markets are located in small towns adjacent to the farms that produce the tobacco, and the unskilled labor employed in the warehouses is drawn in large measure from the tobacco farms. Approximately 13,000 to 15,000 people are employed in the industry.

In our business, as in other businesses, the growth of unfair competitive practices and cutthroat competition had made it increasingly difficult for a warehouseman to conduct a legitimate business with a hope of making a profit. It was foreseen by the industry that the production adjustment program relating to tobacco would inevitably cause a great decrease in the volume of business done by the warehouses, thereby definitely curtailing the volume and gross profits accruing to the industry. Since warehousemen are paid on a commission basis, a 25-percent decrease in volume of business meant approximately a 25-percent decrease in income, since the overhead expenses of our business remains almost constant, regardless of the reduction in volume of business. It appeared imperative that plans be made to decrease the expenditures of operation in order that the warehouse industry might survive.

The most promising field along this line appeared to be in the elimination of unfair trade practices and customs which were not beneficial to the industry but which cost in the aggregate a large sum of money. The elimination of the trucking evil, that is, the practice whereby a warehouseman paid truckers to haul tobacco to his warehouse, promised a great saving. The elimination of indiscriminate hiring of solicitors by each warehouse promised a further saving. The establishment of correct weights on tobacco, and the requirement that buyers pay for their purchases on the basis of the established weights, offered another saving. The giving of rebates to growers, the offering of special inducements to customers, and many other competitive practices were costly items in the conduct of the business, but were necessary in order to meet competition.

It was felt that under a code many of these practices which were financially harmful to the industry could be eliminated without detriment to the service rendered to the tobacco growers. Also, many provisions were incorporated in the code tending to improve the system for the advantage of the patrons of the industry. For many years the industry, through agreements of its members, had attempted to remedy these faults; but lacking the authority and the power except through a civil contract, these efforts had not met with great success.

A code seemed to offer the remedy, backed as it was by the power and authority of the Government. Its object was to improve the system of marketing, and to eliminate the unfair practices. And so, the industry adopted its code and operated under it during the past season. It has been an unmixed blessing to the industry. It has enabled us to conduct our business in a way that it should be conducted, it has eliminated to a great extent unfair trade practices and it has improved the marketing system for the benefit and financial advantage of the tobacco farmers. It has cut down the hours of employment to labor, and has increased the rate of pay to these employees. Unskilled labor employed in this industry consists mostly of Negroes with a limited earning capacity. These people work on the farms during the spring and summer and work in the warehouses during about 3 months of each year. The rate of pay established under the code is in general about one-third higher than the prevailing wage scale prior to the adoption of the code.

We feel that this code has been of great value to us, and we are most heartily in favor of its continuance. A recent vote taken among the industry discloses that over 75 percent of the industry by number, and approximately 85 percent of the industry by volume of business, voted unqualifiedly for a continuance of the code for the coming year. The Kentucky Burley warehousemen last week at a general meeting, by a large vote, requested the continuance of the code for another year. The flue-cured tobacco warehousemen are almost unanimously in favor of its continuance. I quote you a few comments by members of the industry in connection with their votes:

It has brought the warehouse business out of cannibalism into civilization.
Am very well pleased with the code.
I think it is the warehouseman's only redemption.
I think it essential for the life of the auction system.
The code proved its merits very decisively last season; it helped to re-create confidence in the auction system among growers as well as to help eliminate to a minimum unfair practices.
Well pleased with the 1934 code.
As a whole the code has worked wonders for the warehousemen, and I am hearily in favor of its retention.
We like the warehouse code.
Last year under code one of the best years we have had.
We are very much in favor of the code.
Has proved very satisfactory; very much in favor of the code.
We feel that it is the salvation of loose-leaf warehousemen.
Think it is a good thing for us warehousemen.
We find the code authority very satisfactory.
Some minor changes but by all means more teeth.

These are just a few of the many endorsements that are on record in favor of the code from members of the industry.

The code has been generally complied with. I do not mean to say that there have been no violations; there have been some. But generally speaking, there has been an honest effort upon the part of nearly all the members of the industry to comply with every provision in the code. In the entire flue-cured area, that handled during last year 560 million pounds of tobacco, less than 1 percent of code assessments is unpaid. In other words, more than 99 percent have paid their full code assessments. And in the Burley and dark-fired areas the code assessment collections have been almost as good. As a rule, they have paid willingly and voluntarily. The greatest tribute to the efficacy of this code is the willingness of its members to

pay the expenses necessary and incidental to the enforcement of the code.

The code authority set up an organization for a close supervision of the industry. It appointed Mr. J. C. Lanier as code administrator, and with the aid of a corps of field supervisors, a close contract was kept upon the industry, and inspections made approximately twice a week in every warehouse in the entire area.

Our code has been a great success. We want it continued. We want it continued under a law with more teeth in it than formerly. The greatest drawback to the code has been the lack of procedure under which a code violator could be punished. There are "black sheep" in our industry as in every other industry; and it is irritating for a member who is obeying the code to know that his competitor is violating the code and thereby obtaining an unfair advantage by cutthroat competitive methods. Under the present set-up it is in effect almost impossible to secure court action to restrain or to punish violations.

Our business is highly seasonal—that is, in each area a warehouse does not operate more than 4 months, and usually not more than 3 months. Under the present law it is impossible to secure a restraining order against a violator in time to stop the violation before the selling season is over.

Senator KING. You mean it would be a violation if he sold some of his products?

Mr. FENNER. No, sir; if he violated the code.

Senator KING. If he sold it?

Mr. FENNER. This is not for the farmer. This is for the warehouseman.

Senator KING. I understand, but I understood you to advocate some policy under which some warehouseman might not make a disposition of the contents of his warehouse except as provided by the code?

Mr. FENNER. No, sir; I do not think you understand me. If he violates some provision of the code.

Senator KING. What provision of the code, for instance?

Mr. FENNER. If he violates a provision in regard to hiring trucks to haul tobacco to his warehouse.

Senator KING. It would be a violation of the code if he used his own truck?

Mr. FENNER. Yes, sir.

Senator KING. Or if he hired some poor chap that was out of work, it would be a violation of the code, and you want him jerked up in the court for that?

Mr. FENNER. No, sir; that does not mean that he could not hire a man out of work. One of the greatest evils we have is the trucking evil, where a man goes out and hires trucks.

Senator KING. To do what?

Mr. FENNER. To haul tobacco into his warehouse.

Senator KING. The code forbids that, does it?

Mr. FENNER. Yes, sir.

Senator KING. And you want a man punished because he will go and hire trucks to haul tobacco into the warehouse?

Mr. FENNER. Yes, sir. Do you want to know my reason for that?

The CHAIRMAN. Give your reason.

Mr. FENNER. My reason for that, Senator Harrison, is simply this: I run a warehouse. The laws are fixed in our State for the warehouse charges. I go out and every warehouse is supposed to treat every farmer alike and feed him out of the same spoon. Here is Senator George, we will say, with 250 or 300 acres of tobacco, and I go and pay a trucker to haul Senator George's tobacco into my warehouse. You have got only 10 acres of tobacco, you are a small farmer, and I do not haul your tobacco, but I charge you the same.

Senator GEORGE. You mean you give me the favor?

Mr. FENNER. Because you are a big farmer, and you have a big lot of tobacco, and it is an inducement for you to sell your tobacco to me, and I give you advantages I would not give Senator Harrison if he is a small farmer. And I think it is unfair and unjust to do that.

Senator GEORGE. And the code outlawed that kind of practice?

Mr. FENNER. Yes, sir.

The CHAIRMAN. Go ahead.

Mr. FENNER. In my opinion there should be some procedure provided under which a violator could be summarily taken before a court for a violation and after due hearing could be restrained or punished for the violation. The right of appeal to the Federal courts would be reserved, but it ought not be necessary to go through the tortuous court procedure now provided for in order to mete out punishment for a violation.

Here is something I want you to listen to especially, because we are mighty proud of it.

The cost of the administration of this code is almost negligible in comparison to the volume of business handled by the industry. Our budget for the year amounts to $36,000, and the collections were estimated (at a rate of 4 cents per 1,000 pounds of tobacco sold on the warehouse floors) to amount to $36,000. Collections have already exceeded the estimate. The finances of the code authority have been in the black since the first day of operation, and at the present time we have on hand in cash over $11,000. We estimate that we will have on hand at the end of the fiscal year approximately $9,000. The gross commissions accruing to all warehouses will probably amount to $7,000,000. The expenditure of $27,000 for a code out of this gross income imposes no burden upon the industry. Our code is almost a necessity to our industry. Without it the industry will not know where to turn in order to curb the intensive competitive struggle for business that will break out if the restraining hand of the code is not upon it.

Senator KING. How many warehouses are there?

Mr. FENNER. I think there are something over 400.

Senator KING. How many have you?

Mr. FENNER. I have four.

Senator KING. Where are yours?

Mr. FENNER. I have 3 in Rocky Mount and 1 in Kentucky, and I operate 2 houses in Georgia that I do not own. I rent those.

Senator BARKLEY. Where is your Kentucky warehouse?

Mr. FENNER. In Harrisburg.

Senator KING. Who fixes the rate that you charge the farmers when they store their tobacco with you?

Mr. FENNER. They do not store it. This is an auction floor and the farmers put the tobacco in and we put it on the floor and sell it to the highest bidders, and the buyers move it right out to their factories.

Senator KING. Then you are simply a commission business?

Mr. FENNER. Yes, sir; that is all.

Senator KING. Is there any restraint upon anybody else establishing a commission business?

Mr. FENNER. No, sir; the industry is a wide-open field; anybody can go into it that wants to.

We are not a large industry, but we handle a large amount of tobacco and handle a large amount of money. As I said before, last year the tobacco warehouses paid out to farmers close to $250,000,000. Our system has endured over a period of more than 40 years. It is the only system of handling tobacco that has stood the test of time over a period of years. Other systems have been tried and have flourished for a time; but without a single exception that I know of they have failed and have gone into the discard to be forgotten. The auction system of selling tobacco stands out as the fairest method ever devised whereby a farmer can bring his crop to market, sell it to the buyers on its merit, and receive his money and go home within a few minutes after the sale.

We want to continue to improve the system in every way possible. The code has provided the opportunity, and the warehousemen have realized the great benefits that it has been to the industry. I am glad of this opportunity to come before this committee and state that the warehouse industry is almost unanimously in favor of a continuance of the code and in favor of the strengthening of the laws so that violators can be made to cease their violations and to conform to the code.

Senator KING. What are the violations which you complain of? What did you do before the code that was unethical and unjust?

Mr. FENNER. Senator, before we adopted the code, we had a contract among ourselves, practically the same thing as the code.

Senator KING. The warehousemen did?

Mr. FENNER. Yes; the warehousemen did.

Senator KING. Fixing the rates that you should charge?

Mr. FENNER. No, sir; the State does that. It is a State law; but, as to the unfair competition, we had an agreement among ourselves and posted a bond of $500, each warehouseman, as a forfeit; but, of course, you could realize that although we carried it out very well——

Senator KING (interrupting). What were the unfair and unethical things which you did?

Mr. FENNER. Well, all right; just one of those things was the trucking. Another one is that you would come in and sell your tobacco on my floor; and if I thought I wanted to do something unfair and use unfair tactics, and I thought that you were a farmer that had a great deal of influence, I will give you half of the charges and charge the next man with the full charges for selling his tobacco.

Senator KING. Some auctioneers would charge more than others?

Mr. FENNER. No, sir; the auctioneers are hiring the warehouseman on a certain commission. Have you ever seen an auction sale, Senator?

Senator KING. Yes; I have.

Senator BARKLEY. A tobacco auction sale?

Senator KING. Yes; some years ago in North Carolina or South Carolina.

Mr. FENNER. I just want to say this in conclusion: That if this code can be carried out—and it can be—it is an advantage to the farmers, because it puts every farmer on the same footing; and I believe, taking it as a whole, that the warehousemen are about as clean competitors as you will find in almost every business; but wherever you ask people that are unfair competitors and using unfair practices, the people, not only their competitors involved, but to a great extent the people that they deal with, suffer, too.

Also we have in this code here restrictions—this code has not only protected the warehousemen against unfair competition, but it has also protected the farmer against the warehousemen who are crooked, and not straight, and therefore we have a check-up on the weights and things that have been allowed before in the warehouses—I have never allowed it in my warehouse, and I do not think any warehouseman who wants to be fair and square to the farmer has ever allowed it—but there have been cases where an auctioneer in selling tobacco in his warehouse could go ahead and knock the tobacco down quick and not give everyone an opportunity to bid, so that he could, in turn, sell it later on the floor and make a profit. All of that is protected in a code.

Senator GEORGE. You do not have any auctioneer's that speak English so that anybody can understand them. [Laughter.]

Mr. FENNER. Sometimes they have to talk so fast, and that is the reason perhaps why they are not always understood by everybody.

The only weakness in the code is about the procedure where there is a violation so that you could jack up a man after he violates it and find him guilty and punish him. It makes it right hard, you understand, under the code now, because there is so much red tape that it will be 6 months, and the tobacco season will be over and they can close the warehouse up before they can stop him from doing these things.

Senator BARKLEY. Do you know anything about the cigarette end of the tobacco business?

Mr. FENNER. All the tobacco that I sell——

Senator BARKLEY (interposing). No. Do you know anything about the practice which had existed for stores to sell well-known brands of cigarettes and sell them very much below cost?

Mr. FENNER. No, sir.

Senator BARKLEY. In order to induce the trade to come there, as against legitimate merchants?

Mr. FENNER. No, sir; I don't know anything about that. I smoke cigarettes, but I don't know anything about that. In fact, I have never heard of anything of that kind.

Senator KING (acting chairman). Mr. Henry P. Kendall.

STATEMENT OF HENRY P. KENDALL, CHAIRMAN OF BUSINESS PLANNING AND ADVISORY COUNCIL, DEPARTMENT OF COMMERCE

(The witness, having first been duly sworn, testified as follows:)

Senator KING. How much time do you want, Mr. Kendall?

Mr. KENDALL. Not very long.

Senator KING. We have a great many witnesses. You may proceed.

Senator WALSH. Do you hold any official position under the N. R. A.?

Mr. KENDALL. I am president of the Kendall Co. and chairman of the Business Planning and Advisory Council.

Senator BARKLEY. That is under the Department of Commerce, is it not?

Mr. KENDALL. It is lodged in the Department of Commerce, but the Administration is seeking its advice on matters outside of the Department of Commerce.

Senator BARKLEY. It is not necessarily a subsidiary of the N. R. A., as I understand?

Mr. KENDALL. No. It was formed before the N. R. A., and when the N. R. A. was formed, the Secretary of Commerce was requested to nominate an industrial advisory committee to the N. R. A., and he asked the council to appoint certain members to that in rotation, so the industrial advisory committee has been very largely made up of the members of the council serving in rotation.

Senator WALSH. Are Kendall Bros. manufacturers?

Mr. KENDALL. I am sorry to say there are no brothers. The Kendall Co. are manufacturers and have some eight cotton mills located North and South, and manufacture cotton cloth which is converted into surgical dressings and allied products.

The Business Planning and Advisory Council has had a committee working for some time on this Industrial Recovery Act.

Senator KING. You mean with a view to continuing it or improving it or changing it by a new bill, or what?

Mr. KENDALL. With a view to recommending its continuation with certain modifications.

Senator KING. Who asked you to work upon that matter?

Mr. KENDALL. Our industrial advisory committee, which is made up of members of the council, with one or two resident directors who have been very closely in touch with the workings of the N. R. A., felt under obligations, without request from anyone else, to study this act and study its practice and make recommendations for its continuation; and the council, which is composed of 52 members drawn from industry, representing large, medium-sized, and small industries, have been concerned about this and are pretty representative of American industry, and they have unanimously approved this memorandum which I shall read to you.

Senator BARKLEY. Let me ask you, in order to get this picture into the record, how many members are there of the Industrial Board?

Mr. KENDALL. Originally there were 16 members serving in rotation, 4 months each, until it had been practically around the Council. Then there were three or four men added to the industrial advisory committee who could stay there all the time.

Senator BARKLEY. How were those 16 or 20 chosen?

Mr. KENDALL. They were appointed by the chairman of the council.

Senator KING. Who appointed him?

Mr. KENDALL. He was elected by the council.

Senator BARKLEY. You said a while ago that you drew 52 members of the council from this Industrial Board?

Mr. KENDALL. I do not think probably, that I made that clear. In the spring of 1933, Secretary Roper invited 52 men to come to Washington. He first selected 7 men and asked them to select the balance of the 52 men that would be truly representative of American industry—large industry, small industry, geographically distributed, and so forth.

Those men met in the spring of 1933 and he informed us that we were drafted for the period of the war against depression, that no one should decline to serve, and that he expected us to study the Department of Commerce, have committees—a committee on the census, the Bureau of Standards, and so forth, and also to study what measures could help in this war against depression.

Since then, the President has invited us to advise with him on any subject in which he thought we could be helpful in aiding recovery, and so we have had committees working on various aspects of recovery, and this committee worked on the N. R. A. bill or new legislation, and that is simply one of those committees which have been working in the hope that they would be helpful from their first-hand contact with the workings of the Recovery Act, helpful and constructive.

Senator BARKLEY. Were these 52 known as the council or the Industrial Board?

Mr. KENDALL. No. The Business Advisory and Planning Council was formed first, before the N. R. A. Act was passed.

Senator BARKLEY. That is the 52?

Mr. KENDALL. That is the 52, of which I am chairman.

Then, when the Recovery Act was passed, the Secretary of Labor was requested to name a Labor Advisory Committee to the Administrator, and the Secretary of Commerce was requested to name an Industrial Advisory Committee to the administrator. He turned that responsibility over to the council, and the chairman of the council named 16 men, and those men served in rotation for the first year and a half.

Senator BARKLEY. Have you been chairman of the 52?

Mr. KENDALL. I succeeded Clay Williams when he was made chairman of the Recovery Board. I was elected chairman to succeed him.

Senator BARKLEY. And you are now the chairman?

Mr. KENDALL. I am now the chairman.

Senator BARKLEY. Who is the chairman of the 16?

Mr. KENDALL. Douglas Stuart, vice president of the Quaker Oats Co.

Senator WALSH. Serving without compensation?

Mr. KENDALL. Yes sir, without any compensation.

Senator WALSH. How about your traveling and hotel expense?

Mr. KENDALL. The industrial committee are allowed traveling expenses, but the council are not. The council pay their own expenses and have right from the beginning and have served since the spring of 1933.

This resolution of three pages is the result of long work of the committee on this N. R. A. Act, and it was passed about 3 weeks ago. It is as follows [reading]:

Resolution adopted by the executive committee of the Business Advisory and Planning Council at the meeting on March 13, 1935.

The National Industrial Recovery Act has not been in effect long enough to demonstrate whether or not it will be effective for its purposes. Its accomplishments in connection with child labor, maximum hours, minimum wages and collective bargaining are noteworthy. We believe that further progress will best be brought about by its continuance for a further period of 2 years, rather than the enactment of different and alternate legislation.

It is recommended, therefore, that Federal legislation on these subjects during the present session of Congress should be limited to the extension of the present act along lines suggested in the resolution approved by this council on January 17, 1935, copy of which is attached, for a further trial period of 2 years. Such legislation as the Black 30-hour bill (S. 87), the Wagner labor disputes bill (S. 1958), and the Connery equal representation bill (H. R. 4884) should not be enacted.

The report of the committee on the revision of the National Industrial Recovery Act, January 17, 1935, is [continues reading]:

We recommend that the act be continued as an emergency measure for a further trial period of 2 years with the following modifications:

"NEGOTIATION OF CODES

"It should be made clear that the approval of a code of fair competition must be on the basis of a mutual agreement between the industry and the President, the primary responsibility for formulating and presenting a code to rest with the industry. The President should have the power to withhold such a code unless he is satisfied that its provisions are in the public interest. On the other hand, he should have no power to impose fair-trade-practice provisions against the wishes of an industry, with the exception of those of section 7.

Senator KING. Do you mean section 7 (a)?

Mr. KENDALL. The entire section, which includes 7 (a) [continues reading]:

Industry should have the right, by petition of a trade association or group truly representative to withdraw from any code provisions which it may have voluntarily accepted. Provision should be made to permit codified industries to continue under agreements and codes approved under N. I. R. A. if the industry so desires.

The President should have the right to cancel outright an entire code where it appears that provisions of such code are working to the detriment of the public interest, but he should have no authority to modify existing codes without the consent of the industry.

Senator WALSH. By the "industry", you mean a majority?

Mr. KENDALL. A truly representative majority of the industry.

Senator WALSH. And you would not allow any minority group in industry to approach the President suggesting modifications or changes in the code?

Mr. KENDALL. Certainly.

Senator KING. You would or you would not?

Mr. KENDALL. I would. They certainly should approach the President on that, because if they should show that any provisions of the code were truly detrimental to the public interest, then he could withdraw the entire code but could impose the labor conditions, child labor, and minimum wages, and so forth, under section 7.

Senator WALSH. You would give the President no authority to modify or change, no matter how much he was persuaded or affected by the minority representation in the industry?

Mr. KENDALL. Yes; if he were convinced that the minority made a good——

Senator WALSH (interposing). I understand that you agree that he may push aside the entire code?

Mr. KENDALL. Yes, sir; the entire code.

Senator WALSH. But you would not give any authority to impose upon an industry any changes that he thinks should be made as a result of representations made to him by a minority of the industry?

Mr. KENDALL. Not in the fair-trade practices.

Senator WALSH. That is nearly everything; is it not?

Mr. KENDALL. Outside of the labor provisions. But the point is this, that some codes have certain fair-trade practices which a substantial majority of the industry feel should be preserved. It would be possible if the President had complete authority to withdraw some one thing or modify and impose some one thing that might change the implications and workings of the rest. If the code as a whole is not in the interest, in the opinion of the President, in the public interest, he can withdraw the whole code. Then the industry is without a code except the labor provisions.

Senator BARKLEY. They could get together and make another one and submit it to him?

Mr. KENDALL. Yes.

Senator WALSH. Do you not think that somebody else besides the industry itself ought to be in a position to suggest terms and conditions in a code?

Mr. KENDALL. Certainly they could suggest them.

Senator WALSH. If you say that the industry itself decides upon a code and the President can accept it or reject it, but you leave no tribunal in the Government, as I understand your position, in a position to pass judgment upon omissions from the code that it may be in the public interest to include.

Mr. KENDALL. If the industry wishes a code, then it must have provisions which the administration, the President and the Industrial Board, which is representative of labor, the consumers and industry, must approve.

Senator WALSH. Then you would only have those codes which industry requests and desires, is that right?

Mr. KENDALL. Yes. So far as the fair-trade practices are concerned.

Senator KING. Do you approve of all of the terms and provisions of the code now, which some of the witnesses, at least, contend prevent increase of production and tend also to monopolistic control?

Mr. KENDALL. The act states very clearly that there shall be no encouragement to monopolistic control, and all of the codes, practically, that I have seen, state that.

Senator KING. You do not think that some of the practices under the codes and some of the codes themselves tend to monopoly?

Mr. KENDALL. That is charged. There are a great many codes. I am familiar with the details of a few, including the textile code, but I am not familiar with all of the provisions, and I think there have been mistakes made, but I think it was a new, pioneer field. I wonder if I might just finish with this?

Senator WALSH. Perhaps it might have been better not to have interrupted you.

Mr. KENDALL. This is only three pages long. I wonder if I might read it and leave the whole idea with you, then I will be very glad to answer any questions. [Reading:]

Industry should have the right, by petition of a trade association or group truly representative to withdraw from any code provisions which it may have

voluntarily accepted. Provision should be made to permit codified industries to continue under agreements and codes approved under N. I. R. A. if the industry so desires.

The President should have the right to cancel outright an entire code where it appears that provisions of such code are working to the detriment of the public interest, but he should have no authority to modify existing codes without the consent of the industry.

Section 3 (d) of the present act, which empowers the President to impose a code, should be modified as follows:

"GOVERNMENT AUTHORITY TO IMPOSE LABOR PROVISIONS

"All codes should contain provisions against child labor and should provide for minimum wages and maximum hours, either to be negotiated under section 7 (b) or imposed by the President under section 7 (c). Under the authority of section 7 the President should impose codes only if he finds that conditions in a particular industry make such imposition desirable in the public interest. In the formulation of such imposed codes, the setting of wages and hour provisions should be for the protection of labor and industry against unsocial practices.

"PENALTIES

"The act should be written as involving civil rather than criminal liability.

"Violations of code provisions should preferably receive injunctive relief only. Criminal proceedings should be confined only to those offenders who knowingly falsify statistical data or statements with intent to mislead the Government."

Senator WALSH. As I understand your position, Mr. Kendall, you favor two classes of codes; one, what is called "imposed codes", and you would give authority to the President to place every industry in the country under certain imposed codes; am I correct?

Mr. KENDALL. Yes; imposed codes cover——

Senator WALSH (interposing). And those codes would deal only with child labor, minimum wages, and maximum hours, is that right?

Mr. KENDALL. Yes.

Senator WALSH. And the other codes would be voluntary codes, which the industry itself would formulate and submit to the President for his approval or disapproval?

Mr. KENDALL. Of course it would go through the N. I. R. A. Board.

Senator WALSH. He would finally determine whether it was in the public interest or not?

Mr. KENDALL. Yes; and he could deny the code or he could outline what provisions he would approve

Senator BARKLEY. It is a sifting process, which you think is representative of the industry or any committee or association that is truly representative, and that would form a code in the first instance?

Mr. KENDALL. Yes, sir; they would initiate the code.

Senator BARKLEY. And submit it to this board in the N. R. A.?

Mr. KENDALL. Yes, sir.

Senator BARKLEY. Which would act as a sifting process also?

Mr. KENDALL. Yes.

Senator BARKLEY. Subject to any changes that they might suggest or agree upon, and it would finally get to the President in its completed form after going through this process?

Mr. KENDALL. Probably with the approval of the N. R. A. board.

Senator BARKLEY. Codes do not get up to him unless they are approved by the board, do they?

Mr. KENDALL. I do not think so.

Senator WALSH. We hear about men and women being given a living wage. You will agree that the minimum wage is not a living wage, I suppose?

Mr. KENDALL. I will agree that the minimum wages in many respects are too low; yes, sir.

Senator WALSH. Why should not the President, if he has authority to prevent child labor under imposed codes and have authority to fix minimum wages and fix maximum hours, have authority to determine in a given industry, under different localities, what constitutes a living wage for the different grades of employment?

Mr. KENDALL. Well, I think that is quite proper that the President have the power to place a floor by naming the minimum wage, but almost no two concerns in the same industry have the same organization up through, and when you get into the realm of plural minima, which is what I think you are referring to?

Senator WALSH. Yes.

Mr. KENDALL. I think you are getting into something so complicated that, as far as the President is concerned, his authority should be confined to the floor or the basic minimum.

Senator WALSH. He could have a board to determine that. I appreciate the complications you speak of, Mr. Kendall.

Mr. KENDALL. We have for instance, eight cotton mills, and they are all working identically in the same material, and in that industry there has been argument for plural minima as a matter of fact, although our cotton mills will make identically the same product, the machine equipment and the organization is not exactly alike in any two, and we have modified our organization, our responsibilities, and graduated scale of wages to fit each individual case, but at the same time trying to keep them as consistent as possible.

If you go through the entire textile industry of some 1,600 units and attempt by a board to fix plural minima, you are getting into a realm which no board can tackle.

Senator WALSH. I appreciate that, Mr. Kendall, but the general complaints, the most numerous complaints that have come to me from my section of the country, have come, as you probably know, from the shoe industry and also the textile industry, to this effect, that where a minimum wage is established and no other wage, and where the employees in the textile or in the shoe factory are unionized and able to demand a reasonable and living wage, those industries that have no code fixing other than a minimum wage, where the employees are not unionized, have reduced wages consistently and steadily, with the result that without Government action, every industry that is unionized is going to be gradually eliminated from the field of competition in both shoes and the textile industry.

Mr. KENDALL. Senator, I cannot speak for shoes, but I can speak with some knowledge of the textile industry.

Senator WALSH. Are any of your mills unionized?

Mr. KENDALL. I beg your pardon?

Senator WALSH. Are any of your mills unionized?

Mr. KENDALL. Yes.

Senator WALSH. Which one?

Mr. KENDALL. We have a mill in New Bedford. As far as I know, it is completely unionized. We have five mills in the South, in the Carolinas, and four of those are unionized. Just to what extent I do not know, but I know that there are active unions in each one.

Senator WALSH. The situation as described, does not exist in your mills that the unionized employees are at a disadvantage and the owner of the mill, where his employees belong to unions, is not suffering any in the competitive market because his cost of production is increased over those where there are nonunion employees?

Mr. KENDALL. That is a different question. In the first place, you made the statement that mills were reducing wages in the upper brackets.

Senator WALSH. I said that mills were reducing wages by giving lower wages where the employees were not unionized, and could therefore force a particular wage.

Mr. KENDALL. I could not agree with you on that.

Senator WALSH. As a matter of fact, have not the Calloway mills in Georgia, within a month, reduced their wages?

Mr. KENDALL. I have heard various stories and I cannot answer that because I have no first-hand knowledge, but I can this: When the no. 1 code went into effect, it was provided that the minimum wages be set at a point which was certainly higher than the majority of the industry were paying, and that all other wages should be raised proportionately. In our own mills, we did exactly that. We were very little below the minimum, but we raised our wages proportionately. While I think there has been in some instances failure to comply with the code, I think they are at the minimum. I think generally speaking the textile code has had pretty good compliance. The industry itself has tried to police it. There have been some exceptions.

Senator WALSH. But the code does not deal with wages other than the minimum. Am I correct?

Mr. KENDALL. It provided for the minimum wages, and that all other wages should be raised proportionately. If the minimum in a particular mill was below the minimum established by the code. I think that has been generally followed out.

Senator KING. I have been told, Mr. Kendall, that recently, owing to the failure of the mills to sell all of their product, where there has been a diminution in the purchases, that some of the mills have closed, and others who did not want to close, who wanted to keep on—first, for the preservation of their trade as far as they could, and having regard to their employees, have been inclined to reduce wages, not because they desired to but because if they maintained the higher level of wages, especially those above the minimum, they might have to close down entirely. I was wondering if there was anything in that report?

Mr. KENDALL. I think there is. Before code no. 1 came into effect in an industry which was overcapacitated and where there was no limitation, either, on hours in some of the States that had no regulation, or on wages, there was a wage cutting that was perfectly awful. Now, the Code of Fair Competition, code no. 1, put a floor under that and raised the minimum. The industry still is a low-wage industry, I regret to say, but on the other hand it is so overcapacitated and the processing tax has caused so much substitution that the industry is in the realm of diminishing returns, and while it has the power under the code to operate two shifts of 40 hours each, 80 hours a week, it has been running on an average of not over 60 hours a week, and in spite of that curtailment, which was not an organized curtail-

ment but just the average time of operating, they have been piling up inventories.

It might interest you to hear in connection with this, a memorandum which I gave to the President 3 weeks ago which has to do with this matter of wages. [Reading:]

The processing tax on cotton which is paid by the cotton mills, 4.2 cents per pound, increases to double or triple that amount as it advances in the finished cloth and garments to the consumer.

This cost upon cotton goods only has caused so much resistance in consumer purchasing and the substitution of other materials, such as paper, jute, and, in the finer fabrics, rayon, that it appears to have brought the products of the cotton manufacturing industry into the realm of diminishing returns.

Although, under the code, they are permitted to operate 80 hours a week, the average has been about 60. Even this has produced excessive stocks and has lessened the earnings of the operatives. Added to this, the cost of food and clothing has increased.

Reports of the Brookings Institute and the Department of Labor with reference to wages and cotton-mill earnings appear to prove conclusively that added costs will produce less employment and less volume of sales.

I would suggest and urge very strongly a processing tax roughly estimated at $125,000,000 a year for the next 2 years be removed from the cotton mills into a fund provided from some other source. This would distinctly lower the cost of cotton goods in whatever form to the consumers and processors. It would seem to me fair at the same time to request the textile industry to make an increase of 10 percent in wages.

This would lessen the burden of curtailment, which looks as though it would increase rather than decrease.

Senator BARKLEY. What are some of the substitutions that you speak of?

Mr. KENDALL. For instance, the president of the largest flour milling concern in the country, who happens to be a member of our council, told me that before the processing tax went in he was the largest purchaser of heavy cotton sheeting in the country. Now he is purchasing almost none. He is substituting paper and jute. The processing tax is on a pound basis, and it particularly penalizes the heavy fabrics, like heavy sheeting for bags, denim for bags, work clothes, and that sort of thing.

The processing tax multiplies as the processing increases, and if this processing tax were taken off that would reduce the cost of the average cotton mill product, which you might call print cloths, over 10-percent. An increase in wages of 10 percent would increase the cost only about 3½ percent, so there would be a net saving to the cotton mill and the consumer of 6½ percent.

There are at present estimated to be 50,000 less employees in the cotton mills than were employed when the code was first enacted, and it is estimated that it would probably put those 50,000 back to work.

Senator KING. You think there is a less employment in the textile industry now than there was a year ago?

Mr. KENDALL. Yes, sir; I know there is. It is estimated at 50,000 less.

Senator WALSH. And increasing?

Mr. KENDALL. Yes, sir. And the whole industry is facing bankruptcy.

Senator WALSH. Was that excellent statement that you made to the President made in your own name?

Mr. KENDALL. That was a personal statement.

Senator WALSH. And that was 3 weeks ago?

Mr. KENDALL. I laid this on his desk March 18.

The CHAIRMAN. All right, Mr. Kendall.

Mr. KENDALL. I would like to say one more thing, Mr. Senator, if you do not mind. This morning I saw for the first time your bill (S. 2445), and during my absence in North Carolina—I just got in this morning—this bill, which comes very close to the memorandum I left you, has been worked on by our N. R. A. committee, and I would like to leave this with you as a part of my testimony, but I would like to withdraw it just to put it in better shape and then I will replace it; but I would like to have this left as part of my testimony.

The CHAIRMAN. Send it down to the stenographer.

(The following document with certain suggested changes to Senate bill (S. 2445) was subsequently submitted by Mr. Kendall:)

SUGGESTED CHANGES TO S. 2445

(*Italics* denote changes)

[S. 2445, 74th Cong., 1st sess.]

A BILL To amend title I of the National Industrial Recovery Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title I of the National Industrial Recovery Act, approved June 16, 1933, is hereby reenacted and amended to read as follows:

"TITLE I—INDUSTRIAL RECOVERY

"DECLARATION, POLICY, AND STANDARDS

"SECTION 1. (a) The Congress finds and hereby declares that a national emergency exists, characterized by wide-spread unemployment and disorganization of industry and impairment of the standards of living of the American people, and that such unemployment, disorganization, and impairment decrease and burden interstate and foreign commerce and adversely affect the general welfare.

"(b) It is hereby declared to be the policy of Congress and the purpose of this title to meet the needs of the present emergency, and to promote the orderly and healthy *revival and rehabilitation* of trade and industry, by means of such regulations and provisions as are hereinafter authorized; and such regulations and provisions are declared to be necessary and proper to effectuate said policy and purpose.

"(c) In order to effectuate the policy of Congress and the purpose of this title, the President is authorized and directed to take action as hereinafter provided when he finds that such action is necessary and proper in the public interest and in accordance with any of the following limitations and standards: That such action—

"(1) Establishes rules of fair competition.

"(2) Promotes or maintains cooperative organization and action of trade and industrial groups.

"(3) Induces or maintains cooperative relations between, or cooperative activities of, labor and management.

"(4) Promotes or maintains fair competition.

"(5) Prevents or eliminates competitive practices which are unfair or destructive of fair competition, or restraints upon trade which tend to diminish the amount thereof contrary to the public interest.

"(6) Promotes the effective utilization of the productive and distributive capacities of trade and industry.

"(7) Prevents or eliminates restrictions upon production, except those hereinafter sanctioned.

"(8) Promotes or maintains increased purchasing power and increased consumption of industrial and agricultural products.

"(9) Reduces or relieves unemployment or regularizes employment.

"(10) Establishes proper minimum *rates of pay* and maximum hours of labor.

"(11) Improves the standards and conditions of labor.

"(12) Promotes the rehabilitation of industry.

"(13) Conserves natural resources, and prevents production or competition wasteful of such resources and injurious to commerce therein.

"(14) Removes unreasonable burdens upon, or protects the reasonable flow of, interstate or foreign commerce.

"ADMINISTRATIVE AGENCIES

"SEC. 2. (a) In order to effectuate the policy of Congress herein declared, the President is hereby authorized and directed to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal agencies, officers, and employees, and, with the consent of the State, such State and local agencies, officers, and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. Any agency established or utilized pursuant to the provisions of this subsection is referred to in this title as a 'governmental agency.'

"(b) The President may, to the extent that he may deem necessary for the efficient administration of this title, delegate any of his functions and powers under this title to such governmental agencies, officers, agents, and employees as he may designate or appoint.

"(c) For the purpose of more efficient administration of codes of fair competition and agreements under this title, the President is authorized to *approve provisions in* such codes or agreements for the establishment of code *councils*, committees, or other *agents or* organizations, *and to provide* for their duties, responsibilities, tenure, compensation, records, *and removal for cause.* In the establishment of any such *council*, committee, or other organization which is composed in whole or in part of persons in the trade or industry or subdivision thereof affected, provision shall be made that such persons shall be truly representative of the trade or industry or subdivision thereof, having due regard to sectional interests, volume of production and sales, and other pertinent factors. *Nothing in any code or agreement approved under this section shall limit the power of the President to review, modify, suspend, or cancel any action of any such council*, committee, or other *agent or* organization which is composed in whole or in part of persons in the trade or industry or subdivision thereof affected.

"(d) This title shall cease to be in effect, and any agencies heretofore or hereafter established hereunder shall cease to exist, on June 16, 1937, *or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by Section 1 has ended.*

"CODES OF FAIR COMPETITION

"SEC. 3. (a) Upon application to the President by one or more trade or industrial associations or groups, the President is authorized and directed to 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 the trade or industry or subdivision thereof is eligible for a code within the limitations of subsection (b) *of this section*; and

"(3) That such code or codes comply with the provisions of this title, including the requirements set forth in section 7 (a) hereof; and

"(4) That such code or codes conform to and are reasonably designed to effectuate the policy of Congress in accordance with such of the standards set forth in section 1 (c) as are specified in his findings; and

"(5) That such code or codes are not calculated to promote or sanction the creation or maintenance of a monopoly or monopolies or practices destructive of fair competition, to eliminate or oppress small enterprises or to discriminate against them, or to promote or sanction devices for fixing prices or controlling production or distribution which are restrictive of fair competition; but *provisions* for controlling prices, production, or distribution may be *approved* (A) where found necessary and proper by the President to protect small enterprises against discrimination, oppression *or elimination*, or to deter the growth of monopolies, or (B) where found necessary to provide *preventatives or* correctives for emergencies caused by *capacity or* large volumes of production in excess of effective demand, or by destructive price cutting, or (C) *where the trade as industry is found to be affected with a public interest or is a natural resource industry* (such as, among others, coal, oil, or gas).

"(6) That public notice, and an opportunity to be heard either through oral or written presentation, have been given to interested parties (including those engaged in other steps of the economic process whose services and welfare may be affected) prior to approval by the President of such code or codes.

"(b) No trade or industry or subdivision thereof shall be eligible for a code, unless by reason of the character or volume of employment or sales, or the shipment, or use of goods shipped, in interstate or foreign commerce, or the effect of such trade or industry or subdivision thereof upon interstate or foreign commerce, or upon instrumentalities of interstate or foreign commerce, or upon the movement of goods or services in interstate or foreign commerce, or by reason of other conditions which the President finds to exist, said trade or industry or subdivision thereof either is engaged in interstate or foreign commerce, or so substantially affects interstate or foreign commerce that the establishment and enforcement of standards of fair competition in such trade or industry or subdivision thereof are necessary and proper for the protection or regulation of interstate or foreign commerce.

"(c) *The President may refuse to approve any code submitted pursuant to subsection (a) of this section except with such amendments or additions (including requirements for the making of such reports and the keeping of such books and records as may be necessary to establish compliance with an approved code or codes, and for the examination of pertinent books and records to verify the accuracy of such reports) as he may require for the protection of consumers, competitors, employees, and others, or to prevent the growth of monopolies and monopolistic practices, or in the furtherance of the public interest. In such case the trade or industrial association or group submitting such code shall be afforded an opportunity to include such amendments or additions. If such amendments or additions are not included, the code shall not be approved, but the President may prescribe a limited code of fair competition for such trade or industry or subdivision thereof pursuant to subsection (d) of this section. The President may, to effectuate the policy of Congress in accordance with the standards of this title, provide exceptions to or exemptions from the provisions of any code approved or prescribed under this section.*

"(d) Whenever, upon complaint or upon his own motion, after public notice and hearing (except where the President finds that there has been an adequate hearing upon an application for approval of a code) the President finds (1) that excessive hours or inadequate *minimum rates of pay* of employees in any trade or industry or subdivision thereof found eligible for a code within the limitations of subsection (b) *exist and are producing* unfair competition, and (2) that the requirements of fair competition hereinafter *in this subsection* set forth have not been established and are not effective for such trade or industry or subdivision thereof by a code voluntarily presented and approved, or by any agreement with the President made as hereinafter provided, then the President is authorized and directed to prescribe and approve a limited code of fair competition for such trade or industry or subdivision thereof, which he finds to be consistent with the requirements of paragraphs (3) to (6), inclusive, of subsection (a) *of this section*, and which shall contain only the following requirements: (A) Requirements of minimum *rates of pay* and maximum hours of labor; (B) the requirements of section 7 (a); (C) prohibition of child labor; and (D) *a provision requiring the making of reports and the keeping of such books and records as may be necessary to establish compliance with a limited code or codes, and for the examination of pertinent books and records to verify the accuracy of such reports.*

"(e) The *maximum hours and the minimum rates of pay* provided for in any code prescribed or approved under this section shall be those which the President finds to be fair and reasonable and calculated to promote or to maintain fair competition within or between trades or industries or subdivisions thereof, after giving due consideration to living and working conditions in and surrounding the trade or industry or subdivision thereof which is directly involved and to regional or other differences in such conditions: *Provided, That nothing in this subsection shall prevent the inclusion in any code of provisions permitting overtime work when found necessary in excess of the established maximum hours to be paid for at a rate or rates provided in such code. The minimum rates of pay provided shall not be so graded or classified as to tend to set maximum rates of pay, and in a limited code prescribed under subsection (d) of this section shall not be graded or classified according to the trade, occupation, or skill of employees.*

(f) Any code prescribed or approved under this section may require persons subject thereto to make equitable and proportionate contribution to the expenses necessary for the administration of such code. Collection and expenditure of any such contributions may be made in its own name by a code *council*, committee, or other organization approved by the President for the administration of the code; but the President is authorized and directed to prescribe such regulations concerning notice, opportunity to be heard, review, budgets, bases of contribution, auditing, and other matters, as he finds necessary and proper to protect such persons and the public interest.

"(g) After the President has approved or prescribed any code under this section, the provisions of such code shall be the standards of fair competition for the trade or industry or subdivision thereof defined in such code. Any violation of such standards shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the exercise of the powers of the Federal Trade Commission under such Act, as amended, in a manner consistent with the provision of this title.

"(h) In order to limit the number of codes approved and to simplify the administration thereof, the President is authorized and directed, in carrying out the provisions of this title with respect to codes, to propose to each small trade or industry or subdivision thereof *wherever practicable (1) that it permit a consolidation of its code with the code of another trade or industry of related interest or activities, or (2) that it consent to* be covered by a general code for small trades or industries, containing only requirements specially devised for and limited to the needs and conditions of such small trades or industries and subdivisions. No code for any such small trade or industry or subdivision shall be approved under subsection (a) unless persons truly representative thereof shall elect to be covered by a code in accordance with this subsection.

"(i) *Whenever a trade or industrial association or group, found by the President to be truly representative of a trade or industry or subdivision thereof operating under an approved code, shall submit to the President an application for termination of such code, it shall be terminated, but the President may prescribe a limited code of fair competition for such trade or industry or subdivision thereof pursuant to subsection (d) of this section.*

"AGREEMENTS

"SEC. 4. (a) The President is authorized to enter into agreements with, or approve voluntary agreements hereafter entered into between and among, persons engaged in a trade or industry or subdivision thereof, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry or subdivision thereof, if he finds that such agreements (A) are reasonably designed to aid in effectuating the policy of Congress in accordance with the standards of this title with respect to trades or industries or subdivisions thereof found eligible for codes within the limitations of subsection (b) of section 3, and (B) are consistent with the requirements of paragraphs (3) to (6), inclusive, of subsection (a) of section 3. Any agreement so entered into or approved shall be enforcible in accordance with its terms by civil suit in any State of Federal court of competent jurisdiction.

"(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof to establish, by mutual agreement, the standards as to the maximum hours of labor, minimum *rates of pay* and such other conditions of employment as may aid in effectuating the policy of Congress in accordance with the standards of this title.

ANTITRUST LAWS

"SEC. 5. Nothing in this title shall be construed to amend or repeal any provision of the antitrust laws of the United States; but the provisions incorporated in any code or agreement specifically approved, prescribed, or entered into and in effect in accordance with this title, and any action complying with *or authorized by* such code or agreement taken while it is in effect or within sixty days thereafter, shall be lawful. *This provision shall not remove from the operation of the antitrust laws any conduct by members of a trade or industry not complying with or authorized by the provisions of the code or agreement for such trade or industry.* All such codes and agreements shall cease to be in effect on or before June 16, 1937.

"INVESTIGATIONS

"SEC. 6. Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect to investigations under the Federal Trade Commission Act, as amended.

"EMPLOYERS AND EMPLOYEES

"SEC. 7. (a) Every code of fair competition or agreement approved, prescribed, or entered into under this title shall contain the following *conditions:* (1) 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; and (2) 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.

"(b) All employers in the trade or industry or subdivision thereof with respect to which any such code or agreement is in effect shall comply with the requirements of subsection (a) and with the maximum hours of labor, minimum wages, and other conditions of employment set forth in any such code or agreement.

"APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

"SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled 'An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes', approved May 12, 1933, as amended; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the 'Agricultural Adjustment Act.'

"(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades or industries or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

"(c) Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

"OIL REGULATION

"SEC. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

"(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

"RULES, REGULATIONS, AND DEFINITIONS

"SEC. 10. (a) The President is authorized and directed to prescribe such rules and regulations as may be necessary to carry out the policy of Congress in accordance with the standards of this title, and to secure compliance with codes and agreements approved, prescribed, or entered into under this title.

"(b) The President is further authorized to make reasonable provision for the promotion and maintenance of codes and agreements under this title by means of distinctive insignia or labels *and* by requirements that departments and agencies of the United States purchase from persons *having the right to use such distinctive insignia or labels.* The President may regulate the distribution, use, and display of such insignia or labels, in order that purchasers and consumers of goods and services may be assisted in supporting the standards of fair competition provided for in this title. *Any final administrative order, ruling or notice, that any member of an industry or subdivision thereof has violated or is violating such code or agreement and that such member shall be deprived of the right to use such distinctive insignia or labels shall be reviewed by the Circuit Court of Appeals for the circuit in which*

such member has his principal place of business, or by the Circuit Court of Appeals of the United States for the District of Columbia, upon petition filed within 20 (20) days after the receipt of due notice of the entry of such order or ruling. Such review shall be upon the record made before the agency or agencies issuing such order or ruling, but the Court may for good cause shown permit the taking of additional testimony. The Court may in its discretion suspend the operation of such order or ruling pending final determination, and may in its discretion determine whether the circumstances of the violation warrant the deprivation of the right to use such distinctive insignia or labels, and for what period of time, or the cancelation of contracts with agencies of the United States.

"(c) The President may, from time to time, cancel *any order of approval, or cancel,* modify, *or amend* any *other* order, approval, rule, or regulation issued under this title, and each code and agreement approved, prescribed, or entered into under this title shall contain an express provision to that effect.

"(d) As used in this title—

"(1) The term 'person' includes any individual, any partnership, association, corporation, trust, or other form of enterprise, and any receiver, trustee, executor, or administrator;

"(2) The term 'code of fair competition' or 'code' means any group of provisions heretofore or hereafter approved or prescribed as such by the President under this title; and

"(3) The terms 'interstate and foreign commerce' and 'interstate or foreign commerce' include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions (including the Philippine Islands) or other places 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 any foreign nation, or within the District of Columbia or any Territory or any such insular possession or other place under the jurisdiction of the United States.

"TARIFF ADJUSTMENT

"SEC. 11. On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this section, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this section the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this section shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exist.

"ENFORCEMENT

"SEC. 12. (a) The several district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States (including the courts of the Philippine Islands), are hereby invested with jurisdiction of any proceedings under this title, including jurisdiction to prevent and restrain violations of any code or agreement approved, prescribed, or entered into under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain any violation of any such code or of any such agreement to which the President is a party.

"(b) Any *person violating any of* the provisions of any code or of any rule or regulation, approved, prescribed, or continued in effect, under this title, as amended, shall be subject to a *penalty in the sum of $100, collectible in a civil suit brought for and in the name of the United States.* Each day such violation continues shall be deemed a separate *violation.* Any agency of the United States established or utilized by the President under section 2 (a) and authorized to administer such provisions may, prior to the commencement of suit with respect to any such *violation,* subject to the approval of the Attorney General, compromise the liability arising under this title with respect to such *violation* (1) upon *satisfactory assurance of future compliance, or* (2) upon the entry of a consent decree enjoining the future commission of such *violation,* or upon entering into a stipulation that the United States may upon its own motion at any time upon five days' notice to the violator cause such a decree to be entered by any court of competent jurisdiction.

"(c) Whenever, after due notice and opportunity to be heard, upon complaint by an employee or his representative, alleging any violation or violations, occurring after the date this title as amended takes effect, of any provision of any code relating to minimum *rates of pay* or maximum hours of labor, any governmental agency established or utilized by the President under section 2 (a) determines that any person has violated such provision, such agency shall find the facts constituting such violation and *shall fix* the amount of damage, if *it does not exceed $500* which such employee has suffered as a result of such violation, and shall make an order, incorporating such findings, directing the violator to pay such damages to such employee on or before the date fixed in such order.

"(d) If the violator does not comply with the order on or before the date fixed in such order, the complainant may within six months from the date of the order file in any State or Federal court of competent jurisdiction a petition setting forth the causes for which he claims damages and the order of such agency in the premises. Such suit shall proceed in all respects like other civil suits for damages except that the findings and the order of such agency shall be prima facie evidence of the facts found therein: *Provided,* That the petitioner shall not be liable for costs at any stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of suit, *provided that no such fee shall be allowed, paid or received in excess of 5 percent of the amount of any judgment.*

"(e) Nothing herein shall be construed to require any person complaining of any such violation to resort to the remedies and procedure provided for in subsections (c) and (d) of this section before bringing any suit at law which he would otherwise be entitled to prosecute.

"(f) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as amended, are made available to *the President* and shall be applicable to any persons subject to the provisions of this title, or any code of fair competition, agreement, order, rule, or regulation under this title, whether or not such person is a corporation.

"(g) The termination in any manner, in whole or in part, of any code of fair competition, agreement, order, rule, or regulation approved, prescribed, issued, or entered into under this title shall not extinguish any penalty or liability under or arising out of such code, agreement, order, rule, or regulation.

"CODE REVISION

"SEC. 13. The President shall review or cause to be reviewed, for compliance with the requirements of this title, as amended, every code *and agreement* in effect upon the date this title, as amended, takes effect. In order to afford reasonable opportunity for such review, such codes *and agreements* are hereby

continued in effect (subject to cancelation or modification in accordance with this title, as amended) for a period of ninety days after June 15, 1935, unless previously reviewed and superseded hereunder; but no such code *or agreement* shall continue in effect after the expiration of such ninety-day period unless the President has reviewed such code *or agreement* and has approved *or executed* it *after finding* that the code *or agreement* in the form so approved *or executed* conforms to the requirements of section 3 (a) hereof, *or unless a truly representative group petitions that such code or agreement be continued in effect until review as herein provided has been completed.* All rules, regulations, and orders (except orders approving codes *or agreements*), heretofore issued and now in effect under this title shall continue in effect until canceled or modified under this title, as amended."

Mr. KENDALL. I would like to urge that while there have been some mistakes made during the administration, more particularly the earlier administration of N. R. A., I believe that this is such a constructive move in this emergency that, given 2 years more, a lot of problems can be smoothed out, a lot of errors corrected, and industry given the heartening that it needs to go forward, because, after all, industry and business are the ones that employ labor, and that is where you have got to look for employment, and I very much hope—and this is a very simple memorandum, this one that I left with you—it meets with the unanimous consent of our 52 members, which is pretty representative, and with slight modifications to this bill, it is practically the same thing.

Senator KING. Did your committee take into account that there were State rights and that the Federal Government has limitations upon its authority with respect to purely service or intrastate activities?

Mr. KENDALL. Yes, sir; coming from Massachusetts I am very cognizant of the idea of State rights.

Senator BARKLEY. Let me ask you what, in your opinion, would be the result if the N. R. A. should be abandoned at the expiration of the present law?

Mr. KENDALL. If the N. R. A. should be abandoned, I think the cotton textile industry, which employs a half million people, would practically go into chaos. I think it would be bankrupt. I think it would be a very bad jolt to business generally.

Senator KING. I understood you to say that the textile industry was practically bankrupt and had 50,000 less employees than there were a year ago?

Mr. KENDALL. It is not officially bankrupt, and that would make it.

The CHAIRMAN. Thank you very much.

Senator BARKLEY. You are still trying to hold on?

Mr. KENDALL. Yes, sir; with our teeth.

Senator BARKLEY. I hope you succeed.

STATEMENT OF DR. JOHN A. RYAN, MEMBER INDUSTRIAL APPEALS BOARD, NATIONAL RECOVERY ADMINISTRATION

(The witness having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. You are on the Industrial Appeals Board?

Dr. RYAN. Yes, sir.

The CHAIRMAN. Proceed, Doctor.

Dr. RYAN. I want to make a brief statement concerning the origin, constitution, and activities of the Industrial Appeals Board, and I think I shall not need more than 10 minutes.

It is generally understood, not officially proclaimed, however, that the Industrial Appeals Board was set up as the result of, and in part in answer to, the findings of the so-called "Darrow committee." The language of the order setting up the Board is as follows; it is very brief. [Reading:]

OFFICE ORDER NO. 105, JULY 16, 1934

CREATION OF N. R. A. INDUSTRIAL APPEALS BOARD

There is hereby established a Board consisting of three members, to be appointed by the Administrator, which shall be known as the N. R. A. Industrial Appeals Board, to act on all complaints of inequitable application of codes to small enterprises or otherwise.

Such Board shall—

(a) Hear and recommend to the Administrator the proper disposition of complaints concerning N. R. A. or any agency or branch thereof, especially those alleging that code provisions are designed to or tend to eliminate, oppress, or discriminate against small enterprises, or to favor monopolistic tendencies; and complaints of noncompliance;

(b) Advise and make recommendations to the Administrator with respect to the effect of code provisions on small enterprises; and

(c) Conduct any special investigations directed by the Administrator.

Said Board shall adopt rules governing matters of procedure and organization.

Members of the Board are: Amos J. Peaslee, chairman; Mgr. John A. Ryan; John S. Clement.

By direction of the Administrator:

G. A. LYNCH, *Administrative Officer.*

There is a later order from the National Industrial Recovery Administration under date of March 6, 1935. [Reading:]

The National Industrial Recovery Board today issued an office memorandum clarifying the functions of the Industrial Appeals Board. According to that memoradum, the N. I. R. B. "has constituted the Industrial Appeals Board its agency to hear complaints of individuals respecting the inequitable application of codes."

The purpose, "the office memorandum continues", is to afford an impartial hearing on its behalf to any individual who is aggrieved by any administrative action or neglect of N. R. A.

The Industrial Appeals Board, upon such hearing, makes recommendation to the N. I. R. B. as to proper disposition of the case. Such recommendations become official determinations when, and to the extent that, they are approved by the N. I. R. B.

I shall give this to the reporter. I do not think it is necessary to read in the whole of it.

(The balance of the document referred to will be found at the conclusion of the witness's testimony.)

Dr. RYAN. As to the history of the activities of the Board: 74 cases docketed to date, 61 heard to date, 5 canceled to date, 1 dismissed to date, 32 decisions affirm previous administrative action, 11 decisions recommend modification, 10 decisions recommend granting appeal in full, 1 case only completely reversed by the National Recovery Board, and 7 cases docketed which have not yet been heard.

Approximately then, the Industrial Appeals Board has affirmed 60 percent of the decisions of the N. R. A. in the cases that came before us, and about 40 percent have been either wholly or partially reversed. Only one of the decisions of the Board has been set aside by the National Recovery Administration, and that was a rather technical case, set aside not on the merits of the case as a whole but

because of the question of representation by one group of the industry which complained that it should not be under the code because it did not participate in the making of the code, and we were reversed on that.

Between 45 and 50 codes have been represented in the hearings before us.

Just one more point and that is with reference to the small-business man and the kind of complaints generally. The restatement of the functions of the Board under date of March 6 do not single out the small industry or small-business man as subjects for consideration by the Board. Of course, they are included, but I mean there has been a shifting of emphasis, partly I suppose because the National Industrial Recovery Board desired to have the functions of the Industrial Appeals Board adequately stated and possibly in part because the proportion of cases coming before us which were small-business men has not been as large as was expected when the Board was established.

That brings up the question of monopoly. We have not seen a single instance of monopoly charged by any of those that have been before us; not one.

As regards the small men, they sought relief in the great majority of cases because they could not afford to pay the minimum wages, not because they were oppressed by monopoly.

In other cases wages were not involved; for instance, limitation of machine-hours came up in several cases. I think in all cases where a firm or corporation appealed for exemption from the machine-hour provision, the 80-hour week, that appeal was granted and it was upheld by the National Recovery Board.

On the other hand, there is one case in which we recommended that this industry should strive to utilize the unutilized capacity of the industry before it should put on 3 shifts instead of 2, and I think that was satisfactory.

Incidentally, I might mention that in every industry which has been represented before us, we found substantially the same thing that Mr. Kendall has said about the cotton industry—overdevelopment, overcapacity, probably not as great as in the cotton-textile industry, but it is a general condition.

For example, the first hearing we had was the crushed stone, sand, and gravel industry. It was reported that the overproduction in that industry in 1929, or rather of the used capacity in 1929, was only 70 percent. At the time this hearing was held, the capacity use was only about 20 percent. That is everywhere and that of course has created great difficulties.

As regards the small man in general, I say in the cases before us, almost uniformly the complaint has been "We cannot pay the minimum wages." Some of the cases are very appealing.

For instance, a small man in a small place, and if you could isolate him so that the relief that he got would not have any effect on the wage scales elsewhere, the matter would be very simple. You could say, "Go ahead, pay less than the minimum, it will keep some people off the relief rolls, and it won't hurt industry, it won't hurt your competitors, and it won't hurt labor elsewhere."

The CHAIRMAN. Did the question of unfair inequality in representation on the boards come before your board?

Dr. RYAN. None formally. We have had possibly one case.

The CHAIRMAN. It could come before the board?

Dr. RYAN. It could, yes.

The CHAIRMAN. Thank you very much, Doctor.

Senator BARKLEY. You did not quite complete your last sentence or two, as I gathered, with reference to the impossibility of isolating a particular unit from the rest. I would like you to finish that thought.

Dr. RYAN. If you could isolate them—we had one case last week that involved that, and it looked as though that man ought to get relief and be permitted to pay less than the minimum. Incidentally, he was inefficient as far as that goes, but if a man is in business, he has some kind of a claim to consideration. We have not decided that yet, by the way, but it is not clear to me that you could isolate in that way, and it was very clear in the first case we had, the *Eldred Crushed Stone case*, that the thing could not be done because 50 or 60 men said, "If you give him exemption from the wage rate because he has hand-operated machinery for loading, then we will have to ask for exemption on our loading operations." So, generally speaking, that isolation business of putting a man into an economic vacuum, that cannot be done.

Senator BARKLEY. Have you had any cases involving the right to expand capacity or to establish new industries?

Dr. RYAN. Yes; we had one or two cases involving appeal to set up a new industry; for instance, one in the ice business in Brooklyn, which is a very important case. The Ice Code forbids the expansion of the industry unless upon presentation of a certificate of public convenience and necessity. These people who wanted to start that new ice factory in Brooklyn could not show that it was needed. As a matter of fact, at the peak season in Greater New York, there is only 52 percent of the ice capacity used, so we refused the application.

Senator BARKLEY. The theory upon which refusal has been accorded to some of those asking for permission to enlarge or to start anew was that the industry was already overcapacitated and overproduced, and to start a new unit would simply drag down those that are already in existence?

Dr. RYAN. Yes.

Senator BARKLEY. Theoretically it is difficult to defend the refusal of anybody to go in any business he wants to go in.

Dr. RYAN. Mark Sullivan has made a lot of that—a poor fellow down in Florida that wanted to started a new ice plant.

Senator BARKLEY. I realize that, and on the surface it seems like in a free country anybody ought to be able to go into any business he wants to go into, whether he succeeds or not; yet I want to get in the record and before the committee the theory upon which these refusals were based. If I understand you, it was based upon the fact that the industry was already overcapacitated and overproduced and with surplus capacity and surplus products, and to enlarge the capacities simply lowered the chance for success of those already in it?

Dr. RYAN. And lowered all standards and caused further demoralization.

Senator GEORGE. Who grants the certificate of necessity and convenience?

Dr. RYAN. The Administration, the N. R. A.

Senator GEORGE. The Administration?

Dr. RYAN. The National Recovery Administration. And they refused it in the case of this ice company, and the appeal was from this refusal.

Senator GEORGE. The industry does not have anything to do with it?

Dr. RYAN. Yes; the code authority. The industry primarily, and the code authority makes its recommendation then. Finally, though, the decision is made by the National Recovery Administration, and in this case that I speak of everybody was opposed to granting it, and even the city officials of New York said——

The CHAIRMAN (interposing). As I understand it, in the Ice Code it is written in the code and subscribed to by the men of that industry, that before a new industry can be established in the ice business, they must get a permit and if they can show that it is needed in that community, they will procure it?

Dr. RYAN. Yes.

The CHAIRMAN. If they can show it is not needed, it is turned down?

Dr. RYAN. That is it exactly.

The CHAIRMAN. All right, Doctor, thank you very much.

(The balance of the document submitted by the witness is as follows:)

The Industrial Appeals Board took office August 1, 1934, having been created "to act on all complaints of inequitable application of codes to small enterprises or otherwise." Its duties were to "hear and recommend * * * the proper disposition of complaints concerning N. R. A., especially those alleging that code provisions are designed to eliminate, oppress, or discriminate against small enterprises, or to favor monopolistic tendencies; and complaints of noncompliance" and to "advise and make recommendations * * * with respect to the effect of code provisions on small enterprises."

During its 7 months of existence the Appeals Board found that the larger part of its hearings involved questions other than complaints of discrimination against small enterprises. It has developed rules of practice and procedure in handling appeals. The new office memorandum is intended to clarify and crystalize the functions and procedure of the Appeals Board in the light of its experience.

The Industrial Appeals Board is made up of Amos J. Peaslee, chairman, New York attorney; Monsignor John A. Ryan, Catholic educator; and John S. Clement, Philadelphia industrialist.

Since the Appeals Board was created it has heard 44 appeals. Recommendations have been submitted to N. I. R. B. in 42 cases; in one case the interested parties have requested more time to submit additional briefs, and the other undecided case was heard this morning. There are 10 cases on the Appeals Board docket awaiting hearing. Recommendations of the Board have been submitted from 3 to 30 days after the conclusion of the hearing.

Appeals Board recommendations have upheld previous N. R. A. action in 28 of the cases so far decided; in nine cases the recommendations urged modified the prior action or remanded the cases for further action; and in five cases the Board recommended that the appeal be granted in full and the N. R. A. rulings be reversed.

Recommendations of the Appeals Board have been followed by the N. I. R. B. in all but one case. That case involved the question of representative character of proponents of a code amendment. The Appeals Board recommended that the amendment be rescinded, but after further investigation the N. I. R. B. decided it had been properly adopted and permitted it to stand.

The following general types of code provisions have been involved in cases heard by the Industrial Appeals Board:

	Cases
Minimum wage or maximum hours	15
Classification of appellants and interpretation of code provisions	11
Problems of small towns or rural communities as against large cities	7

	Cases
Pleas for special consideration on the ground that the appellants were small industries	6
Machine-hour limitation	4
Apprentices and learners	4
Hand-operated plants as against machine-operated	4
Effects of prior existing contracts or independent contractual relations	2
Representations or actions of administrative officials	2
Restrictions of capacity and plant expansion	1
Rates of a public-service company	1
Employment of outside salesmen	1
Right to participate in the election of a code authority	1

The following codes have been involved in the appeals heard:

Baking; cotton textile; crushed stone, sand and gravel and slag; ice; upholstery and drapery; wool textile; dress manufacturing; motor bus; slate; hosiery; furniture manufacturing; smoking pipe; retail monument; throwing; retail jewelry; retail solid fuel; silk textile; cotton garment; boot and shoe manufacturing; saddlery; leather; candy manufacturing; fur dealing; hat manufacturing; American glassware; trucking; corset and brassiere; cigar manufacturing; restaurant; cotton pickery; cooking and heating appliances and gas appliance; cocoa and chocolate; graphic arts.

The text of the office memorandum clarifying the functions and procedure of the Industrial Appeals Board is as follows:

OFFICE MEMORANDUM

FUNCTION OF INDUSTRIAL APPEALS BOARD

Complaints respecting the final order or decision of officials of N. R. A. should be forwarded to the Industrial Appeals Board.

INDUSTRIAL APPEALS BOARD

(1) *Function.*—The N. I. R. B. has constituted the Industrial Appeals Board its agency to hear complaints of individuals respecting the inequitable application of codes.

(2) The purpose is to afford an impartial hearing on its behalf to any individual who is aggrieved by any administrative action or neglect of N. R. A.

(3) The Industrial Appeals Board, upon such hearing, makes recommendation to the National Industrial Recovery Board as to proper disposition of the case. Such recommendations become official determinations when, and to the extent that, they are approved by the National Industrial Recovery Board.

(1) *Nature of complaints.*—In general, the Industrial Appeals Board will hear complaints which allege that any act or neglect of National Industrial Recovery Administration is unfair to, discriminatory against, or oppressive of the complainant. Acts (or neglects) of which such complaint may be made include——

(*a*) Any code provision.

(*b*) Any order or ruling made by National Industrial Recovery Administration pursuant to a code or otherwise.

(*c*) Any neglect of National Industrial Recovery Administration to make proper ruling or take proper action.

(*d*) Any neglect of procedure, as, for example, insufficient notice.

(2) All final administrative actions of officials of National Industrial Recovery Administration are by virtue of authority delegated by the National Industrial Recovery Board, and are therefore acts of the National Industrial Recovery Board. They remain official actions until and unless other action is taken by the National Industrial Recovery Board. Resort to the Industrial Appeals Board is not a step in the administrative process and does not affect the finality of administrative action. The question whether to stay an administrative action pending a hearing before the Industrial Appeals Board is one exclusively for the determination of the official responsible for such action or the National Industrial Recovery Board.

(1) *Limitation on complaints.*—The Industrial Appeals Board will not hear matters prior to the final administrative action except where it is alleged, and established to the satisfaction of the board, that reasonable efforts to procure final administration action have been unsuccessful.

(2) Litigation in the courts assures that impartial hearing which is the purpose expressed * * * above. The Industrial Appeals Board will therefore decline to hear any complaint upon advice from the litigation division that litigation is pending or may refuse when litigation is imminent.

(3) The board is concerned solely to determine the facts respecting the claim of inequity made by the complainant and, where such is substantiated, to recommend the appropriate form of relief. It is not concerned with questions touching the general policy or validity of code provisions.

(4) Since hearings involve trouble and expense to the parties involved, the Industrial Appeals Board will make every effort to avoid unnecessary hearings. Accordingly, the Industrial Appeals Board will not set hearings unless satisfied of its jurisdiction and unless a prima facie case is presented.

Procedure of Industrial Appeals Board.—(1) *Form of petition.*—A complaint should be set forth in a typewritten or printed petition stating (*a*) the name and address of the petitioner; (*b*) the details of the complaint; (*c*) the relief requested; (*d*) the disposition of the complaint made by each agency or official concerned; and (*e*) the final disposition made by the appropriate division of N. R. A. A signed original and at least four copies of the petition should be filed.

(2) *Notice of filing of petition.*—Notice of the filing of a petition will be sent to all interested parties, as determined by the Board, and a copy of the petition on request.

(3) *Answers.*—The Board may request an answer or other information from any interested person within a time specified by the Board, and immediately upon receipt thereof will send a copy of the answer or other information to the petitioner.

(4) *Notice of hearing.*—If the Board decided to call the interested parties together for a hearing, a notice thereof will be sent to the parties concerned, as determined by the Board.

(5) *Appearance, briefs, and evidence.*—Any petitioner or interested party may (*a*) appear in person or by attorney, or both; (*b*) submit a brief, at any time, subject to the discretion of the Board; (*c*) introduce written evidence at any time, subject to the discretion of the Board. Failure of any interested parties to appear in person shall not deprive the Board of the right to hear other interested parties in person.

(6) *Hearings.*—Hearings may be had before the full Board or any member or members thereof or any other person designated by the Board, as the Board may direct. They will be open to the public, except that the Board may in its discretion for proper cause conduct hearings and receive information which are not public.

The CHAIRMAN. Mr. Charles Lachman of Philadelphia.

(No response.)

The CHAIRMAN. Mr. Lachman is not here. Mr. Charles E. Sands

STATEMENT OF CHARLES E. SANDS, REPRESENTING INTERNATIONAL UNION OF HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' ALLIANCE, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. You represent the International Union of Hotel and Restaurant Employees?

Mr. SANDS. The International Union of Hotel and Restaurant Employees and Bartenders' Alliance.

The CHAIRMAN. Bartenders too?

Mr. SANDS. Yes; thanks to the honorable Senators.

I represent an organization of approximately 75,000 members affiliated with the American Federation of Labor. I am the international representative of the organization and know something of the code as it pertains to our industry.

We operate in our industry on two codes. One is known as the "hotel code", which takes in such as the bellboys, maids, and so forth, and the other code is the restaurant code.

All restaurants come under the jurisdiction of the restaurant code. The hotel code is in the service group, but the restaurant code is not in the service group. The restaurant code is in the food-manufacturing division. We kill and process food for consumption, and about 6 months ago we proved to the N. R. A. that the restaurant code applied outside of the service group.

I have heard some talk of scrapping the service codes, and I hope that the committee will remember that the restaurant code is not in the service group but is in the food manufacturing.

We favor the retention of the code. All of our local organizations favors the retention of the code. I am one of the labor advisers on the restaurant code. No salary and no expense. And I feel that I have some right to represent the workers in the industry.

The restaurant industry has approximately 750,000 employees. The hotels, exclusive of the restaurants, perhaps another 250,000.

The code that we got out of the N. R. A. did not suit us, but the code did for the great mass of workers, and we are a very poorly organized trade, but we have in certain sections wonderful organizations where we have established conditions. In the other sections, we are very poorly organized and there is no conditions.

The code gave to the restaurant workers—and they are the poorest paid I think of any industry, men and women—the code did establish for them one day's rest in seven. It did establish a weekly payment of wages.

Perhaps the Senators will think that is not important, but it certainly is when you recognize the great amount of people who go in the restaurant business and fail. Many years ago we were successful in passing that law in the State of Massachusetts, a weekly-payment wage law, because there were so many people who opened summer resorts, and so forth, and when it came to the end of the season, the help did not get their money.

We established a maximum work week of 54 for men and 48 for women. There is no doubt, and it can be easily proven, that some people in the unorganized sections of our industry worked as many as 110 hours per week before the code. We take this position, that whatever benefits our people, whether we are organized or not, we are in favor of.

The code has placed plenty of people back to work. In the city of Washington alone we have placed in the restaurants in Washington over 2,000 workers since N. R. A. went into existence. There has been no reduction of wages, and we had a very good wage scale in Washington, due to the strength of our organization, because there is a section in the code which states that the wages cannot be reduced under the wages of June 16, 1933. If it were not for that code and that section in the code, I feel that in the last 2 years the restaurant worker would have had decreases that would have been terrible, due to the great amount.

We have a number of unemployed throughout the country, thousands of them. You could go to our own organization here today, this morning, and you would see 100 or 150 men and women there waiting for work.

If you do not retain this code, the Restaurant Code, the employer is going back on the old hours, and the people who succeeded in obtaining any employment when the code went into effect are going to be dumped on the street again.

We never had very many people on relief until recently, because our organization was financially able to care for them. The burden became so great that we were no longer able to care for them.

The question of interstate and intrastate probably enters into the question, but I want to point out to you that, in some of the large restaurants, they have kitchens and commissaries in New York, for example, which processes food for consumption in several States surrounding. The same applies in all of the bigger States. The food that has to be processed comes from practically every State in the Union.

Another thing: In 14 States now, we have State codes, and in a number of other legislatures, the State codes are pending and they are awaiting in some cases the action of the national administration as to whether they will enact such codes.

The CHAIRMAN. Have the restaurants an organization?

Mr. SANDS. Yes, sir; and they favor retention of the code.

The CHAIRMAN. They do?

Mr. SANDS. Yes; but the Hotel Association, which has contributed not one iota to the recovery program, notwithstanding this administration gave them repeal which brought them out of the red, never went along with the code except in the cities where we have organization strong enough to make them do so.

The CHAIRMAN. Is there anything else?

Mr. SANDS. As to the small little fellow who has a restaurant, all exemptions on the Restaurant Code ultimately come to me, and there has never been a time that we could not agree with industry that a small fellow was entitled, perhaps, to exemption, and in the set-up of division 6 now, held in abeyance is a set-up for a regional-compliance division where the small fellow or someone who could not go along would present his claim to the regional-compliance division, and they being locally there, giving to labor and industry equal representation, could grant the small fellow an exemption. I mean the fellow who has only got one cook, for example, in the kitchen.

The CHAIRMAN. Was there not an order made that in certain-sized cities, 2,500 or less or some such number, that they were exempt from the code?

Mr. SANDS. Yes, sir, they are exempt from the codes. There have never been exemptions presented to us after they have passed the Industrial Advisory Board and the consumers and finally come to us and to me, and there have been no exemptions that we have not granted reasonable exemptions.

Senator BARKLEY. Do you recommend the continuance of the hotel code as well as the restaurants?

Mr. SANDS. Yes, indeed. I recommend the continuance of all codes.

Senator BARKLEY. Would you be able to make an estimate as to the number of employees who now have work under the codes, compared with the number that would have work if there were not any codes in the restaurant division?

Mr. SANDS. I could not, except taking Washington as a barometer. I could name you restaurants in this city who have placed as many as two to three cooks in the kitchen and fifteen to twenty waiters in the dining room, and several miscellaneous workers, such as dish washers, potato peelers, and so forth.

Senator BARKLEY. You said that you had, I think, 700,000 employees in your organization?

Mr. SANDS. Not in our organization; in the industry.

Senator BARKLEY. In the restaurant industry?

Mr. SANDS. Yes.

Senator BARKLEY. And possibly 200,000 in the hotels?

Mr. SANDS. Yes.

Senator BARKLEY. How many of the 700,000 are employed? I mean, how many of the 700,000 would you be willing to make an estimate would be out of work, taking the country as a whole, if there had not been any codes and were not any codes now?

Mr. SANDS. I think 25 percent would be a very conservative estimate. When you take into consideration that some of the dishwashers and the potato peelers worked 12 and 14 hours a day before the code, and now they are on a 55-hour week. Six days per week for some of the employees was unknown in our industry. We only got the 6-day work week for the cooks and the waiters in the cities where we had strong organizations, but the great mass of workers, like the dishwashers, potato peelers, and those people who have not as yet seen the light of organization work, work 7 days a week.

Senator BARKLEY. I understood you to say that your organization funds were exhausted and you could no longer maintain them?

Mr. SANDS. That is right.

Senator BARKLEY. Have you any opportunity of knowing whether that situation is so in many other labor organizations throughout the country?

Mr. SANDS. Yes, indeed.

Senator BARKLEY. In other words, men and women who have gone on relief in recent months were out of work originally but were maintained by the organization?

Mr. SANDS. They had little savings of their own, and their organizations by assessments out of their treasuries, they wanted to pride themselves that the members of their organizations were not on relief and they subscribed to them.

Senator BARKLEY. So that the putting of these people on relief has given a sort of artificial stimulus to the number of people on relief who would have been on relief from the beginning except that they had some savings or that they belonged to an organization that maintained them?

Mr. SANDS. That is right.

Senator BARKLEY. And it is not a correct barometer as to employment or as to recovery to cite that in certain industries there are so many people on relief now, whereas many of them would have been on relief at the start if it had not been for these funds of theirs and their organizations?

Mr. SANDS. That is right, and in the restaurant industry we cannot say so many are out of work, because the stenographer, the bookkeeper, the retail clerk, the baker, the painter, and the carpenter who is out of work will think nothing of going into the restaurant industry and working, like potato peelers and dishwashers to temporarily tide them over until they can obtain work in their own jobs or professions. Every worker out of work is a potential restaurant worker because they walk by and see the coffee urns and smell the food and feel if they were inside they would get something to eat. So that in a case

of unemployment, we in our industry are confronted with the fact of absorbing pretty nearly all of them.

The CHAIRMAN. Thank you, Mr. Sands.

I desire to place into the record at this point a letter and brief from the American Hotel Association.

AMERICAN HOTEL ASSOCIATION OF THE UNITED STATES AND CANADA,
New York, N. Y., March 14, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: In further reference to my request of February 21 that we be allowed to appear before your committee in defense of the interest of hotels under N. R. A., if it is agreeable to you, we are willing to confine our representation to the presentation of a brief which covers the essential points in our claim that hotels and hotel restaurants should be completely exempt from all regulation by N. R. A. or similar governmental bodies.

I take pleasure accordingly in enclosing a brief which has only recently been prepared at the suggestion of Mr. S. Clay Williams, chairman of the National Industrial Recovery Board, and submitted to him.

With this brief, I enclose a copy of a letter written to Mr. Williams on the same general lines and for the same purpose. Both of these communications contain the essential facts and I thought you would prefer to have our claims presented in the form in which we have officially presented our claims for exemption to the National Industrial Recovery Board.

With kind personal regards, I am,

Yours sincerely,

THOMAS D. GREEN,
President and Executive Director.

A BRIEF PRESENTED ON BEHALF OF THE AMERICAN HOTEL ASSOCIATION TO THE NATIONAL INDUSTRIAL RECOVERY BOARD, AT THE REQUEST OF ITS CHAIRMAN, MR. S. CLAY WILLIAMS, FOR PURPOSES OF A PUBLIC HEARING ON THE HOTEL CODE TO BE HELD ON MARCH 21, 1935, AT WASHINGTON, D. C. PREPARED BY EDWARD C. ROMINE, C. P. A., MEMBER OF THE FIRM OF HORWATH & HORWATH, SPECIALISTS IN HOTEL ACCOUNTING, NEW YORK, N. Y.

Your petitioners, in the belief that the application to the hotel business, including hotel restaurants, of N. R. A., or any similar regulation, is impractical as well as unconstitutional, present the following, reserving at the same time all individual rights of the members of our association under the law and the Constitution. We maintain that the hotel business, and every part thereof, should be exempt from any form of regulation, including any provision relating to working hours and wages of employees.

Although the hotel business is conducted under two major departments, rooms and restaurants—it is nevertheless one business under uniform regulations. It is entirely impractical to determine separately the financial condition of that part of a hotel that is subject to the Hotel Code and that part that N. R. A. wants to put under the Restaurant Code. Therefore, all references to "hotels" in this brief mean hotels in their entirety—not merely the rooming department apart from the restaurant which employs practically half the total working force.

ECONOMIC STATUS OF HOTELS

At the first public hearings on the National Recovery Administration Code for Hotels, held in Washington, D. C., September 25, 1933, a brief was presented by the American Hotel Association setting forth the economic status of hotels at that time. Some of the unrefuted facts contained in that brief are as follows:

1. Eighty percent of hotel mortgages were in default.
2. First-mortgage bonds of the country's leading hotels were selling for 15 cents on the dollar.
3. Thirty-two of every hundred hotels did not earn taxes.
4. Fifteen percent of the hotels did not even earn pay rolls.

At a subsequent National Recovery Administration hearing in Washington on August 20, 1934, it was shown that while repeal had added materially to the business of hotels in States where the sale of liquor was legal in hotels, nevertheless

expenses had risen even faster because of the higher wage rates set by the codes and the general rise in market prices. Consequently, the losses were greater then than at the time of the first hearing. Conditions have not changed materially since the last hearing, and it is, therefore, easy to picture the economic status of hotels today. It seems unnecessary to point out that a large proportion of the expense of operating a hotel consists of fixed charges for taxes and interest, which cannot be curtailed when business falls off as the expenses of a manufacturing or a mercantile enterprise can. This is one of the principal reasons why hotels are so much worse off financially today than other businesses.

CLOSING OF HOTELS AND RECEIVERSHIPS IMMINENT

What happened to the Bartram in Philadelphia will happen to many other hotels in the not far-distant future if present undue hardships are not repealed. The Bartram was taken over in 1932 by a Philadelphia bank. The bank contracted for the operation of the hotel with one of the largest and most efficient hotel-management companies in the country. On June 1, 1933, the hotel was showing a slight profit, sufficient to justify an extension by the bank of the contract for another year. But the hotel's full compliance with the N. R. A. codes had a disastrous effect, causing such a substantial deficit in the face of increase in business, that, on the recommendation of the hotel-management company itself, the house was closed on June 1, 1934. All employees were dismissed. The building is now vacant.

In addition to the danger that hotels will actually be closed and unemployment thus increased, there is the danger of hundreds of foreclosures and receiverships if, just at this crucial point in recovery, hotels are cut off, by regulation of hours and wages, from the possibility of at least earning taxes and interest. Arrearages in taxes and interest have piled up during the depression, but many mortgages have been withholding action on the assurance that conditions were improving. If, now, this confidence is destroyed by regulation that increases hotel expenses and pushes tax and interest payments still further to the rear, the real-estate market will be thrown into a panic. And the fact must not be overlooked that it is largely the money of the wage earners—directly through the purchase of small bonds and indirectly through savings banks and insurance companies—which is invested in hotel mortgages.

Hotels have no surpluses and no collateral or other security with which to make loans for the pay-roll rises that are being counted on as one of the ways of speeding recovery and subsequently of increasing sales.

COMPETITIVE BUSINESSES UNREGULATED

At all public N. R. A. hearings on the Hotel Code, the unfairness of attempting to regulate hours and wages in hotels while permitting border-line competition to go unregulated has been pointed out. Hotel men who attempted to comply testified that they found their business being drained away from them to the very dregs by wayside inns, tourist camps, and private homes which have the competitive advantage of lower wages because N. R. A. admits they cannot be regulated in this respect.

Among the unregulated types of establishments which extend lodging to the public in competition with hotels are:

1. Tourist camps, many of which are equipped with hot and cold running water, heat, light, and cooking facilities. Such modernization is making the tourist camp an all-year-round competitor of the hotel. The magnitude of this business is indicated by the following estimates: Total camps, 25,000; modernly equipped camps, 10,000; number of beds in modernly equipped camps, 264,000; number of guests each year, 25,000,000.

2. Wayside inns, which offer 1 to 5 rooms to travelers for short periods.

3. Rooming and boarding houses which offer furnished rooms on a weekly, monthly, or yearly basis. There are thousands of these establishments all over the country.

4. Subsized lodging houses which offer cubicles at 25 to 50 cents a night.

5. Nonsubsidized lodging houses which offer cheap accommodations as low as 50 cents a night.

6. Nonprofit hotels which offer rooms at very low rates, and in some cases, free, for charitable, benevolent, educational, or religious purposes.

7. Club residence hotels which provide rooms at special rates to persons who have qualified for membership.

8. Apartment house hotels which offer accommodations furnished or unfurnished with or without lease, and with or without the usual hotel service.

No code or codes could be devised to cover all of the foregoing places.

UNIFORM WAGE AND HOUR REGULATIONS IMPOSSIBLE

Even if hotels were in a financial position today to absorb additional pay roll it would be almost a superhuman task to establish uniform wages and hours which would be fair to all. Hotels are not in the manufacturing business; they constitute basically a localized service industry and their characteristics must conform to local requirements. Hotels are, in fact, domestic establishments on an enlarged scale. They operate for 24 hours a day; they have peak periods of varying lengths which often occur without notice—business may be slack today, rushing tomorrow; the work of their employees is largely intermittent in contrast with the steady grind of employees in industry. There can be no rigid schedule of working hours such as that under which industries run. And, as many hotel employees receive tips from guests, wage scales must be more flexible than would be possible under Government regulation. Hours and wages that are appropriate for a large transient hotel would be utterly impractical for a small transient hotel, an apartment hotel, a small-town hotel, or a resort hotel. For instance, imagine trying to regulate the wages and hours in a 15-room hostelry of a junction town which is run by husband and wife, who sometimes do the cooking, make the beds, and call in the "girl next door" to wait on tables and help out during rush hours. Still, this little place is just as much a hotel in the eyes of the Government as the 500-room establishment of a metropolis.

A book could be written on the impossibility of formulating national or State policies and regulations which can be applied to all hotels without great unfairness and undue hardships to a large percentage of individual establishments. All efforts have failed and practical hotel men have been forced to the conclusion that there can be no national or State regulations to cover completely and equitably the hotel business in all its variations and ramifications. The National Recovery Administration has been utterly unsuccessful in applying a code to the hotel business and so too have been those States which have N. R. A. enabling acts.

HOTEL BUSINESS NOT INTERSTATE

In this brief the impossibility, from both an economic and a practical standpoint, of applying a code to the hotel business has been explained. The American Hotel Association has contended from the very outset that the N. I. R. A., as it affects the hotel business, is unconstitutional because hotels are not engaged in interstate business.

As to the constitutionality of the act itself, nothing could be added to the arguments which have already been presented in various courts throughout the country by representatives of businesses of all sorts, the hotel among them. The Supreme Court will have to decide this question. The Supreme Court will also have to decide whether any business exists in this country which is not interstate in character. If one there be it is the hotel business, for it sells nothing for delivery across State borders and over 90 percent of the purchases of the average hotel are made locally.

HOTEL SITUATION WORSE THAN RAILROAD

Railroads, like hotels, have large fixed charges to contend with and in times of subnormal business find it difficult to meet them. Much concern is being shown over the financial condition of the railroads, and the Government is trying to work out some plan to "save the transportation system of the United States." But what is the Government doing for that important adjunct to travel—hotels—which have just as heavy fixed charges as railroads and are in a far worse condition today? So far from taking measures to relieve and protect them, the Government is proposing regulations which will further increase their present substantial losses. And it should be remembered that hotel bonds are in the hands of the same interests as are railroad bonds—insurance companies, savings banks, and persons of moderate means.

During 1934, 7 of the 15 leading railroads of the United States paid dividends and the one showing the poorest results among the 15 still earned 84 percent of its fixed charges. The results of the individual roads were shown a follows:

	Ratio of fixed charges earned	Dividends paid		Ratio of fixed charges earned	Dividends paid
	Percent			*Percent*	
1. Norfolk & Western	640	$10.00	9. Northern Pacific	100	.....
2. Chesapeake & Ohio	380	2.80	10. Erie	96	.....
3. Union Pacific	230	6.00	11. Great Northern	95	.....
4. Bangor & Aroostock	220	2.50	12. Atlantic Coast Line	93	.....
5. Atchison	150	2.00	13. Baltimore & Ohio	[1] 90	.....
6. Louisville & Nashville	[1] 130	3.00	14. New York Central	87	.....
7. Pennsylvania	120	1.00	15. Southern Ry	84	.....
8. Southern Pacific	105	.....			

[1] Estimated.

The system of accounting prescribed by the Interstate Commerce Commission rightly includes depreciation among fixed charges. Furthermore, the bases of depreciation, interest, and dividends of railroads are not deflated values. How many of the country's leading hotels are paying dividends? None. How many of the country's leading hotels earned even half of their fixed charges during 1934 on a basis comparable to that of the railroads? None. Many did not earn even taxes. And if such conditions existed in the country's leading hotels—in a year during which the first excitement of repeal helped—it is alarming to think what must be the condition of the average hotel.

SUMMARY

Summing up briefly, the attempts of N. R. A. to regulate hours and wages in hotels, including hotel restaurants, have developed the following facts:

1. The hotel departments must be considered as one coordinated business which cannot be separated into rooms and restaurants. Uniform employment conditions must be maintained throughout.

2. The economic status of the hotel business has been precarious for some time, and is today, with 80 percent of the mortgages in default. Repeal has increased sales in some hotels but not sufficiently. The country's leading hotels earned in 1934 a startlingly small percentage of fixed charges. The financial conditions in the hotel field are far worse than with railroads, about which so much concern is shown.

3. Hotels have no surpluses with which to increase pay rolls in the hope that the consequent speeding of recovery will make up for the immediate additional losses.

4. Full compliance with the N. R. A. codes would result in closing many hotels and throwing their employees out of work. A typical case is described.

5. Many hotels would be subject to foreclosures and receiverships unless the confidence of mortgagees could be maintained; to increase hotel expenses at this time would further postpone tax and interest payments and destroy the mortgagee's confidence. And it should be remembered that a large proportion of hotel mortgages represent the workingman's savings.

6. Although fair-trade practices, including price regulation, would solve the problem of, Where's the money coming from? N. R. A. has decided that such legislation is not practicable.

7. As N. R. A. has come to the conclusion that border-line businesses—wayside inns, tourist camps, and private homes—cannot be regulated, hotels are left at a great disadvantage.

8. For nearly 2 years N. R. A. State bodies, and leaders in the hotel business, have been trying unsuccessfully to work out hour and wage regulations that would cover fully and fairly the numerous establishments of different sizes, types, and conditions, all operating 24 hours a day, 7 days a week.

9. It is for the Supreme Court to rule on the constitutionality of the act and on whether there are any businesses in the United States which are not interstate. And if it decides that there is just one which is not, surely it will mean the hotel business.

10. As hotels are in reality domestic establishments on a huge scale, and it is admitted that employment in homes cannot be regulated, hotels, too, should be exempt from all wage and hour regulations.

The belief of hotel men generally that the N. R. A. code, as applied to hotels, is a complete failure is reflected in the following resolution which was adopted October 12, 1934, by the National Convention of the American Hotel Association in New Orleans, La., as follows:

"Resolved, that inasmuch as it is now clearly evident that the hotels of the United States cannot comply with the provisions of the present N. R. A. code, that the president of this association be authorized to appoint a special committee to seek an appointment with the Honorable Franklin Delano Roosevelt, President of the United States, for the purpose of securing relief from the obligations of code provisions."

OCTOBER 30, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR MR. WILLIAMS: Pursuant to a resolution (hereto annexed) adopted at the annual convention of the American Hotel Association, held in New Orleans October 10–13, the special code committee of the association desire an opportunity to present to you their petition for relief on the grounds that the operation of the provisions of the Code of Fair Competition for the Hotel Business and the Code of Fair Competition for the Restaurant Business, as applied to hotels, impose unusual and undue hardship upon the hotel business; the committee is awaiting an appointment with you at such convenient time and place as you may designate for said meeting.

As to the standing of the American Hotel Association, as the representative trade body, I refer you to the official printed copy of the Code of Fair Competition for the Hotel Industry, in which Gen. Hugh S. Johnson, Administrator, in his letter of transmittal to President Roosevelt, referring to the American Hotel Association, says:

"The applicant group imposes no inequitable restrictions on admission to membership therein, and is truly representative of the hotel industry."

The various points which the committee wishes to urge in connection with the code of fair competition for the hotel business are as follows:

1. This committee has in the past maintained and continues to maintain the attitude that N. I. R. A. and the Hotel Code are unconstitutional for various reasons, among them the following:

(a) Section 1 of the National Industrial Recovery Act declares, "the policy of the act to be to remove obstructions to the free flow of interstate commerce and foreign commerce." We maintain that hotel operation is not interstate in character.

(b) We believe the act to be unconstitutional for the reason that in delegating Congressional powers to the President it sets up no standard to guide him in carrying out the legislative will and policy.

(c) The statute and codes are unlawful attempts to regulate commerce generally in violation of article 1, section 8, clause 3 of the Constitution of the United States.

(d) The statute and codes represent an attempt to authorize the President of the United States to exercise police powers not granted to the National Government by the States and therefore such attempt is in violation of the tenth amendment to the Constitution of the United States.

In connection with the whole question of the constitutionality of N. I. R. A. and N. R. A., we respectfully refer you to a brief filed by our general counsel, Frank A. K. Boland, in connection with the public hearing on the Hotel Code held in Washington, D. C., on September 25, 1933. We may add that no opportunity has been presented to test the constitutionality of the act in courts of last resort.

2. Due to the peculiar character of the hotel business, we believe it is utterly impractical to attempt codification of the many and diversified departments included in the operation of a hotel, as the business consists entirely of a combination of various services. We are advised that attempts will be made in the future to administer the restaurants of hotels under the Restaurant Code, print shops under the Graphic Arts Code, laundries under the Laundry Code, cigar stands under the Retail Code, etc.

It is pointed out that the lack of flexibility in the Hotel Code, as applied to a business which by its very nature cannot be conducted on any cut-and-dried plan,

makes compliance impractical and impossible. A hotel, for example, does not produce a manufactured product which can be stored away and held for sale. A hotel must remain open, at the service of the public, 24 hours a day for every day in the year. The business of a hotel fluctuates in character and volume from day to day. There is no known way to insure steady operation along lines which can effectively be applied to industries. The hotel, in fact, is not an industry.

3. The experience of the business since the imposition of the code has demonstrated the absolute impossibility of securing compliance. The code as imposed contained no compensatory provisions to offset the increased expenses involved in any attempt to comply.

We were led to believe in connection with the original preparatory work on the Hotel Code that such compensatory provisions would be accepted, as it was then recognized that without such compensatory provisions our business could not possibly bear the added burden of increased expense of operation.

The code as drafted by our association and submitted to N. R. A., was not accepted. The proposed compensatory provisions and other desirable elements were eliminated. N. R. A. framed its own Hotel Code and this code contained absolutely no provisions for meeting, even in part, the increased expense entailed through compliance with the code as finally drawn by N. R. A. Since that time, we have repeatedly urged the incorporation of such compensatory provisions, but without success. We can refer your board to the many documents on file with N. R. A. which prove conclusively the bankrupt condition of the business and the absolute impossibility of compliance. We particularly refer to the brief presented by Mr. E. C. Romine at the public hearing on the Hotel Code, in Washington, D. C., on August 20, 1934, entitled "Economic Status of the Hotel Business."

It was shown in this brief, among other things, that 80 percent of hotel mortgages were at this time in default. We also refer you to the hundreds of individual petitions for relief which have been filed with N. R. A. and upon which no favorable action was taken.

4. In further reference to the exceptional character of hotel operation as a business which cannot practically be included in the operation of N. R. A., we direct your attention to the fact that this business is not only purely of a service nature, but it is also subject to serious competition from establishments which are not commonly known as hotels, such as tourist camps, boarding houses, wayside lodging houses, and even private homes. No successful attempt has been made to codify this competition. As Mr. Lucius Boomer stated at the public hearing on September 25, 1933, in Washington, D. C.:

"It is a fact that for the reasons given, and collateral ones, hotels differ in important essentials from manufacturing and commerce. In no way is this more clearly defined than as to the character of employment and employees. While it is true that as to building and plant, hotels require physical operation and employ in incidental ways most of the mechanical trades, and while it is true that as business enterprises they require ordinary executive functions, accounting and other clerical work, nevertheless, essentially, in catering to patrons the services which may with appreciation and dignity be referred to as 'domestic' are those principally required. These services (comprised under such descriptive categories as housekeeping, cooking, dining-room service, uniformed service, and the like) are all counterparts of what goes on in private homes.

"For obviously sound reasons, domestics in the private homes of the country have been exempted from control under the National Industrial Recovery Act. In principle, there should be a similar exemption as to hotel personnel. The more the facts are studied the more apparent this should be; not only is this true from the point of view of all service considerations and remuneration considerations but it is also definitely true as to the right relations of hotel operators with hotel personnel. Successful operation in a hotel calls for successful cooperation among the members of a household, performing different but interrelated and interdependent duties in making accommodations, comforts, and services available to the public. It is irrational and unwise to attempt arms-length contracts between various classes of hotel workers and managers. To be successful, and this means the success of all concerned, hotels should have wise regulation and suitable discipline—essential conditions on a large scale of the successful household. To carry on with the simile of the household; it must be recognized that there is a unity of common interests in hotel families. This should not be interfered with or endangered by intrusion from outside the family circle. It is a matter of the enlightened self-interest of all concerned to recognize this.

I earnestly state as a fact that interference with the domestic characteristics of hotel operation or any attempt to put hotel operation on a basis with factory operation or interstate commerce or to regulate individual hotel establishments by unsuitable means or agencies would be seriously damaging to hotels and thus to employment in hotels and employees of hotels.

5. The hotels of the United States are unanimous in their desire to eliminate the Hotel Code. There is no minority element supporting the code. In some cases, entire States have never even attempted to comply with the code and in one instance N. R. A. was informed immediately after the promulgation of the code that hotels in that State would make no attempt to comply. No effort was made by N. R. A. to enforce compliance in that State.

6. In view of the foregoing, we respectfully ask that the so-called "Hotel Code" be rescinded by Executive order or otherwise.

THE CODE OF FAIR COMPETITION FOR THE RESTAURANT INDUSTRY

In respect to the Code of Fair Competition for the Restaurant Industry, as it applies to restaurants operated by hotels, much of the foregoing statement against the Hotel Code equally applies. This is particularly true of section 1 of the foregoing, as follows:

1. This committee has in the past maintained and continues to maintain the attitude that N. I. R. A. and the Restaurant Code, as applied to hotel restaurants, are unconstitutional for various reasons, among them the following:

(A) Section 1 of the National Industrial Recovery Act declares "the policy of the act to be to remove obstructions to the free flow of interstate commerce and foreign commerce." We maintain that hotel operation is not interstate in character.

(B) We believe the act to be unconstitutional for the reason that in delegating congressional powers to the President it sets up no standard to guide him in carrying out the legislative will and policy.

(C) The statute and codes are unlawful attempts to regulate commerce generally in violation of article 1, section 8, clause 3, of the Constitution of the United States.

(D) The statute and codes represent an attempt to authorize the President of the United States to exercise police powers not granted to the National Government by the States, and therefore such attempt is in violation of the tenth amendment to the Constitution of the United States.

In connection with the whole question of the constitutionality of N. I. R. A. and N. R. A., we respectfully refer you to a brief filed by our general counsel, Frank A. K. Boland, in connection with the public hearing on the Hotel Code, held in Washington, D. C., on September 25, 1933. We may add that no opportunity has been presented to test the constitutionality of the act in courts of last resort.

2. It is utterly impossible to separate, for purposes of code operation, the restaurant department of a hotel from the general business structure. The restaurant is an integral part of hotel operation. It is not an independent unit. Salaries are fixed by the hotel management. Prices charged are determined by the hotel management. The operation of the restaurant is vitally related to the room-rate structure fixed by the hotel. The restaurant service is a necessity in hotel operation. The comfort and convenience of guests demand such a service.

As in the case of the hotel proper, the hotel restaurant service must be available to guests for a greater part of the 24 hours, regardless of the question of profitable operation. Such factors as room service, for example, are a necessary item of expense to a hotel, and such item does not enter into the cost of operation of the ordinary restaurant outside of a hotel. Therefore, logically, the hotel restaurant should not be considered as an independent entity to be governed by a code over which the hotel management has no control, but should be considered as part of the hotel and therefore should be governed, if at all, by the hotel code, and in this instance our plea is that the hotel code as well as all other codes applying to hotels should be abrogated.

Contrasting ordinary restaurant operation with the restaurant service of a hotel, it is obvious that an outside restaurant will cater only to lucrative business. If it is located in a section where luncheon business is the main factor it will do a luncheon business. It will only open for breakfast and dinner if these meals can be handled profitably. In other words, it serves a clientele which seeks to patronize a particular restaurant and use its facilities. The hotel restaurant, on the contrary, must serve not only breakfast, luncheon, tea, dinner and supper, but in many cases must be prepared to handle room service to a very late hour or all

night, irrespective of whether any of these subdivisions of the service are in themselves profitable. Our clientele demands equally satisfactory service throughout, and the hotel must provide this satisfactory service regardless of this element of profit. It is a matter of common knowledge that thousands of restaurants close entirely on Sundays and holidays, yet the hotel restaurant must continue even at a great loss to give service for the special benefit of its guests.

The restaurant department of a hotel also performs the functions of a commissary department for the other departments and feeds a certain number of personnel employed elsewhere in the hotel.

It is pointed out that the lack of flexibility in the Restaurant Code, as applied to hotels, as applied to a business which by its very nature cannot be conducted on any cut-and-dried plan, makes compliance impractical and impossible. A hotel, for example, does not produce a manufactured product which can be stored away and held for sale. A hotel must remain open, at the service of the public, 24 hours a day for every day in the year. The business of a hotel fluctuates in character and volume from day to day. There is no known way to insure steady operation along lines which can effectively be applied to industries. The hotel, in fact, is not an industry.

3. The same reasons why compliance is impossible in the case of hotels apply with even more cogency to the restaurant department of a hotel. Our argument as to the necessity for compensatory provisions in the Hotel Code applies with equal effect to the restaurant department, particularly in view of the stated fact that the restaurant is in integral part of the hotel and therefore its operation is dependent upon the operation of all other departments of the hotel and wages paid, hours worked, and other detail of operation are corelated with the general expense of operation of the hotel as a single entity. Compensatory provisions have not been allowed to hotels under the code; therefore, the restaurant department suffers equally with all other departments in hotel operation.

We again refer your Board to the many documents on file with National Recovery Administration which prove conclusively the bankrupt condition of the business and the absolute impossibility of compliance. We particularly refer to the brief presented by Mr. E. C. Romine at the Public Hearing on the Hotel Code, in Washington, D. C., on August 20, 1934, entitled "Economic Status of the Hotel Business."

It was shown in this brief, among other things, that 80 percent of hotel mortgages were at this time in default. We also refer you to the hundreds of individual petitions for relief which have been filed with National Recovery Administration and upon which no favorable action was taken.

4. In further reference to the exceptional character of hotel operation as a business which cannot logically be included under the administration of National Recovery Administration, we again direct your attention to the fact that this business is not only purely of a service nature but, in particular respect to its restaurant department, it is subject to intense competition from restaurants operated independently outside of hotels and in which restaurants such elements as the convenience, comfort and continuous service to guests does not enter. Certain standards which are imperative in the operation of hotel restaurants are not essential in the operation of independent restaurants. The character of the hotel must be reflected equally in its restaurant policy and management as in all other departments of the hotel.

Such demands, we respectfully point out, are not required in the operation of the ordinary restaurant. Therefore, the hotel restaurant must be exclusively under the control of the hotel management, without any outside interference, supervision or control whatsoever.

We again refer to the statement by Mr. Lucius Boomer at the public hearing on September 25, 1933, in Washington, D. C., as follows:

"It is a fact that for the reasons given, and collateral ones, hotels differ in important essentials from manufacturing and commerce. In no way is this more clearly defined than as to the character of employment and employees. While it is true that as to building and plant, hotels require physical operation and employ in incidental ways most of the mechanical trades, and while it is true that as business enterprises they require ordinary executive functions, accounting and other clerical work, nevertheless, essentially, in catering to patrons the services which may with appreciation and dignity be referred to as 'domestic', are those principally required. These services (comprised under such descriptive categories as housekeeping, cooking, dining-room service, uniformed service and the like) are all counterparts of what goes on in private homes.

"For obviously sound reasons, domestics in the private homes of the country have been exempted from control under National Industrial Recovery Administration. In principle, there should be a similar exemption as to hotel personnel. The more the facts are studied the more apparent this should be; not only is this true from the point of view of all service considerations and remuneration considerations but it is also definitely true as to the right relations of hotel operators with hotel personnel. Successful operation in a hotel calls for successful cooperation among the members of a household, performing different but interrelated and interdependent duties in making accommodations, comforts and services available to the public. It is irrational and unwise to attempt arms-length contracts between various classes of hotel workers and managers. To be successful, and this means the success of all concerned, hotels should have wise regulation and suitable discipline—essential conditions on a large scale of the successful household. To carry on with the simile of the household, it must be recognized that there is a unity of common interests in hotel families. This should not be interfered with or endangered by intrusion from outside the family circle. It is a matter of the enlightened self-interest of all concerned to recognize this.

"I earnestly state as a fact that interference with the domestic characteristics of hotel operation or any attempt to put hotel operation on a basis with factory operation or interstate commerce or to regulate individual hotel establishments by unsuitable means or agencies would be seriously damaging to hotels and thus to employment in hotels and employees of hotels."

5. The hotels of the United States are unanimous in their desire to eliminate any code which affects the operation of its restaurant or any other department. There is no contrary minority in the hotel business. In the case where whole States have refused from the very beginning to comply with the regulations of the Hotel Code, such hotels have equally refused to comply with the terms of any code which affects their restaurants or any other department.

6. In view of the foregoing, we respectfully ask that the Restaurant Code, as applied to hotel restaurants, be rescinded by Executive order or otherwise.

Yours very respectfully,

J. LESLIE KINCAID,
Chairman Special Code Committee, American Hotel Association.

STATEMENT OF BENJAMIN C. MARSH, REPRESENTING PEOPLE'S LOBBY, WASHINGTON, D. C.

(The witness, having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. How much time do you want, Mr. Marsh?

Mr. MARSH. Fifteen or twenty minutes.

The CHAIRMAN. I hope you can get through in 10 minutes.

Mr. MARSH. I will try. I shall express some opinions on which it will be very hard to take an oath, but they are my opinions.

The CHAIRMAN. A lot of people have expressed opinions after they have taken oaths.

Senator BARKLEY. We do not hold anybody responsible for their opinions.

Mr. MARSH. We have not reached that state of control yet. I hope we do not.

The CHAIRMAN. Proceed.

Mr. MARSH. I want to say that in the criticism I shall make of this bill, we do not want it understood for a moment, that we oppose the protection that it attempted to give to labor, but to point out—and I am sorry Senator King was called away—that you cannot act in a national crisis on State lines. You have got to treat it as a national crisis. You have got to treat it as a national crisis and by national legislation, and there should be legislation fixing the hours of labor and probably a minimum compensation.

I want to read a brief statement and then analyze my statement from several documents.

The CHAIRMAN. Let me ask you in the beginning, did you favor, or not, the passage originally of the N. R. A.?

Mr. MARSH. No; as I pointed out, it would not do any good because the purpose was to maintain excessive prices for property which had to be written down. And I called it a swindle at the time——

The CHAIRMAN (interrupting). I just wanted to get in my mind whether you opposed it or favored it from the beginning.

Mr. MARSH. I was logical then and I am logical now. That is why I am dangerous.

This bill, like the original N. I. R. A., and the bill creating the A. A. A., is a device to protect, maintain, and increase fictitious and unwarranted property prices for the benefit of property owners, and at the expense of the consumers of the Nation, without even fair protection to the workers in the industries affected.

It is under the guise of legislation carrying out the basic principles of Fascism promulgated by proclamation in Italy and Germany to sanction the reduction of wages, and consuming power, so as to maintain and increase profits.

Of course, short-sighted and selfish predatory interests are for it.

Mr. Leon Henderson, director, Research and Planning of the N. I. R. A., in his report on the operation of this act says:

> 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 the volume of production has declined by one-third.

Mr. Henderson points out also that big employers of labor get longer hours than small ones.

As I stated to this committee when the original N. I. R. A. was pending before it, there is no hope for a fair deal for either labor or consumers, until scores of billions of dollars of watered assets are wrung out of corporations. In 1929 the alleged assets of chief corporations was in round figures $335,777,910,000, probably at least $150,000,000,000 too much, but at the end of 1932, these assets were still $280,082,923,000, or probably close to $100,000,000,000 too high.

The New York Journal of Commerce, which has no Bolshevist connections so far as I know, reports that total dividend and interest payments for the 5 years of the depression were 10 billions of dollars greater than for the 5 years before the depression, the respective figures being 26 billion and 36 billion dollars.

In 1932, net income of all corporations reporting such income was $2,153,112,819, while total interest payments that year were about $5,506,000,000, and charges on production on account of private retention of ground rents was probably close to $6,000,000,000.

In 1932, about 1 percent of the people received nearly one-fifth of the returns on property.

The proposed bill attempts to repeal the antitrust laws by codes, and to permit increases in tariffs, apparently needed because of higher production costs, really because the N. I. R. A. and A. A. A. are increasing returns to the relatively few people who own most of the property of the Nation.

I would like to analyze this; I won't take time if you are going to limit me to 10 minutes, but will read into the record this statement from the Commissioner of Internal Revenue of the corporations submitting balance sheets to the Bureau of Internal Revenue for 1929 and 1932, if you will permit me to; just a short analysis.

It pointed out that in 1932, mortgages totaled, in round figures, 47 billion dollars as against 35 billion dollars in 1929. The striking point is that although in 1932 reports were made on 392,000 corporations, out of those, 618 corporations had net assets of 149 billions, or over half of the total net assets of the 392,000 corporations.

(The report is as follows:)

Comparative statement of corporations submitting balance sheets to Bureau of Internal Revenue for 1929 and 1932

[Amounts in thousands]

	1929	1932	Corporations having in 1932 total assets over $50,000,000
Number	398,815	392,021	618
Assets	$335,777,910	$280,082,923	$149,240,618
Cash	18,933,170	15,917,202	8,447,610
Tax exempt investments	8,195,241	11,916,864	6,328,966
Real estate and equipment	91,711,742	108,553,151	58,613,888
Bonded debt and mortgages	35,225,921	47,310,414	28,459,222
Capital stock	109,957,923	97,488,992	43,439,994
Surplus and undivided profit less deficit	55,111,294	45,663,746	22,616,039
Cash dividend	8,355,662	3,853,943	2,369,998
Stock dividend	1,288,643	142,422	70,881

In this report of the operation of the N. R. A. by Mr. Henderson, he makes a statement that the chart no. 5 shows that the weighted average shows nearly five times as large a percentage working more than 40 hours a week as does the unweighted, a clear indication that the codes with the larger number of employees secured a larger maximum than did those with relatively few employees.

Also on page 18 Mr. Henderson points out—

If worker productivity has not changed appreciably since June 1933, then the fact that in the manufacturing industries in December of 1934, despite a 20 percent lower level of production, the index of employment has increased one-sixth, at least furnishes provocation for argument.

Also on page 35—

The fact seems clear that on the whole the amount of money which the average workingman in industries under the code finds in his pay envelop has not increased increased a great deal.

A polite way of saying it has very often decreased.

On page 42 he gives some figures as to the net business profits and losses for the first 9 months of 1934, 1933, and 1932. In 1932 the total for 290 companies representing the major industries of the country was, in round numbers, $100,000. For those same companies in 1934, the first 9 months, the profits were $430,500,000.

I would like to have this table, which is a short one, read into the record. It is just one page.

The CHAIRMAN. Very well.

(The table is as follows:)

TABLE H.—*Net business profits and losses for the first 9 months of 1934, 1933, and 1932*

[Source: Federal Reserve Bank of New York]

Corporation groups	1934	1933	1932
Total, 290 companies	$430,500,000	$202,800,000	$100,000
Automobile	86,600,000	82,500,000	[1] 18,700,000
Automobile parts and accessories (excluding tires)	21,500,000	6,900,000	[1] 8,800,000
Aviation	1,200,000	2,800,000	[1] 3,300,000
Building supplies	700,000	[1] 3,800,000	[1] 5,500,000
Chemicals and drugs	78,200,000	54,700,000	41,900,000
Clothing and textiles	900,000	[1] 2,400,000	[1] 3,700,000
Coal and coke	1,400,000	[1] 2,800,000	[1] 4,000,000
Copper	[1] 100,000	[1] 3,600,000	[1] 4,700,000
Electrical equipment	14,000,000	[1] 700,000	1,100,000
Food and food products	96,300,000	90,100,000	89,200,000
Household equipment	800,000	[1] 200,000	[1] 2,800,000
Machinery	4,400,000	[1] 5,000,000	[1] 8,400,000
Metals and mining (excluding copper, coal, and coke)	26,200,000	15,400,000	5,000,000
Motion picture and amusement	2,500,000	200,000	[1] 10,700,000
Office equipment	9,700,000	[1] 3,700,000	1,000,000
Oil	41,800,000	[1] 7,900,000	20,400,000
Paper	1,600,000	900,000	[1] 700,000
Printing and publishing	5,500,000	1,500,000	5,500,000
Railroad equipment	3,700,000	4,900,000	[1] 2,800,000
Shipping	600,000	1,100,000	800,000
Steel	[1] 7,500,000	[1] 51,300,000	[1] 103,200,000
Tobacco	2,800,000	700,000	1,900,000
Miscellaneous	37,700,000	20,100,000	10,600,000

[1] Deficit.

Mr. MARSH. Our suggestions are practical. Of course, we are disgusted with the continuing of the present system of the Government protecting the profits and letting the crumbs which fall from the master's table seep down if possible to the unemployed. As you know, our program is public ownership of natural resources, monopolies, and basic industries. If the cotton industry is so nearly in bankruptcy as Mr. Kendall outlined, it would seem appropriate that the Government should take it over, and every member of this committee realizes that as we are now preparing to buy up farm lands, for the benefit of speculators down South and pay princely prices for pauper land, we have got to guard against the next step, which is going to be in America the socialization of these basic industries, as every member of this committee knows.

You were afraid 2 years ago to face the issue of overcapitalization and watered stock. We are now feeding probably 21,000,000 people. You cannot produce enough under any series of codes that you want to devise, as I think every member of this committee knows, to pay a return upon the present capitalization of industries and land values and debts. A former Wall Street man who was in the Government for sometime, made the statement that we could not pay 2 percent on those values. We are trying through this N. R. A. and the A. A. A. and other devices to evade the obvious necessities of the situation, to fix it so that we can pay 4 or 5 or 6 percent, and it cannot be done.

I am not arguing for this scrapping of the N. R. A., but it is a peculiar thing that you retained in this bill, Senator Harrison, the same admission of the tragic conditions which existed in 1932 when you started the N. I. R. A. when the original bill was introduced.

There has got to be legislation, as I stated, to protect hours of labor, but it has got to be general and not subject to so many exemptions.

I do not want to take your time to read the thousands of exemptions recorded by Mr. Henderson in this report as to hours of work under which employers escape what is supposed to be a binding code, but to point out that you have evaded what you have got to face in the next year, and that is reducing the basis for profits for interest and for rent, if you are going to get out of this mess.

We can carry 5 million unemployed at a cost, if they merely exist, at a cost of 3 percent of our income in 1929. It will be a very low standard of living. I think I am correct in assuming that the administration and this committee and Congress would like to work out a system under which the people can be employed, that is the employable, to the maximum, and not under which we shall try to restore the profits of 1929 in the total or in the percentage and have these millions of people out of work and living, as millions of them are now, on a bare subsistence level.

I therefore recommend that this committee amend this law to provide for the writing down of the capitalization of corporations affected by this bill, and I think practically all of them are and all industrial enterprises and others which are subject to this bill, to a reasonable level.

Senator WALSH. Have you prepared an amendment along that line, Mr. Marsh?

Mr. MARSH. I am not a lawyer. There are enough lawyers here, and any of you folks that want to do it can do it, because don't forget this, Senator Walsh, nothing can be held unconstitutional which is necessary to keep the American people from chaos, and the lawyers can do it. I am perfectly willing to do it, but I think you can do it.

The CHAIRMAN. With that modification, you are in favor of its continuance?

Mr. MARSH. Oh, no. I am in favor of general laws as to wages and hours of work and not of all of these detailed opportunities to evade the law. It seems peculiar that you have to have so many thousands and tens of thousands of people to enforce the laws. If the laws were practical, they would be more nearly self-enforcing. Of course, it is one way of aiding unemployment, I will admit, but it does not help the standard of living of the American people.

If you ask my practical suggestion, it is that for the major industries, natural resources, and monopolies, the Government take them over and operate them. There is no other way to meet the situation.

The large number of bills introduced which seek to make it unconstitutional or illegal at least—there is a difference—to express opinion, to curb the right of the press and assemblage and expression of an opinion, are an indication that the administration realizes the extreme seriousness of the present situation. No effort to protect existing property values and also provide a decent standard of living for the American people is possible.

I thank you for your courtesy.

The CHAIRMAN. I should like to place in the record the letter received by Senator Walsh from the New England Jobbers & Manufacturers Millinery Association of Boston, Mass., as follows:

At a meeting of our association, which represents all those engaged in the manufacture and marketing of millinery here in New England, great concern was voiced, especially among the manufacturers, as to the ever-increasing cost of conducting our business owing to the expense and restrictions imposed upon us by the National Recovery Administration Millinery Code.

Our industry, by code figures, showed a volume of but $105,000,000 last year, and was taxed by the code authority $576,628.27. This amount was obtained by selling to the trade N. R. A. labels which are sewn in all hats sold.

The figures given above represent far too great a burden for our industry which, to quote our code authority in the annual report just published:

"We ought to feel rather proud of what has been accomplished, despite the fact that the industry, by and large, has not been prosperous for either workers or management, due to the depressed state of consumption."

The code authority have fitted up their New York office headquarters in an extravagant and lavish way at a cost as follows:

Office furniture (desks)	$6,068.87
Office equipment (typewriters)	1,537.12
Office furnishings (carpeting)	1,646.34
Shelvings	1,263.94
Partitions and constructions	5,219.45
Electric fixtures	2,369.28
Total	18,105.00

In this office are installed our—	Per year
Code director, salary	$20,000
Code secretary, salary	10,000
Code auditor, salary	10,000

These salaries are excessive for the total amount of business of our industry, and are far more than the vast majority of our members can hope to earn.

It is not alone the expense of maintaining the above useless machinery, but the un-American way of inspection, both of our books and work rooms which, to our way of thinking, violates the constitutional right of personal liberty.

The code provides for classified and minimum wages for every operation of our work and reduces working hours to 35 per week (except for a limited time in rush seasons), which leaves no elasticity of judgment for the harassed manufacturer who, under the code law, has his costs fixed and is then left to cutthroat competition in selling his product to compete with the rest of the trade where there is an annual 20-percent mortality.

If our code continues, there seems no other way out but that many of our best people will be forced to join the ranks of next year's 20 percent, which is not an encouraging outlook for anyone.

If our Government feels that sweatshops and exploitation of child labor should be stopped (and to this any honest-thinking man will agree), let a law be passed covering the above, with teeth in it so that the grafter and chiseler will not try to evade and nullify its effects, hand the same over to the Department of Justice to enforce; then all will be well.

Under the above regulation, there would be no need of all these many different codes with their exaggerated expense accounts, eating the very lifeblood out of our business and taxing the consuming public beyond their ability to pay.

Our association knows of no other way to express our views other than to write to you who are so placed that you may use your valued influence to abolish this cumbersome and expensive un-American practice.

With sincere thanks for your cooperation, we remain,

Yours sincerely,

NEW ENGLAND JOBBERS & MFRS. MILL'Y. ASS'N.

The CHAIRMAN. I desire also to place in the record a telegram addressed to Senator McNary from Homer W. Bunker, president of the Coosbay Lumber Co., San Francisco, Calif., as follows:

It now seems that my contemplated visit to Capital may have to be deferred beyond initial period of committee discussion of revamping or extending National Industrial Recovery Act. So I resort to this method of presenting my views to you and shall appreciate your sending a copy to Senator Pat Harrison. As you know this company is one of the largest owners of timber and manufacturers of lumber within the United States. In 1934 it is reported to have manufactured and sold more lumber than any other Oregon lumber operation. In addition it operates coastwise vessels on the Pacific Ocean and maintains a distributing organization and facilities in California. Its experiences with the National Recovery Administration and the Lumber Code have been extensive. It has constantly been under the necessity of defending itself from the allegedly legalized

attempts of its competitors to appropriate its long-established trade under the guise of administering the Lumber Code. It has had no difficulty with or criticism of the National Recovery Administration itself. It has appealed to N. R. A. some 15 times with respect to destructive acts of the code administrators and with one exception the N. R. A. has upheld its contentions. This message is for the purpose of remonstrating against the inclusion in any similar legislation of the power to again create private monopolies in the form of compulsory combinations in restraint of trade such as the price-fixing and price-control articles of the Lumber Code. We additionally deprecate any provision of new legislation which authorizes or contemplates (as the National Industrial Recovery Act was construed to have authorized or contemplated) placing powers of commercial life and death over the respective units of an industry into the hands of self-selected groups within that industry. Such has been the case under National Industrial Recovery Act codes whereby the dominant groups have destroyed and attempted to destroy the businesses of those of their competitors who disagreed with them or whose efficiency and advantages made such destruction desirable. That has been our own experience as conclusively proved by the record of our filings with the National Recovery Administration. We shall greatly appreciate your favorable consideration and also your support should your own ideas coincide with our best regards.

The CHAIRMAN. I desire to place into the record also a telegram signed by Paul J. Alwart, 1854 Webster Avenue, Chicago, Ill., dated April 6, 1935, as follows:

SENATE INVESTIGATION COMMITTEE, N. R. A.,
Senate Office Building:

Alwart Bros. Coal Co. have been retail coal merchants for the past 63 years, operating four large yards which for the past 30 years have been under the undersigned's personal supervision. The present Retail Solid Fuel Code of this district controlled by the Chicago Coal Merchants Association has resulted in numerous ruinous practices to the coal industry. The cost determinations which have resulted in nothing more than price fixing, gouging the small consumer, making it possible for intermediaries who by virtue of influence, political, or otherwise, control large tonnages of coal to receive large commissions to the detriment of the building owners and bondholders; also driving many customers to gas and oil. Results being detrimental to the numerous coal dealers. We strongly protest the continuation of the Retail Solid Fuel Code and suggest only maximum hours and minimum wages be considered. Substantiating evidence covering the entire code set-up of this district has been furnished; would appreciate having this wire read in your records.

The CHAIRMAN. I desire to place into the record a letter dated April 8, 1935, from Sol. A. Rosenblatt, Compliance and Enforcement Director of the National Recovery Administration, as follows:

The HONORABLE PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: Before the Senate Finance Committee on April 5, 1935, L. L. Horen, of St. Louis, representing the Coal Service Co. and the Greater St. Louis Independent Coal Dealers Association of St. Louis, made the statement that he had several times written to N. R. A., complaining of a general persecution by the Divisional Retail Solid Fuel Code Authority and that his letters, and a wire or wires, addressed to Sol A. Rosenblatt, had neither been acknowledged nor answered.

I had never heard of Mr. Horen, nor of his association. I had never seen the man and had no recollection of any correspondence addressed to me. Accordingly, I ordered an investigation to be made.

Search of the files discloses no letter and no wires addressed to me by Mr. Horen, either as an individual or from the Coal Service Co.; nor from the Independent Coal Dealers Association. He specifically stated that the letter and the wire to me were sent "around December 9, 1934."

The result of the investigation is as follows:

1. Files in my office as Director of Compliance and Enforcement show no correspondence of any kind with Mr. Horen.

2. Files in Compliance Division show no correspondence from any of the above parties to me.

3. General files of N. R. A., Commerce Building: No trace of any correspondence from Mr. Horen addressed at any time to me.

4. Government Contracts Branch: No correspondence and no memoranda indicating that Mr. Horen communicated with me.

5. Western Union, Postal Telegraph, R. C. A., and Army and Navy Telegraph Service: Search here shows no wire at any time from Mr. Horen or any of the other parties to me.

6. Files of Division Administrator Ellis show no memos, no wires, no letters addressed at any time to me.

I represent these facts because my name was brought into the testimony by Mr. Horen and to show clearly that contrary to his statement, neither prior to or in November, December, nor later did he send any letter or any wires to me, and I do not know of any such.

Sincerely,

SOL A. ROSENBLATT,
Compliance and Enforcement Director.

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

(Whereupon, at 11:45 a. m., recess was taken until Wednesday, Apr. 10, 1935, at 10 o'clock a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, APRIL 10, 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 (chairman), King, Walsh, Barkley, Connally, Gore, Clark, Lonergan, Black, Couzens, Keyes, and La Follette.

The CHAIRMAN. I would like to say to those who will appear before the committee this morning that we trust that everybody will be as brief as possible. If you have a statement, it will go into the record. We have a number of witnesses here and we want to finish them by 12 o'clock if possible.

STATEMENT OF H. C. PETERSEN, REPRESENTING NATIONAL ASSOCIATION OF RETAIL GROCERS, CHICAGO, ILL.

(The witness was first duly sworn by the chairman and testified as follows:)

The CHAIRMAN. Mr. Petersen, you represent the National Association of Retail Grocers?

Mr. PETERSEN. Yes. Of Chicago, Ill. And I have also been in the grocery business for 25 years.

The National Association of Retail Grocers, with a membership of 40,000 independent retail grocers, representing more than 160,000 retail grocery stores throughout the country, hereby places itself on record before the Senate Finance Committee requesting a continuation of N. R. A. and continued operation under the Code of Fair Competition for the Retail Food and Grocery Industry.

We respectfully request that this code be made more effective by providing rigid enforcement of the code provisions, and prosecution for violations of these code provisions. Furthermore, we request that the entire food and grocery industry, including manufacturing, wholesaling, and retailing be included under similar code regulations.

The National Industrial Recovery Act, was called "an emergency measure." In its preamble it stated:

A national emergency, productive of wide-spread unemployment and disorganizations of industry, which burdens interstate commerce, affects the public welfare, and undermines the standard of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate commerce, which tends to diminish the amount thereof; and to promote the organization of industry for the purpose of

cooperative action among the 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, to improve standards of labor and otherwise rehabilitate industry and to conserve natural resources.

The National Association of Retail Grocers, immediately on the passage of N. I. R. A. mobilized the independent retail grocers of the Nation, in order that the united strength and cooperation of this great industry might be engaged with the Government to accomplish its stated purposes.

To that end, our association together with other associations and groups within the food and grocery industry presented a proposed or tentative "code" which was, after many changes and revisions, approved by the entire industry, by the administration, and signed by President Roosevelt.

According to the latest United States Summary of the Retail Census for 1933 just published by the Bureau of the Census, Department of Commerce, the retail food group represents 27.1 percent of all retail sales in 1933. Certainly then, it is reasonable to expect that such a large retail business, employing 1,049,361 persons, including managers, employers, full- and part-time employees, would reflect the general retail trend, and according to the majority of our association members, both N. R. A. and codes should be continued, properly enforced, and violators thereof properly cited and prosecuted.

In every activity of civilized life, except business, a book of rules has always been provided for the guidance of participants to insure orderly results. Business awakened to the need of rules of conduct and trade practice conferences were set up, but failed largely because the will of the industry could not be enforced on the unwilling few. And then came the N. R. A. and a new era which provided a vehicle strong enough to deliver.

We believe the N. R. A. and the Food and Grocery Distributors Code should be continued because business under the N. R. A. has been given for the first time a code of ethics with provisions under which the unwilling few who refuse to play according to accepted standards of the industry may be chastised.

Much publicity has been spread to the effect that small business has suffered greatly from the codes. Considering the state of our country during the life of the code, we frankly state that the opposite is true—small business has received benefits.

In the race for business the codes have reduced the handicaps under which small business in the food field have labored by setting in motion machinery which has materially lessened the damaging loss leader selling habit and eliminated to a large degree the vicious practice of giving so-called "advertising allowances."

The Food Code has by its markup provisions which only cover a part of labor costs, also helped the producer in securing a fairer price. The stabilizing effect of the Food Code has also benefited the consumer.

The administration of the Food Code has been efficiently handled, the cost has not been burdensome on any business. Our assessments were collected at $1 per employee per year. The Food and Grocery Distributors Code collected during 1934, $334,000 from independent retail grocers, $164,000 from grocery chain stores and $97,000 from

all types of grocery wholesalers. We believe the code set up in the food field would be materially strengthened if all manufacturers of foods were under a code which contained provisions identical to those now covering wholesale and retail distribution in the industry.

At present without a code the manufacturers can offer so-called "advertising allowances" not based on any service performed to wholesale grocers and to retail grocers who would violate the fair trade provisions of the Food and Grocery Distributors Code if they accepted it.

The burden placed on our members by the recovery program which so materially shortened hours of labor without a reduction in pay, was pretty generally accepted. Wages and salaries in independent stores had not been reduced materially prior to N. R. A., partly because we hoped the depression would be a short one and because of the close friendly relationship which exists in most stores of our type between owner and employee.

Facts covering reemployment in the food industry will be submitted by the chairman of the Food and Grocery Distributors Code Authority. The gains in employment may not indicate real help for a great number of unemployed, for the reason that our industry had maintained a high record of employment and many units were overmanned, consequently an increased volume of business was necessary before additional help could be employed.

We believe, finally, that N. R. A. should be continued for a period of 2 years and legislation finally enacted should provide for codes in the food industry covering manufacturing, wholesaling, and retail distribution.

The food industry is so important that its inclusion in any program of recovery is imperative if it is to be effectively carried through. If the codes in the food industry are abrogated, we predict an era of price cutting so vicious that many efficient grocers, because of limited capital, will be forced out of business.

The future happiness of millions of people depends upon legislation which will protect small business from ruthless methods of corporations who have no consideration for others. Our country's future greatness depends upon a people living under ideal home conditions, many of them engaged in a business which they own or control.

To further substantiate this argument, we attach to this brief, statements copied from letters recently received from our members; original copies of these letters are on file in the office of the National Association of Retail Grocers, 360 North Michigan Avenue, Chicago, and will be furnished this committee on request.

(Letters referred to are as follows:)

JOHN D. THOMAS, JOHN D. THOMAS CO., OKLAHOMA CITY, OKLA.

There is no doubt in my mind that the Grocery Code should be continued, providing rigid enforcement of code provisions is granted, with prosecution for violations of code provisions where they are proven to be premeditated; and there are many such violations today.

J. N. ZECKHAUSER, TIEDTKE'S, TOLEDO'S FAMOUS STORE, TOLEDO, OHIO

We are in favor of a continuance of the National Recovery Administration Code for the Retail Food and Grocery Trade:

1. If the minimum mark-up provisions are maintained and rigidly enforced. At present, the power of the code authority in many cases is a joke, as they have no authority with which to enforce their decisions.

2. Provided there is no further reduction in the number of working hours. The present code hours are working a great hardship in a number of departments. However, we would be willing to go along on the present basis, providing hour provisions are enforced.

3. The provision in the code regarding uniform operating hours has not been given Washington backing. Our city obtained over 80 percent signatures and were advised by Washington that they could not give us the authority to proceed. It is necessary, for the preservation of the industry, that all-night openers and 7-day-a-week operators be restrained in their operations against regularly operated stores.

The above remarks are not only the opinion of our firm, but of hundreds of operators in our trade in this community.

C. FRED VERLEGER, EXECUTIVE SECRETARY DISTRICT FOOD AND GROCERY DISTRIBUTORS' CODE AUTHORITY NO. 5, ALAMEDA AND CONTRA COSTA COUNTIES, OAKLAND, CALIF.

The Food and Grocery Codes have been a wonderful protection to the independent retail merchants, and we have had about 98 percent compliance, there being only two violators in our whole district that have openly defied the codes.

If the National Recovery Administration and Food and Grocery Codes were not extended at this time it would result in chaos and cutthroat competition, which would drive hundreds of small merchants out of business. Such a thing is unthinkable.

ARTHUR W. SIEVERT, THE STAR GROCERY, TOLEDO, OHIO

We are very much in favor of the present Code of Fair Competition for the Food and Grocery Industry, providing the Government can "crack down" on violators. We have several operators here in Toledo whom we believe from observation must be violators of the code, but apparently the code authority cannot get them in line, because of no police enforcing powers.

IRVING B. CORBIN, CORBIN'S FOOD MARKET, DELTA, OHIO

Our population is 2,000, so you can readily see we are exempt under code in some ways, which I think is a detriment to the cause.

I would personally like to see National Recovery Administration and the fair competition code continue, with the small towns in on everything.

Personally I would prefer rigid enforcement, with actual prosecution for violators.

H. L. OTTINGER, OTTINGER & DAVIS, INDIANAPOLIS, IND.

I wish to assert if we can really have support and enforcement of the present rules and regulations in this matter, we much prefer this set-up.

MORRIS WEINBERG, ATLANTA, GA.

I might say, first, that I think it would be suicide to the average individual grocer, especially in this particular territory, if the National Recovery Administration were to cease.

It is very evident that the larger chains are very anxious to do away with the administrative program which has held them in line and also for the larger business interests who have not been helped quite so much as the small independent retailer.

WILL G. OLIN, OLIN & OLIN, IRON MOUNTAIN, MICH.

We honestly believe that a continuance of the National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry is virtually imperative if the average independent retailer is to survive, but without rigid enforcement of code provisions, a code would be worthless.

JOHN J. COYLE, LIBERTY MARKET, NEWBURGH, N. Y.

When the Food and Grocery Code was placed in operation under the N. R. A. I was greatly elated because I felt that for the first time in years the independent grocer both large and small was handed an instrument to use which would prolong his life in business. This opinion has been passed along to me by hundreds of retailers, in fact a great deal of enthusiasm was built up surrounding our industry under the codes, and I still believe that, although for the present this enthusiasm is on the decline, there is still an opportunity of saving the situation.

KARL C. YOCHUM, YOCHUM'S FOOD SHOP, CINCINNATI, OHIO

I realize the Food and Grocery Code has not functioned perfectly but has done much to eliminate cutthroat competition and I feel that if it is given a fair chance to work out its weak points there will be equal opportunity throughout the entire industry.

W. H. MILLER, ASSOCIATION OF INDEPENDENT RETAIL GROCERS, INC., SAN ANTONIO, TEX.

We have the codes and ought to keep them, see to it that they are justly and honestly administered, overhaul and revamp them, and rigidly enforce their every provision. Unless this is done, as far as small enterprise is concerned, the "new deal" will have been a dismal failure, and we shall have to adjust our living standards to meet the present economic condition, which for us will surely continue, ending in business chaos.

I personally, and on behalf of my associates, respectfully request the continuation of the National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry if capable and impartial administration and a rigid enforcement can be obtained.

M. RUSTER, RUSTER BROS., KALAMAZOO, MICH.

If there could be enforcement of code provisions, then every last merchant would be heartily in favor of the code, as they all realize that there must be some method, and certain rules, in our industry, which will overcome many of the evils existing.

WM. J. GILLESPIE, SECRETARY, PHILADELPHIA RETAIL GROCERS ASSOCIATION, PHILADELPHIA, PA.

As you no doubt know, the Retail Grocers Association of Philadelphia is comprised of 950 active retail grocers vitally interested in the future of their business.

We wish to take this opportunity of expressing through you to the national authorities and the powers that be that the entire membership of our organization of 950 are 100 percent back of the present set-up of the Food and Grocery Code. They not only feel that the code has been of a direct benefit to them insofar as fair competition is concerned, but they are without doubt 100 percent of the opinion that if many of their members are to remain in business, it is necessary for them to have some protection over unfair competition and in that respect they are clinging with all their hope that the present code may be continued indefinitely.

E. W. MANSFIELD, BROCKTON PUBLIC MARKET, INC., BROCKTON, MASS.

If the National Recovery Administration and its various codes are to continue to be of permanent benefit to our industry, then we must respectfully ask that some measures be taken whereby particularly the fair practices section of our code be lived up to by all parties subject thereto. We must definitely oppose any change in the code that would shorten the number of hours which salespeople in our industry are now allowed to work.

CARL BERGLUND, BERGLUND & PETERSON, STILLWATER, MINN.

The independent retail grocers, who are the lifeblood of the community, ask for the continuation of the National Recovery Act and the code of fair competition. They want to be guaranteed rigid enforcement of code provisions.

The independent grocers respectfully request the National Recovery Act be continued and actual prosecution for violation of code provisions.

FRANK BOSANEK, SOUTH OMAHA, NEBR.

In reply to your inquiry I want to emphatically state that I do want National Recovery Act to continue but only with the provision that the local code authorities are given the power to enforce its provisions or either that the Government itself take the steps necessary to enforce its provisions.

LOUIS A. NEIGUT, NEIGUT'S, AMBLER, PA.

While we have not experienced any direct results under the present Code of Fair Competition for the Food and Grocery Industry, still I am firmly of the belief had this code not been in effect we would be a lot worse off than we are at present.

You can place us on record that if rigid enforcement of code provisions is guaranteed, especially as to fair-trade practices, we would request the continuation of such a code under the N. R. A.

ARCHIE E. HICKMAN, PURE FOOD STORE, INC., LAKE CHARLES, LA.

It is my opinion that the code in the past 12 months has been a benefit to the independent retail grocer and it is my hope that its life shall be continued for at least another year, probably longer.

W. J. PATTERSON, PROPRIETOR PATTERSON'S MARKET, ATLANTIC CITY, N. J.

I am very much in favor of continuing the Retail Food and Grocery Code, providing that we have rigid enforcement guaranteed, and positive assurance that prosecution for violation of the code will be actually started and carried through to a finish. I believe the Code of Fair Competition for the Retail Food and Grocery Industry is an honest instrument, and I therefore ask its continuation.

C. A. MARSHALL, MARSHALL GROCERY, FAYETTEVILLE, ARK.

Just want to let you know the sentiment of the retail grocers in Fayetteville about the continuation of the National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry. That providing rigid enforcement of the code provisions is guaranteed we are for it 100 percent; but if not enforced, we are not for it. Enforcement has been the trouble in the past, and it is not right for a few to try to tear down what so many are trying to build up.

I want it continued with the Government rigidly enforcing the rules and regulations, for it has been a great help to us in our own store. And I am sure that the National Recovery Administration and codes has helped every retail grocer in these trying times. We know that conditions are better than they were before the National Recovery Administration.

W. C. KENYON, THE KENYON GROCERY, WOONSOCKET, R. I.

I believe the individual food retailers throughout the country, operating under the code provisions, are better protected from the ruinous effect of price cutting of the chain monopolies who through their power, enjoying secret concession in purchasing, are gradually strangling small business and impoverishing communities.

H. J. KOPKE, BUNGALOW STORES CO., BOISE, IDAHO

It is our opinion that the present code has worked out to some degree to the advantage of the industry although it has fallen considerably short of the hopes and expectations of the small independent retailer of foods. It has resulted in considerably increased overhead and due to imperfect enforcement has not resulted in a proportionate benefit. We are, however, unable to suggest a better plan nor would we like to see conditions returned to the suicidal condition that prevailed before the application of codes.

A. H. GOTTSCHALK, FRED GOTTSCHALK CO., SPRINGFIELD, ILL.

The Code of Fair Competition for the Retail Food and Grocery Industry provides an ample and splendid working basis for the industry. I believe it is singularly significant that we have had such whole-hearted cooperation on the part of most of the industry. Those who have not complied, need particular treatment in the form of compelling their observance of the code.

HENRY R. FREPAN, SOUTH BEND, IND.

I am in favor of the rigid enforcement of the code provisions.

H. H. LACK, PIEDMONT GROCERY CO., OAKLAND, CALIF.

May we express our desire to have the Food Code continued, providing rigid enforcement of all violations are guaranteed, and also that prosecution for the violations be made in every case where the case justifies it. We believe in some kind of regulation with a provision that does away with selling at cost, etc.

W. A. SEWELL, SECRETARY-TREASURER, MCDANIEL'S FOOD MARKETS, INC., ALHAMBRA, CALIF.

We believe that the 6-percent minimum mark-up of the code is a very essential part of the code and if this part of the code were taken out it would be a bad thing for the grocery business as a whole.

We believe that the method of determining cost should be on replacement basis instead of invoice cost. The present system gives the large buyers an unfair advantage over the merchant who is unable to buy more than a few weeks supply.

S. H. ADELSON, ADELSON BROS., INC., LOS ANGELES, CALIF.

We are whole-heartedly in accord with the National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry.

We sincerely hope the National Recovery Administration and the code will be continued. The office here in Los Angeles has handled all matters efficiently and has done much to improve the price condition in the market.

We respectfully request the code be continued with rigid enforcement of all provisions and actual prosecution for code violations.

C. E. MURFIN, ZENOR & MURFIN, LOS ANGELES, CALIF.

As an independent Los Angeles grocer, I am writing to ask you to do everything in your power to see that the National Recovery Administration is continued along with the Code of Fair Competition for the Retail Food and Grocery Industry. I sincerely hope there will be rigid enforcement of code provisions with actual prosecution of violators.

E. H. NAGLE, NAGLE'S SALAD KITCHEN AND DELICATESSEN, OAKLAND, CALIF.

I would very much like to see the Grocers' Code of Fair Competition continued. Until now it has done very little good because it has not been enforced. I would like to see it strictly enforced with a severe penalty for violation.

DOROTHY SHANAFELT, SECRETARY, ST. JOSEPH VALLEY FOOD DEALERS ASSOCIATION, INC., SOUTH BEND, IND.

As an association we want to go on record with you as earnestly desiring the retention and enforcement of the Code of Fair Competition for the Food and Grocery Industry for we feel it is for the benefit of the entire industry to have such enforcement. Now that we have made this step for improvement we do not want to relinquish our position.

EDNA B. RASMUSEN, SECRETARY DULUTH RETAIL GROCERS' AND MEAT DEALERS' ASSOCIATION, DULUTH, MINN.

We do not believe that National Recovery Administration and the codes thereunder should be continued unless we can be assured of the rigid enforcement of the code provisions. In theory it is very fine to have a lot of provisions set up in a code for our industry but unless the constant violators of these provisions are brought into line we think that the present set-up is unfair to those who are doing their best to live up to both the hour and wage provisions and also the fair trade practice provisions.

HENRY KING, CHAIRMAN, VOLUNTEER STORES, CHATTANOOGA, TENN.

My views are these:

1. It is one of President Roosevelt's first-born recovery babies and if it should be cast aside it would be a reflection upon the administration.
2. It undoubtedly did away with child labor and the sweatshop and established more or less uniform and reasonable hours throughout the country.
3. It has been most beneficial to the small business man, especially in the mercantile field, because it has to a large extent put a stop to what I would term "trick merchandising."

Because of their enormous size they were closely checked upon and these conditions were fairly well enforced.

G. J. ANDRYKOVITCH, BROOKSIDE MEAT MARKET, BEAVERDALE, PA.

We respectfully request that you use your good offices to secure a continuation of National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry.

J. R. RANDLEV, RANDLEV & SON, INC., EVANSTON, ILL.

We are depending on the National Association of Retail Grocers to uphold the Grocery Code, if and when called to Washington. We respectfully request continuation of National Recovery Administration and the Code of Fair Competition for the Retail Food and Grocery Industry, providing rigid enforcement is assured and actual prosecution for violators can be secured.

W. H. EHLERS, DAVENPORT, IOWA

While the provisions of the code are not effective enough, I do not deny that the present code has done a lot of good and should continue in that manner, if it is enforced. If compliance can be secured, then I personally would be in favor of continuing the code for an indefinite time.

FALL RIVER GROCERS ASSOCIATION, FALL RIVER, MASS.

The members of our association can see the benefits that have been derived from the codes since its inception. They can understand that, with the adherence to the labor provisions in the code, that in itself creates necessary additional purchasing power, and they also understand that the fair trade practice provisions of the code are fundamentally sound and have eliminated many abusive practices.

Our efforts in behalf of enforcement have been on a more or less arbitrary and good-will basis. To the ethical business man, that basis will suffice, but the recalcitrant, unethical business man appears to have developed a sense of self-importance because he apparently feels that his unethical methods, especially in price cutting, stamps him as a leader in the industry.

The entire industry in this city needs the code and want it very badly, but feel that it is of no effect if the offender can not be legally punished so as to serve as an object lesson to the rest of the trade.

E. A. FISHER, CUMBERLAND, MD.

Providing rigid enforcement of code provision is guaranteed, with actual prosecution for violations of code provisions, we respectfully request the continuation of N. R. A. and the Code of Fair Competition for the Retail Food and Grocery Industry.

NATIONAL VOLUNTARY GROUPS INSTITUTE,
Chicago, Ill., April 8, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: The National Voluntary Groups Institute, representing that substantial portion of the independent food and grocery distribution trades operating under the voluntary plan, approves the national policy of establishing minimum wages and maximum hours for labor and the prohibition against child labor. It also approves the continuation as a national policy of the prohibitions against loss leader selling.

However, its approval to the above is predicated upon a careful revision and simplification of both the Retail and Wholesale Food Distribution Codes which shall contain only provisions which are enforceable and, by functional determination, be applicable alike to all who participate in food distribution.

Yours truly,

NATIONAL VOLUNTARY GROUPS INSTITUTE,
ASA STRAUSE.

NATIONAL BRANDS STORES, INC.
Chicago, April 6, 1935

NATONAL RETAIL GROCERS ASSOCIATION,
360 North Michigan Avenue, Chicago, Ill.
(Attention of Mr. Petersen.)

GENTLEMEN: Referring to our conversation today, we are very much interested in promoting the welfare of the independent retail grocer, and you have our full support in any matters that will help him. As you are aware, our organization is sponsoring voluntaries through the wholesale grocers, and we now have approximately 8,000 retailers working on this basis. In addition, our jobbers have a service business with approximately 12,000 to 15,000 additional independent retail grocers. At any time that we can lend our support to your organization, please do not hesitate to call on us.

Yours very truly,

NATIONAL BRANDS STORES, INC.,
CHAS. G. BRUNDNER, *Manager.*

QUAKER CITY WHOLESALE GROCERY CO.,
Philadelphia, Pa., April 9, 1935.

Mr. H. C. PETERSEN,
Secretary-Manager, National Association of Retail Grocers,
Hotel Washington, Washington, D. C.

DEAR MR. PETERSEN: I am advised that tomorrow you will probably appear before a committee to present the views of the food and grocery distributors regarding the continuation of the code governing that industry, and I trust that the sentiment throughout the country warrants you in strongly recommending that the code be continued.

There is an overwhelming sentiment in favor of the continuation of the code in the section in and around Philadelphia, as is evidenced by the action taken at recent meetings of several groups engaged in the food and grocery business in this section, among which I cite the following:

At a meeting of the wholesale food and grocery distributors held in the Penn Athletic Club on Monday, March 25, the question of the code was thoroughly discussed, and it was the unanimous opinion, as expressed by a vote taken, that the code should be continued;

On Monday, April 1, at a meeting of the Frankford Grocers Association (with a membership of approximately 2,000 retail grocers) the great majority of those who attended the meeting expressed a desire to continue under a code;

At a meeting of the Retail Grocers Association of Philadelphia (with a membership of approximately 1,000 retail grocers) there was a unanimous vote of the members present in favor of the continuation of the code; and

At a meeting of the Penn Mutual Grocers Association (which consists of about 500 Jewish retail merchants) every member who attended the meeting voted in favor of code continuation and enforcement.

The code have undoubtedly helped a great deal to stabilize business, reduce loss leaders and selling below cost practices, and has materially helped the food distributors to comply with the provisions of the code regarding hours and wages which, in many instances, greatly increased the operating expenses of these establishments.

I sincerely hope that the Code for the Food and Grocery Distributors will continue to exist, that unenforceable sections (if any) be removed, and that the code be strictly enforced, with power given to the proper authorities that will enable them to take quick and decisive action.

The criticism to which our code and other codes have been subjected in the past is due not to the provisions of the code, but to the fact that they were not enforced. Let's have a code, Mr. Petersen, and let us have the authority to see that it is enforced. The results obtained would be beneficial not only to the trade as a whole, but to each individual engaged in the food and grocery business, and all employees whose livelihood depends upon the success of this great industry.

Most sincerely yours,

OLIVER STOUT,
Chairman Code Authority, State of Pennsylvania.

P. S. All of the above organizations voted their approval of the Food and Grocery Distributors Code and recommended it's continuation provided it could and would be enforced. It is the general opinion, however, that a code that is either not enforceable or not enforced is worse than no code at all.

If the proper machinery is set up to strictly enforce the code, and the trade is assured of prompt action on the part of enforcement agencies, we want our code. We do not, however, care to continue carrying out a bluff—we want an enforceable and enforced code, or no code at all.

STATEMENT OF S. L. HOFFMAN, REPRESENTING NATIONAL ASSOCIATION OF HOUSE DRESS MANUFACTURERS, NEW YORK, N. Y.

(The witness was first duly sworn by the chairman and testified as follows:)

The CHAIRMAN. You are from New York City?

Mr. HOFFMAN. Yes, sir.

The CHAIRMAN. You represent the Cotton Garment Code Authority?

Mr. HOFFMAN. I represent the National Association of Cotton Wash Dress Manufacturers.

The CHAIRMAN. How much time do you want?

Mr. HOFFMAN. About 6 or 7 minutes.

The CHAIRMAN. Very well; proceed.

Mr. HOFFMAN. At the outset I want to inform the committee that I am not a paid executive of either the cotton garment industry or of the code authority.

For 35 years I have been actively engaged in the manufacture of cotton garments.

Senator KING. Where?

Mr. HOFFMAN. In New York City, West Virginia, and New Jersey.

Senator KING. How many employees do you have?

Mr. HOFFMAN. Today about 575. For 25 years in the manufacturing end, and for 10 years as a technical expert. I am therefore familiar with the varying phases through which the industry has passed.

During the depression years our industry increased working hours to as much as 55 hours a week. In this period there existed a vicious cycle of wage reducing, which resulted in the payment of mere pittances—sometimes as little as $3 a week—for incredibly long hours. Competition degenerated into a mad scramble, wherein the manufacturer's adroitness at human exploitation was of paramount importance. As a result, the industry was reduced to what might be termed a button-hole jungle. Despite the low wages, long hours, and so forth, more than 1,000 bankruptcies are recorded for the period.

The "blue eagle" appeared to us almost like an angel from heaven. In a very short period it bettered the condition of all workers tremendously. Wages in some cases were increased 300 percent. The industry itself has shown steady and substantial profits since the code went into effect. As a result of shorter hours, there has been a tremendous increase of efficiency in operation and management.

The cotton garment industry includes 3,700 factories in 42 States, with 200,000 workers producing 600,000,000 garments yearly. Only 3 percent of its workers are located in New York City, in sharp contrast to the other apparel industries. It is situated in over 900 towns, with 27 percent of its workers in communities of less than 10,000 population. Under N. R. A. weekly working hours have been reduced approximately one-third. Hourly rates of pay have risen 117 percent since the bottom of the depression in March 1933. Hourly rates of pay are 47 percent higher than even in July 1929, and employment has increased 10 percent over 1929—as is shown by the chart I have herewith.

Many individual plants have submitted records to the statistical division admitting payments before N. R. A. as low as 8 cents an hour for a 55-hour week. Only one-fifth of the cotton garment employees were receiving as high as the present minimum wage prior to N. R. A., while two-thirds of the workers are now paid above the code minimum.

The weekly pay check of the worker has the chief bearing on purchasing power. The advance of $4.40 per week per worker from March 1933, to February 1935, multiplied by 200,000 employees, produced a greater cotton garment pay roll of $880,000 per week, or an increase of $45,000,000 annually in this industry's contribution to

purchasing power under N. R. A. Weekly wages are only 3 percent lower than 1929, while living costs have fallen 20 percent.

The compliance division of the Cotton Garment Code Authority has restored $445,036 to underpaid cotton garment workers.

Thirteen thousand child laborers have been replaced by adult workers. This is in itself a notable achievement.

The foregoing figures are on the basis of 979 identical plants reporting 147,898 workers in February 1935, or approximately three-fourths of the cotton garment industry. Comparable figures on this industry were never available prior to the work of the statistical division of the Cotton Garment Code Authority, which mobilization of factual evidence is another achievement of the code.

It is true that mistakes were made during the incubation period of code application. These mistakes are being satisfactorily rectified, and with some modifications most of them will be eliminated. The tremendous gains which the National Recovery Act enabled us to make, however, more than offset any inconvenience which faulty application has caused.

The elimination of 13,000 child workers, the restoration, at the instigation of the Compliance Board, of approximately $450,000 in wages wrongfully withheld, the enormous decrease in working hours, and an almost 50 percent increase in weekly wages, are certainly benefits not to be overlooked. If the National Recovery Act were permitted to terminate now, we are sure to return to chaotic conditions even worse than before, at a time when our business was reduced not even to a glorified dog fight.

Senator KING. What was the production in 1926, 1927, and 1928?

Mr. HOFFMAN. In units?

Senator KING. What was the production of the industry with which you are associated in those years?

Mr. HOFFMAN. You are speaking of units?

Senator KING. The value of the production.

Mr. HOFFMAN. We had no statistical data at that time.

Senator KING. What was the number of employees in 1926, 1927, and 1928?

Mr. HOFFMAN. In my branch of the cotton-garment industry, there were approximately 35,000.

The CHAIRMAN. Thank you very much.

Senator BLACK. I want to ask you one or two questions. You employ 575 people now?

Mr. HOFFMAN. Yes.

Senator BLACK. How many did you employ in 1933?

Mr. HOFFMAN. In 1933 we employed 400, and in 1931 we employed 900.

Senator BLACK. How many in 1932?

Mr. HOFFMAN. Four hundred.

Senator BLACK. And in 1933?

Mr. HOFFMAN. Four hundred.

Senator BLACK. And how many in 1931?

Mr. HOFFMAN. Nine hundred.

Senator BLACK. Nine hundred in 1931?

Mr. HOFFMAN. Yes.

Senator BLACK. How many in 1930?

Mr. HOFFMAN. I would say approximately 700.

Senator BLACK. 1929?
Mr. HOFFMAN. Anywhere between 900 and 1,000.
Senator BLACK. How many in 1928?
Mr. HOFFMAN. Considerably less. I think about 600 or 650.
Senator BLACK. Just a little more than you employ now?
Mr. HOFFMAN. Yes.
Senator BLACK. In 1927, do you remember?
Mr. HOFFMAN. 1927 was the same as in 1928.
Senator BLACK. What is your capacity?
Mr. HOFFMAN. In garments?
Senator BLACK. How many could you employ in your factory?
Mr. HOFFMAN. I guess we could employ, probably with present capacity, about 150 or 200 more.
Senator KING. Were you running at full capacity in 1927, 1928, 1929, and 1930, when you were employing 1,000?
Mr. HOFFMAN. From 1926 to 1930, or close to 1930, we kept on increasing.
Senator KING. Did you pay pretty good wages then?
Mr. HOFFMAN. Are you speaking before 1929 or after 1929?
Senator KING. 1926, 1927, 1928, 1929, and 1930.
Mr. HOFFMAN. Based on competitive prices, we paid fair wages. Based on requirements, I don't know.
Senator KING. You were increasing your production during those years?
Mr. HOFFMAN. Yes.
Senator KING. When did you reach the peak?
Mr. HOFFMAN. 1929.
Senator KING. In production as well as in employees?
Mr. HOFFMAN. In production as well as in employees; yes.
Senator KING. Where is your principal factory?
Mr. HOFFMAN. My principal factory at present is in Brooklyn, N. Y.
Senator KING. Is it a new factory?
Mr. HOFFMAN. That is an old factory.
Senator KING. When you said "at present", you did not mean to indicate——
Mr. HOFFMAN (interrupting). We had contractors working in Pennsylvania during 1929 and 1930.
Senator KING. Do you have contractors all the time?
Mr. HOFFMAN. No; we have our own factories. We have one in Morristown, N. J., and one in Brooklyn, and until recently I operated a cotton-blanket mill in West Virginia. My experience is that the textile industry has experienced more or less the same setback and the same history as the cotton garment.
Senator BLACK. I had not quite finished. There were one or two other questions I wanted to ask you. You have about 600 employees?
Mr. HOFFMAN. Yes.
Senator BLACK. What hours do you work?
Mr. HOFFMAN. At the present time?
Senator BLACK. Yes.
Mr. HOFFMAN. Thirty-six hours a week.
Senator BLACK. That is all of the factory workers?
Mr. HOFFMAN. Yes.

Senator BLACK. So that you mean when you say you are that close to capacity that you only work 36 hours a week in the factory. That is correct?

Mr. HOFFMAN. That is right.

The CHAIRMAN. Thank you very much.

STATEMENT OF JOHN L. STRONG, NEW YORK CITY

(Witness was first duly sworn by the chairman and testified as follows:)

The CHAIRMAN. The committee gives you 10 minutes.

Mr. STRONG. I am a former employee of the Code Authority of the Fur Dressing and Fur Dyeing Industry of New York. For 15 years I specialized in the investigation of frauds in the fur district.

I was retained on about March 1, 1934, to act as an inspector to go around to the various plants to check up as to hours and wages and practices.

Senator KING. By whom?

Mr. STRONG By the Code Authority of the Fur Dressing and Fur Dyeing Industry.

Senator KING. In New York or in Washington?

Mr. STRONG. In New York City. I was so employed until about June 1, when the deputy administrator of the code, Col. Roscoe Conkling resigned as deputy administrator and became chief counsel to the code at $1,000 a month on a yearly contract.

Eight employees were let out on June 1. The apparent reason for it was that there was not enough money to pay Colonel Conkling and pay the employees. After we were let out, there was no enforcement whatever of any kind, and whatever cases were in the office never came to light.

Up to that time, there was a compliance board within the code who heard cases and assessed fines anywhere from $250 to $1,000. When Colonel Conkling came in, he remitted all of those fines.

The CHAIRMAN. Was that after you left the code authority?

Mr. STRONG. No; while I was with the code, we started to return some of the fines. These cases never went to court and never went to the State regional board either.

Senator KING. What were the fines imposed for?

Mr. STRONG. Violation of the code.

Senator KING. What particular provision?

Mr. STRONG. Hours, wages, kick-backs. At that time they had price-fixing in the code.

Senator KING. How did the price-fixing operate in the code?

Mr. STRONG. In what way?

Senator KING. That is what I am trying to find out.

Mr. STRONG. It did not operate. Everybody chiseled.

Senator KING. The attempt to fix prices; that is what I am trying to get at.

Mr. STRONG. Prices were fixed by the code but they had been fixed so high by the deputy administrator that it left so much room for chiseling that everyone from the largest concern down just chiseled.

Senator CONNALLY. I have heard so much about chiseling and chiselers. What is it? What do you mean by it?

Mr. STRONG. The code called for instance——

Senator CONNALLY (interrupting). Do you mean a fellow that sneaks around and does something on the quiet and violates it? Cut prices and works the men overtime?

Mr. STRONG. They put in proper bills, and when they are paid, they rebate a certain percentage back to their customer. For instance, the price we will say of dressing and dyeing——

Senator CONNALLY (interrupting). Secret rebates, you mean?

Mr. STRONG. Secret rebates, I mean.

Senator CONNALLY. That is not the only thing you call chiseling. Do you mean any unfair advantage that they take of each other?

Mr. STRONG. Yes.

Senator CONNALLY. You call that chiseling?

Mr. STRONG. Yes.

Senator BLACK. As far as the price-fixing is concerned, a chiseler is a man who sells his goods to his customer too cheap?

Mr. STRONG. In the fur market, we term it that.

Senator BLACK. What is that?

Mr. STRONG. In the fur market, under the code, we term that chiseling.

Senator BLACK. If he sells too cheap?

Mr. STRONG. He would bill an item at 50 cents and receive 50 cents, but secretly he would return 10 or 15 cents.

Senator BLACK. But it has to be a secret rebate to be a chiseler?

Mr. STRONG. That is right.

Senator BLACK. If he sells it openly in the market, it is not chiseling?

Mr. STRONG. It must be a violation of the code, if he sold it openly. It would be a violation of the code.

Senator KING. Did the code fix the prices at which all commodities must be sold?

Mr. STRONG. Yes, sir.

Senator KING. And if a man made too large profits under those prices fixed by the code, and he was willing to sell for a little less and did it, he would be called a chiseler?

Mr. STRONG. That is right.

Senator KING. Even though he made a large profit?

Mr. STRONG. That is right.

Senator KING. And were the prices established in the code too high, or so high as to enable those operating under the code to obtain very large profits?

Mr. STRONG. It was established too high—out of proportion to the costs. For instance, the price for dressing and dyeing Hudson seals under the code was 52½ cents. The minute the code was signed, one of the dyers in the fur market put advertisements in the trade publications that he would dress and dye Hudson-seal skins at 25 cents a piece and make a profit, and today he is still dyeing and dressing Hudson-seal skins and making a profit.

The CHAIRMAN. What is your business?

Mr. STRONG. I am an investigator. I have been in the fur industry for the past 15 years. I was retained by the late Evening World some years ago to furnish them all of the information concerning the bankruptcy ring in New York.

The CHAIRMAN. Do you mean investigator to this fur proposition or to anything?

Mr. STRONG. Pardon me?

The CHAIRMAN. For other things as well as furs?
Mr. STRONG. In anything and everything.
The CHAIRMAN. That is your business?
Mr. STRONG. That is my business; yes, sir.
The CHAIRMAN. And you were engaged in that business when you got employment in the code administration?
Mr. STRONG. That is right, sir.
The CHAIRMAN. And you went back into that business?
Mr. STRONG. I was in the business for myself all of these years, and when my own business—bankruptcies were on the wane, and those that did fail, there were not any liabilities or assets to speak of, so I had taken a position.
Senator KING. What business were you in?
Mr. STRONG. In the investigation business.
Senator KING. Were you in the manufacturing business?
Mr. STRONG. No. But the fur market takes in about 8 square blocks, the entire fur market in New York.
The CHAIRMAN. After you got out, you were employed to investigate some of these matters with reference to that code?
Mr. STRONG. Oh, no. I am down here of my own volition.
Senator COUZENS. What are you occupied at now?
Mr. STRONG. Nothing.
The CHAIRMAN. All right; proceed.
Mr. STRONG. One case that Colonel Conkling did handle——
Senator CONNALLY (interrupting). How long have you been out?
Mr. STRONG. I was in from March 1 to June 1.
Senator CONNALLY. Last year?
Mr. STRONG. Of last year. I was recalled on September 1 and got out again November 15.
Senator CONNALLY. Why did you get out in November?
Mr. STRONG. I was fired.
Senator CONNALLY. They chiseled on you?
Mr. STRONG. I would not say that. I was fired.
Senator CONNALLY. You were let out?
Mr. STRONG. I was let out without charges and without a hearing and I was exonerated of any charges if there were any without any hearing, and I was reinstated without a hearing and was never reemployed.
Senator CONNALLY. Of course that has had no effect on your coming down here to testify?
Mr. STRONG. It has to some extent; yes. I have got an axe to grind.
Senator KING. Proceed.
Mr. STRONG. Our case was decided by Colonel Conkling, and that was the case of the Hunts Point Fur Dressing Co. The records showed that they owed their employees something like $800 underpayment of wages. When Colonel Conkling came in, he sent for Mr. Perry, the president of the Hunts Point Fur Co. and he told Mr. Perry, "You don't have to pay all of this money"——
Senator CONNALLY (interrupting). Were you there and heard him say that?
Mr. STRONG. Yes; I was there. I was interested in the case. I attended all of the hearings before the compliance board.

Senator CONNALLY. I am just trying to find out whether you are testifying from your own knowledge or what somebody told you.

Mr. STRONG. Oh, no. Colonel Conkling told Mr. Perry, "You can claim an emergency, Mr. Perry, for certain periods here so that you won't have to pay any overtime", and in that way he brought the matter down to $100 from $800 that he owed the employees, and it was down to $100. The custom of the code was that when one man was compelled to work overtime, they had to claim the emergency before they actually did the work, but in this case, a month after the work was done and they owed the employees money, then Colonel Conklin said, "You can claim an emergency."

Senator KING. Certain emergencies have been claimed by people in the fur business?

Mr. STRONG. Yes. That would arise, for instance, if they would soak skins on a Wednesday night for dressing, what they call fleshing them on Friday, and sometimes the skins would be hard, they would not be soft enough to flesh, and they would not let them stay in the water over the week end. There was no work on Saturday permitted under the code, and they would ask for permission to work on Saturday.

Senator KING. Proceed and make your testimony as brief as you can, Mr. Witness.

Mr. STRONG. A number of the small rabbit dressers were reported by me as having worked before 8 o'clock, which was the starting time under the code, and after 4 o'clock in the afternoon which was the quitting time. A number of these men were brought in before the compliance board and they were fined $250. Where they could not get the $250, they would take notes. Where they could not get notes, they took post-dated checks. Where they could not get post-dated checks, they would take customers' notes, and Mr. Winniker, who was the chief accountant at the time, was busy at the telephone all day long calling these people up and asking them to make a payment.

A number of the large concerns, especially one, Philip A. Singer & Bro. of Newark, N. J. Philip A. Singer is a client of Mr. George J. Beldock, chief counsel to the code.

I found that Singer's plant worked on Saturday. A couple of days thereafter, Mr. Jack Shulman, the business agent for the American Federation of Labor for the union covering the rabbit dressers, complained at the office that Singers' men were going to work at 6 o'clock in the morning.

I was detailed to go with this agent the following morning and he would call off the names of the men as they went into the plant. About 60 of them went in between 6 and 7 o'clock in the morning. I walked into the plant about 8:30 and examined the time cards. All of the time cards were stamped starting at 7:44 and the last one was 7:45, showing conclusively that they had all been stamped at one time one after the other. That was also in my complaint.

Senator CONNALLY. How did you know that they got there about 6?

Mr. STRONG. I was there with the business agent who pointed these men out.

Senator CONNALLY. I thought you said you went there at 8:30?

Mr. STRONG. I went into the plant at 8:30. But I was at the plant at 6 o'clock in the morning watching the men go in.

Senator CONNALLY. From the outside?

Mr. STRONG. Yes.

Senator BLACK. With the business agent?

Mr. STRONG. Yes.

Senator BLACK. The business agent of what?

Mr. STRONG. The American Federation of Labor local covering that branch of the industry.

Senator CLARK. Was it a unionized shop?

Mr. STRONG. No, it was not.

Senator KING. Are all of the fur shops unionized, or most of them?

Mr. STRONG. If they are, it does not mean anything.

Senator KING. Do they belong to the Amalgamated, or is the Amalgamated limited to textiles?

Mr. STRONG. This particular union was the Rabbit Workers Union, Local No. 25.

Senator KING. The Rabbit Workers Union, you call it?

Mr. STRONG. Yes, sir. Here is their card [indicating]. When Mr. Singer was brought up on charges, the charges just read that he had worked on a Saturday. Mr. Mittleman, the treasurer of the code, who was on the code, asked Mr. Beldock and Mr. Schlesinger of the code authority asked Mr. Beldock why Mr. Singer was not brought up on a more serious violation. They just said they would not bring him up on those charges, and charge him with Saturday violation. He pleaded guilty to that, and when they assessed him the $250, he did not pay.

There are quite a number of large concerns that have been up on charges and they have not paid and they are not supposed to pay. There is no provision in the code that they have to pay. Quite a few of them have been reprimanded, but the little man has been harassed and fined $250.

Senator WALSH. Did he continue the violations of the code?

Mr. STRONG. Yes, sir.

Senator WALSH. For how long? Up to the present time?

Mr. STRONG. I don't know about the present time. I got out of there on November 15. I have a record of some of my visits to the different plants.

Senator KING. Your testimony was to be, as stated in your telegram, that you intended to give evidence of alleged violations or real violations of the code by some of the larger manufacturers in New York.

Mr. STRONG. No. I want to show that the chairman of the code authority and the chief counsel of the code authority are protecting the large people and harassing the small ones.

Senator WALSH. And there is no effective way of correcting the evils under the code?

Mr. STRONG. Not with the fur crowd. Never at any time.

Senator KING. And the deputy administrator resigned and became chief counsel?

Mr. STRONG. At $1,000 a month; and when he got out, there was not a cent left. To be sure he got his money; he requested to get his pay weekly.

Senator KING. Is he still acting?

Mr. STRONG. No; they got rid of him after 3 months. There was not any more money.

Senator CONNALLY. Was he paid out of the code authority funds?

Mr. STRONG. That is right. The money that he was paid out of came from assessments against the members of the code.

Senator CONNALLY. He was paid out of the same fund that you were paid out of?

Mr. STRONG. That is right; but with the exception——

Senator CONNALLY (interposing). There is no difference between his being paid out of that and your being paid out of it?

Mr. STRONG. The difference was between my salary and his salary, and I worked. Most of this money that he received in wages was paid out of——

Senator CONNALLY (interposing). Your complaint here is against this individual?

Mr. STRONG. No; no. The code authority in general.

Senator CONNALLY. We are trying to find out whether the N. R. A. ought to be continued.

Mr. STRONG. Not in the fur industry; no. It is a racket the way it is being conducted today. The fur industry is absolutely a racket in the way it is being conducted today.

Senator CONNALLY. It has always been a racket, has it not?

Mr. STRONG. Yes, sir; and it is a worse racket today.

Senator CONNALLY. It is a little louder today?

Mr. STRONG. Yes.

Senator BLACK. May I ask you, do you know who is responsible in the fur industry for having all of the Senators mailed, at their residences, thousands of post cards?

Mr. STRONG. Yes; Mr. Michael Hollander, of A. Hollander & Sons, the chief factor in the fur market.

Senator BLACK. These post cards all allege that all of the poor people in the country are going to be destroyed by this small tax on furs. Who is Mr. Hollander?

Mr. STRONG. He is at the head of A. Hollander & Sons, a firm listed on the New York Stock Exchange, and every week or two the manufacturers or someone else gives him a dinner on account of the wonderful showing he has made here at Washington.

Senator BLACK. He is the one that is responsible for having all these post cards mailed?

Mr. STRONG. That is right.

Senator BLACK. They might understand that if anybody had an inclination to vote to repeal the tax, he might be inclined now to vote against it through this bombardment of post cards.

Mr. STRONG. Since the code went into effect, the fur dressing and dyeing industry—the workers—have not averaged $10 a week. I have been around to the different plants and inspected them and have spoken to the men, and I attended the A. F. L. meetings, and I attended the Communist meeting.

Senator WALSH. Is that because of the few hours they work a week?

Mr. STRONG. If they could be guaranteed 25 hours a week they would be happy.

Senator WALSH. What are they getting?

Mr. STRONG. They are supposed to work 35 hours a week, and the minimum is 65 cents an hour, but I do not think any of them get any more than 12 or 15 hours a week. They have not averaged that during the past year.

Senator CONNALLY. That is because in the fur business they are not selling lots of furs? If the manufacturer cannot turn out the goods, he cannot hire people.

Mr. STRONG. Since the price fixing in the code was lifted, there is so much competition. For instance, where it would cost originally for years a fixed price for dressing a silver fox of $2.50, today everyone is dressing them for 65 cents—ruinous competition.

Senator KING. Proceed. Senator Walsh, will you please preside. I am called to the Committee on Privileges and Elections.

Senator WALSH. Proceed, Mr. Strong.

Mr. STRONG. I made a visit to the office of the regional director in New York, Mrs. Anna Rosenberg. Mr. McLaughlin is in charge of labor complaints down there. I was out with him several times. I met him socially, and I asked him whether I would be entitled to overtime on account of the hours I had put in. I had averaged anywhere from 100 to 120 hours a week, 7 days a week, working. He told me, "No"; I was not entitled to it.

Naturally, having been out with him several times, I thought he was friendly; and I said something about that I did not like the way the code was being conducted—there was a lot of discriminations up there—and he said, "You bring down the proof of these discriminations, and I will act." He said, "I don't believe my friend, Henry Schlesinger. the chairman of the code authority, would do anything like that."

Before I could get my statement out that same night there was a visit at the code authority board, and—lo and behold—Mr. Schlesinger, the chairman, and Mr. Beldock, the chief counsel, were aware of the fact that I had been down to see Mr. McLaughlin; and the matter was discussed up there, leading me to believe that Mr. McLaughlin had so advised Beldock and Schlesinger. I wrote a letter to Mrs. Rosenberg——

Senator WALSH (interposing). Who was Mrs. Rosenberg?

Mr. STRONG. Mrs. Rosenberg is the regional director for the State of New York of the N. R. A.

Senator WALSH. Who appointed her?

Mr. STRONG. I don't know. She was the campaign manager for Congressman Peyser. Maybe that had something to do with it.

Senator WALSH. What is your correspondence with her?

Mr. STRONG. Shall I read it into the record?

Senator WALSH. In your letter asking to appear before this committee, you said that you had some interesting correspondence with Mrs. Rosenberg, showing where she shielded an N. R. A. employee with regard to complaints which had been made against violations of a code.

Mr. STRONG. That is right. Shall I read this into the record?

Senator WALSH. Yes.

Mr. STRONG (reading):

MARCH 11, 1935.

Mrs. ANNA ROSENBERG,
Regional Director, National Recovery Administration,
New York City.

DEAR MADAM: As a former employee of the code authority, fur dresser and fur dyers, I paid a visit to your Mr. McLaughlin, in charge of labor compaints, and who is a drinking acquaintance, to ascertain whether I had any rights concerning additional pay from the code for having worked on an average of 14

hours daily, 7 days per week. At the same time I told him that I thought that the code was functioning improperly. This visit was about 2 weeks ago.

He told me to get all of my data and to submit it to him and that he would act. At the same time he told me that he did not believe that Mr. Schlesinger, chairman of the code, would do anything improperly. Before I had a chance to submit my evidence to him, it is evident that he communicated with Schlesinger. I base this on the fact that at a meeting of the code board held last week, that this matter was brought up by Schlesinger.

I charge that McLaughlin tipped off Schlesinger as to what I was going to do, that he had no right to do this, and that it is nothing short of a racket practiced by McLaughlin. The information that I gave him and the information that I was to give him was confidential, and he knew it. He is a National Industrial Recovery Administration employee, and under the law he is not supposed to give out information, etc., and I believe that there is a ruling on this phase. I do not believe that you personally would countenance such tactics on the part of your assistants.

Under date of March 16, I received a letter from her. [Reading:]

This will acknowledge your letter of March 11, for which I thank you.

A thorough investigation of your complaint satisfies me that the information you gave in confidence was not revealed. If you have additional information which would enable me to make further investigation, I will be glad to receive it.

Sincerely yours,

ANNA M. ROSENBERG,
Regional Director.

I replied to her on March 19. [Reading]:

This will acknowledge receipt of your letter of the 16th instant, which constitutes your reply to my letter of the 11th instant.

I am not at all satisfied with the whitewash that you have given Mr. McLaughlin. As an investigator of many years' standing I cannot understand what investigation you could have made without having called in witnesses to verify the charge that I had made against your subordinate. It is evident that the seriousness of the charge is entirely "over your head." I have charged that McLaughlin violated the United States Criminal Code in that he revealed information that under the law is to be kept confidential.

I realize to some extent that politics make strange bedfellows and that your letter would be as far as it would go. In this case I do not intend to allow anyone to "get away with it", and if I must lodge my complaint with the Federal authorities or turn it over to the newspapers, you may rest assured that I will not hesitate in doing so. Some of the labor unions may also be interested in that any complaints that come into your office will result in a "tip-off" to those involved.

I shall expect a thorough investigation of my complaint and also do not anticipate that you will leave this matter in the hands of your secretary whose initials appear as having dictated your answer to my complaint.

Under date of March 21, I received this letter:

DEAR MR. STRONG: I herewith refer to your letter dated March 19 which is in answer to my previous communication to you of the 16th.

I have again taken this matter up with Mr. McLaughlin, and he assures me that, upon the occasion of your visit to this office, you discussed with him general complaints against the Code Authority for the Fur Dressing and Fur Dyeing Industry. You did not mention to him any specific complaint, and he informed you that in the event you have any definite evidence against this code authority you should give to him such evidence in your possession with the assurance that appropriate action would be taken by this office. According to Mr. McLaughlin's statement, this you have failed to do, therefore I cannot understand what Mr. McLaughlin or anyone else from this office could have told the code authority. Neither is there any evidence that Mr. McLaughlin communicated in any way with Mr. Schlesinger.

In the event that you have any complaint to make against this code authority or any individual connected with same, I suggest that you immediately contact me and upon receiving such complaint from you, I will take such steps as may be necessary in the matter.

Senator WALSH. The remaining correspondence may go in the record.

(Following is additional letter submitted by Mr. Strong:)

DEAR MRS. ROSENBERG. Reference is made to your letter of the 21st instant wherein you state that there is no evidence that Mr. McLaughlin communicated with Mr. Schlesinger of the fur-dressing and fur-dyeing industry, that you have spoken to Mr. McLaughlin, and that he stated that he did not communicate with Mr. Schlesinger.

You have a very fine reputation for your integrity and I fail to understand your lack of integrity by asking McLaughlin whether he made the call to Schlesinger. From my letters you could readily see that I was the complainant that I had the information regarding this and that I was the logical one to give you this information and not for you to ask McLaughlin. It is evident that in your anxiety to protect him that you have taken the course that you should not have.

On account of the foregoing I do not feel that I should give you any information concerning the racketeering going on in this particular code and I am mighty glad that I did not give this information to McLaughlin.

As to my visit to him, when he remarked that his friends Schlesinger and Beldock could not do anything wrong and that he wanted the complaint from me (he knew that he was not the proper person to receive such complaints) his overzeal ousness prompted me in not giving him the information.

I do not want to appear to be egotistical but Mr. Beldock I am positive will advise you that I am an investigator of long standing and that I have some intelligence and that I know what the proper procedure should have been in this case. You may rest assured that these matters will be taken up through the proper channels at the proper time.

Very truly yours. ——— ——— ———.

Senator WALSH. Is there anything else you desire to say?

Mr. STRONG. That is all.

Senator WALSH. That completes your testimony?

Mr. STRONG. One other thing. The City Fur Dressing Co., formerly of Brooklyn, moved to Manville, N. J. The head of the concern was a man by the name of Kriegman. Mr. Kriegman told me that he will make an affidavit if necessary that two inspectors of the code authority brought in a business agent of one of the unions into his plant in an effort to unionize the shop. It was an open shop. And further, that these two inspectors posed as Federal officers and went through this small town in an effort to get affidavits concerning this firm.

That is all; thank you.

STATEMENT OF EDWARD A. FILENE, PRESIDENT WILLIAM FILENE'S SONS CO., BOSTON, MASS.

(The witness was first duly sworn by the chairman and testified as follows:)

Mr. FILENE. My name is Edward A. Filene. I am president of William Filene's Sons Co., Boston, Mass.

I come here as a business man to plead for what my experience has forced me to recognize as the best interests of business; but I trust that this will not debar me from appearing also as a citizen interested in something more than mere dollars and cents.

If there is any conflict between the best interests of American business and the best interests of the American people, this committee should of course discover it and line up with the people; and no business man is worthy of American citizenship if he would not applaud you for doing so.

But there isn't any such conflict. The trouble is, however, that there used to be just such a conflict. There was a time when business could get more if the masses got less. There was a time when employers could make more profits if their employees got less wages; and it was during that time that most of us business men developed our theories of business.

But that time has passed. The trouble is that the theories are still sticking around. All that business needs for recovery today is to recover from those theories—theories which were perfectly valid so long as there was a conflict between the interests of business and the interests of other elements of the population, but theories which ceased to be applicable as soon as American industry had developed to a point where it could produce enough to go around.

When we became able to produce enough to go around, one of two things just had to happen. It either had to be passed around or the whole machinery of production would choke up. It wasn't passed around and the machinery did choke. That's almost the complete story of the depression. The N. R. A. was an effort to permit such an organization of business that the products of industry could be passed around to every family in America.

Let us admit that the N. R. A. has been but a moderate success so far. I, myself, have groaned over the mistakes it has made, and over the way in which we business men failed to correct those mistakes and therefore muffed our great opportunity. Nevertheless, the issue now is clear. It is: Shall we keep on with this effort to organize our American life in accordance with the new economic facts, or shall we go back to the practices which landed us in this depression?

I am aware that many business men—men of undoubted brains and ability and high in the councils of organized business—have no confidence in the N. R. A. and repudiate the principles upon which it was founded. But, gentlemen, isn't that always true, in every historical crisis, where a great step forward has become necessary?

I do not want to denounce such persons. There is no need of getting angry. Human society couldn't get along without institutions, and institutions could not thrive unless men of brains and ability did weave their lives and weave their thinking into fixed institutional patterns. It would be strange indeed, and quite contrary to the usual course of human history, if the leaders of the United States Chamber of Commerce should be the first to recognize that business had come upon an utterly new time, and that the very principles upon which their leadership was organized had become no longer valid.

As a matter of fact, our labor unions have a better understanding of what is good for business today than our chambers of commerce have. But I don't mean that as a slap at the chamber of commerce nor as a eulogy of the leaders of organized labor. It is simply a fact that a man could not rise to leadership in organized labor without giving some attention to the common interest; whereas until the passing of the age of scarcity it was possible to rise to leadership in business and think almost solely in terms of special interest.

It has not been the United States Chamber of Commerce, then, but President Roosevelt who has been representing the true interests of business during the past 2 years. He saw that we could not continue to produce an abundance until we discovered how to pass it around.

He saw that business could not recover until we did discover this. He didn't know, and didn't pretend to know just how we could do it; but under his leadership the Congress gave us a chance to find out how, and then to act upon our findings.

I mean, of course, that you passed the National Industrial Recovery Act, which made it possible for all American business to act in concert for the common good without being prosecuted for conspiracy. Unfortunately, however, it did not make it possible for every business man suddenly to unlearn all the habits and practices of business which he had learned in the age of scarcity.

Any failure of the N. R. A. so far can be attributed definitely to this failure of business men to change their basic attitude toward business when this basic economic change had made it necessary. I do not think, however, when all the facts are in, that business has made such a deplorable failure in this as many seem to think. It is true that we went to bat and fanned. It is true that we burdened ourselves with innumerable and all uncalled for agreements governing details of business competition, for the purpose of stabilizing prices instead of stabilizing prosperity. It is true that, instead of increasing the buying power of the masses by lowering prices and paying wages as high as we could pay, we formulated codes in many instances which actually raised prices and robbed ourselves of the market which we had to have if recovery were to come, and then we haggled with labor in the hope that, if wages must be raised, they would not at most be raised enough to enable us to sell enough of our goods to keep workers employed and thus make our business profitable.

On the face of it, I admit, that looks rather stupid. But I plead extenuating circumstances. For that was the way we had all learned to do business; and this new event—this machine age of enormous production—which made it not only unnecessary but impossible to do business in that way any longer, was a social event, and we business men had had almost no experience in analyzing social forces.

You gentlemen know how we were. If we asked you to pass a tariff law, for instance, did we do it because we had studied tariffs and had worked out any comprehensive economic theory? You know we didn't. We came down here to Washington, one after another, and we all demanded a high tariff; but what each of us really demanded was a high tariff on the particular gadget he happened to be manufacturing.

I am not blaming anybody for this. That was business—in the old days before we got out of the age of scarcity. There wasn't enough to go around anyway, so everybody just naturally got what he could get. Business, we all understood, was a personal, individual matter. What was that we used to call it—oh, yes; rugged individualism. We did not have to act in concert. It was un-American, we said, to think of such a thing. All we were doing was producing and distributing the things which the masses had to have if they were to go on living, and it was not only un-American but unbusinesslike that such a job should be carried on according to any systematic, Nation-wide plan.

Gentlemen, I am not exaggerating this. That was almost uniformly our attitude as late as 1928 and 1929. If anyone had proposed the N. R. A. in those days, we would have put him down immediately as a Bolshevik. Admitting, gentlemen, that we bungled

our chance when you presented us with the N. R. A., I want to ask you candidly if the American business mind, in spite of all the formal pronouncements of the chambers of commerce and manufacturers associations, has not made really remarkable progress toward recognizing the need of introducing order and planning into our economic affairs. Are there not thousands today, where formerly we could hardly point to one, who are thinking in terms of the social character of production and distribution? And haven't you faith, if you give us another chance, that we may yet work out a program which will apply to the age of abundance in which, if business is to prosper and the masses are to be employed, the abundance must be passed around?

Because we bungled our chance, it is now proposed not to give us another chance. It is now proposed to do away with the N. R. A. I cannot definitely promise, of course, that business will generally see the light if a further chance is given us, and that we will make maximum use of the N. R. A., lowering prices and raising wages until the masses can buy enough to keep themselves employed. I can say, definitely, however, that we cannot do this, if you now take the N. R. A. away.

The N. R. A., I admit, cannot be fully successful, until the mind of business has become sufficiently aware of the new problem, so that it will concentrate upon the necessary central task of increasing the buying power of the masses. If we do not have the N. R. A. to work with, however, we will have to wait, not merely until business generally gets the new viewpoint but until every last business man gets the new viewpoint. For business cannot act in concert, especially in the matter of increasing wages, so long as some chiselers are eager to reduce wages, undersell the others, and get away with it.

I heard somebody ask what a chiseler was. My definition of a chiseler is a barber who shaves not only the beard but the skin away. [Laughter.]

To get concerted action, we must have codes and codes which can be enforced. We must have them, even if the Supreme Court says we cannot have them unless we amend the Constitution. I do not know, of course, how well these codes will stand up in law; but I do know that business, unless it is permitted to arrange an orderly distribution of buying power, cannot again achieve any lasting prosperity.

I don't pretend to any extraordinary knowledge when I say that. You can see it as well as I; and any business man who once learns to think in terms of business, instead of in terms merely of his own particular business, cannot help seeing it.

For certain things are obvious. No matter how successful certain individual businesses may temporarily be it is obvious that we can't run our modern industrial machine as a whole unless the masses can buy its products—that is, we can't run it on any business system. The Government might conceivably take it over and operate it in some lifeless, bureaucratic way. Or we might install some dictatorship of labor, called "Communism", or a dictatorship of privilege, known as "Fascism", under which the masses might get a living instead of experiencing an abundant life. But if we are to have liberty and prosperity—including economic liberty and economic prosperity—we must have them under economic law.

You will not, I am sure, question that it is an economic law that business cannot sell more than its customers can buy. The only basic

change that has occurred is that business with its then limited output, could once find enough customers even if the masses could not buy extensively. But that time has passed. We cannot operate this American machine at its present and rapidly increasing capacity unless the masses can buy on a scale which was never before heard of; and the masses cannot buy on any such scale unless wages are removed from competition, and organized business and organized labor cooperate on the task of seeing how high these wages can be made. That means that there must be codes, with teeth in them. It means that chiselers and economic traitors must be brought to book.

Of course, gentlemen, if business won't see this, then the business system is over. Because business has not already seen it, in fact, conditions in this country have already become extremely threatening. I am not thinking merely of the poverty and unemployment. I am thinking of the millions whose spirits are breaking under the superstrain of this long-drawn-out poverty and unemployment. I have shared the hope with you, I know, that the American spirit would not break; but the things I saw, and the conversations I heard, on my most recent study tour from coast to coast, made me almost lose this hope.

If recovery does not come soon, we may as well get ready for whatever Dr. Townsend, Father Coughlin, and Huey Long propose. Already, these agitators claim upward of 30 million followers, not because the people agree with their arguments but because the one effective answer to their arguments has so far been withheld. That one effective answer cannot be given in words; for when the masses have reached the breaking point, mere economic arguments are futile. The only effective answer then is economic action, and we cannot take this necessary economic action unless we can work under some such device as the N. R. A.

You gentlemen must have noticed this; for in all the business criticism of the N. R. A., not one alternative proposal has been made.

I went all through the country, from coast to coast, speaking and conferring with leaders of labor, speaking in many chambers of commerce, and always with groups of business men in conference at the hotel, and there was not one alternative proposal made to what the N. R. A. is doing.

That is because there is no business alternative, excepting, as I said, to resume the planless regime which, while perfectly well suited to the age of scarcity, could not apply to the age of plenty and brought us to disaster.

Our problem definitely is the distribution, not of our little and waning pile of existing wealth, but of the abundance which we have learned how to produce. If I believed that this abundance could be distributed more effectively by the Government than it could be in the processes of modern business, when business once seriously undertakes the task, then I would be for Government ownership and operation of industry; for the national situation is so serious that no one can afford to think of it merely in business terms. But I am compelled to believe that business can do this job better than any mere political administration could do it. And I am compelled to agree with the President who from the start, instead of attempting to administer our economic affairs, merely opened the door by which business, with the cooperation of labor, could set up its own controls.

All I urge is that you leave that door open. Then, if business fails, it will not be your responsibility. The N. R. A., we must remember, was never intended to produce recovery by some power within itself. It was an act, rather, a charter under which business, if it grasped its opportunity, could attend to its own recovery; and we could have complete recovery before this coming fall if business in general were to begin concerted action under that charter now.

Business has not yet done this because, instead of thinking of its opportunities it has been thinking of its rights—like the absolute monarchs of old who absolutely lost their thrones because they insisted upon their divine right to remain absolute.

In this Nation-wide peril, surely, we cannot recognize the right of any business man, large or small, to continue business in a way which must add to the peril. Many, I know, have asked you to do exactly that. They have asked you, in the name of protecting the little men, to give them the privilege of paying such low wages that their employees cannot have effective buying power. In the age of scarcity, it was any man's right to go into business, if he could do something to help relieve that scarcity. In this age of plenty no one has a natural right to remain in business unless he can do something to help distribute that plenty. The N. R. A., notwithstanding its defects, notwithstanding its weakness of administration, notwithstanding the unbusinesslike opposition to it, is basically sound, and as it continues will take us out of this depression and bring legitimate profits back to business, and bring industrial peace and prosperity to our country.

Senator WALSH. Thank you, Mr. Filene.

Senator COUZENS. May I ask how the retail code works?

Mr. FILENE. In our own business it has increased the expense somewhat by shortening the hours. The employees, most of them, work only 5 days a week, and that means an increased expense. Our number of employees are the same. We never discharge employees because times are bad.

Senator COUZENS. How do you divide up the work among your employees when you only work 5 days a week? You are open 6 days a week, are you not?

Mr. FILENE. Yes; we are open 6 days a week. We either divide it up or take in extra people. The extra expense comes from the extra people.

Senator COUZENS. What hours per week are you working now?

Mr. FILENE. We are working on a 40-hour week.

Senator COUZENS. Is that too high or too low?

Mr. FILENE. Too high. I think with so many people out of work, that the hours ought to be reduced if not to 30 at least to 35, and the result of that would be that if necessary—we would be compelled to hire more people because we would keep open the regular amount of hours. In legislation of this kind, no technique or anything is of any use unless the result of it is to increase the production of wealth. We cannot distribute—you will agree with me—anything more than we produce to distribute, and high wages must come out of increased production of wealth.

Senator COUZENS. As the result of the code, have you had to raise prices?

Mr. FILENE. That is a rather difficult question to answer. In our lines of business, which are mostly men and women's clothing and furnishing goods where style comes in and all of that, the competition is a real factor of determining prices. I should think for a guess that prices in some lines have advanced, while competition in the main lines, like dresses, are producing more beautiful and better dresses at lower prices, but that again I think is competition rather than codes.

Senator COUZENS. You must come in contact with a great many codes in your purchasing, do you not?

Mr. FILENE. Yes.

Senator COUZENS. Have you found that that has increased the price of goods materially?

Mr. FILENE. I shoud not like to testify directly about that, because it is a question of competition and searching the market until you get somebody who wants to produce at the price you want it.

In our basement, where we sell $10,000,000 under the mark-down system, where we mark down 25 percent after 12 days, 50 percent after 18 days, 75 percent after 24 days, and after 30 days give it away to a charity, that is of course supplied by the excess of production and the mistakes of the producers who are not organized sufficiently. In that basement it is rather harder now to find these excess lots and lots that will be sacrificed than it used to be. I do not know whether that is directly the result of the codes or not.

Senator WALSH. Mr. Filene, how many employees have you in your Boston store?

Mr. FILENE. We have rising 3,000 in Filene's. We have 2,000 or more in White's that we own, and then we own——

Senator WALSH (interrupting). When the retail code was adopted, you reduced the hours from 48 to 40?

Mr. FILENE. Yes.

Senator WALSH. And you did not reduce the wages?

Mr. FILENE. We did not reduce the wages.

Senator WALSH. Where did that extra cost come from?

Mr. FILENE. I want to modify that. Wages were reduced for the first time in our history, I think.

Senator WALSH. You were not able to pay for 40 hours as much as when you were paying for 48?

Mr. FILENE. We were not ready yet. We had not adjusted ourselves to it. We had made a rule during all the time that I was in control there—I am no longer in control, it went into the Federated as a merger, and I would not go in. But during all of the time—and this is rather important in your consideration of the codes, too—during all of the years, that is until the last 3 or 4 years, we never reduced wages or discharged anyone because business was bad, and the result of that was that with the added percentage of expense to a smaller business, bad business, we were forced to find methods of conquering some of the incredible waste that still exists in distribution.

The retailers are not getting enormously rich, you know. They are not chiselers in that respect, at any rate. But the average thing increases in price from the production cost to the consumer, and that is the whole line of railroad excess charges, middlemen, and all of the other things that go in, so that the prices are increased not only 2 and 3 times, but often 5 and 10 times.

Senator WALSH. The prices of what?

Mr. FILENE. Of all classes of merchandise, they are increased sometimes 5 and 10 times, and in the study of the Twentieth Century Fund that is now being made of what makes prices high, we are finding many things that are increased 20 times above prime cost of production, the prime cost being labor, material, and a fair return to capital.

Senator WALSH. I got the impression from what you said to Senator Couzens that there had not been much increase in the retail price.

Mr. FILENE. Not of the kind of goods we sell.

Senator WALSH. You did reduce the hours of employment from 48 to 40?

Mr. FILENE. Yes.

Senator WALSH. Did you reduce wages or did you keep the same wages?

Mr. FILENE. Wages were reduced at one time. They have been since restored in part.

Senator WALSH. So there was no need of adding that increased cost to the expense of the goods that you were merchandising?

Mr. FILENE. The way to meet it and the way we always met it, and that is what made us successful as a store was that when that expense came of keeping our employees through bad times and thus added expenses, we were compelled by the pressure of these expenses, and we did find always the means of reducing these excess expenses.

Senator WALSH. Was that policy generally followed out by the retail trade in Boston and elsewhere when the reduction in hours came from 48 to 40, namely, a reduction in wages?

Mr. FILENE. I don't know.

Senator GORE. What happened to the pay roll in the aggregate?

Mr. FILENE. The total pay roll?

Senator GORE. Yes.

Mr. FILENE. The total pay roll is about the same, as I have the figures in mind.

Senator GORE. What happened to the total number of your employees?

Mr. FILENE. We do not discharge the employees, and I imagine we would have to hire some extra ones on account of it.

Senator WALSH. Mr. Filene is not actively engaged in the business now. He is the president of the company. You are not actively engaged in business?

Mr. FILENE. I am there all day now, but I do not deal with details.

Senator GORE. Could you give us an idea how many you have added to your pay roll?

Senator WALSH. Since the N. R. A. was adopted, you mean?

Senator GORE. Yes.

Mr. FILENE. No; I will get you those figures and forward them to the committee.

Senator WALSH. We will be very glad to get them.

(Mr. Filene subsequently submitted the following data:)

Data on hours and wages at Wm. Filene's Sons Co., Boston, Mass., before and after the National Industrial Recovery Act

[Furnished at request of members of the Senate Finance Committee during Mr. Filene's testimony at the National Recovery Administration hearing on Wednesday, Apr. 10, 1935]

	Before National Recovery Administration	After National Recovery Administration	Percent of increase or decrease
Total number of employees [1]	2,800	3,260	+16.43
Total pay roll of employees, per week [2]	$68,704	$77,350	+$12.58
Total number of man-hours, per week [3]	132,000	133,482	+.11
Average hours per week per employee [4]	47	41.6	−11.50
Average earnings per week per employee [4]	$24.50	$23.70	−$3.27

[1] This gives the total employees on the pay roll, which includes not only sales persons but drivers, elevator operators, receiving and shipping clerks, etc.

[2] Figures are total dollar pay roll per week for all employees listed in (1).

[3] It will be noted that though the number of employees has increased by nearly 16½ percent [1], the total number of man-hours worked per week has increased only a little over one-tenth of 1 percent. This figure merely substantiates the fact that the increase in the number of employees has been counteracted by the shorter hours worked per employee, as shown in (4). In terms of man-hours, the store has not increased its force.

[4] Though sales girls are limited to 40 hours a week, the figure for all employees is 41.6 instead of 47. This is due to the effect of a longer work week than 40 hours being permitted to certain groups under the retail code.

[4] Though the average weekly earnings are 3.27 percent lower after the National Industrial Recovery Act than before, this is accounted for by the fact that the average wage of the people added is lower than the wage of the experienced employees. It should be borne in mind that the National Industrial Recovery Act necessitated many shifts in hours which, in turn, necessitated the employment of many extras.

PRICES

In late 1933 and 1934 prices generally advanced sharply and then dropped off. At the present time the prices of cheaper merchandise are up from 15 to 25 percent above the very low prices prevailing in the spring of 1933. In better and more expensive merchandise, prices are up not to exceed 15 percent of the 1933 low prices. Most of these price advances are due to advances made by the producers; for example, in cotton textiles where the processing tax alone caused a fairly sharp advance in all cotton products. In general it would be safe to say that prices at retail are today from 10 to 25 percent higher than those which prevailed during the low price point of early 1933, the higher advance being in the lower grades of merchandise.

Senator GORE. Have you computed the number of hours that you received after the reduction from 48 to 40 hours a week plus the new employees, how many hours of work did you get on a per-week basis now, including all of your employees, as compared with the hours of work you got before the code went into effect?

Mr. FILENE. We cannot run more than 40, and that is strictly observed, and the result of that is that it makes a better life for most of the employees. Voluntarily or involuntarily they used to stay over hours; you mean——

Senator GORE (interrupting). I did not mean that. That is, how many hours one individual works. What I want to know is how many hours all of your employees combined work now per week as compared with the number of hours work you got per week before the code.

Mr. FILENE. The total number of hours worked by all the employees?

Senator GORE. Yes.

Mr. FILENE. I cannot tell you. I do not carry that in mind. I will answer all of those questions if you will give me a questionnaire, and give it to you exactly.

Senator GORE. The prices of the goods that pass over your counter, could you give us any idea as to the price level in general now as compared with the prices before the code went into effect?

Mr. FILENE. I should think that the price level would be lower, not higher. You cannot sell the customers what they cannot buy or pay for. In many lines in the last 2 or 3 years there are more beautiful and better goods that have come out at lower prices than before.

Senator GORE. So that some prices at least have gone down?

Mr. FILENE. The general tendency I should say in our class of goods—and you have to bear in mind that there is a style element that comes into it more than in most businesses—they are men's and women's clothing and furnishing goods. In our class of goods it is largely a matter of competition and as trade has been not as good, as you know during these years, the competition has been fiercer.

Senator GORE. The price level has gone down notwithstanding the increased cost you spoke of a moment ago?

Mr. FILENE. I think so.

Senator BARKLEY. Mr. Filene, in addition to being a substantial merchant, you are something of a student of public affairs and economics, are you not?

Mr. FILENE. I am charged with being that. I give most of my money and most of my time outside of business to the study of practical economics, the next step forward.

Senator BARKLEY. From your study and observation and experience, taking into consideration the multiplicity of machinery for the production of goods and the mass production which we have developed in this country, do you believe that we may expect to have in a reasonable time if at all a return to such conditions as will absorb all unemployment without a still further reduction in the hours of labor?

Mr. FILENE. I should think as first aid to the injured, a reduction of hours of labor is required. More than that, in order to absorb that enormous production, people must have leisure enough to use up the goods. If you are going to produce as many automobiles, people must have time to run the automobiles and use them up and want new ones. I think there is no such thing as overproduction. The mass of people are only too eager to buy all that we produce, and the average man wants and strives toward getting everything that the richer people have been using, and most of those things can be made under mass production and produced at a price reasonable enough with fair wages so that the masses can buy them.

Senator BARKLEY. Assuming that there is a certain quantity of goods required and a certain other quantity that would be salable if the people had the time and the opportunity and the purchasing power to satisfy normal demands, is it not almost automatically true that a reduction in the average hours from 40 to 30 would spread employment among a sufficiently large number of unemployed to make possible that leisure time as well as the increased purchasing power to which you refer, which would automatically increase the normal demand for commodities and goods and merchandise?

Mr. FILENE. I think that is true. I want to modify it, however; that in the study that I made of the 30-hour week, the immediate effect has some drawbacks. It might be perhaps better to consider going by stages and go to 35, say; but eventually the greatest production is possible under 30 hours just as much as under 40, because the

wastes in production and distribution, and I am not talking of the waste in material and I am not talking of guesses, but of studies we have made, the waste in production and distribution is almost incredible.

We have been running our production and distribution—with the exception of such well-managed firms as the General Motors and General Electric who run on fact-finding research—we have been running them on hopes and guesses and wishes, and you can see by what I told you about our basements, that we get these large amounts, enormous amounts of goods at less than cost constantly, because there is no planned production, and if a manufacturer produces rightly, you see, then other manufacturers jump in until too many manufacturers are producing that right thing for the moment, and they cannot find an immediate market.

Under the codes, that is one of the things that has not been attacked but that could be taken care of because if the codes bring all of the people in the same line of business together, they will gradually learn that can increase their market by raising wages, and I would just as lief pay double wages provided I know no competitor directly or indirectly can beat me by competing or cutting wages down.

Senator BARKLEY. Can any concern like yours or any similar institution make a material reduction in the hours of labor and at the same wage under competitive conditions unless all others similarly situated do the same?

Mr. FILENE. I think not. You might do it temporarily or sporadically.

Senator BARKLEY. Taking it by and large over the country as a whole, in order to be effective it must be universal throughout?

Mr. FILENE. Absolutely. I am in full agreement with that.

Senator GORE. If the hours were reduced from 40 hours a week to 30 hours a week and the same payment was made for 30 hours as for 40, that would of course increase the labor cost per unit of time?

Mr. FILENE. I do not think there is anything more fallacious than the idea that high wages necessarily increase unit costs.

Senator GORE. Not necessarily, depending upon machinery and methods of manufacture and so on, but assuming other factors to be equal and taking the situation as it is. When the codes go into effect and if the codes go into effect and with a reducing of hours to 30 a week and you pay as much for 30 hours a week as you do for 40 hours a week, would that not increase the cost?

Mr. FILENE. It might temporarily, but I want to go on record here that we can produce as much wealth in general production under 30 hours as we ever produced under 48 or 40 hours, because under that pressure of the need of the compulsion of the increased expense then in order to make profit, we would have to fight and conquer the incredible waste that exists in our businesses and all of the businesses and all production and all distribution.

Senator GORE. You think there is waste enough to conquer in order to increase the efficiency and absorb the increase?

Mr. FILENE. I am sure of that, Senator.

Senator GORE. You remarked a while ago that no person has a natural right to go into a business that was overproducing. What would you have that party do if he wants to and finds all of these resources and all of the business preempted or preoccupied? He

might be potentially the most efficient man that could go in. If you have him on your hands, what would you do with him?

Mr. FILENE. There is unlimited demand for anything that can be produced at a price the people can pay. People are perfectly willing to buy all of the things that richer people have been buying.

Senator GORE. And prices tend to correspond with costs. That was my other point. Whether you could continue to cut hours down and pay the same amount of wages for the smaller hours as for the longer, and avoid increased costs resulting in the increased prices, and the increased prices resulting in the decrease of consumption.

Mr. FILENE. The American market, Senator, can be doubled or trebled if people can be given the buying power. If you get a 30-hour week—and I do not want to go on record here as maintaining that 30 hours a week is immediately feasible——

Senator GORE (interposing). Do you not think that ought to be flexible all the time and adapted to the requirements?

Mr. FILENE. It may be necessary to approach 30 hours with a step in between of 35, but this is sure, that if we reduce to 30 hours, we will so greatly increase the number of employed, so greatly increase the buying power of our market that the result will be a very great leverage on reducing of prices both in production and in distribution, and especially in overheads. If I can sell, Senator, two or three times more than I have been selling, my fixed rent and all other fixed overhead expenses are reduced accordingly; are they not?

Senator GORE. That is immaterial, but I agree with your philosophy entirely on that side of it, but I was wondering whether you could continue to pay a fixed number of laborers increased wages for reduced hours, or the same wage for reduced hours and put on the additional employees that you mentioned whose wages would be added to your normal outlay on wages, and avoid an increase in the cost and an increase in the price. You said a moment ago that if you could reduce the price to bring it within the people's purchasing power, you could double or treble their purchases. That is undoubtedly true, but what I am getting at is, can you continue to increase costs without increasing prices, and when you increase prices, while you have added to some people's purchasing power, you subtract from the people's purchasing power who have to buy this stuff at the increased prices, and maybe they have not got any increase in their purchasing power.

Mr. FILENE. Well, as a businessman who has been pursuing studies of business all these years, I believe that the best thing that could happen to my business and to all business would be to largely increase wages and salaries, and that can be done if we take wages and salaries out of competition, and that can be done if no competitor can pay less or work more hours than I can. But that can only be done, gentlemen, under the codes. You realize that.

I worked as a boy in a store in Lynn. The Lynn stores could have done all of their week's business—I figured it out in a careful study—in 2 days of the week, but they kept open every night until 9 o'clock, and on Saturday until 12 or 1 o'clock, and we tried to cut down so as to have two evenings a week to free us people. I was working in the store and trying to pass a Harvard examination, and I had to work on Sundays and holidays in order to do that, because the store was kept open so many hours. We finally got all but two of the retailers to agree to close two evenings in the week, and then because those two

would not change, I worked all of those years, 6 days a week every night until 9 and Saturdays until 12 or 1.

If you abolish the codes, you cannot control these chiselers. You can help them in spite of themselves, and that is perfectly feasible, and yet you cannot do that without the codes that will put all of the people in and coerce them if they won't voluntarily see the light.

Senator BARKLEY. If every store in Boston or any other city in the country stayed open 6 hours a day for 6 days and everybody understood that, they would sell just as much goods during those 6 hours or those 36 hours a week as they would sell if they stayed open until 10 or 11 o'clock every night, would they not?

Mr. FILENE. You are right. You take our store. It is probably in as good a position as any store in the world, at the junction of the underground and at the junction of the principal business streets of the city, with subway entrances and all that sort of thing, and I doubt whether our store—let me put it another way. I feel certain that we could easily do all of our business in 6 hours, and when the customers knew that they had to go there during certain hours they would come just the same as they go to banks for certain hours, you know, to deposit or withdraw money.

Senator BLACK. I want to ask Mr. Filene one or two questions. Mr. Filene, your testimony with reference to the continuation of the N. R. A.—I want to see if I correctly understood you—do you favor price-fixing?

Mr. FILENE. I absolutely am against it with all of my power.

Senator BLACK. Then, so far as your testimony with reference to the continuation of the N. R. A. is concerned, you do not wish to be placed upon record as favoring price-fixing in any form by codes or otherwise?

Mr. FILENE. Thank you for the question. I do not want to be on record for price-fixing by codes or otherwise. What I said, at the beginning of the codes, what I thought when the codes were being made, was that in order to get it across some price-fixing might be necessary for a time such as price-fixing for some agricultural and raw materials. But I said with reference to price-fixing in general, that price-fixing will succeed when fishes chase lions, and not before.

Senator BARKLEY. You are not referring to kingfish? [Laughter.]

Mr. FILENE. Don't frighten us with those bogeys.

Senator BLACK. That being true, I also understand what you are arguing for is Federal legislation by the continuation of the N. R. A. or by such legislation as the Congress adopts that will protect maximum hours and minimum wages?

Mr. FILENE. What do you mean by maximum hours?

Senator BLACK. Maximum hours as a maximum in the work week. As I understand it, what you have argued here for and discussed very intelligently and very clearly and forcibly is that we need some kind of law which will provide against some people working excessively long hours and thereby driving their competitors to do the same thing.

Mr. FILENE. Exactly.

Senator BLACK. And you think we need some kind of law which will protect those engaged in business from being compelled to compete with others who work on sweatshop or starvation wages, and that in the main is what you have been presenting to the committee, is it not?

Mr. FILENE. Exactly. And I should like you to consider whether it would not be wise to get into the codes also that when the members of the code agree to raising wages, that those minimums shall then be raised and enforced according to the majority vote or whatever vote of the members of the code that they agree on as constituting their decision. The minimum wage is not high enough to make great prosperity. You know that.

Senator BLACK. Your object, as I gather it, is to increase the income of the purchasers of the mass production in this country?

Mr. FILENE. Exactly. In the age of scarcity, it was not necessary to have the masses buy very much. It was the classes that could take care of surpluses and were looked upon for profit. Even when I was a boy and we had a popular store, we thought that the profit came out of the hgih-priced goods. That has all gone by. The automobiles keep 4,000,000 directly or indirectly employed and making them customers, and if employers did not employ them at more than minimum wages, they could not buy any automobiles even on credit.

Senator BLACK. One other question. You were diverted in your discussion of the unit prices when you made the assertion that it was not necessary either to reduce production or increase prices if we reduce hours. As I gathered your statement, it was that the unit cost of production would not necessarily be increased by reason of the fact that the standing ordinary expenses of taxes, management, insurance, rent, and interest continued to operate whether a factory runs 1 day a week or 2 days a week, that your idea is to increase the purchasers, thereby increasing the product, thereby expanding production from 1 day to 6 and distributing the standing ordinary expenses among a large number of units of production so that you would not increase the unit cost of production, but you could decrease the unit of production?

Mr. FILENE. Exactly. I wish I could say it as well as you say it for me. It is the common mistake to think that high wages necessarily make high unit cost. You take our textiles, for instance. The unit cost of the textile with wages that are not high enough, yet in the textile we pay incomparably higher wages than the wages paid in India, but the unit cost of our textiles is less than any production in India where the workers get 10 cents or 12 cents a day.

Senator GORE. That is the reason we could compete with them without a tariff, is it not?

Mr. FILENE. I came back in September 1933 and I issued a statement that I had been a low tariff man all my life, I had been a 100 percent gold-dollar man all my life, and I had been an internationalist all my life, and I reneged on all three. Our country has got to be just to the 125,000,000 people here before it can be generous to the world, and there is no use in making noble futile gestures in conditions that are as clearly seen as the coming of either revolution or war in Europe and where there are high barriers to all kinds of trade. There was no use making abstract theoretical generous gestures in a condition when all of Europe was afire——

Senator BLACK (interposing). Will you let me continue my question?

Senator GORE. You have been wrong about those things you mentioned, have you not?

Mr. FILENE. Yes.

Senator GORE. Might you be wrong now?

Senator BLACK. A lot of opinions have changed, and a lot of people have changed their opinions through life, haven't they, Mr. Filene?

Mr. FILENE. It is the hardest thing in the world to do.

Senator BLACK. May I continue with my question?

Senator GORE. I have to leave. May I ask a couple of questions more?

Senator BLACK. I thought you had finished awhile ago. But that is perfectly all right.

Mr. FILENE. May I say this, Senator Gore? I said in that statement that inevitably and finally there is no peace and prosperity in the world unless the nations do get together as the States of our country were forced to get together for their own prosperity and protection, but under these conditions, the conditions that are more clear now than they were in the fall of 1933 but were evident then, I said that I would have to change my previous position and I believed my opinions or my conclusions were sound in regard to these things, that we could not have N. R. A., and that we could not raise wages if the other nations could dump their goods on to us in order to raise money to pay for their war preparation. You see what Japan is doing, with their money, the yen so depreciated as to make competition impossible—do you realize how much it is hurting our people?

Senator WALSH. I realize that particularly——

Mr. FILENE. (interposing). Our textile production is on the way out.

The CHAIRMAN. Let us keep to the N. R. A., gentlemen.

Senator BLACK. Senator, I have some further questions I want to ask.

Senator GORE. Does the minimum wage tend to become the fixed or maximum wage?

Mr. FILENE. I am afraid it does. There is a tendency I found over the country, but it is largely due of course to the depression and the bad times. Men are so hard up that business chiselers can send men away and replace them with men who work at the minimum wages.

Senator GORE. You are willing to fix wages, which is an element of price, but you are not willing to fix the prices themselves?

Mr. FILENE. Absolutely not.

Senator GORE. You stated a while ago, and I agree with you if I understood you, that you favored improvement as far as we can have it in our present system of distribution?

Mr. FILENE. Yes.

Senator GORE. I want to ask you whether you favor a curtailment of production?

Mr. FILENE. Absolutely not. I think it is the most stupid thing in the world to try and remedy bad mistakes by swinging the pendulum, to the other extreme; that instead of learning how to distribute production, we try to remedy it by curtailing production.

Senator GORE. Then you do not think we can end want by destroying wealth?

Mr. FILENE. Absolutely not.

Senator GORE. Then you are not quite as stupid as I thought you were.

Mr. FILENE. Thank you. That is high praise from you, Senator. [Laughter.]

Senator BLACK. It is on that question that Senator Gore asked you that I was about to ask you another question. Do you think we have improved the wealth of this country by having our system operate in such a way that our shoe factories frequently run 1 or 2 days a week while the people need shoes? Has that increased wealth or has it tended to abolish it?

Mr. FILENE. That question answers itself. It is one of the stupid mistakes of us business men.

Senator BLACK. We had here a few days ago a man who was in the furniture business who said that for 5 years the average operation of the furniture factories had not been as much as 33⅓ percent or more. That is what you are opposed to, is it not?

Mr. FILENE. Yes.

Senator BLACK. Stopping those furniture factories from operating when people need the furniture.

Mr. FILENE. That is one of the things I have specially studied, furniture production. If you take an average piece of furniture, these better pieces even, and you put it alongside of a Ford or a Chevrolet and you get engineers, not opinions, but engineering examinations of costs of material and labor, and so forth, you will find that the furniture in the price to the consumer is at least 10 times overvalued. The time is coming, I have said again and again about furniture, when furniture will be handled—and the transportation of it is very bad, it is stone-age transportation and handling—the time will come when furniture will be so low-priced that the factories will be kept busy and the people will change their furniture—the women will change their furniture the way they change their dresses, and they buy new dresses all the time.

Senator BLACK. And the only way that the furniture factories and the shoe factories and the clothing factories and the other factories will manufacture under our economic system is to have customers who can buy their goods at a profit, is it not?

Mr. FILENE. Absolutely.

Senator BLACK. And you are proposing a plan of reduction of hours and increasing the income of the purchasers of these businesses to stop this wanton destruction of potential wealth and to require our great productive capacity to run for the benefit of the people, all of the people, instead of having them operate a day or two of the week to supply only the richest and the most favored?

Mr. FILENE. Exactly. You can see, Senator, well, let us exaggerate. If a sofa cost $100,000, they would not buy any sofas. If a sofa cost $1, they would change sofas and add new sofas the way they buy these cheap and handsome dresses they are making.

Senator BARKLEY. They would have to reduce wages if sofas only cost a dollar.

Mr. FILENE. No, Senator. That is something too we make mistakes on. Sofas will never come down to a dollar—of course there can always be trash and fake stuff made, but finally as a general rule, market prices on goods can come down only if the workers earn enought to warrant mass production. It is an exaggerated statement of course when I price a sofa dollar—but no goods can come down to be very cheap unless they are sold freely and are good enough so that

the customer will come back, and they can be produced by the methods by which they can be produced so cheaply, and that means mass production, and the customers have got to buy them and be satisfied with them and come back right along for more. When you get a low price on that principle it is going to stick.

Senator BARKLEY. How long will it take for that sort of a millenium to arrive?

Mr. FILENE. It is not a millenium. You can go back in history right along. When a new epoch comes, the whole fight is because the methods that were successful in the past are stuck to. Naturally.

All of our training of the race has been to try and conserve what we had gained. Now we have come to a new time, and in that new time—well, as I said before that I think we could get back to where all our people could have work by fall provided we business men should get really together under the N. R. A.

You must, however, get many codes changed because you know that a great many of the codes were made by special interests, and big business men with limited outlook. May I tell you just a story that happened in San Francisco, that perhaps will clear what I have in mind.

The barber in San Francisco charged 60 cents for a hair cut. And I said, "Is that the general price here?" He said, "Yes; it is a code price." I said, "Can all of your customers afford to pay it?" And he said, "No." I said, "What happens then?" He said, "Their wives cut their hair or something of that kind."

Senator BARKLEY. That would not happen but once, would it?

Mr. FILENE. I am a bachelor; I don't know. [Laughter.]

I said, "Do the little barber shops that outnumber you 10 to 1 or 20 to 1, charge 60 cents?" He said, "Yes; they must, but their customers cannot pay it." I said, "How come?" He said, "The little ones have not got the time nor the money nor the brains to go to Washington and put up their case for a code, and those of us who went—" —this was said in one of the biggest hotels, with a big barber shop—"we could afford to do it because it paid us to do it." I said, "How long will this last? What is happening to these little men?" He said, "They have lost their trade largely, and anybody of their customers who pays 60 cents would rather come to a swell barber shop like ours, and we are getting the increased rate and they are losing their trade." I said, "How long will it last?" "They will get together and stop this gouging?" He said, "No; they have not got the brains and never would get together."

When I came again—I had been over the country on this kind of a study three times in the past 15 months; and when I came there the next time to San Francisco I was very much interested, and as I drove up to the hotel, I saw signs, "Haircuts, 15 cents, 20 cents, 25 cents" in the little barber shops. I asked this barber what had happened and he said, "They got together and abolished the code."

Senator WALSH. Thank you, Mr. Filene.

Senator LONERGAN. Mr. Filene, I would like to ask a question. On fixing hours in commerce and industry, do you not think we ought to be guided by the opinion of experienced men who are ethical as to the number of hours?

Mr. FILENE. Absolutely.

Senator LONERGAN. And that we ought not to do anything that would be arbitrary as to the number of hours or anything else?

Mr. FILENE. When you talk about experienced men, remember that because I have grown rich in business does not make me wisely experienced, you know. I may have floated with the tide into wealth, and that does not make me experienced, but if you mean that hours ought to be fixed on experience and ethics, it certainly ought to, but what experience? That experience of the past? Then we would go back to 14 or 16 hours.

It is the men who are wisely experienced now who realize that we are in a machine age and we have come out of the agrarian age of scarcity, and that we cannot only produce enough and more than enough under present circumstances, but that if we do cut the hours there is so much waste going on that we can more than make that good, and if we raise wages we can more than make that good. The result will be also if this present bad condition was allowed to continue you will greatly increase the danger that you are now realizing and facing of the Huey Longs and Coughlins and Townsend followers, most of them just as honest as you and I but who because they are overstrained cannot stand more strain on top of the 2 and 3 years of being out of work. If there were an abundance distributed on fair wages, buying wages, those theories could not even have much of a hearing. You would not have 30 million of them enrolled and a growing enrollment all the time.

Senator COUZENS. Is there any reason for different hours for different industries, or do you believe that 30 hours, for example, would be sound all over the Nation?

Mr. FILENE. I do not want to go down to saying that I am convinced that we can immediately go to 30 hours.

Senator COUZENS. No; I am not asking you that. My question related to uniform hours throughout the Nation.

Mr. FILENE. With some slight modifications, I think that under a pressure of shorter hours, there is so much chance for improvement in technique, in method, and especially in management, gentlemen. We managers of big business, we think that we and God are the only ones that know how to run them, and we are a little uncertain about God, but under pressure I think with the shorter hours almost every business can do it. Of course, there are certain things like hotels, but even there you can just have different shifts, I imagine. My general response to your question, Senator Couzens, is, yes.

Senator COUZENS. I mean that they can be uniform.

Mr. FILENE. Yes; I think in general.

Senator COUZENS. Without any exception?

Mr. FILENE. I would like to have a chance to hedge on that if it came to some special kinds of business or trade.

Senator LONERGAN. I want to digress. I know of your interest in humanity. If we are to have all of this leisure in commerce and in industry, have you given thought to the necessity of a national plan so that the leisure time can be profitably and pleasantly occupied?

Mr. FILENE. That is very important, but I want to emphasize that we people who have money and if we have leisure we never learned how to use leisure until we had it. The best education for leisure is leisure. Do you get what I mean?

Senator LONERGAN. Yes.

Mr. FILENE. All I remember when we were working 14 hours, employers said that the people were going to tear up the country and

ruin it and do every horrible thing if we cut the hours and if we gave them more leisure by cutting hours to 12, and when we cut from 12 to 10, you remember the outcry, don't you? What was going to happen? And we have adjusted ourselves, and we are adjusting ourselves to 8. We are going to adjust ourselves to a shorter time. Mr. Kettering, of the General Motors, said to me a little while ago that we have no conception yet of the possibilities of increasing our power and our production, and within a few years we will look back upon the present enormous production as small comparatively with what is coming. And you know who Kettering is; he is probably the best mind we have in that kind of thing.

Senator WALSH. I am sorry that we have to hurry on as we have several other witnesses.

Mr. FILENE. May I say that I hope you have a chance, in making these codes, to consider whether it would not be wise to make labor fix its own code of fair practices just as you have made business men do it. I think if you want some way of approaching this great number of strikes and labor troubles, the approach is through making labor fix its own code of fair practice, and not to adopt it until it is measured up against the common need and the rights of the masses of the people, and it will probably conflict so much with the codes that we business men have made, that there will have to be adjustments between us. You might hire the stadium and put a group of labor men and a group of business men together to fight it out.

Senator GORE. You referred to a subject a while ago that to me is the riddle of the Sphinx, and that is that Japan is increasing her shipments particularly cotton goods to the United States. That is true. But Japan is the largest purchaser of raw cotton from the United States. She buys about 1,700,000 bales a year, which one-third or more than a third of our whole exports. Japan can only pay for this raw cotton she buys from us by shipping some sort of things to us in exchange. What is your solution for that?

Mr. FILENE. Under present circumstances it is wholly a question of barter. We have got to allow to come into this country only such things as will not take the diminished amount of work away from our workmen. You take this very question of cotton. I think, Senator Gore, you undoubtedly would prefer that this cotton from America which you say they buy should be worked in America rather than made up in Japan under present conditions in America.

Senator GORE. I certainly would if you could find a market here where you would give employment to people and find a market which would clothe our people.

Mr. FILENE. The market is made by employing them to make textiles and shoes and all the other things. It is the wages that make the market.

Senator GORE. If we had a market for all we produce—and I appreciate the gravity of this—but our cotton farmers down South have a right to a market for their raw cotton, and until they get the market at home, how is Japan to pay for this raw cotton? Of course you know that all of Japan's exports combined last year amounted to less than 30,000,000 gold yen a month.

Mr. FILENE. They brought in 25,000,000 yards of textiles into this country this year.

Senator GORE. More textile this year than all the other years, was it not?

Mr. FILENE. I do not want you to accept my figures as exact, because I have not looked them up recently, but I think it was 7 or 8 million yards last year, and already this spring they have brought in 25,000,000 yards.

It is a great deal better for our workmen to manufacture that cotton here.

Senator GORE. More this year already than last year.

Mr. FILENE. Let me say this, Senator: I believe that we cannot have a lasting prosperity in this country unless the farmers are prosperous. I believe the farmers have got a definite case. Their goods have to be sold in world competition at world prices, their export goods; and they have to buy things under a high tariff, and that is not a fair deal. We have to find some remedy, and we can find some way. If there were time, I would like to tell you about it.

Senator GORE. That is what we want, a way, without hitting our cotton farmers over the head, in order to serve the cotton manufacturers.

Mr. FILENE. If you will allow me, I would like to send you a study of the possibility, a study which I have made, if you have any time to read the mass of statements you must get.

Senator GORE. Thank you; I would.

Senator WALSH. Mr. H. A. Phillips, chairman of the Code Authority of the Lace Manufacturing Industry?

(No response.)

Senator WALSH. James M. Butler, Columbus, Ohio?

(No response.)

Senator WALSH. R. B. Pitts, Camden, S. C., representing the Hermitage Cotton Mills.

STATEMENT OF RUBEN BURTON PITTS, REPRESENTING HERMITAGE COTTON MILLS, CAMDEN, S. C.

(The witness was first duly sworn by the chairman and testified as follows:)

Senator WALSH. What is your business?

Mr. PITTS. The Hermitage Cotton Mills.

Senator WALSH. Are you the owner or manager of these mills?

Mr. PITTS. I am president and largely the owner.

Senator WALSH. How much time do you want?

Mr. PITTS. About 5 minutes.

Senator WALSH. Proceed, please.

Mr. PITTS. This is a letter addressed to the Committee on Finance.

I represent Hermitage Cotton Mills of Camden, S. C., a small independent unit of 412 narrow looms, owned about 95 percent by local Camden people. I am not familiar with proper procedure before your committee, nor owing to unavoidable circumstances have I been able to secure the presence here of our attorney, therefore, I am presenting in letter form a very condensed statement of our situation.

Senator WALSH. Do you want the letter put into the record or would you like to read it?

Mr. PITTS. This is all that I have to present unless you wish to ask me some questions.

Senator WALSH. Very well.

Mr. PITTS. First, I believe that the general tendency of the Cotton Textile Code is favorable to the larger manufacturing units and in its practical operations the small plants are being discriminated against.

Second, theoretically, small plants do not pay as high wages as larger plants. We, ourselves, have believed in good wages and in the past have paid and are now paying what we believe to be above the average in our territory for similar work. I do not believe that small plants can continue to operate and continue to pay high wages, unless they are relieved from certain restrictions imposed by the Cotton Textile Code.

Third, our plant and its productive capacity are today approximately the same size that they have been for a long term of years. We have not increased the size of our plant nor purchased other plants, nor combined with other plants. Operating under the code we were obliged to throw out of employment about 17½ percent of employees and we are producing considerably less than at any time since before the World War. On the other hand, there are many manufacturing units that, under the code, are producing more than they have ever produced in their recent history.

Senator WALSH. Is that true today that there are some cotton plants producing more than ever in their history?

Mr. PITTS. Ever in their recent history. In the recent 10 or 12 years.

Senator WALSH. Are you referring to cotton yarn or cotton cloth manufacturers now?

Mr. PITTS. Cotton cloth. I know that to be a fact.

Senator WALSH. The information from all of these cotton-cloth manufacturers that comes to me from the North and South is that they are all ready to close up.

Mr. PITTS. I do not mean to indicate that the whole industry is. I have no statistics on that.

Senator WALSH. I understand.

Mr. PITTS. Fourth: I do not believe that the code authority should be allowed to exercise any control over the amount of our production. If, however, such control is exercised, I think it should be based upon a percentage of prior production for a given period of years.

Fifth: Under reduced production the cost of overhead and fixed charges have increased greatly and now compose so great a part of our whole cost as to be unduly burdensome and I believe constitute proportionately a great disadvantage as compared with larger units.

Senator WALSH. In other words, instead of a reduction such as was recently made under the code, a reduction of employment from 40 to 35 hours, you would urge that production be on a percentage basis of what each factory has produced in the past?

Mr. PITTS. We do not object to the 40 hours.

Senator WALSH. It is about to be reduced to 35 hours.

Mr. PITTS. That is under a curtailment program. I am speaking of the existing formal code regardless of curtailment. I might say that in curtailment, I do not believe the curtailment is exercised proportionately in proper ways, because some plants that are running certain ways are not curtailing at all compared to what they have been running.

We do not ask any favors, nor do we wish any exemption from wage or hours of labor provisions. We do wish the privilege of getting from our small plant the highest possible amount of production from

each machine in order that we may continue in operation and furnish adequate wages and regular employment to our workers.

STATEMENT OF CHARLES H. LIPSETT, NEW YORK CITY

(The witness was first duly sworn by the chairman and testified as follows:)

Senator WALSH. What is your residence?

Mr. LIPSETT. 91 Central Park West, New York City.

Senator WALSH. And your business?

Mr. LIPSETT. Publisher of trade papers.

Senator WALSH. Are you representing yourself or all of the trade papers?

Mr. LIPSETT. Representing the waste-paper industry.

Senator WALSH. How much time would you like?

Mr. LIPSETT. This involves what we would call combinations in restraint of trade, and I am afraid it will be quite a little lengthy; possibly 12 minutes or so.

Senator WALSH. You may proceed.

Mr. LIPSETT. First, Mr. Chairman, I want to outline that, as my telegram indicated—that I am appearing for an industry who as individuals do not dare to appear in this particular matter.

Senator WALSH. I will read your telegram for the benefit of the committee. [Reading.]

As a member of the Senate committee investigating the N. R. A. your attention is respectfully directed to the bankrupt conditions in the waste-paper industry caused by the monopolistic control of paper-board mills in both the purchase of their raw material waste paper and their sale of the finished product, paper board. The waste-paper dealer is compelled by virtue of the cooperative and monopolistic action of the mills to accept the sharply below cost prices set by the mills regardless of its value in relation to the sales price of paper board and regardless of supply and demand. Complete control is manipulated of such supply and demand by mutual arrangements of board mills and through captive waste-paper plants owned by certain mills. Practices of board mills constitute a direct attack on the N. R. S. and N. R. A. labor regulations in the waste-paper industry. The board mills are using the N. R. A. and their code as a means of oppressing the waste-paper industry and gouging their consumers. If present conditions are permitted to continue it can only result in widespread ruin among thousands of small waste-paper dealers while board mills themselves are making exhorbitant and unwarranted profits. State the time of my appearance before your committee. Trade in general is reluctant to make formal complaint by fear of boycott and reprisal by mills. I will supply names of witnesses who will be able to substantiate the charges herein contained.

I understand you want to talk on that subject.

Mr. LIPSETT. Yes, sir.

Senator WALSH. You may proceed.

Mr. LIPSETT. I am presenting these facts in behalf of the waste-paper industry which employs directly between 25,000 and 30,000 workers and collectors who gather waste paper of every description from every conceivable source. This industry also affects about 200,000 additional workers in affiliated industries. The waste-paper dealers and shippers sort and pack this paper and prepare it for use by mills that manufacture paper board. The waste paper constitutes the raw material for the board mills.

Under the waste material N. R. A. code, waste-paper dealers and shippers are called upon to pay their thousands of workers a minimum

of $12 a week and permit them to work no more than 40 hours a week. This is what they are supposed to do under the N. R. A.

The board mills however, who buy the waste paper from these dealers and shippers, have created such market conditions that many dealers have been compelled by sheer necessity to work their employees as high as 60 hours a week and in many instances the weekly wage instead of being $12 has been as low as $6. In other words, the business tactics of the board mills are such that they are compelling the sweating of the labor that provides them with their raw material.

During the past year and a half, the board mills have reduced the purchase price of the raw material about 50 percent and advanced the selling price of their finished product at least 25 percent, thereby increasing their profits in some instances as high as 700 percent.

Senator BLACK. Have you the names of these companies?

Mr. LIPSETT. I have them further on.

Senator WALSH. Are the board manufacturers under a code?

Mr. LIPSETT. I believe they are; yes.

In the East, the board mills have delegated a large New York firm to do their buying of waste paper for them. While this firm appears to be an independent agent, it is a known fact that the Robert Gair Co., one of the very large board mills in New York, owns either 50 percent or 51 percent of this company's stock. The Robert Gair Co. dictates to this firm what it should pay for its waste paper. Besides buying for the Robert Gair Co., the firm also does the buying for other board mills, making a total purchasing power of about 65 percent of the consuming capacity in the East.

This creates the situation where Robert Gair Co., itself consuming almost 40 percent of the waste-paper production in New York, acts through its subsidiary as purchasing agent for its competitors, thereby arbitrarily keeping the price down to a low level.

The board mills apparently are under an agreement not to buy waste paper from other sources and under no circumstances to pay a higher price than that set by the Robert Gair Co.

As a result of this agreement, the board mills buying through their central agency have forced the price of waste in New York down to $2.50 a ton.

In their effort to stay in business, waste-paper packers are resorting to 50 and 60 hours a week work and from $6 to $10 a week pay, in order to avoid bankruptcy, all struggling along, looking for relief.

My own conviction is that in preference to working for this starvation wage and doing work that requires hard physical labor, many workers prefer to remain on the relief lists of their various localities.

So much as to what the board mills are doing to the waste-paper dealers. Their violation of the antitrust laws might be condoned if their own business were in such precarious state that they were losing money and were making a last effort to salvage their business. That however, is by no means the situation. The profit record of the board industry not only supplies a striking contrast to that of the waste-paper industry but also furnishes clear proof of the success of their conspiracy and combination in restraint of trade and of the terrible toll it has taken of the waste-paper industry in order to make these excessive profits possible.

The following table shows the comparison of profits of some of the paper-board mills for 1934 as compared with 1933:

Container Corporation of America, net profit after charges and taxes:	
1934	$1, 112, 711
1933	140, 921
Robert Gair Co., Inc., net profit after charges and taxes:	
1934	935, 422
1933	313, 477
Eddy Paper and subsidiaries:	
Net income, 1934	360, 648
Net loss, 1933	355, 500

Senator BARKLEY. Where do you get those figures?

Mr. LIPSETT. From the figures filed by the companies in the various trade publications. Their official annual statements.

Hinde & Dauch Paper Co., of Canada, Ltd. (controlled by Hinde & Dauch Paper Co. of the United States):	
Net income, 1934	$201, 683
Net income, 1933	88, 589
Sutherland Paper Co., net profit:	
1934	440, 733
1933	307, 087
Consolidated Paper Co.:	
1934	1, 819, 000
1933	814, 000

It will be noticed in the case of the Eddy Paper Co. that the 1934 profit increase over 1933 amounts to 715 percent. In the case of the Container Corporation of America, the increase in profit for 1934 over 1933 amounts to 689 percent. In the case of Robert Gair Co., the increase in profits for 1934 over 1933 amounts to 198 percent. In the case of the Consolidated Paper Co., the increase in profits for 1934 over 1933 amounts to 122 percent.

These exorbitant profits in 1934 were possible when the selling price of chip board (the finished product) was $32.50 per ton and the purchase price of mixed paper (the raw material) was $5 per ton and the selling price for news board (the finished product) was $35 per ton and the purchase price for folded news (the raw material) was $7 per ton. Since 1934, the selling price for chip board has been increased 20 percent to $37.50 per ton while the purchase price for mixed paper has been decreased 50 percent to $2.50 per ton and the selling price for news board has been increased to $40 a ton and the purchase price for folded news has been decreased to $4 per ton.

Mixed paper is used in the manufacture of chip board and folded news is used in the manufacture of news board. Therefore the spread in the price between mixed paper and chip board in 1934 amounted to $27.50 and at which price the board mills during 1934 made such tremendous profits, whereas today the spread between the selling price of chip board and the purchase price of mixed paper amounts to $35 per ton. The spread in 1934 between the selling price of news board and the purchase price of folded news was $28 per ton whereas the spread today is $36 per ton, indicating still greater profits for 1935.

The deplorable situation in the waste paper trade affects the entire waste material industry of which it is a part and in which there are employed between 200,000 and 300,000 workers. This situation has been a source of great concern to the N. R. A. officials who recently have conferred with me frequently with respect to enforcement of N. R. A. wages and hours which seems to be hopeless as they are helpless to compel enforcement.

The various efforts of the N. R. A. to assist the waste paper industry through the medium of an emergency order establishing

minimum prices have been defeated by the antagonistic attitude of the board mills who sweated and starved the paper stock dealers in large production centers by refusing to place orders until under the leadership of the captive paper stock plants, the dealers themselves asked for its cancelation.

If the N. R. A. is to be extended I think that the Recovery Act should make it impossible for any large industry to oppress its supplier of raw material on the one hand, and virtually hold up the consumer of its product on the other. Certainly the N. R. A. should safeguard the thousands of workers who are suppliers of raw materials and are dependent upon an industry for their livelihood.

Senator WALSH. Does the N. R. A. admit violations by the board manufacturers, and that they are powerless to correct them?

Mr. LIPSETT. I do not know whether they admit them by the board manufacturers, but they do by the waste paper.

Senator WALSH. And that they are powerless to correct them?

Mr. LIPSETT. I do not believe they have been able to create the enforcement.

Senator WALSH. You used the word "hopeless."

Mr. LIPSETT. I believe it is getting worse and worse all the time. They cannot do a thing. They have not done a thing.

Senator BARKLEY. How would you correct that unless you had price fixing?

Mr. LIPSETT. I do not know how you would correct it except it seems to me if the N. R. A. is permitting these large industrial firms to get together and to develop a code for the conduct of their business, there should be some sort of a safety valve there insofar as their arrangements are concerned. That is, arrangements in the buying of raw material or in selling their finished product.

Senator BARKLEY. Is the waste-paper industry under a code?

Mr. LIPSETT. Yes.

Senator BARKLEY. Which code is that?

Mr. LIPSETT. The Waste Material Code.

Senator BARKLEY. It is a separate code from the one involving the board manufacturers?

Mr. LIPSETT. It involves the waste material dealers such as scrap iron, old metal scrap, and waste paper, in which there are about three or four hundred thousand workers.

Senator BARKLEY. How long has this practice gone on of the board mills and the others to which you refer?

Mr. LIPSETT. I believe it has been going on at least for a year, and it formerly was quite a common thing with the board mills. The records indicate that they have been investigated and I believe indicted or ordered to disband at least four of five times in the past 25 years.

Senator BARKLEY. In other words, this practice went on before the N. R. A.?

Mr. LIPSETT. It was taken in hand by the Department of Justice and stopped, that is, the combination in restraint of trade practices of the board mills.

Senator BARKLEY. How many board mills are there? You mean by the board mills, those who make paper board?

Mr. LIPSETT. For paper boxes. We call them board mills. Their entire product is waste paper.

Senator BARKLEY. What is their raw material?

Mr. LIPSETT. Waste paper.

Senator BARKLEY. Exclusively?

Mr. LIPSETT. 90 percent.

Senator BARKLEY. Of course, if they are able to beat down the price of waste paper, which is their raw material, and then raise the price of the finished product, the only way to remedy that, it seems to me, would be if they are to operate under a code, is to have the code authorities given power to fix prices. Do you advocate that?

Mr. LIPSETT. The code authority to fix prices on waster paper?

Senator BARKLEY. Yes.

Mr. LIPSETT. There was an emergency price fixed for 90 days of $8 a ton, and the board mills immediately stopped buying, knowing that it was an emergency price. When the emergency was over, the market just broke because everybody was anxious to sell, and the board mills got the stuff at their own price.

Senator BARKLEY. Would a permanent price, so long as the codes are to operate——

Mr. LIPSETT (interrupting). I would much prefer to see an open market. I am a publisher of 13 different trade papers. Most of them are in commodity lines. I do not approve of price fixing. From my experience, I have found that it does not work out properly. I would much prefer to see an open market especially on raw materials, but in this particular case, you have your board mills who combined to reduce the price of raw materials so that these men have to chisel in order to keep in business; in fact, the labor cost on a ton of paper is higher than the actual value that the dealer is getting for the paper from the board mill, and on top of that they keep advancing the price of the board.

Their profits are tremendous, terrific; and they are going to make twice as much this year because they have dropped the price of waste paper this year 25 or 50 percent from what it was last year, and they have advanced the price of board again.

Senator BARKLEY. How many purchasers are there among these board men? How many units are there in the group that you call the board mills?

Mr. LIPSETT. There are about 100 board mills in the United States. Eighty or ninety percent of them are small ones. I imagine that 15 or 20 board mills would practically constitute 75 percent of the industry.

Senator BARKLEY. Is there any substitute for waste material that they could use in making board?

Mr. LIPSETT. Not in making board.

Senator BARKLEY. So they are bound to have your material?

Mr. LIPSETT. Waste paper is the raw material for making the board.

The CHAIRMAN. Very well, Mr. Lipsett.

Mr. LIPSETT. I would like to put the rest of my statement in the record, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. LIPSETT. Mr. Leon Henderson, head of the Research and Planning Division, N. R. A., in commenting upon the operations and

the price position of the paper-board industry made the following statement:

[Feb. 15, 1934—Hearing on Mill Plan to Scrap Excess Plants]

I regard some of the testimony that was given today or suggested as highly incendiary. I don't see how the administration can escape the influences that were made that the National Paper Board Association is already on a voluntary basis practicing this matched inch basis of control. * * * There is ample evidence that already the National Paper Board Association is practicing some form of production control. * * * But if this industry is meeting somewhere, taking its material and determining what shall be the number of days that these plants shall run they are in effect price fixing because * * * there is a definite relationship between supply and demand and price. * * *

I have been publishing trade papers devoted to raw materials for about 30 years and I am very much concerned over the danger of the entire waste paper industry being eliminated as the direct result of the unfair manipulations of the board mills. Hence this complaint.

I have here a list of witnesses who should be in position to supply very illuminating data in support of the charges contained in my statement. It is respectfully requested that this list be accepted in confidence and that no publicity be given to the identities of those on the list. The members of the trade are ordinarily reluctant to testify against the mills out of fear of being blacklisted later.

TESTIMONY OF E. R. HAROTH, SECRETARY OF SHEET METAL AND ROOFING CONTRACTING INDUSTRY, BALTIMORE, MD.

(After having been first duly sworn by the chairman testified as follows:)

The CHAIRMAN. How long do you want before the committee?

Mr. HAROTH. About 10 minutes.

The CHAIRMAN. Very well.

Mr. HAROTH. Gentlemen, the speaker is E. R. Haroth, secretary of the Sheet Metal and Roofing Contracting Industry of Baltimore, and also a small sheet-metal contractor, perhaps one of the smallest.

We are sincerely grateful to be permitted to appear before you to testify and we want you to know we represent the majority of our industry in Baltimore, who are the small and medium shops.

It is not our purpose to attack the National Industrial Recovery Administration but rather the manner of administration of its enforcements. Although we were told at the beginning of this experiment that industry would have to govern itself, it is unbelievable that the Congress meant anything else but that the democratic principles used in our form of government would also apply in governing the Recovery Act. We find instead that the minority, so spoken of as monopolistic interest, rules the roost cruelly and czaristically for their own selfish interests regardless of the rights of their fellowmen.

This does not only apply to the very large and major industries, it follows right down the ladder until it reaches the small man, the tradesmen with their small shops, who have not been so fortunate as their big brethren in fortune, organization, and predominating influences in their line of endeavor.

It is our purpose to show in our brief the methods to ride rough-shod over majorities by these all-powerful minority groups, code authorities.

(Brief referred to is as follows:)

THE SHEET METAL AND ROOFING CONTRACTING INDUSTRY OF BALTIMORE, MD.,
April 9, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

(Attention Mr. Felton M. Johnston, clerk.)

Subject: Brief of the sheet metal and roofing contracting industry of Baltimore.

GENTLEMEN: Our activities and cooperation in connection with the code dates back to August 1933, and was of a somewhat pleasant experience and we were very much in earnest in availing ourselves of the many promised features that the National Industrial Recovery Act was intended to give to industry, however, on May 31, 1934, when the first public meeting of the members of the sheet metal and roofing industries held its conference at the Southern Hotel, Baltimore, Md., we received a different impression after this first meeting. At this meeting several important matters were voted on and it was agreed that the territory to be governed by our local code authority would consist of Baltimore City and the following counties: Anne Arundel, Baltimore, Carroll, Cecil, Harford, and Howard. However, you will note by the letterhead, exhibit C, that this so-called "local code authority" has ignored the wishes of the industry at this meeting and appoint themselves the code administration board for the entire State of Maryland including several counties in Pennsylvania. Tentative nominations for the local code authority were offered and accepted at this meeting with the understanding that any additional nominations could be made on the floor at the election which was decided would be held June 8, 1934, at 22 Light Street, Baltimore, Md., and all members for this territory notified and approximately 200 notices were sent out.

At the meeting held June 8, 1934, two printed ballots were offered and accepted, one from the Sheet Metal & Roofing Contractors Association, Inc., with 11 members, without any potential membership, consisting of the large shops and which we will for convenience refer to hereafter as group A, the other from the Sheet Metal and Roofing Contracting Industry of Baltimore which we will for convenience refer to hereafter as group B, consisting of 32 members and approximately 125 potential membership, consisting of small and medium shops. Forty members of the industry were present at this election. The results of this election were, 1 member from group A, 4 members from group B, 1 member from slate roofers group, and 1 member from the industry not affiliated with any of these three groups—the slate roofers group, we understand, consists of 10 or 12 members. This election was, shortly afterward, declared void due to the influence of group A and the cooperation of the National Code Authority. Group B engaged counsel who filed our protest with Mr. W. C. Markle, secretary of the National Code Authority, and demanded a hearing without any favorable results.

At the first meeting of the National Code Authority held in Chicago on July 18, 1934, after a great deal of discussion, Mr. Markle, secretary of the National Code Authority, wrote us a letter permitting us to hold another election. On August 7, 1934, the zone representative, Mr. W. Roy Eichberg, of the National Code Authority, notified us that on August 9, 1934, at 2 p. m., a meeting would be held at the Southern Hotel, Baltimore, Md., to arrange for the second election of the industry. This meeting naturally, under the circumstances, was somewhat strained and instead of arrangements for the second election being completed, Mr. Eichberg, the zone representative of the National Code Authority, reached into his inside pocket and read off a list of names consisting of his appointees to the local code authority. These appointees were approved by the National Code Authority. This appointment our counsel told us was illegal and he filed our protest against this appointment and demanded a hearing in this matter, which was again ignored.

Wish to call your attention to the fact that 4 members of the 7 appointed to the local code authority are from group A (membership 11), 2 from group B (membership 32), 1 from the slate roofers group (membership 10 or 12). The two members of group B were very reluctant to accept the appointment tendered them, as they personally felt they did not want to serve on a board created under these conditions but were prevailed upon by the members of their group to accept and attend the meetings for the benefit of their group, which they did but which very shortly afterward became evident to them that a movement was pending to have them removed from the board which prompted these members to write the local code authority a letter dated October 18, 1934, copy of which is herewith attached, exhibit A. The prediction incorporated in this letter that an effort

was being made to have them removed came true and the zone representative, Mr. W. Roya Eichberg, notified them on December 3 and 18, 1934, respectively, of their removal.

Repeated efforts were made to the National Code Authority regarding the two appeals pending, without any results. On September 5, 1934, we wrote the National Industrial Recovery Administration, Washington, D. C., and they declined to do anything at this time and advised us to again write Mr. Markle, secretary of the National Code Authority and endeavor to adjust this matter and if not able to do so they would be glad to investigate the matter further.

On November 8, 1934, the industry in Baltimore received notices sent out by the local code authority requesting remittance of a 1 percent assessment of total sales of all members of the industry for period from May 25, 1934, to August 25, 1934. This assessment was received by 98 percent of the industry as being preposterous and payment of same has been definitely refused. Repeated efforts have been made by the local code authority board and the inquiry has just lately been threatened with legal action, as you will see upon referring to exhibit B which is a letter dated April 15, 1935, sent to the members of the industry. Our protest against this excessive assessment was filed by all the members of group B with the local code authority as well as the National Code Administration and submitted revised plan sponsored by the metropolitan New York industry which was what we felt an equitable arrangement and one which we could endorse.

On December 15, 1934, group B was notified by the local code authority that they have established and appointed themselves, without consulting group B, to be the proper depository for copies of all bids to be deposited with them for which they would exact a fee not in excess of $1 for each bid. In view of all the aforegoing circumstances and on advice of our counsel that this local code authority was not the legal agency of the National Code Authority, we were not bound to be governed by it, so the members of group B decided they were strictly within their legal rights not to recognize this bid depository and refused to file copies of their bids with the local code authority bid depository. This refusal has reached a point at the present time that they are threatening all awarding authorities and coercing them to the point that a practical boycott now exists wherever a member of group B is known to be the low bidder.

The excess budgets of both the national and local code authorities were vigorously protested by the members of group B.

Up to this time the members of group B never received any official notice that the present so-called "Administration Board" was approved by the National Industrial Recovery Administration, at which time a copy of a letter attached to this notice signed by Arthur G. Stanford, Assistant Deputy Administrator, was received, on February 6, 1935. A member of our coordinating committee, upon receipt of this notice, immediately called Mr. Stanford on the long-distance telephone and asked him how this board could possibly be approved when we had filed two protests against the local administration board and he suggested we come to Washington to see him on February 11, 1935, which we did, but not having been able to arrive at any definite solution, he requested that we leave our correspondence with him, for which his receipt was taken, and he suggested another appointment for the following Thursday, February 14, 1935, at which time Mr. W. Roy Eichberg, zone representative, was present. This was not only a lengthy but also an unpleasant meeting, and it finally concluded when one of the members of our committee told Mr. Stanford that unless he would give us the consideration we demanded and which we felt was only just and equitable we would resort to legal action in our local courts, although we regretted exceedingly to be forced to discredit the National Industry Recovery Act. Mr. Stanford again requested that we leave the same correspondence and he would take same up with Major Campbell, his superior, and notify us by letter, which he did on February 16, 1935, advising that both he and Major Campbell stated "that the local code committee as at present constituted is legally qualified to administer the code within your State" and returned our correspondence left with him.

On April 2, 1935, one of the members of group B was notified by the National Industrial Recovery Administration State compliance director to appear before him for not depositing copies of bids to his prospective customers with the bid depository, and in the same mail the same member was notified by a general contractor that his bid, amount $13,500, which was the low bid, was rejected for the same reason. This action proves conclusively that economic pressure is being brought into action to boycott the members of group B.

We have our correspondence with us and same will be submitted to you upon request and any correspondence which you might require we will gladly have photostats made and sent to you immediately.

Respectfully submitted.

THE SHEET METAL & ROOFING CONTRACTING INDUSTRY OF BALTIMORE,
ERNST B. HAROTH.

EXHIBIT A

CODE ADMINISTRATION BOARD FOR THE STATE OF MARYLAND

ROOFING AND SHEET METAL CONTRACTING DIVISION OF THE CONSTRUCTION INDUSTRY

12 West Madison Street, Baltimore, Md.

Officers: J. O. White, chairman; E. G. Fick, vice chairman; Roy Roush, secretary-treasurer.

Members: S. O. Bevans, E. G. Fick, E. R. Haroth (removed), W. F. Zeller, Roy Danzer, J. O. White, Ph. H. Lenderking (removed).

EXHIBIT B

THE SHEET METAL & ROOFING CONTRACTING INDUSTRY OF BALTIMORE,
Baltimore, Md., October 18, 1934.

CODE ADMINISTRATION BOARD,
Roofing and Sheet Metal Contracting Division, Baltimore, Md.

GENTLEMEN: Your letter of October 10, 1934, relative to your questionnaire, would say that we, the writers, have made our position very clear verbally during our services on your board and also prior to our appointment to said board. It should be unnecessary to go into the matter again in further detail.

You seem to desire to establish a built-up case (documentary) for the purpose of removing the minority members of your board on the grounds that they are affiliated with the major portion of an industry, who are contesting the appointment of the present board, which was done contrary to a popular election held by a representative industry, in which election the larger firms of this industry took not only part but initiated and conducted the election. It is our contention that these larger firms of the industry have been instrumental in having this election voided, and also had a major part in the appointment of the present board, in particular recommending the minority members and therefore it follows that this same interest now desires the removal of their own recommendations, because this minority was appointed for the express purpose, it was thought, that these could and would use their influence with an association of which they are members, and which association is now contesting the propriety and legality of this board and its actions since its inception and to have this association withdraw all pending action past and future.

In our discussions on the floor of the board you readily disclosed as to why we were ever appointed, using your own words, "because we wanted to placate and mollify you and also your association." In this statement you confess beyond a doubt that you consider that these members are not sitting on this board as a matter of right but rather as an act of charity on the part of the larger firms of this industry with a well-thought-out design as a background. Another statement that one of your officers (secretary and treasurer) made openly on the floor, to quote: "That no matter which way we might answer this questionnaire it would disqualify us from the board." To our minds this shows that you are bent to seek our removal.

The first question, therefore, is calculated according to your design to disqualify us from serving on this board, because we are members of an association that is contesting the legality of your board, and our membership therein makes us a party to this contest, regardless of our own personal action in this association. You seem to have selected a large order, to call null and void an appointment made by the National Code Authority through their zone representatives,

"your superior" who was fully aware of our sympathies prior to our appointment and during the extended negotiations of our acceptance of these appointments. It will be recalled by all parties concerned that we showed great hesitancy in accepting, in fact so that Mr. Eichberg was obliged to bring much pressure to bear, even to such extent as to setting a time limit to us, namely, August 27, 1934, to be correct.

In our letters of reply to his ultimatum dated August 22, 1934, we restated our position very clearly, that an appeal was to be taken and that we ask an extended time, so that in order said appeal might be heard and the controversy adjusted in a right and proper manner. His reply to this letter was that he was sorry not to extend the time limit and hoped for our acceptance, stipulating no conditions should be accept. It follows, therefore, that our letter to him and his reply cannot be mistaken as to our position and his full knowledge thereof and his perfect willingness to have us serve although we were to all full intents a party of the appeal. It follows that you are, in fact, contesting an act of your superior as well as to your own recommendations. The recent howl that has gone up for our resignations, no doubt, is due because we do not vie with the present board's activities. You should know by this time that we are not merely "yes" men. We have the undisputed right to have opinions of our own and you must also recognize we have the courage of our convictions as well as the ability to secure those things to which we are justly entitled.

The question remains, why after all we accepted, for the simple reason, that we intended to have the smaller contractors represented on any board, although illegal perhaps, during the interim and pending the hearing of our appeal. Therefore, your contemplated action in seeking our removal on these grounds reek with inconsistency of a high order, and must amaze anyone that may yet become a party to these proceedings.

As to not returning your questionnaire of registration, please be advised that we consider all mandates of yours, at the present status, unenforceable including territory, etc., because the board has not been approved by National Recovery Administration and that an appeal is pending with the National Code Authority and so docketed for a future hearing. Our personal exception, however, is to the question, "number of employees", ordinarily we consider this question entirely proper, had it not been for the subsequent ruling of the board, in response to a board member belonging to the larger firms of the industry, to the effect that all estimators, clerks, and other office employees may be included in the number of employees engaged. Inasmuch that the question is calculated to establish a record, number of employees, that are affected by the labor provision of the code, to be used when labor area agreements are attempted. The answer according to your ruling is certainly misleading and gives the larger firms of the industry an unfair advantage not enjoyed by the smaller contractor who employs no office help of consequence.

In conclusion, the board's action in its adjournment, pending the disposition of the appeal taken by contestant parties, is highly commended, if it were not for the fact that a joker was inserted as an amendment to this motion; "That the executive committee be empowered to transact the business of the board during the interim and until the appeal is disposed of." You have therefore unseated in fact the minority members of your board. An act highly reprehensive, a function belonging to the National Code Authority only.

Your actions display no courtesy, but rather breeds prejudice and class antagonism and destroys confidence and recovery. Fundamentally, injustice must always cause protracted instability which has been vividly demonstrated by the present deplorable condition which has existed since the first meeting we held on code matters at the chamber of commerce. We wish to emphasize this warning and sincerely trust you will realize its truth—"That nothing is settled until it is settled right." Repeated attempts to use force and coercion, as previously stated, "must always cause protracted instability."

Very truly yours,

_____.

_____.

EXHIBIT C

CERTIFICATE OF NONPAYMENT OF CONTRIBUTION, ROOFING AND SHEET METAL CONTRACTING CODE

APRIL 15, 1935.

The undersigned certifies that:

1. The respondent, Jos. Bogun & Son, is subject to the Code for the Roofing and Sheet Metal Contracting Division of the Construction Industry.

2. The undersigned is the agency authorized pursuant to such code to collect contributions from the respondent to expense of administration of the above code.

3. On November 7, 1934, the undersigned gave to the above-named respondent notice of contribution due by United States mail.

4. The respondent after 30 days from receipt of such notice, having failed to pay the amount due as required in such notice, was mailed a "second and final notice", a copy of which is attached hereto.

5. The respondent after additional repeated requests from the undersigned, has failed to pay amount due as required in the said notice.

6. (*a*) The respondent has not within 15 days of the receipt of the above notice mailed November 7, 1934, filed with the undersigned or with the National Code Authority a protest against the contribution on any grounds set forth in the attached copy of notice, and the undersigned has been informed by the National Recovery Administration that no such protest has been filed with National Recovery Administration within such period; or

(*b*) If such protest has been filed, such protest has been overruled by National Recovery Administration.

Original of this certificate must be sent to Washington for National Recovery Administration action. Unless your assessment is received on or before date specified. (Red print.)

Received April 9, 1935.

CODE ADMINISTRATION BOARD FOR THE STATE OF MARYLAND,
ROOFING AND SHEET METAL CONTRACTING DIVISION,
ROY ROUSH, *Secretary-Treasurer.*

STATEMENT OF S. D. NICHOLS, PRESIDENT AND TREASURER OF MENZIES SHOE CO., ST. LOUIS, MO.

(The witness having first been duly sworn, testified as follows:)

Mr. NICHOLS. Mr. Chairman, I am not a very good reader. Could some one read this brief for me please, and I will be here to answer any questions.

The CHAIRMAN. Won't you please state what it is, and let the brief go in the record?

Mr. NICHOLS. The brief deals with the abuses which we as a small shoe-manufacturing company have had to tolerate since the beginning of this new law in reference to the N. R. A. It starts with a colonel coming out to our place of business and was sent there by the deputy administrator, C. C. Williams, and he goes from our St. Louis office down to the Cookeville, Tenn., factory and interviews 25 of our employees on a Sunday, behind closed doors. He would not let anyone inside to listen to what they said.

He came back to my office in St. Louis on the following Monday and told me that every employee there had told him that they were satisfied with their positions, that they had been treated fairly, and that he had never found one that said anything against my company or against its president, which happens to be me.

Before leaving my office, he told me that he had interviewed some gentleman in the city of St. Louis for an hour and a half that morning——

The CHAIRMAN (interposing). What was the object of his visit?

Mr. NICHOLS. Because they had issued a statement from my company for having to operate under the code in one department, but at that time Deputy C. C. Williams wanted to see if it was justified, so he sent this fellow out there, which was Colonel Battley.

Senator BARKLEY. You were asking for an exemption?

Mr. NICHOLS. I had received an exemption in the way of a letter because we said we could not comply with the code.

Senator BARKLEY. Could not pay the wages?

Mr. NICHOLS. We have our factory located in the small village of Cookesville, Tenn., about 89 miles east of Nashville, where the living cost is about 40 percent less than the city's. We manufactured a shoe that sold in the South to the Negroes as consumers, such as the cotton pickers and those who could not pay high prices.

Senator BARKLEY. In order to make an investigation as to whether this exemption was justified, they sent this man out from the N. R. A. office in Washington to check up on it?

Mr. NICHOLS. To follow up, but I had previously received a letter from another department, a Mr. Forbush or another person, stating that we were exempted, and they sent this captain out there to check up to see whether this exemption should continue.

Before leaving my office, he told me that he had interviewed some gentleman in St. Louis for an hour and a half that morning about my company, and he was told that there was plenty of money for my company, and that the company—he used the words "gold mine" but it needed more money, and he said he was even thinking about resigning from his position as soon as he could get out of the Army and go in with these gentlemen to take over my company.

I said, "I just happen to be president and treasurer and the chief owner of the company. Where do I come in?"

I did not like that at all, and then he began asking questions about my salary and things, and I thought he went beyond what he should, and I refused to give him the information. Then he said he was going to have me arrested and imprisoned, so I took the long-distance telephone and telephoned to get Deputy Administrator Williams on the wire, and while the operator was getting him in Washington, he reached over and caught me by the arm and said, "Don't do that." He said "Let us settle this some other way." Then he said, "Sit down and write out a letter about your company and tell why it cannot continue to carry on and operate under the code the same as the other companies have to do."

So I sat down and dictated a letter while he was there, and my secretary typed it, and he came in and he said, "You have not made it strong enough." So he put in a lot of long hand of his own there and made it stronger than I had written it, and he told my secretary to recopy it. Then he tore it up, and I have it right here in my brief case.

The CHAIRMAN. What was his name?

Mr. NICHOLS. Capt. Joseph F. Battley.

The CHAIRMAN. Do you know whether he is still in the employ of the N. R. A.?

Mr. NICHOLS. The deputy administrator wired me that he was sending his personal representative out there.

Senator BARKLEY. Was he in the Army at the time?

Mr. NICHOLS. I don't know. All I know is that Deputy Administrator Williams sent him out there following a wire that I had received, as being his personal representative.

The CHAIRMAN. Then what happened?

Mr. NICHOLS. Then he said, "I will give you 4 months' exemption." Right there on the spot. Before he left he said, "Mr. Nichols, if you ever mention to anyone that I threatened to have you arrested or imprisoned, I am powerful in Washington", he said, "I have a lot of influence there and I will make it very hot for you." He said, "You will regret ever making anything public about my threats to you."

Following on the heels of that, there was a wire received by us out there, after we had received this 4 months' stay from the compliance officer here in Washington, the chief compliance officer, requested that I come to Washington to set before the committee, that we had been charged with operating in violation of the Shoe Manufacturing Code. So I came down, and even though we were operating under a stay, they charged me with violating the code and said that I had to pay back all of these wages during the past 3 or 4 months, they wanted me to agree right then and there. I said, "I don't understand it; you are working at cross purposes. I am working under a stay." Finally they said, "You have to do it." I asked them if they would excuse me, and I went up to see Colonel Lea. He was the administrator. And Colonel Lea said he did not understand the action in it, because I was working under a stay; so he sent up for Deputy Administrator Conklin, and Conklin came up. And Lea asked him what it was all about, and Conklin said, "I think that this shoe company should close up. They are a small industry and they should close." And at that time I was employing 250 people exclusively for the company.

But before the conference was over, Colonel Lea told me to go back to St. Louis and continue operating under a stay until further notice. That was the second administrator that was there during those few months. Deputy Administrator Williams had gotten out, and then Conklin came in, and then following on the heels of that came Deputy Administrator Berry, and Berry insisted that we comply with the code, although we were still operating under a stay that was granted by Colonel Lea.

The Darrow board was being held here in Washington, and I went before the board to protest about the abuses we were subjected to, and at that board Col. Harry S. Berry went on record there that he thought our company should close because it was a small company. That was the second deputy administrator who thought that a company employing 250 people manufacturing shoes was too small to operate.

The situation did not get any better, so I went back to St. Louis and finally I received a letter from Miss Robinson, General Johnson's secretary, requesting me to be in Washington at a stated time. I came to Washington myself, a thousand miles, and kept my appointment, and General Johnson or Miss Robinson, either, did not show up all day long, although I sat in the waiting room there from early in the morning until 4:30 in the afternoon. I went back to my office in St. Louis and tried to get either one of them by phone for two solid days, and neither one of them would answer the phone, and finally I got tired of it and I phoned the White House, and I tried to reach

President Roosevelt to tell him about the situation, and I talked to Marvin McIntyre, and he told me he would look into the matter right away. A little while later Miss Robinson answered the telephone and said that she had been called to the White House and asked to bring my records to the White House and she felt the very mischief on account of her having to call at the White House to get him to answer the telephone. And she wanted me to come on a train and come to Washington and to see General Johnson on Sunday, the next day, and I told her I could not be there the next day, but I would be there on Wednesday.

So I saw General Johnson, and General Johnson, the first thing he asked for was a financial statement, and he looked it over and he said "Mr. Nichols, I do not believe you can pay the code wages or comply with the code."

I did not know what to suggest, so I asked him if we could not continue to operate under a stay, and he said "No, we could not do that", but he said, "I will grant you to pay two-thirds of your wages in cash and a third of them in scrip of some kind maturing at some future date." Instead of doing that, I told them that I would go back and do the best I could.

So I went back to the office and I had to cut my employees down. I had formerly used as high as 289 employees in the factory there, and I cut those employees down to where I today use a little over 100, in order to pay them and pay them in cash and pay them code wages.

We have received threats from the compliance division here in Washington. We have received from Memphis, Tenn., letters approving of putting on infirm and aged employees, and then we have received from Nashville, Tenn., threats that we had to pay these infirm and aged employees the same wages that we did the others, even though we had the approval of the N. R. A. officials out of Memphis.

Recently we received a wire from Atlanta, Ga., stating that they were thinking about taking away our "blue eagle." We had never signed the President's order, and we had never signed any kind of an agreement. When the "blue eagle" was sent to us on September 7, the code "blue eagle", without our asking for it, we returned our "blue eagle" that same day and told them that we preferred to operate under the red, white, and blue, that we thought it was a better one than their "blue eagle", and we sent that back by registered mail to General Johnson, and 7 months later they threatened to take our "blue eagle" from us even though we never used it.

Senator BARKLEY. You beat them to it?

Mr. NICHOLS. Yes; I did not want to worship an idol.

Senator BARKLEY. Would that same observation apply to the American eagle?

Mr. NICHOLS. The "blue eagle" is not—well, I don't want to say that.

Senator BARKLEY. You just objected to its color?

Mr. NICHOLS. The "blue eagle" is kind of all fox, if you want to put it in my language.

Here is the situation we are trying to operate under. The law provided that a small company was not to be oppressed or discriminated against and the law was not to operate to cause monopolies; yet, we stand today as a small company trying to compete with the

larger companies, some of whom manufacture their own composition soleing and rubber heels. On that item alone we have been requested to pay a hundred percent advance from the rubber companies, yet these big men can operate to an advantage by manufacturing their rubber soles and their rubber heels.

We are being requested to pay our bills at a specified time of 30 or 45 days, yet, the Shoe Manufacturers Code provides that if you sell and give a discount, you cannot go beyond a certain date, but if you sell on net terms, there is no limit. That was arranged for the large shoe manufacturers so that they can sell on net terms and take away from the small manufacturer the business which he now has and which he is entitled to get; in other words, shoes are shipped by a lot of the large men in April, with September and October dating. The small manufacturer cannot possibly finance his trade to that extent of dating.

Senator BARKLEY. Was that practice of giving longer terms where they paid the net price and gave no discount; had that always been in effect?

Mr. NICHOLS. Yes; but we did not have to pay our bills as promptly as we do now. The Leather Code and the Findings Code and the Rubber Code and all of those codes where we buy our raw materials from, they have a specified time in which your bills have to be paid. They used to cooperate with the small manufacturers, but they have a code which they have to live up to now, and it works with us that we have to pay our bills quicker, and then compete with these manufacturers who give these long terms.

On top of that, the large manufacturers arranged the voting arrangement, so that each manufacturer would get one vote for each 100,000 pairs of shoes he manufactured. One large manufacturer in my city down there, St. Louis, has 436 votes. There are 1,081 shoe manufacturers, yet 3 large manufacturers have approximately a thousand votes. The little man has one vote. He may as well not even cast his vote, because it amounts to absolutely nothing.

Then they have arranged, in addition to that, 16 districts. So you take the large manufacturers with their vote for each 100,000 pairs of shoes they manufacture, and the districts the way they are laid out, and we are absolutely today in the hands of the large manufacturers of shoes in the United States, and it just makes it almost unbearable.

Senator BARKLEY. What is your suggestion?

Mr. NICHOLS. My suggestion is this: That the ball and chain of the N. R. A. be eliminated, and let us go back and run our business as long as our money is in our business and not tell us how to run it or be told how to run it by the large manufacturers, with whom we are competing. It is nothing but a ball and chain.

Senator BARKLEY. You are opposed to the extension of the N. R. A.?

Mr. NICHOLS. To any extension in any form or in any manner whatsoever, because it has caused more crooked dealings in less than 2 years than I have ever known in my 31 years connected with industry. It has caused more underhanded dealings and more things done on the quiet which is not lawful.

Senator BARKLEY. To what extent did you increase your wages as to the code?

Mr. NICHOLS. We had to increase our wages down in Tennessee almost 40 percent on the average.

Senator BARKLEY. Were your people working on a daily wage or on piecework?

Mr. NICHOLS. They were working on piecework, and they get down there—we ran this factory in Cookeville, Tenn., where the living costs are about 40 percent less than what they are in St. Louis.

Senator BARKLEY. What was the average?

Mr. NICHOLS. The good employees down there made around $18 to $19 a week in that little town.

Senator BARKLEY. What was the minimum?

Mr. NICHOLS. There was no minimum. We would take anybody in there and break them in and take them several months before they could get to doing the work on piecework, and when they did it they received exactly the same pay as the better operators received.

Senator BARKLEY. What did you pay while you were breaking them in?

Mr. NICHOLS. Sometimes we paid a man as low as $1.50 a day when he came in, but his brother out on the farm might be getting $13 or $14 a month right there out on a farm.

Senator BARKLEY. He also got his board and lodging, too, didn't he?

Mr. NICHOLS. No, sir. The situation in Cookeville, Tenn., today is this: We pay 35 cents minimum wages for a man and 32½ cents for a woman. Their sister goes to work in a laundry for 14 cents an hour. Take their brother who may be older than the one who works for 35 cents an hour, he goes to work for the Western Union at $5 a week, and the daddy goes to work at the planing mill where he has worked all his life for 24 cents an hour.

Senator BARKLEY. One of your objections was the requirement to increase your wages?

Mr. NICHOLS. My objection is not the requirement so much on that. I am objecting to be put into the hands of the three large monster rich shoe concerns in this country to be dictated to by them and at the same time be requested to compete with them.

Senator BARKLEY. What about the hours of labor?

Mr. NICHOLS. I am not worried about the hours. We are working 7 hours a day. If they want to go to 5 or 6 hours a day, that doesn't make any difference. All I want is a fair break. I don't want to be tied down and told by these big manufacturers what I have to do, and it is to their advantage the way they want to do it.

Senator BARKLEY. What is the average weekly wage of the most efficient people in your factory?

Mr. NICHOLS. I pay down there—the highest wage I pay down there is one of the employees down there gets $35.25 a week, but they are not paid that high. They range between 32½ cents an hour on pay. We don't care how much they make——

Senator BARKLEY. And they work 7 hours?

Mr. NICHOLS. Seven hours a day.

Senator BARKLEY. At 32 cents?

Mr. NICHOLS. Thirty-two and a half cents for women is what we have to pay, and her sister goes to work in a laundry and works a long time for 14 cents.

Senator BARKLEY. I am trying to figure out what you pay.

Mr. NICHOLS. That is the minimum; 32½ cents an hour for the minimum.

Senator BARKLEY. That would be about $2.25 a day.

Mr. NICHOLS. And their father works in the planing mill right there for 24 cents an hour, 8 hours a day. In other words, the girl goes to work in the factory and gets more money just to come in there and go to work without knowing the work at all, than the daddy does where he has worked all his life in the planing mill.

Senator BARKLEY. With whom do you compete?

Mr. NICHOLS. The Endicott Johnson Shoe Co. out of New York, who manufacture their rubber soles and rubber heels. I compete with the International Shoe Co. out of St. Louis who manufacture their rubber soles and heels. And with the Brown Shoe Co. in St. Louis, and I don't know just what agreement they have, but one of the companies I think manufactures most of their soles and heels which I have to pay a hundred percent more for rubber soles and heels than I did before we had the code, and, of course——

Senator BARKLEY (interrupting). These large companies have always manufactured those things before the code, have they not?

Mr. NICHOLS. Yes; but we did not have to pay the high prices. It is about 3 cents a pound less than what it was a year ago, and the sole product has a hundred percent advance.

Senator BARKLEY. Is that advance accounted for in part by the increase of the wages of those who make them?

Mr. NICHOLS. I do not think so, because the new machines they have put in have, if anything, had a tendency to lessen the number of employees.

Senator BARKLEY. What new machines have been put in since the code went into effect?

Mr. NICHOLS. If you will spare me from expressing the name, an employer told me himself that they put them in his department where it took the place of four operators. It used to take four operators, one on each machine, and this machine came in to take the place of the entire four operators. The big companies can do that. They can go and buy those expensive machines. I wanted 43 more machines from the United Shoe Machinery Corporation, leased machines, because I shortened my hours, and they asked me to put up $7,000 cash to hold while I leased the machines. I could not do it.

Senator BARKLEY. You put your statement in the record, Mr. Nichols?

Mr. NICHOLS. I have it in form here, but there is one thing further I would like to refer to and then I will stop.

The code authority has gone on record in writing that they do not represent the nonmembers of the National Boot & Shoe Manufacturing Association. I happen to be a nonmember. I do not belong to the association. The Government has gone on record with me that I have no representation because I am not a member of the association. The Government set a date of April 16 to accept amendments to give us representation. There was pressure brought to the extent of 300 wires, I am told, and 140 air-mail letters to certain influential people that met with the code authority and they rescinded that order and they are not going to open the Shoe Code on April 16, therefore, I sit on the outside without representation, yet the code authority is threatening today to make me pay money for their salaries and their expenses.

It is nothing more or less than taxation without representation. I have no way of getting representation, because the Government

won't open the Shoe Code, and while I am on the outside, I do not see why I should be asked to comply with something that is illegal.

The National Industrial Recovery Act provides that these code authorities must be truly representative of the entire industry, yet they are on record themselves, and I have a copy of the wire, where they are not truly representative, and the Government has admitted the same thing.

That is the situation that the small manufacturer is put in today. He is in the hands of his big competitors.

(The statement previously referred to is as follows:)

STATEMENT OF S. D. NICHOLS

INTRODUCTION

Mr. Chairman and Members of the Senate Finance Committee investigating the National Recovery Administration, gentlemen:

As president and treasurer of the Menzies Shoe Co. of Missouri, a Missouri corporation, who manufactures shoes and who maintains their general office in the city of St. Louis, Mo., and their manufacturing plant in the small mountain village of Cookeville, Tenn., I wish to lay before you some of the abuses and injuries and losses which our company has had to tolerate for almost 2 years.

It was our understanding when the national recovery law was enacted that our company would be protected by that part of the law which read in part as follows:

"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."

THREATENED WITH ARREST BY CAPTAIN BATTLEY

In October 1933, I received a wire from Deputy Administrator Williams, advising me that he was sending his personal representative to see me in St. Louis, and this party turned out to be Capt. Joseph F. Battley, who first called at our St. Louis office and conducted himself as a gentleman, this being on a Saturday. The following Sunday he spent at our factory in Cookeville, Tenn., and returned to my office in St. Louis on the following Monday, about the date when the Shoe Manufacturers' Code was to become effective.

Captain Battley advised me upon his return from our Cookeville (Tenn.) factory that he had interviewed at least 25 of our employees and that every one had told him they were satisfied with their positions and were satisfied with the treatment they were receiving from our company.

Before leaving my office, however, Captain Battley made some requests which I considered beyond his authority and his attitude changed and he made a threat that he would have me arrested and imprisoned and when I reached for the telephone and called the long-distance operator to notify Deputy Administrator Williams of his threat, he reached over and caught me by the arm and asked me not to do that and then his attitude again changed to a more friendly manner after I had advised him that he had exceeded his authority and had no right to threaten arrest or imprisonment without legal proceedings. However, before he left my office he again threatened me that if I should ever let anyone know of his threats to me about having me arrested and imprisoned that I should remember he was very influential at Washington and that he would get revenge and make it hard for me.

OUR COMPANY SHOULD CLOSE

In the early part of 1934, while our company was operating under a stay from having to abide by the shoe code, we received a wire from the compliance officer at Washington stating that we had been charged by the planning and fair practice committee with having violated the Shoe Manufacturers' Code, and stated when the hearing of our case would be held in Washington.

I personally went to Washington at an expense which our company could not afford and at a time when I should have been looking after our company's affairs and upon arriving at the specified place and at the specified time, I was advised that the meeting would not be held until later, and I had to wait several hours and finally when I was called before the compliance board, I told them our com-

pany had not violated the Shoe Manufacturers' Code, but was operating under a stay.

Sitting in with the board were some members of the Shoe Manufacturers' Code Authority whom I had every reason to believe that had certain grievances against me, and that at any rate the compliance board made it very plain to me that we had to operate according to the Shoe Manufacturers' Code regardless of any stay or previous arrangements.

I immediately appealed to Colonel Lea, and stating the facts to Colonel Lea and he called for Deputy Administrator Conklin to come to his office, as Deputy Administrator Williams had already been replaced with Colonel Conklin. Colonel Conklin told Colonel Lea in my presence that our company as small as it was, he felt should be closed and not allowed to operate, yet at that time we were employing approximately all told 250 people working exclusively for our company.

Colonel Lea sent me back to St. Louis with assurance that nothing would be done for the present and we should continue as we had in the past few months, even though Colonel Conklin thought and so stated that our company should be closed and the compliance committee was trying to make me agree to pay code wages for the time which we had been permitted to operate under a stay.

Your special attention is called to the fact that during the short time the code had been in effect, the second Deputy Administrator was in power, and at this writing not only Deputy Administrator Williams and Colonel Conklin have become a matter of history, but Col. Harry S. Berry became Deputy Administrator, and he, too, has become a matter of history, and now they have the fourth Deputy Administrator Walter Mangum, whom I also believe to be a colonel.

I, also, call to your special attention that at the same time our company was working under a stay, we were being accused of violating the Shoe Manufacturers' Code and this is only one of many, many times where two branches of the N. R. A. division were working in opposite directions, one approving certain things and others charging violations of those same things.

JOHNSON CALLED ME TO WASHINGTON

About May 1934, I received a letter from Miss Frances Robinson, secretary to Gen. Hugh S. Johnson, requesting that I see General Johnson at a certain specified time at General Johnson's office in Washington.

At a large expense to our company, necessitating taking my time away from my duties, I complied with the request from Miss Robinson and even though the appointment had been made for fairly early in the morning, I was kept waiting at General Johnson's office throughout the day and told from time to time in answer to my inquiry that neither General Johnson or his secretary had come to the office or had phoned to the office during the entire day, so finally a little before 5 p. m. I left General Johnson's office and returned to St. Louis, my time and the expense both having been a loss to the company after traveling 2,000 miles at General Johnson's suggestion and then neither he nor his secretary were available and the waiting room manager stated he had not heard from either throughout the day.

PHONED WHITE HOUSE

After I returned to my office in St. Louis from the Johnson-Robinson "wild goose chase", I tried for 2 days to either get General Johnson or Miss Robinson on the long distance telephone and I received most every kind of excuse that you can think of except they did not state either of the parties were dead. However, I finally decided to phone to the White House and this was on Saturday. I did not succeed in getting President Roosevelt, but I believe it was Marvin McIntyre whom I finally succeeded in talking with and I told him the situation and about my being called to Washington by Johnson and Robinson and neither one of them kept their appointment and now for 2 days they would not answer the telephone.

I was told that the matter would be taken up immediately and a little later that day Miss Robinson finally answered the telephone and blamed me for her having been called to the White House with the records on our company and said she had just returned from the White House and wanted me to get on the train and be in Washington the next day, which was Sunday, to see General Johnson. I asked her why she and General Johnson had me to go to Washington and neither of them kept their appointment and she told me they were out of the city, but I told her I had reasons to believe otherwise and, gentlemen, for your information, I believe that this date can be verified and that it can be shown that they were both in Washington, D. C., or if not they should have been, as they had a definite appointment which they asked me to keep.

I told Miss Robinson that I would not be there on Sunday, but that I was going before the Darrow Board the following Wednesday, May 16, and I would see General Johnson on that date if agreeable and she told me to come ahead.

SAW JOHNSON

On May 16, 1934, I did get to see General Johnson.

Here is what followed.

General Johnson asked for a financial statement of our company and when he had looked it over he told me he did not see how the company could operate under the Shoe Manufacturers' Code.

He further told me that he would not approve of further stays.

He finally suggested, however, that we operate under the Shoe Manufacturers' Code, but pay two-thirds of the wages in cash and one-third of the wages in scrip of some kind, stating this would qualify us under the code and at the same time would not necessitate our paying out more than two-thirds of the wages in cash.

I explained to General Johnson that the factory had been located in this small village of Cookeville, Tenn., since 1926, and that in doing so I had carried out those many years ago the the exact suggestion that was being offered by the present administration of decentralizing industry.

I further explained to General Johnson that it cost a lot of money for freight to and from the factory and that living expenses were about 40 percent less than in the big cities and that we were making low-priced shoes chiefly for the southern trade, and I pleaded for some kind of stay or exemption to enable our employees to continue at work and in the jobs which they were satisfied in.

General Johnson would not concede to my wishes, but he again stated two-thirds of the wages be paid in cash and one-third in paper or scrip to be taken up some time in the future, seeming to overlook the fact entirely that the scrip or paper was an obligation which the company, even though not paid for months or years later, would have to pay.

DARROW'S BOARD

On the same day I succeeded in seeing General Johnson—namely, May 16, 1934. I appeared before Darrow's board at the Willard Hotel.

I maintained that the Shoe Manufacturers' Code of "Fair Competition" was misnamed and should have been named the Shoe Manufacturers' Code of "Unfair Competition."

I cited the fact that small manufacturers, such as ourselves, had been discriminated against and had not been truly represented by the planning and fair practice committee.

I further maintained that the voting arrangements for nominating purposes, the outlay of districts, the unlimited net terms and the wage differential among other things were unfair.

It is my impression at this time that later on Darrow's board referred to the Shoe Manufacturers' Code as being one of the worst codes they investigated, but I do not recall just the wording of the news items; however, I do know that the shoe code was severely censored or criticized by Darrow's board, if news items were correct in their statements as to certain unfair and discriminating features in the shoe code.

DEPUTY ADMINISTRATOR HARRY S. BERRY'S STATEMENT BEFORE DARROW BOARD

While in the room in which the Darrow board was hearing complaints against the N. R. A. I talked to Col. Harry S. Berry, deputy administrator, who was then the third deputy administrator in charge of the Shoe Manufacturers' Code during the few months that it has been in operation.

Colonel Berry told me that he wanted our factory closed and that he thought we should close the factory.

When I asked Colonel Berry what would become of the help and furthermore what would happen to the town, as this was the main source of livelihood for the town of Cookeville, Tenn., he stated that was of no interest to him, as he wanted our factory closed as we were a small company and he thought it best that we close our factory. Later in the day I finally succeeded in getting Mr. Berry to repeat part of his statement aloud before the Darrow board, but it was with a lot of difficulty that I succeeded in getting him to do this, and he finally stated before the board that he had told me, and that it was his opinion, our company's factory

at Cookeville, Tenn., should be closed, but he did not go into details about not being interested what became of the help and those dependent upon the help, or the effect it would have upon the town.

NATIONAL RECOVERY ADMINISTRATION PROPAGANDA

Gentlemen, please bear in mind:

We did not sign the President's Reemployment Agreement.

We did not sign a code of any kind.

We did not fly the blue eagle, by this I mean, we did not at any time use a regular blue eagle, as we did not feel that we should worship an idol.

Now imagine our surprise after all the propaganda that had been put out that how difficult it was for anyone to obtain a code Blue Eagle for us to receive on September 7, 1934, a large code Blue Eagle without ever having asked for it, or without having signed a code of any kind.

We returned that same day to Gen. Hugh S. Johnson, Administrator, by registered mail, the code "blue eagle" and wrote a letter that same day and closed the letter with a postscript reading as follows:

"Anyway, 'blue eagles' seem to be losing their popularity in this vicinity, and the style seems to be swinging more and more to the old faithful emblem of 'Red, white, and blue', and we like to be in style. Therefore, we say, 'Long may it wave over the land of the free and the home of the brave.'"

With all the ballyhoo and propaganda put out about taking a "blue eagle" away from some small enterprises, you did not see any news item whatsoever appear in reference to a code "blue eagle" being returned the same day it was received by our company.

NATIONAL RECOVERY ADMINISTRATION CROSS-WORD PUZZLE

We have had to contend with such conditions as those listed below.

While our company was working under a stay from having to comply with the Shoe Manufacturers' Code, which was granted by representatives at Washington, D. C., we at the same time were being threatened with prosecution by a party by the name of Hugh Humphrey, signing his name as State director at Memphis, Tenn.

Mr. Humphrey even went so far as to take the matter up with a Federal district attorney at Nashville, Tenn., claiming that he could not get information out of Washington to the effect that a stay had been granted to us, and that he was going ahead with his prosecution of our company.

Later, after this matter had blown over and Mr. Humphrey had been advised of the situation from Washington, the following took place:

We wanted to put on six of our former employees under the heading of Aged and Infirm Employees, and we received Mr. Hugh Humphrey's approval of what we did, this coming from Memphis. Now just a little later, we received information from another party by the name of Megill, signing his name as acting State National Recovery Administration compliance officer, threatening various kinds of threats because we had used these employees on the basis of which we had Mr. Humphrey's approval from Memphis.

Now later comes a wire from still another party out of Nashville, whom we never heard of, signing his name as J. A. Fowler, State National Recovery Administration compliance officer, all this occurring within a period of a few months' time. It would seem that the right hand knows not what the left hand is doing, or misinterpretation on various rulings from those interpretations of the other hand, all at the expense and embarrassment and trouble to our company. Atlanta, Ga., came in with a wire telling us that a hearing in reference to our company was set for a certain date, so what it is all about we do not know.

SUIT THREATENED BY ATTORNEY FOR SHOE CODE AUTHORITY

At a meeting held at the Statler Hotel in St. Louis on July 28, 1933, the suggestions in reference to the Shoe Manufacturers' Code were so one-sided and in favor of certain large manufacturers that I walked out of the meeting; and the report of my so doing was carried in the columns of the St. Louis Post-Dispatch on that date, as I maintained that the large monster shoe companies were being favored at the expense of the small shoe manufacturers.

At no time did our company belong to or offer to join the National Boot and Shoe Manufacturers Association, yet it is admitted in writing that the members of the National Boot and Shoe Manufacturers Association are being truly repre-

sented by the planning and fair practice committee or other officers of the Shoe Code Authority, but that the nonmembers, or those manufacturers who are not members, are not truly represented. In other words, the code authority, or planning and fair practice committee, are not truly representative of the entire shoe manufacturing industry as the National Industrial Recovery Act provides.

We, being a nonmember and maintaining from the very beginning that the Shoe Code Authority was not truly representative of the shoe manufacturing industry, refused to pay any money into the hands of these people, whom we claim were not truly representing the industry, for such expenses as salary and other item.' of expense.

Attorneys for these representatives have threatened us with suit to collect from us, which we claim that we do not owe, as we are not being truly represented, and that if we paid money it would be a case of nothing more or less than taxation without representation.

Furthermore, we claim that with the present set-up we consider the entire Shoe Manufacturers' Code being illegally represented and that we do not have to abide by any code unless those representing that code are truly representative of the entire industry, as prescribed by the National Industrial Recovery Act, we are continually threatened in the face of written evidence that we are not being given representation as prescribed by the recovery law.

CODE AUTHORITY'S CONFESSION

Gentlemen, please pay special and particular attention to the wording of the wire which was sent out to directors of the National Boot and Shoe Manufacturers' Association on February 23, 1935, over the signature of Fred A. Miller and Jay O. Ball. For your information, Mr. Miller was president and Mr. Ball was executive vice president at the time the wire was sent out.

Quoting contents of wire:

"The National Recovery Administration finds itself in a position where it cannot defend our code authority as at present constituted as being truly representative of the industry in accordance with provisions and intent of the National Industrial Recovery Act, in spite of the fact that the code authority is constituted, as provided in the code. Any proposal of change involves a public hearing. If the present provision in the code establishes a code authority which is not truly representative, then the present position is, in fact, not in accordance with the National Industrial Recovery Act. In view of this legal necessity it is believed advisable that the code authority should avail itself of the opportunity to show that it is truly representative of the industry or submit an alternative provision. As it appears highly desirable that the association should take the initiative, we are sending this telegram to all directors, and your telegraphic reply collect to the New York office will be appreciated. Believe situation critical and that it will be necessary to give nonmembers representation on planning and fair practice committee and that association should recommend it."

Gentlemen, would anyone need any further evidence than the contents of the wire quoted above to convince them that a nonmember of the association such as we are is not only failing to have representation we are entitled to, and as provided by the National Recovery Act, but don't you think that the entire code authority should resign, as requested by me some time ago in a wire to Mr. Miller and to Mr. Ball? Furthermore, do you believe that any honest shoe manufacturer should be forced to have anything to do with the Shoe Manufacturers' Code when a condition such as that admitted in the above-quoted wire exists?

RESCINDED ORDER OPENING SHOE CODE

On the preceding page a confession in the form of a wire has been quoted about no representation for the shoe manufacturer who is not a member of the National Boot and Shoe Manufacturers Association.

Our company has spent hundreds of dollars fighting what we considered an illegal set-up in the shoe manufacturing industry, and finally we were advised by Deputy Administrator Walter Mangum that the Shoe Manufacturing Code would be opened on April 16, 1935, for the purpose of an amendment to give representation to nonmembers such as ourselves of the Shoe Manufacturers' Association so that we would have true representation as well as the members of the association.

Now what happened?

I am told that several hundred wires, together with 140 air-mail letters, were sent into Washington, and pressure was brought to such an extent that the order for reopening the Shoe Manufacturers' Code on April 16 was rescinded.

In other words, as our company sets today, we have no representation and have been advised that we cannot have representation until the shoe code is opened or until new legislation is passed, yet we are being hounded by compliance officers of the National Recovery Administration, threatened with a suit by the attorneys for the planning and fair practice committee for money to help pay salaries and expenses for the committee who does not even represent our company and who is not truly representative of the shoe manufacturing industry as provided by the law itself.

Can you conceive of the National Recovery Administration officials admitting that we have no representation and no chance of getting representation at the present time and admitting that the law provides for representation or committees that are truly representative of the entire industry and at the same time pouring in threats of various kinds to make our small company do as they see fit, although we are being prevented from getting the representation which the law provides?

Could anything be more disheartening, discriminating, unfair, unbusinesslike or did you ever hear of anything that paralleled a condition of this kind?

LARGE RICH SHOE COMPANIES BENEFIT

Our company is at a grave disadvantage and we contend is being discriminated against in many ways in favor of the large, rich, and influential shoe manufacturing companies.

If you read the sales terms set forth in the shoe code itself casually, you perhaps will not notice without someone calling it to your particular attention that various discounts and lengths of terms for allowing discounts are set forth, but behind this smoke screen there is no limit as to the length of terms on which a shipment can be made if shipped on net terms instead of allowing a discount.

How can a small manufacturer with limited means compete with large manufacturers with millions of dollars of idle money to go out and solicit the small manufacturers' customers with inducements of long net terms and in many cases additional datings running as a whole into several months longer than the small manufacturer can allow and still stay in business?

What voice can a small manufacturer have for nominating purposes when it comes to votes with the voting arrangements being based on 1 vote for every 100,000 pairs of shoes produced by 1 company?

There are approximately 1,081 shoe manufacturing companies, yet three of these shoe companies alone have almost 1,000 votes alone for nominating purposes, where a large number of the other companies only have 1 vote each and in one case, I believe, the figures show that one company would have a total of 436 votes.

This voting arrangement for nominating purposes is not all by any means, as various districts have been laid out and laid out in such a manner that in our opinion the small manufacturer with only one of a few additional votes at the most, especially our own concern, would be wasting their time should they wish to vote for nominating purposes or any other purpose.

If a careful investigation is made of the permission to ship on net terms without limit as to when bills are to be paid and as to the voting arrangements for nominating purposes and as to the laying out of districts, I believe that it will be readily seen who dominates or in fact how few shoe manufacturers dominate the entire industry at the present time.

TROUBLES AND EXPENSES

In addition to other disagreeable features previously cited, I call your particular attention to 44 special reports we have been asked to make out.

To comply with all of the requests made for filling out blank reports and various information in answering questions and inquiries from Washington, D. C., Nashville and Memphis, Tenn., Atlanta, Ga., and sometimes from other places by those connected with the National Recovery Administration and other organizations is almost unbearable.

Our small company would need the services of a lawyer, an accountant, and a bookkeeper a large part of the time to furnish the information asked of us.

It is our experience that when information of this kind has been obtained and finally made ready for publication that it is nothing more or less than history and is practically worthless.

THE NATIONAL RECOVERY ADMINISTRATION A "BALL AND CHAIN"

The National Recovery Administration, we feel, works to a tremendous benefit for the immensely wealthy shoe-manufacturing companies at the expense of small companies such as our own and we feel that it acts as a "ball and chain" on us when it comes to competing with large wealthy shoe-manufacturing companies. Some of the reasons are as follows:

They have the advantage when it comes to voting for nomination purposes.

They have the advantage by the way the districts are laid out.

They have the advantage by being able to finance shipments sold on net terms for long periods of time and can use this as an inducement to take our accounts away from us.

Some of them have advantage in manufacturing materials we have to buy, some of which have advanced 100 percent since just a little before the codes went into effect.

They have the advantage in being able to hire the best brains by paying large salaries, due to their enormous manufacturing facilities.

They have the advantage by being able to ship to and from their units in big quantities and getting carload rate or less-than-carload rate by shipping by truck where we ship mostly l. c. l.

They have advantage by being able to obtain the most up-to-date and speediest machines, while we were even asked to make a cash deposit of $7,000 to obtain 43 leased machines.

They have the advantage of being able to advertise in a big way and through mediums such as the radio, the newspaper, and other methods, includings toys and novelties too numerous to mention.

They have the advantage by selling general lines of shoes, rubber goods, felts, advertising signs, and other items too numerous to mention, which enables them to sell at a sales cost of perhaps one-third of what it costs a small company such as ourselves.

They have the advantage by having a wage differential in big cities such as St. Louis, Chicago, and Boston, where shoe artists can be obtained for producing expensive shoes, yet the minimum wage is only $1 per week more than ours, and we manufacture low-priced work shoes chiefly and they are manufactured in a village where the living cost is approximately 40 percent below that of the large cities referred to above, and where experienced shoe employees are not available without being carried through the expensive process of teaching them.

LET NATIONAL RECOVERY ACT DIE ON JUNE 16, 1935

The National Recovery Act, we believe, has failed to relieve the unemployed situation.

While the National Recovery Act has been in effect the relief rolls have grown to an amount never before equaled in this country.

We believe that more dishonest dealings have been brought about during the almost 2 years of the National Recovery Act than have been brought about in the industry during the past generation or more and we further believe that the honest man under the National Recovery Act is the one who suffers the most, especially if his is a small enterprise or a small industry.

I feel that sufficient facts have been cited in the foregoing pages to justify asking that the entire National Industrial Recovery Act be permitted to go out of existence on the night of June 16, 1935, and that these artificial or experimental methods be allowed to be substituted with previously tried and successful methods which have helped to build this good old country of ours up to where we at one time seemed to be the envy of most all other nations.

Prosperity can be brought back quickly and the unemployed situation can be relieved speedily and the standard of living of those in the lower brackets can be rapidly improved, but I do not believe that it can be done by those means resulting in the facts previously cited by me, as there are far better ways, more favorable ways to accomplish what should be accomplished.

To find out whether my opinion is that of most small manufacturers and of those heading small enterprises, wouldn't it be the fair thing to do to hold hearings in various localities where these people who do not have the ready cash to pay out for a trip to Washington could attend the hearing in their locality and express their experience under the National Recovery Administration?

The large industry can well afford to send a representative to Washington, but think of the millions who would like to express their opinion, but do not have the ready cash with which to pay their expenses to and from Washington and

while stopping in Washington, as this in itself works to a grave disadvantage to the small industry and the small enterprise.

Respectfully submitted.

P. S. Now, gentlemen, here is a laugh for you.

Since dictating this brief there has come to my desk a telegram from an National Recovery Administration official at Atlanta, Ga., making threats about not letting us display the "blue eagle."

Just think of a wire threatening to prevent us from displaying the "blue eagle" reaches us this year in the month of April 1935, when the "blue eagle" was returned to General Johnson by our company the same day it was received last September 7, 1934.

Could anything be more ridiculous and could money be spent in any more wasteful way than paying the salary of officials of the N. R. A. who sent out threats above their signature about things which they are not familiar with?

SPECIAL SHEET

DIVISION OF WEALTH AS RECOMMENDED BY S. D. NICHOLS [1]

Division of wealth should be accomplished without injury to any living person and without upsetting the fine principles in effect throughout our country today, but on the other hand should react in a way which raises the standard of living of those receiving wages in the lower brackets.

Most of us are gifted with talents of some kind, some becoming great singers, others great musicians, others great statesmen, and others too numerous to mention, while some are gifted with the talent of making money.

Those who are gifted with talents, such as those mentioned above, should all be encouraged, and this means that those who are gifted with talents of making money and doing so honestly and without breaking any laws, should also be included.

At the death of a person who had the talent of making money and who has built up a great fortune, the first thing that should be done, there should be set aside to this person's dependents enough to maintain them in their then present way of living during their remaining years of life.

After the dependents have been taken care of in the above mentioned manner every item of net assets thereafter should revert to the Government and should be kept in a special fund and this fund should be used entirely for the purpose of assisting those who are being paid in the lower brackets. For example, if a person without dependents is receiving less than $1,000 per year, they should then receive an additional 20 percent of their earnings from this special fund and if a person with dependents is receiving less than $2,500 per year, they should, also receive 20 percent of their earnings from this special fund.

This method, as outlined above, would enable the workers who being put in the lower brackets to immediately raise their standard of living by 20 percent and this could be brought about speedily by the issuing of bonds to be paid with the money coming into this special fund.

No living person could be injured, while on the other hand no dead person would be controlling a lot of wealth years and years after they had died, which was not even needed for their dependents.

Those in the lower brackets would cease to complain about those who were gifted with the talents for making money because they would readily realize that the more money these people made honestly and according to the law, the more money they would leave in this special fund, and perhaps the 20 percent could be raised, and, also, there would be a possibility of raising the lower brackets and including some without dependents who are in the brackets receiving over $1,000 per year and some in the brackets receiving more than $2,500 per year.

Where the deceased's assets consisted of other than Government securities and cash and after the dependents have been taken care of in the manner suggested above, the Government should have to divest itself of the assets other than Government securities or cash within a reasonable period of time, so that under no condition the Government would become the owner of various businesses

[1] Copyrighted.

or interests therein for any length of time over and above a reasonable length of time in which it should divest itself of these assets.

The above-mentioned plan if put into effect, and it could be put into effect speedily, would immediately enable those in the lower brackets of earning to have more spending money and this in turn would help business as a whole and by helping business as a whole, the farmers, and in fact every citizen in the United States would soon be benefited, and as previously stated, no living person would be injured to any extent whatsoever.

I do not believe there is any plan as simple, or as fair, or any plan that can be put into operations as quickly as this one, or would work to the benefit of everyone like this simple, yet effective plan for raising the standard of living of those in the lower brackets of earnings and at the same time not affecting to a disadvantage any living person, but on the other hand making it possible to carry on in this country in a bigger and better way, the fine business principles which have brought us to become the great Nation which we are today.

Of course, provisions would be made to prevent anyone disposing of their wealth without the proper amount going into this fund.

Respectfully,

S. D. NICHOLS.

RECOMMENDATIONS BY S. D. NICHOLS FOR RETURN OF PROSPERITY

1. Cease destroying or reducing anything which is needed by the citizens of the United States, or even things that are needed by our neighbor nations.

2. There is no such a thing as a surplus of anything as long as that particular thing is needed and can be used to an advantage by anyone in the United States, and if we are the Christian Nation we set ourselves up to be, this same thing should apply to things that are needed by citizens of neighboring nations.

3. Cease all efforts to raise prices beyond the reach of the masses.

4. Enact no new legislation to shackle or ball and chain industry such as that of the National Industrial Recovery Act and let this N. R. A. with all of its angles cease to exist on the night of June 16, 1935.

5. Encourage production of everything that is needed and can be used to an advantage by our people, as it is nothing less than folly, or I would even say it is a sin to restrict production on anything while human beings are in need of that particular thing, and by so doing it will satisfy their needs and at the same time give increased employment and enable use to be made of raw materials which we have been so abundantly supplied with.

6. Make it possible for small enterprises and small industries and the small individual business man to be able to borrow money for use in their particular business without their having to employ attorneys, accountants, and others too numerous to mention to fill out application blanks to the extent of 21 pages and almost 2 feet in length to find out in most cases that after all the expenses and all the trouble they are going to be denied the loan that they are in need of and entitled to while at the same time the banks are bulging with money and can obtain more money if they want it through the sale of their preferred stock while at the same time loans are being denied to those entitled to credit from those same bank.

7. Discourage experiments during these critical times and encourage what we know to be good common sense facts such as were used in the past generations in building up the greatest nation in the world.

Finally, if the antitrust laws and the other laws which have been enacted in the past are duly enforced there would be no need for all of the foolish expensive experiments which have so utterly failed.

The American people should not be ball and chained with such experiments as the National Receovery Administration, but on the other hand if they are appealed to as they were to purchase Liberty bonds, it is my opinion that they would respond in a bigger and better way and if appealed to in the right way, I believe that the unemployed ranks could be cut more than half within 30 days, but it should be entirely a voluntary matter from a patriotic standpoint and they should be appealed to as they were to purchase Liberty bonds, as it is clearly shown and has been clearly shown as with prohibition, that the American people will not remain tied to experiments which work entirely to the advantage, or almost entirely to the advantage of those who are not law-abiding, but who profit at the expense of the honest person.

To prove that people are still patriotic, I refer you to our company having placed a small advertisement in St. Louis papers reading as follows:

"A CHALLENGE TO EVERY EMPLOYER OF LABOR"

The advertisement set forth that we were putting on 10 percent more employees in number before November 30, 1934, and we challenged others to do likewise.

This small advertisement resulted in the actual placing of 502 additional employees with a total of six companies and if it is reasonable to figure three dependents on each of these employees, this small advertisement directly affected 2,008 persons and indirectly affected hundreds.

A copy of the advertisement is attached hereto.

[Advertisement]

"A CHALLENGE TO EVERY EMPLOYER OF LABOR"

"We are planning to have on our pay roll and actually at work 10 percent more employees November 30 than we had October 31."

Five years of talking has not licked "old man depression" and now it is time for constructive acts.

The unemployed are entitled to be given work to do and whether you are a large employer of labor or only employ one person, it is your duty to do your part and do it quickly.

Who will be the next to add on 10 percent to their pay roll before November 30?

As Americans with "red blood" running through our veins, it is our duty to make this sacrifice.

Increased pay rolls will bring prosperity.

THE MENZIES SHOE COMPANY,
(A Missouri Corporation)
S. D. NICHOLS, *President.*

(The chairman subsequently received the following letter from Mr. Joseph F. Battley, Division Administrator, National Recovery Administration, Washington, D. C.:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 12, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: My attention has been called to the testimony given before your committee by one S. D. Nichols, president The Menzies Shoe Co., St. Louis, Mo., on April 8, 1935, in which he alleges that in October 1933, I made two threats against him.

I should like to have the record of your committee contain my unqualified denial of Mr. Nichols' allegations.

Very truly yours,

JOSEPH F. BATTLEY,
Division Administrator.

Senator BARKLEY. The committee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 1 p. m., a recess was taken until Thursday, Apr. 11, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, APRIL 11, 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 (chairman), King, George, Walsh, Barkley, Connally, Gore, Costigan, Clark, Black, Gerry, Couzens, Keyes, La Follette, Hastings, and Capper.

The CHAIRMAN. The committee will be in order. Mr. James M. Butler.

STATEMENT OF JAMES M. BUTLER, REPRESENTING, PHARIS TIRE & RUBBER CO., NEWARK, OHIO

(The witness, having been first duly sworn, testified as follows:)

The CHAIRMAN. How much time will you require, Mr. Butler?

Mr. BUTLER. That will be at your convenience, Mr. Chairman. I know how busy you are.

The CHAIRMAN. We have a long list of witnesses. If you have a statement there which is already prepared——

Mr. BUTLER (interrupting). No; it is not, Mr. Chairman, I have some notes.

The CHAIRMAN. Is 10 minutes enough for you?

Mr. BUTLER. I should say 20 minutes, Mr. Chairman, but I am here to obey orders.

The CHAIRMAN. Try and get through in 10 minutes, because we have a large number of witnesses to hear.

Mr. BUTLER. My name is James M. Butler, Mr. Chairman, and I reside at Columbus, Ohio. I represent the Pharis Tire & Rubber Co. at Newark, Ohio, that manufactures only rubber tires. I am a lawyer and a farmer and a businessman, and have tried to keep my eyes and my ears open.

I hope that I may bring to you a few facts connected with our business. We come with no grouches, with no personal animosities. We have the most friendly feeling for all of our competitors. We assume they are just as honest as we have tried to be.

My company has never been in default. It has obeyed the law; it has obeyed the code. We have lived strictly within the rules.

Before the N. R. A. we sold our product and we made a decent profit. That shows that we did not cut prices.

Until price-fixing became a part of the code, we continued to make some money. When price-fixing came we were unable to make money. In the rubber tire manufacturing industry——

The CHAIRMAN (interrupting). You are opposed to price-fixing?

Mr. BUTLER. Wholly. We have fought it from the beginning to the end openly and aboveboard, although we have obeyed it when it came into our industry. We felt that that was our duty. Sometimes we stood alone.

For almost 2 years now I have devoted much of my time to that.

In our industry there are two great classes, the bigger companies and the small companies. We are a small company. I have been with the company since it started more than 20 years ago. We came up from scratch. We started with nothing. We financed ourselves. We have wasted no money. We have kept down our executive costs. We are efficient in manufacturing. We advertise appropriately but not too much. We have no great company stores. We do not indulge in these great service stations.

To illustrate: In this contest before the Federal Trade Commission, it appeared that the Goodyear Co. spent about $72,000,000 in advertising in the last 8 or 10 years. We spent probably $500,000. We do not criticize the Goodyear. We are proud of their great success, but we point out, Mr. Chairman and gentlemen, that we are a different company, and we want to be protected in our methods as long as they are decent and honest; and they have been decent and honest.

But we could not resist price fixing. It came. An emergency was declared. If the emergency were true, it was an emergency that existed 8 or 10 years. It almost ruined our business. We do not have it now. When it will return, I do not know. The menace is there all the time, and we have been begging that that menace be removed for all time.

The CHAIRMAN. If the price-fixing features in the code were stricken out, would you believe that it is for the best interests of the country that the N. R. A. be continued?

Mr. BUTLER. I do not, Mr. Chairman. I have very positive beliefs on that. Of course, I may be wholly wrong. Your great committee and your Congress will determine that. My judgment—my own judgment—is that the time has come for the Congress to do the legislating and not for the multitude of codes to do it, so that business may know the rules, and that a business man may not wake up tomorrow morning to find that the rules have been changed in the middle of it.

The CHAIRMAN. What are the other glaring defects, as you see them, in the operation and administration of the codes?

Mr. BUTLER. Petty control; the control by your own competitors. I submit that if before the N. R. A. our competitors should not control our business, if they were trying to succeed, as they were, the N. R. A. has not purified them nor purified us.

The CHAIRMAN. Do you think it would be advantageous if the Government should have some representation in the administration of the codes?

Mr. BUTLER. I think so. My own personal belief is that this Congress should set out a few simple rules, minimum wages, maximum hours, labor provisions, abolishing the sweatshop—anything of that kind—and a few simple rules of fair conduct in business.

Senator COUZENS. Would you illustrate what you mean by fair conduct in business? Because I understand the rubber industry has been in very desperate shape so far as its ability to continue fair-trade practices, over many years.

Mr. BUTLER. It all depends on what you call that. As a matter of fact, the trouble with the rubber industry came from overexpansion and overcapitalization. My little company had no trouble in succeeding and making a decent profit. We set before ourselves not what the big companies have set before themselves. We said that our motto was to produce as good a tire as is produced in this country and to produce it a little cheaper so that we may make a little profit out of it; and strange to say, without the great stations—without the great service stations—without the company stores, we found it quite possible to find all of the patrons and all of the purchasers that we needed. There is a class of people who are willing to buy and carry, but they do want the quality, and they do want price.

Senator COUZENS. What kind of a fair practice would you like to see put in the law? You said "a few fair practices."

Mr. BUTLER. For example, in false advertising; no cutting of prices for the purpose of pursuing a competitor. Turn it over to the Federal Trade Commission.

We have made great progress, Mr. Chairman and gentlemen, in the last 8 or 10 years. Unless you have been out on the firing line, you can hardly appreciate how much progress has been made along the lines of fair trade.

I believe in the Federal Trade Commission. I want my clients and my businesses to go there. They are the best organization today in the Government, for the reason that they are both administrative and judicial. They are flexible; they get away from the barbed-wire entanglements of the law, and yet they make you feel that you have been in a house of justice; and when you are through, even though you are defeated, you realize that you have had a decent, fair day in court, yet shorn of all of the technicalities.

The Attorney General of the United States, the Department of Justice, should be at the head of all prosecutions. That is his business. It will inspire confidence.

Above all—it may be quite old-fashioned—restore the antitrust laws to us. With no "buts" and no "ifs", if you please, Mr. Chairman and gentlemen, but with the straight proposition declared by the Congress that the antitrust laws are restored. Just as long as you have a "but" or an "if", just as long as somebody may declare an emergency that, if it exists has always existed, just so long will you remain in difficulty in that respect.

Mr. Richberg seems to think that price-fixing is essential for the little fellow. I have infinite respect for Mr. Richberg, for his very great ability, for his fidelity. Of course, it does not hurt him for me to disagree; it probably hurts me.

But in my humble judgment he has wholly mistaken the essentials of the case. Why do big businesses want this freedom from the antitrust laws if it is merely for the benefit of the little fellow, and why do so many little fellows stand afraid of the absence of the antitrust laws? This country needed the antitrust laws. This country sooner or later must get them back. No man in this country should be permitted to work with another to set up a false standard of prices

which will be for his benefit. The little fellow is not hurt by the general lowering of prices.

Take our own selves. We do sell below the big companies. What was the purpose? To bring us up, and as they brought us up, our customers dropped away. Who would buy a Pharis tire, of which you have never heard, probably, when you could buy a Goodyear tire, a great tire and a great company, and nationally known, for the same price?

It is perfectly self-evident that a little company like mine must quit—yes, quit, go out of business—if it must sell at the same price as the big companies. A general lowering of prices does not hurt because the big companies cannot do it.

I know something of the methods in the old, old days. I am older possibly than I appear. In the old days, the individual was not driven out of business by the general lowering of prices, but because he was pursued as an individual, and prices were lowered at his particular place and probably raised elsewhere. But the general lowering did not affect him.

No, the little man needs to be relieved through the antitrust laws, and without any exceptions or exemptions. The companies, the combinations, the interests, the businesses that cannot live with a decent, honorable antitrust law should quit.

Don't you see how we were affected? They brought us up there [indicating]. There was always the provision, however, that the man above here [indicating] could come down in competitive work to our price. He could fall below our costs, but we were fastened there, and as I once said to the industrial commission down here, it was like fastening out a pig for the tiger. It was more unfair. The hunter stood ready to rescue the pig. But we were tied, and when the big fellow came down to us we could not get away under the law. We could not fall down and get away from him. We could not run away. We were held there. Absolutely ruined; no escape.

I am aware, Mr. Chairman and gentlemen, that I must keep faith with you and let me hurry on. I have already told you what I think about the Federal Trade Commission, but over and above everything else, I know you hear it and probably you are very tired of it, but let the Congress legislate. All over this country, I give you my word, I think I know it, the country is asking the Congress to legislate. Not turn us over, unless it be absolutely necessary, to a lot of boards and code authorities and administrators. Give us straight from the shoulder rules and regulations and provisions that every man may know today and tomorrow how he must live and how he must carry on his business. That is what we need, and it is a growing feeling in the country.

I have no criticism. The President of the United States is my President. I know the terrible load he has carried. We have worked with him. We have never brought a suit. Of course, we were led to believe that soon the Supreme Court of the United States would settle all of this, and yet the other day for reasons that I cannot understand, the Government dismissed the Belcher case, which would have helped to settle this. I wonder, Mr. Chairman and gentlemen, if the purpose be to withhold a decision of the Supreme Court of the United States until the Congress is compelled to extend the N. R. A. so it may go on another 2 years without a definition of rights.

The CHAIRMAN. I may say to you in that connection that the authorities are trying to press a case that is now before the Supreme Court to get an early decision.

Mr. BUTLER. Yes, Mr. Chairman, and I hope they are in earnest, and I do not doubt that, because almost for 2 years now we have been waiting and waiting. All I want to know as a business man, as a lawyer, is, what does the Supreme Court say, and whole-heartedly I shall obey it, but until that time how may we proceed? What do we know?

Mr. Chairman, another word. Surely the N. R. A. did not have the right to deal with all of these intrastate, little businesses, and which I have witnessed for 2 years, what you might call a terror, enabling the Federal Government to do those things which I believe and which the courts are now unanimously agreeing are forbidden to the Federal Government.

Let us know; let us keep within it. Personally, I like the Federal Government to have full and complete power, but I should like to know the limitations.

Now, gentlemen, the codes are not being enforced. I know and I read, but I am out among the people and I tell you that a little investigation will show you that the codes are not being enforced. Take our rubber code. One hundred and fifty thousand or two hundred thousand outlets for the sale of rubber tires. It is an utter impossibility to enforce it. It has not been enforced. Even the people who were most insistent upon price-fixing in my own city checked up by me day after day, did not live up to the requirements of it. I am not censuring them. It just cannot be done.

I once called the attention of an administrator to that. I told them it was more difficult to enforce than prohibition. He rebuked me in an open meeting rather strongly, but I lived to see the day when he frankly said to me that I was right. It cannot be done; it is not being done.

Give us few rules, just regulations, something that we can live up to and something that will be enforced.

The CHAIRMAN. Thank you for your statement.

Mr. BUTLER. I thank you for your patience, Mr. Chairman.

The CHAIRMAN. It has been a very interesting statement. Mr. Albert Kellerman, Hampton, N. J. (No response.)

The CHAIRMAN. Mr. A. H. Blackall.

TESTIMONY OF A. H. BLACKALL, EVANSTON, ILL.

(After having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. How many minutes do you want?

Mr. BLACKALL. Senator, I think about an hour.

The CHAIRMAN. You can have 10 minutes, Mr. Blackall. If we gave everybody an hour, every witness that wants to come here, we would be here until next September and perhaps longer than that.

Just state succinctly what you wish, and if you have a statement, that will be put into the record.

Mr. BLACKALL. May I read this statement? It will take probably 20 minutes without any further amplification?

The CHAIRMAN. What we want are the main facts.

Mr. BLACKALL. I have been sent to present to you the pitiful economic plight of many hundreds of oil refiners, jobbers and dealers throughout the central west included in the membership of many organizations and individuals.

Senator KING. You may talk a little more rapidly, if you care to, because we want to get all that you have there in your paper.

Mr. BLACKALL. Because of ruthless playing within the oil industry, I hope that I bring to you some possibly unknown facts, which will arrest your attention and that your having these may result in straightening things out back home and generally throughout the country in the oil industry.

While internal adjustments within the industry make some aspects right today look brighter, immediately I can advise you that never in my experience has the whole oil business been as close to a financial and moral collapse as right at this minute. That applies to little and big companies and individuals.

I am speaking to you as an experienced oil man. I have been in the oil business for 17 years—since the time when it really began to grow big. In all of that time it has stumbled along and endured despite itself.

I want to refer to the recent Blazer Committee report on the operation of the Oil Code over the past 18 months. This is a very capable summary of the immediately serious conditions prevailing in the oil business today. It points out the uneconomic balances generally and the over-saturation of selling outlets. It is complete.

I think that I can address you also as a code authority—at least on Oil Code authority. My first experience with codes was in 1925 when the State Oil Code in Ohio was just getting started. It lasted a few years. Conditions were the most hectic ever in the industry while it lasted. Then it passed out. It accomplished nothing.

Then I had a lot of experience for a few years with the A. P. I. Code which was introduced in 1929. It never amounted to anything.

Then came the Oil Code under the N. I. R. A. in September 1933 which the A. P. I. Code was the pattern for in the main.

Senator KING. What is the A. P. I.?

Mr. BLACKALL. That is the American Petroleum Institute.

Largely the same organizations and men responsible for its conduct were those responsible for the demise of the A. P. I. Code.

I am convinced beyond any and all doubts that no code in the oil business will be successful where voluntary compliance with its regulations is the only requisite. The business itself has always taken care of the fittest—meaning the ones with the most resources, or cunning or the luckiest.

To give credence to my remarks I wish to state that until January 15 I was field secretary for region 3, Oil Code Marketing Committee, with headquarters in Chicago, Ill., and in charge of a large part of the code work done and also very active in the stabilization program, as authorized, not as conducted.

Before July 20, 1934, when the price stabilization order was issued the Oil Code was going along all right and improvement was apparent in all branches of the industry. The code then was generally thought to have Federal teeth for enforcement; the code really prospered. Conduct under it was fair mainly. Later when it was found that

legal enforcement was impossible it began to rapidly disintegrate and then began a program of planned deceit which has brought the industry to its present prostrate state.

Then with the July 20 stabilization order was born the triumverate, "The king can do no wrong"; "The divine right of kings" and "Let's take a chance."

The administrator's order very carefully called for adherence to the N. R. A. law section III. But this meant nothing for the cunning with an aim to accomplish. In different parts of the country representatives of the "holy 31" assembled behind guarded doors and the division of the "spoils" was planned. The "holy 31" are 31 intebrated, mostly affiliated companies who do wholly control the oil industry throughout the country.

Senator KING. You spell it with a "w" instead of an "h"?

Mr. BLACKALL. It is ambiguous.

Senator KING. All right; proceed.

Mr. BLACKALL. And still with this monopoly for extinction operation, some have the audacity to mention that "rugged individualism" must survive. To me the survival of rugged individualism is to become active in upsetting this monopoly. A pup might fatten if the master drops enough crumbs—but the master is well mannered. The cur, to him, is not even allowed entrance. David did sock Goliath with the rock, but the oil monopoly has not been retarded yet.

Senator KING. You have not been a very good administrator, have you?

Mr. BLACKALL. Senator, I have been a rotten one. According to dictates.

For region no. 3 code district, embracing the Central West, there were called together a group of companies' representatives, hand picked, mostly belonging to the "holy 31" companies, or those whose interests were identical, for a series of meetings.

They were packed committees.

The conduct of these meetings was so "sinister" that a member of the Petroleum Administrative Board was asked to leave.

At different meetings two State code chairmen were ousted. Two State stabilization chairmen were refused admittance and three region no. 3 committee members were not admitted.

Senator KING. Who is the deputy administrator for the code of the oil industry?

Mr. BLACKALL. Who is the deputy administrator? Of stabilization work, Mr. Arnot.

Senator KING. Is Mr. Ickes the administrator for the whole industry?

Mr. BLACKALL. Right; you are correct.

Senator KING. Who represents him in the administration?

Mr. BLACKALL. Since July 20, the Oil Code work has become solely a matter of stabilization, and Mr. Arnot is practically the sole moving spirit in Oil Code work.

Senator KING. Proceed. I will not interrupt you because your time is limited.

Mr. BLACKALL. I submit to you the Administrator's order of July 20, and section 111 of the N. I. R. A. outlining conduct of such price stabilization meetings in industries. It is very specific and fair.

I also submit to you the minutes of each of these meetings through January 4–5, inclusive, held in Chicago, Ill. All of them contain illegal acts in criminal violation of the Clayton Act and recklessly tread upon the fair trade practices act, and the antitrust statutes as well.

I want to advise you that when the activities of our associations—the associations whom I am representing—became known I was 'phoned twice last Friday, April 5, and Saturday, April 6, at my home in Evanston, Ill., from Excelsior Springs, Mo., where the "gang" were in session to see if I could not be diverted from my intention of appearing before this body and also discontinuing my activities in other directions. You may make your own further deductions. I have nothing further to add specifically.

Senator KING. Who were the members of the so-called "gang" who were meeting at Excelsior Springs, Mo.?

Mr. BLACKALL. The "holy 31."

Senator KING. Who were some of them?

Mr. BLACKALL. That embraces about 75 percent Standard Oil memberships, with a few with identical interests. The companies are largely represented on the P. and C. committee.

Senator COUZENS. Who are the companies that you refer to outside of the Standard Oil Co.?

Mr. BLACKALL. The Mellon interests through the Gulf Refining Co., Morgan interests through the Continental, the City Service group.

Senator King. Who represents them?

Mr. BLACKALL. The City Service?

Senator KING. Yes.

Mr. BLACKALL. They are represented in different districts by different men, all of the same authorized line of procedure. I can give you all of those names.

Gentlemen, the struggling groups whom I am representing today have contributed to my prosperity for many years past. I have sold many of them their petroleum requirements and have counseled with them in the conduct of their businesses. During the year that I was with the code these gentlemen paid about one-half of my salary. Any information which I possess belongs to the entire industry.

After July 20, 1934, I saw these assessments deliberately used against the majority in numbers. Now, I want them to have restitution. I want to emphasize that I had nothing to do with the negotiations or conclusions arrived at in so-called "stabilization work". Many times I protested against the conduct of stabilization work. I still feel that the refiners, jobbers, and retailers should have immediate relief from this program of stabilization.

I do not know that the same financial conditions exist today that did prior to January 1, 1935, regarding code finances, but at that time the Standard Oil Co. of Indiana were willing to carry a large deficit as an investment in stabilization.

I want to call your attention to code instructions to conduct through regional committees a survey by committees of dealer and jobber margins.

There are six regions in the Oil Code, and each region appointed a committee to investigate matters.

The recommendation of this committee in region no 3 was that the dealers must have 4½ cents per gallon commission, and recommended an additional one-fourth cent for each 1 cent that the retail price advanced. Jobber commissions were to be 2 cents with one-fourth cent additional for each 1 cent advance in retail price.

This means a total jobber-dealer margin on gasoline of 6½ cents. This was a most wise recommendation as it made all parties interested in maintaining fair retail prices.

I wish to submit to you reports of State jobber and dealer associations. The dealer margin in no case to be under 3½ cents and up to 5 cents.

Senator KING. Let me ask you a question if I may; I hate to interrupt you. Is this a contest between the jobbers and the retailers and the large oil interests, the producers, such as the Standard Oil and the various other organizations?

Mr. BLACKALL. Senator, it is not a contest. It is rather that the jobber and dealer and refiner wanted the collective representation that the N. I. R. A. granted him, and that has all been waived aside, and there has been definite means used, usurped, for his ultimate extinction.

Senator KING. You mean then that the manufacturers or the big producers are the code authority, and the independents and the brokers and dealers are not represented?

Mr. BLACKALL. Right.

Senator KING. Proceed.

Mr. BLACKALL. Strictly collusion by those who control the industry. It is an easy industry to control.

I wish to submit to you reports of State jobber and dealer associations. The dealer margin in no case to be under 3½ cents and up to 5 cents. The jobber margins substantiated and asked for range from 2½ to 3½ cents. This makes a total jobber-dealer margin range of 6 cents to 8½ cents. These reports were compiled fairly by organizations well manned.

Senator KING. Can you not put those in the record without taking the time to read it?

Mr. BLACKALL. Yes; I will be glad to.

In contrast to this, the Standard Oil Co. of Indiana in the stabilization meeting of January 4 declared that total jobber-dealer margins must be cut 4½ cents and in Chicago, Detroit, and elsewhere this has been done. The method used in this regard is that a 5¼-cent total spread was set by the group then a fighting branch of the group gives a 1-cent retail discount making the actual spread 4½ cents above tank car, freight paid, tax paid, on siding price. The rate of extermination in Chicago is alarming. The savings of approximately 1¼ cents per gallon in the pipe-line transportation of gasoline is being used to carry on this fight.

I want to read to you the oft-repeated statement of the vice president in charge of sales of the Standard Oil Co. of Indiana reflecting his opinion on dealers.

This is quite important in this connection. This is addressed to Senator Harrison.

Senator KING. Can you not state the contents of it and put it in the record?

Mr. BLACKALL. This letter is directed to Senator Harrison. The contents of this letter are, that we wish no dealer representation and we can get along just as well without it.

Senator KING. Put it in the record.
(The letter is as follows:)

CHICAGO SERVICE STATION OPERATORS' ASSOCIATION,
Chicago, Ill., April 8, 1935.

Senator PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

Honorable SENATOR: This letter is directed to you upon the request of Mr. A. H. Blackall.

The fundamentals of this letter is to inform you of a statement made by Mr. Allen Jackson, vice president in charge of sales of the Standard Oil Co. of Indiana in Washington, D. C., in the first week of October 1934. The writer, being an invited guest of the marketing committee of the Petroleum Administrative Board, discussed with Mr. Jackson the industrial problems that affect the small operator under the National Recovery Act engaged in the oil business. In my statements to Mr. Jackson I called attention to many of the subservient conditions which the resellers were faced with and asked his opinion as to what the ultimate relief would be. In general discourse the outstanding statement made by Mr. Jackson was that the Standard Oil Co. could very easily get along without the reseller in the Chicago market.

The above statement made by a Standard Oil official is nefarious insofar as dealer elimination may be concerned.

We believe that monopolistic pressure upon the small merchants in our industry should be the concern of governmental officials to ward off the forming of monopolistic power.

We have been informed that Mr. Blackall will appear before your committee investigating National Recovery Administration activities Thursday, April 11.

Appreciating any interest you may take in this matter, we remain,

Yours very truly,

CHICAGO SERVICE STATION OPERATORS' ASSOCIATION,
By HARRY F. RATHMAN, *Business Manager.*

Mr. BLACKALL. Gentlemen, that is in spite of the fact that the big block of their sales are made through their dealer representation.

The Standard Oil Co. of Indiana have no or few jobbers. Their policy is control from well to automobile gas tank. The Standard Oil Co.'s policies in the Central West are so important because they are the pace setter and market leader for the area and reflect general sentiment, and the work which has been done by the group making stabilization policies are their creations.

Despite desires of stabilization committees in many States to cope with trackage station prices, in the fall of 1934 the Standard Oil Co. Indiana created one of the worst and most vicious price wars in history by refusing any tolerance of them. Whether or not they are entitled to any is a question. Just as it is a matter of arbitration that unbranded dealers should be granted lower-price privileges at which to sell.

I want to submit to you a plan devised by a group of Indiana jobbers for dealing with this plan. This plan was just read at a meeting. It has possibilities. But instead of any solution being attempted, markets of a million gallons a month were broken as much as 6 cents a gallon to check 6 to 12 thousand gallons monthly of price-mutilated material.

After the price wars of last fall were over many hundreds of jobbers were in bondage hopelessly the victims of pay-back obligations to refiners who had protected them during the war so that later they could enter the ranks of peons.

The pay-back feature is a guarantee which the refiner gives to the jobber.

Senator CONNALLY. What do you mean? Was it a rebate?

Mr. BLACKALL. No; it was not a rebating. The pay-back feature is, the refiner protects the jobber preventing his extinction.

Senator CONNALLY. In other words, if the jobber has to sell at a lower price, then the refiner later on rebates him the difference?

Mr. BLACKALL. The refiner protects him so that he can protect his dealers and his business. That grows as a definite obligation. It is later to be paid back.

Senator CONNALLY. That is what I mean.

Mr. BLACKALL. That is correct.

Senator CONNALLY. If he sells them at 5 cents and later he finds that he has to sell at 3 cents, he has to give back the 2 cents.

Mr. BLACKALL. Yes, sir.

This plan was deliberately engineered and is covered in the minutes of January 4 and 5, inclusive. Free buying has been eliminated.

These payments become accumulated if a contract is canceled. If you have not got this $75,000 to pay off this pay-back obligation—well you have to pay it back or else. Many hundreds of businesses have been taken over in this manner.

And now is anticipated control of the dealer and a wonderful job is being done to exterminate him. To illustrate to you the determination to monopolize the oil business. The compilation of December 5-9 stabilization meeting shows 2,599 tank-wagon and service-station price adjustments made simultaneously. These were all made in private sessions and announced to employees and others interested in open sessions and announced to employees and others interested in open sessions, later, to be followed. I wish to show you the stabilization program of the Minnesota stabilization committee proposed to become effective Friday, August 31. At the time this was sent out Standard Oil Co. of Indiana had worked out price cuts for the whole State, which were made effective about the same time when the stabilization committees' changes were to be effective. You will find a vicious report condemning this action made by the jobbers' association president to the P. A. B., the Petroleum Administrative Board.

I wish to call your attention further to a report of September 12 by the Nebraska stabilization committee, in which the industry as a whole is neither considered nor consulted, regarding stabilization work in that State, but here again the selected few rule and direct and work nefariously.

I have tried to point out to you that all solely voluntary compliance codes in this industry have failed or have been perverted, and then ultimately have failed.

At the present time free competitive trade in the oil business is at its worst, having retrograded continuously for the past 6 months. Survival of a few and elimination of most is imminent even if more collusion is not resorted to.

A legislative investigation in Michigan resulted from substantial evidence that apparent irregularities violating the State antitrust statutes persisted. This investigation was voted by both branches of the legislature without a dissenting vote, so apparent was it that a conspiracy existed. I submit for your perusal the legislative House bill passed in Michigan authorizing this investigation.

This same resolution is being held back now in three other States awaiting possible Federal corrections. We hope for ouster orders.

In the Federal courts we intend to proceed along criminal lines for violation of the Clayton Act and also to prosecute for violation of the Fair Trade Practices Act.

We are skeptical that the divorcement of different branches of the industry can be legally accomplished but would like to see this made actually effective. It seems probable to us that any law of such nature could easily be circumvented some way, and the effect of same nullified.

The Blazer committee report states clearly and capably the conditions in the oil industry. That an immediate desperate emergency exists for many of the million engaged in the industry is true. The current condition prevails because forces in the industry have recklessly and illegally striven for a monopoly. The conspirators, fortunately, are about as groggy from the struggle as their victims and victims to be. However, more victims, if such proves to be true, and it will without your immediate help, have not some of the serious consequences facing them afterwards as now confront the alleged conspirators.

Senator KING. What is the Blazer report?

Mr. BLACKALL. It was a report made for a code survey. The members of that committee of five very substantial——

Senator KING (interposing). To whom was it submitted?

Mr. BLACKALL. It was submitted to the Petroleum Administrative Board. It was submitted to the Administrator and the Petroleum Administrative Board.

Senator KING. You may leave a copy of it.

Mr. BLACKALL. It is very comprehensive.

Senator CONNALLY. I would like to ask the witness a question. Are you through?

Mr. BLACKALL. I will be in another page.

Senator KING. Please hasten along because your time has expired.

Mr. BLACKALL. The Congress just passed the $5,000,000,000 emergency bill to take care of 3,500,000 workers and others.

The majority of the people in the oil industry are doing poorly in every sense. The return per man is the poorest on record for the industry. The status of individuals is the most uncertain.

It is known that there are many duplications of facilities; guaranties cannot be established to attract everyone and anyone into the industry, but with reasonable censorship of new facilities and fair judgment regarding things as they exist it is possible that the administrator can with the help of the industry, working honestly, and cooperatively protect the present investments, and the numbers of people engaged in the oil business. His directions, however, must be authorized by law.

This is economically sound to restrict further taxation, to earn and collect taxes on existing properties, to stabilize employment, and to retain purchasing power.

The ruthless psychology of "assassination" prevalent with those sitting in high places, using same for connivance in the industry must be curtailed. We are not yet ready for feudalism. A law of live and let live must be made effective.

I want to call your attention here to the fact that these relatively few "barons" of the industry are terribly poor custodians for stockholders' money and interests, judging by the published statements

for 1934 of many of this group of companies. I suppose that their belief is that the big pay-off will come later when competitive extinction has been accomplished and gasoline prices set according to their mighty wills. Referring again to the Blazer committee report and testifying to its truth regarding existing emergencies I would like to add that this report has little to do with the oil code as same has not been rightly effective since July 20, 1934. It does state the truth regarding industrial conditions.

I would like to refer to the Harrison Senate bill S. 2445.

In section 1 (c) in paragraph 1 change "rules" to "laws," is recommended: Add:

That in the oil industry the regulations developed and made effective by the oil administrator become laws for the duration of this act.

Section 1 (c), paragraph 3, make enforcement of fair competition obligatory.

Oil regulation: Section 9, the President by this act is authorized to declare the petroleum industry the public utility furnishing the Nation with power, lubrication, heat, and so forth, from an exhaustible natural resource, petroleum.

Production and refining quotas and allocations must continue to be surveyed and regulated, as is the case now. This makes marketing regulation too imperative.

Refinery prices of products shall be calculated by the administrator in reference both to costs and fair retail prices.

The Interstate Commerce Commission should immediately prescribe regulations of both oil and gasoline pipe lines and to fix tariffs equal to all shippers comparable with other means of making deliveries to all points eliminating discriminatory costs.

The regulation of the marketing branch of the industry shall be worked out by representatives of all branches of marketing appointed by the oil administrator. In session with him or the P. A. B. or his other representatives in several sections of the country, and said regulations may be published only by him. That is in contrast to, as at present, almost anybody issuing a regulation.

The regulatory measures issued by the administrator shall be in effect laws, violations of which are subject to the fines hereinafter stated in this act.

Additionally, we wish to point out that this measure ought to be taken out of this bill effective for only 2 years, and made permanent.

Senator KING. Cannot you put those recommendations in the record?

Mr. BLACKALL. I am through right here.

Senator KING. You have exceeded your time by 10 minutes which Chairman Harrison gave to you.

Senator CONNALLY. You advocate then the complete control of the oil industry from the well to the filling station?

Mr. BLACKALL. I do.

Senator CONNALLY. I mean, by making it a public utility and having the Government regulate prices, of course, of gasoline?

Mr. BLACKALL. That is correct.

Senator CONNALLY. And regulate all processes of production and refining and everything?

Mr. BLACKALL. Correct. There are only three measures open. There is either complete free trade which is now effective, eliminating everybody pretty near. There is Government regulation, or there are voluntary codes. I have cited to you that voluntary codes in our business have failed. Therefore we appeal to the Government.

Senator GORE. Pardon me, I was not here when you began. What is your name and whom do you represent?

Mr. BLACKALL. A. H. Blackall, Senator Gore.

Senator GORE. And where do you live?

Mr. BLACKALL. I lived in Tulsa a great many years. I now live in Evanston, which is outside of Chicago.

Senator GORE. Do you represent some organization?

Mr. BLACKALL. I represent a substantial group of organizations as a whole, and individuals, refiners, jobbers, and retailers.

Senator GORE. What I mean by that is, is it an organization that has an identity of its own and headquarters and offices?

Senator KING. You can answer that yes or no.

Mr. BLACKALL. I can say this. It is not an incorporated organization. It is an informal organization.

Senator GORE. If it is confidential I do not want to ask, but if you could compile a list supplementing your statement—could you do that?

Mr. BLACKALL. Briefly, Senator, they represent some 1,200 jobbers in the Central West.

Senator GORE. I do not want you to file that list, of course. Do you represent oil-producing companies?

Mr. BLACKALL. I do not represent any production companies. I represent refiners, jobbers, and retail organizations and individuals.

Senator GORE. Perhaps you can list the refiners. I just want to get a sort of bird's-eye view. Are you an attorney yourself?

Mr. BLACKALL. I am not a licensed attorney. I am a jackleg lawyer.

Senator GORE. There is only one other question. I was wondering if your counsel or legal adviser had advised you that the President, nor even Congress could impress the oil industry or clothe it with a public interest. My point is—I do not want to confuse you, Mr. Blackall, but my point is that the Supreme Court has decided that that question is a question of fact and not a question of law. In the *New State Ice Co. case*, which came up in Oklahoma and was decided about 2 years ago, that was the point in the decision, whether an industry is clothed with a public interest, that question is a question of fact and not a question of law. The legislature of Oklahoma had declared that the ice business was clothed with a public interest, and the Supreme Court held that it was not. The legislature made that legislative declaration as a basis for regulating the price of ice. That is what I had in mind. But if you are not familiar with it——

Mr. BLACKALL (interposing). I am not familiar with that case.

Senator CONNALLY. Are you yourself engaged in the oil business?

Mr. BLACKALL. I just stepped out of the oil business, Senator, which was losing $4,500 a month.

Senator CONNALLY. A refining business?

Mr. BLACKALL. Jobbing.

Senator CONNALLY. What do you mean by that? A wholesale dealer in gas and oils?

Mr. BLACKALL. Yes; that is correct. The other people now are losing considerably more.

Senator BARKLEY. You stepped out of it none too soon.

Mr. BLACKALL. Unquestionably.

Senator BARKLEY. What is the name of your organization or the association you represent?

Mr. BLACKALL. It has not got any name.

Senator BARKLEY. No name?

Mr. BLACKALL. It is a group of organizations.

Senator BARKLEY. Have any of the groups names?

Mr. BLACKALL. Yes.

Senator BARKLEY. Where is the headquarters?

Mr. BLACKALL. In Chicago.

Senator BARKLEY. At what place?

Mr. BLACKALL. At my home, 720 Mulford Street, Evanston. That is where I operate from.

Senator BARKLEY. Have you any letters indicating your authority to represent these groups?

Mr. BLACKALL. I appeared here so hastily, Senator, that I did not get a signed petition. I can present a signed petition representing a great many thousands of different groups and individuals.

Senator BARKLEY. It might be a good idea to file with the reporter a list of those you represent, together with the authority that you have from them. If I understand you, with the suggestions that you make here, you are for the Harrison bill?

Mr. BLACKALL. I would like to see the Harrison bill go one step further, as I have outlined, if I might make that recommendation.

Senator BARKLEY. That is with reference to making the oil business a public utility?

Mr. BLACKALL. Right.

Senator GORE. And to make the rules and regulations of the administrator laws.

Mr. BLACKALL. They must be, Senator; otherwise, as has been the case in all voluntary oil codes, they must disintegrate and degenerate.

Senator KING. That is all.

Senator CONNALLY. Just one other question. Under your scheme of making it a public utility, the Government would fix the price at which the wholesaler would buy it and also fix the price at which he would sell it?

Mr. BLACKALL. That is correct.

Senator CONNALLY. It would then have to regulate the profits, would it not? Control the organizations and the wholesalers?

Mr. BLACKALL. It would have to, through the organization of the entire industry.

Senator KING. And prevent the States from levying taxes on the sale of gasoline? Some States have a 1-cent tax per gallon, some 2 cents, and some 7. I suppose you would deny the States the right to impose a tax?

Mr. BLACKALL. No Senator; the State tax problem would not come into this regulation at all. This would be a matter of organization and distributing expense.

(The following documents were submitted in connection with Mr. Blackall's testimony:)

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 20, 1934.

Mr. C. E. ARNOTT,
Chairman Marketing Committee and Planning and Coordination Committee, Washington, D. C.

MY DEAR MR. ARNOTT: It has been brought to my attention that the market for gasoline and other petroleum products has recently been disturbed by numerous price wars in many different localities and States. This has resulted in causing petroleum products to be sold below cost in some areas in order to meet unrestrained competition and has in turn depressed the wholesale market for such products, thereby leading to the building up of surplus and to the economic and physical waste consequent thereon.

Such conditions have a strong tendency toward, and in many instances have resulted in, the payment of wages below the minimum established by the code and in the working of employees for a period beyond the maximum hours provided for by it. Furthermore, price wars necessarily injure small independent marketers, who are unable to dispose of their products profitably when prices sink to ruinous levels. It would appear, therefore, that we are faced with conditions which would, if uncontrolled, tend to frustrate the purposes of the National Industrial Recovery Act by increasing unemployment, reducing standards of labor, and preventing the rehabilitation of industry, which the act was intended to achieve.

Under article VII, section 3, of the code it is the duty of the planning and coordination committee to cooperate with the Administration as a planning and fair-practice agency for the industry. I am, therefore, requesting you, as chairman of the marketing committee of the planning and coordination committee, to take action which we deem necessary to restore markets to their normal conditions in areas where wasteful competition has caused them to become depressed. The number and extent of these situations would make it impractical for the Petroleum Administrative Board, acting alone, to deal with each specific situation.

Therefore, I am requesting and authorizing you, as chairman of the marketing committee, to designate committees for each locality when and as price wars develop, with authority to confer and negotiate and to hold due public hearings with a view to ascertaining the elements of conflict that are present, and in a cooperative manner to stabilize the price level to conform to that normally prevailing in contiguous areas where marketing conditions are similar.

Any activities of your committee must, of course, be consistent with the requirements of clause 2 of subsection (a) of section III of the act; and if in any situation it should appear that this section is not being complied with, the matter should be referred to the Petroleum Administrative Board.

I trust that I can count on your cooperation.

Sincerely yours,

HAROLD L. ICKES,
Administrator of the Petroleum Industry.

CODES OF FAIR COMPETITION

Clause II, section 3 (a). 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 subdivisions 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: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors,

employees, and others, and in the furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Enclosure for G. L. no. 172.

OCTOBER 27, 1934.

DEAR SIR: Referring to the announcement given the newspapers for release on October 29, 1934, copy of which is attached.

The industry in region 3 (excluding Kentucky and including the entire State of Kansas) will be governed by the following:

1. Effective December 1, 1934, all reseller agreements, authorized agents' agreements and dealer arrangements of any type or description (other than company-owned of long time leased stations, leased out) will be canceled or changed to the basis described below. These margins, discounts, or commissions are to be over-all, all-inclusive. There is to be no cash-rental understanding on the outside, or any outside understanding. If there is a flat, cash or gallonage rental involved a compensating change or adjustment must be made to bring the total over-all margins, including rentals and commissions to the basis given below.

Dealer margins or discounts, effective Dec. 1, 1934

	Third grade	House-brand	Ethyl
	Cents	*Cents*	*Cents*
Maximum (over-all) margin	2½	3½	3¼
Minimum (over-all) down stop margin	2	3	3

PROVISIONS IN CONTRACTS

The following three paragraphs must be incorporated in each dealers, agents operating under lease and license, lease and agency and all other forms of dealer sales contracts when the present agreements are renewed and are to be contained in every new agreement executed after November 1, 1934. The fourth paragraph may or may not be used at the option of the supplier in said agreements. It is understood that if verbiage supplied by the legal departments of the supplying companies clearly accomplishes the same purposes covered by the four paragraphs following, such verbiage may be used but this must not be used in any way so as to defeat the meaning contained therein: Purchaser agrees to pay to the seller for_____gasoline, _____gasoline and_____gasoline the seller's posted service-station price therefor, less seller's posted discount to dealers.

As herein used, the words "Seller's posted service-station price" means the seller's gross service-station price for the product sold and delivered hereunder, as posted and displayed at seller's bulk plant from which deliveries hereunder are made from time of delivery, without deduction of any allowance and/or discount in effect at time and place of delivery.

As herein used the words "Seller's posted discount to dealers" mean seller's prevailing regular discount to dealers of purchaser's class for the product sold and delivered hereunder and as posted and displayed at seller's bulk plant from which deliveries hereunder are made, at time of delivery in respect to the point of delivery.

Provided, however, that if and when seller's posted discount to dealers on any product herein mentioned is changed, purchaser reserves the right to cancel and terminate this contract on written notice to seller given within 10 days after the effective date of such change.

2. THE EFFECTIVE DATE OF THE FOREGOING SCHEDULE IS DECEMBER 1, 1934

Regardless of the time specified in contracts as to the companies' cancelation or change privileges, whether it be 24 hours, 5 days, 10 days, or 30 days, every notice of cancelation or change must be deposited in the post office of the United States Post Office Department not later than November 1, 1934. This places all marketers on exactly the same basis. This is very important and it is the duty of

all marketers to see that these notices are deposited not later than November 1, 1934, as effective December 1, 1934.

The committee further recommends that the operations effected as outlined above will not be limited to the marketers' own operations, but will continue through their dealer and jobber operations and each marketer will see to it that his jobbers conform thereto.

3. The committee recommends that the attached notice will be mailed to each holder of any reseller agreement, or authorized agents agreement, or dealer arrangements of any type or description (other than company-owned or long time leased stations, leased out). You will note that the attached letter of cancelation carries an option A and an option B. Option B will be inserted in the third paragraph of the letter in place of option A in the event the supplier desires to use that form of expression. However, some suppliers have contracts or agreements, the provisions of which, pertaining to discounts or margins, may be changed without the cancelation of the said agreements, consequently in that event the supplier is not required to cancel such existing agreements, but must, however, notify the holders of such agreements on November 1, 1934, using either option A or B and changing the phraseology of the last sentence of the second paragraph and all of the third paragraph of the letter of cancelation attached hereto, to provide the mechanics of accomplishing the same ends insofar as their particular form of agreement is concerned.

4. The committee is not in a position at this time to make a definite recommendation to the industry in region 3 as to the matter of jobber contracts and the relationships, however, this shall be the first order of business at an early meeting of the stabilization committee.

5. The moratorium now in effect which expires on October 31, 1934, will not carry on beyond that date. It will, however, be a subject for discussion at a subsequent meeting of the stabilization committee for this region. At the same time so-called "rules of the game" will be discussed.

6. The stabilization committee urgently recommends that you cooperate in this movement which is designed to accomplish stabilization. I deem it highly important that you advise me by telegram at 26 Broadway, New York City, at or before 10 a. m. on October 30, 1934, as to your concurrence and cooperation in this recommended stabilization program.

Yours very truly,

C. E. ARNOTT,
General Chairman Stabilization Committee.

REGION NO. 3, EXCEPT OHIO AND KENTUCKY; REGION NO. 4, KANSAS ONLY

GENERAL STABILIZATION COMMITTEE,
Chicago, Ill., January 4 and 5, 1935.

SALES TO CUT-PRICE MARKETERS

Inasmuch as some doubt had been expressed as to the acceptance by the industry of the following recommendation of the general chairman, which was outlined as item no. 6, December 5 to 9, 1934, the subject was further discussed and found to be acceptable. The recommendation follows:

"Concerning sales to cut-price marketers, recommendation concurred in by group 1 (major brand) refiners, effective January 1, 1935, to the effect that selling to this type marketer was destructive and against stabilization efforts."

UNIFORM COMMISSIONS FOR BULK AGENTS

This subject appeared as item no. 9 in the December 5 to 9, 1934, memorandum. It is the recommendation of the general chairman that this matter be given further intensive study by the committee appointed.

TANK-CAR GASOLINE MARKET

At the recommendation of the general chairman, a committee was appointed to study the subject and report back their findings to the general chairman. Independent refiners have been unable to recover the price of crude; therefore, a study is to be made to determine if stabilization committee can make recommendation to alleviate refiners' situation.

NEW RETAIL OUTLETS

The general chairman asks that the industry individually consider the advisability of restricting their extension of retail outlets so that the subject may have further discussion at a later date.

ADVERTISING

The general chairman recommended that the subject matter of advertising and type of price signs should receive consideration so that unwarranted and superlative claims may be eliminated and a more acceptable procedure followed. A committee of three will be appointed to act with the Chicago representative of the general chairman of the stabilization committee, to review current advertising.

COMMERCIAL CONSUMER DISCOUNTS

The question of an additional bracket on the tank-wagon contract to apply to large consumers was discussed, and it is the recommendation of the general chairman that no additional discount bracket be placed into effect; further, that no additional discount bracket be adopted under any circumstances by any supplier without first notifying the general chairman. The eastern schedule of discounts is not to apply in this area when combined in contract.

DEALER MARGINS

Inasmuch as there had been indications that this matter had not received the full support of the industry, it was further discussed, and the general chairman was assured of the full support of the industry on this matter.

MICHIGAN SITUATION

Michigan gasoline buying program.—This program will be deferred until February 1, 1935, giving additional time for study of this subject.

Jobber control.—The following item, which appeared as no. 7 in December 5 to 9, 1934, memorandum, was discussed and recommended for application to Michigan:

"It was the unanimous recommendation of group 1 (major brand) refiners that each sales executive should take upon himself the personal responsibility of seeing that his jobbers operating outside his marketing area, operate according to the recommended general stabilization program. Group 3 refiners did not express themselves; however, it is hoped that they will do likewise."

Yours very truly,

C. E. ARNOTT,
General Chairman Stabilization Committee.

JANUARY 5, 1935.

JOBBER CONTRACTS

The moratorium expiring January 11, 1935, which provided that no new jobber contracts would be written in depressed price areas, was not renewed, due to the lack of unanimity.

A committee will study the matter of guaranteed margins.

PLANNING AND COORDINATION COMMITTEE FOR THE PETROLEUM INDUSTRY

Marketing committee:
A. G. Maguire, chairman.
P. J. Martin, secretary.

GENERAL STABILIZATION COMMITTEE

CHICAGO, ILL., *December 5, 6, 7, 8, and 9, 1934.*

The following matters were finalized and recommended to the industry for application in region no. 3, except Ohio and Kentucky, and region no. 4, State of Kansas only.

1. Action of general stabilization committee at Chicago, November 26 and 27, 1934, was again ratified, and the general chairman recommends to the industry that each detail of the plan outlined and discussed be followed in every par-

ticular. Minutes of the November 26 and 27 meetings have been generally distributed to the industry; however, if additional copies are required they will be supplied upon request.

2. *Price posting.*—Price posting forms will be furnished to jobbers by suppliers, in order to effectuate the price-posting provisions.

3. *Employ two stabilizers.*—The general stabilization committee will employ two men, well qualified as to leadership and acceptance in the industry, to act as field representatives, assisting Mr. C. E. Arnott. One will be stationed at Chicago, Ill., and one at Tulsa, Okla. The general chairman will make the selection and appointments after conference with various interests in the industry.

4. *Stabilization of markets.*—State stabilization meetings were decided upon and field representatives were brought to Chicago together with each State stabilization committee, for meetings as follows: Iowa, Friday, December 7, 1934; Illinois and Indiana, Saturday, December 8, 1934; Kansas and Missouri, Sunday, December 9, 1934; and Minnesota, North Dakota, South Dakota, Monday, December 10, 1934.

Recommendations for the respective States were approved by the general chairman of stabilization and the proper instructions were issued in connection with these recommendations to the State stabilization committees interested.

5. *Octane rating, third-rate gasoline.*—The octane on third-grade gasoline for resale or for tank wagon delivery shall not exceed 56 with a tolerance of 1 (maximum of 57 with no tolerance). No objection to selling higher octane gasoline to industrial accounts for their consumption, tank-car delivery. It is recommended that in advertising third-grade gasoline there shall be no reference made to octane values. The industry is urged to make the foregoing effective January 1, 1935.

6. *Sales to cut-price marketers.*—Concerning sales to cut-price marketers recommendation concurred in by group 1 (major brand) refiners effective January 1, 1935, to the effect that selling to this type marketer was destructive and against stabilization efforts.

7. *Jobber control.*—It was the unanimous recommendation of group 1 (major brand) refiners that each sales executive should take upon himself the personal responsibility of seeing that his jobbers or distributors operating in his market area, operate according to the recommended general stabilization program. Group 2 refiners did not express themselves; however, it is hoped that they will do likewise.

8. *Five-year noncancelable leases on existing dealer facilities.*—For a period of 90 days from Tuesday, December 11, 1934, the following arrangement is recommended:

No lease agreement or other contract will be made whereby any rental for the leasing, use, or coperation of any premiums, improved in whole or in part, with any filling station, building, or facilities where competitive gasoline is now being sold. In other words, this means that the only basis on which a company may solicit a competitive resale account shall be on a straight sales contract in accordance with the official posting of price and discount at the bulk plant of supplier.

Companies shall not convert any arrangement with a retail dealer of its own now involving rental payments to any arrangement involving rental or lease.

Companies may renew leases with existing retail outlets.

There is no prohibition against the practice of leasing new retail outlets where gasoline has not been previously sold. If parties not participating in the stabilization movement attempt to secure accounts from those who are participating, either by giving rentals or by giving margins in excess of the present supplier's officially posted dealer margins, the present supplier shall have the right to protect such business by entering into a lease agreement.

9. *Uniform commissions for bulk agents.*—The subcommittee were unable to bring in a recommendation. This matter will require further study.

10. *Michigan crude oil and gasoline situation.*—In the hands of special committee for further study.

11. *Michigan marketing problems.*—(a) Sales to cut-price marketers: The general chairman questioned whether all companies should discontinue selling to cut-price marketers, not only direct, but also through their jobbers, the supplying company assuming the obligation to control its jobbers. The general chairman recommended that such a policy be followed.

(b) Dealer margins: This matter was discussed and will be brought before the committee at some future date.

(c) Commercial consumers. The present commercial consumers' policy and CD–1 discounts should be continued in Michigan until further notice. Government bids should be made no the same basis as heretofore. Cross-country con-

tracts originating in Michigan should remain in effect until a further decision is reached.

(*d*) Tank-car bids to Federal Government in Michigan: The same basis should be used as recommended for the balance of the area and outlined in special meeting on the commercial consumer policy December 7, 1934, using a 25-percent top on group 3 basis. (See item no. 2 (*a*) "Tank-car deliveries" of December 7, 1934.)

(*e*) Third-grade gasoline in Detroit: It is recommended that the present policy of not quoting on or posting a tank wagon price on third-grade gasoline in Detroit be continued. The only exception to this is on bids to Federal Government in which cases third grade may be quoted on.

Yours very truly,

C. E. ARNOTT,
General Chairman Stabilization Committee.

MEETING OF GENERAL STABILIZATION COMMITTEE

CHICAGO, ILL., *December 7, 1934.*

The order of the Petroleum Administrator, Harold L. Ickes, dated November 28, 1934, canceling Commercial Consumer Discount Contract Form CD–2 and contract form CD–1 in regions 1, 2, 3, and 4, as well as the order of February 20, 1934, together with all other orders approved on or after February 1, 1934, interpreting, amplifying, conditioning, and/or relating to the said order of February 20, 1934, or to sales of gasoline and/or other motor fuel (excluding kerosene, furnace oil, distillate, tractor fuel, or Diesel fuel) to commercial consumers on a contract quantity basis under article V, rule 3, paragraph 7, was discussed.

The following procedure for region no. 3 with the exception of the States of Ohio and Kentucky, and region no. 4 in the State of Kansas only is recommended to the industry by the general chairman of the stabilization committee, it being understood that products other than gasoline and/or other motor fuel are not covered by the order.

TANK-WAGON DELIVERIES

1. All tank-wagon deliveries to other than governmental units should be according to the procedure outlined in the minutes of the stabilization committee dated November 26 and 27, 1934.

2. Sales and quotations or bids to the United States, or any agency thereof, or to any State or Territory or political subdivision or agency thereof, or to any municipality should be handled according to the following basis:

(*a*) The United States Government and agencies thereof: These bids and quotations should be made for the period specified in the bid. The tank-wagon price posted at the time of delivery in respect to the point of delivery should be quoted, less applicable discount if the bid calls for quantity in excess of 1,000 gallons per month. The discount may be given at time of delivery. A top price may be bid which is not lower than the normal price in effect at time bid is made, less applicable quantity discount.

(*b*) The States and political subdivisions thereof, excepting the State and county highway commissions: These bids and quotations should be made for a period not longer than 30 days (unless no top price is made). The tank-wagon price at the time of delivery in respect to the point of delivery should be quoted less applicable discount if the bid calls for quantity in excess of 1,000 gallons per month. The discount may be given at time of delivery. A top price may be bid which is not lower than the normal price in effect at the time bid is made, less applicable quantity discount. If no top price is involved in the bid, the period may be not longer than 1 year.

(*c*) The State and county highway commissions: These bids and quotations should be made for a period of not longer than 1 year with the tank-wagon price posted at the time of delivery in respect to the point of delivery being quoted, less applicable discount if the bid calls for quantity in excess of 1,000 gallons per month. No top or flat price should be bid.

(*d*) Counties and municipalities and agencies thereof: The tank-wagon price at time of delivery in respect to the point of delivery should be quoted less applicable discount if the bid calls for quantity in excess of 1,000 gallons per month. A top or flat price may be bid for a period not longer than 30 days, which is not lower than the normal price in effect at the time bid is made, less the applicable quantity discount.

TANK-CAR DELIVERIES

1. All tank-car sales and deliveries to other than governmental units shall be made with guaranteed prices being limited to 10 days; thereafter, the seller's posted tank-car price shall govern. The use of form CD–2 shall be discontinued.

2. Sales and quotations or bids to the United States, or any agency thereof, or to any State or Territory or political subdivision or agency thereof, or to any municipality will be handled according to the following basis:

(a) The United States Government and agencies thereof: These bids and quotations will be made for the period specified in the bid. The current tank-car posted price in respect to the point of delivery will be quoted with a top price which shall be ascertained in the following manner: From the delivered price, excluding tax, at point of destination on date of bid should be subtracted the full rail freight from group 3 to destination, thus arriving at the group 3 net-back. To this group 3 net-back should be added an amount equal to 25 percent thereof, and to the sum so obtained shall be added freight from group 3 to point of destination, plus applicable taxes.

(b) All States and political subdivisions thereof: These bids and quotations shall be made with guaranteed prices being limited to 10 days; thereafter the seller's posted tank-car price shall govern.

SERVICE-STATION DELIVERIES

1. The order of the Petroleum Administrator dated May 26, 1934, pertaining to service-station deliveries to all governmental agencies is still in effect. This order permits a top price to be bid for a period not exceeding 3 months which is not lower than 25 percent more than the posted price in effect on date bid is made.

2. All other bids, quotations, and contracts pertaining to service-station deliveries shall be made at the posted service-station price without discount. No top price may be bid.

Yours very truly,

C. E. ARNOTT,
General Chairman Stabilization Committee.

Budgets' marketing committees—region no. 3

	1933–34 yearly over-all budget	1933–34 regional portion	1934–35 regional portion	1934–35 over-all total
Chicago	$10,000.00			$11,000
Illinois	22,800.00	$9,200	$7,807	23,007
Indiana	19,250.00	4,050	3,481	20,991
Iowa	17,420.00	3,450	2,965	18,635
Kentucky	11,975.00	1,550	1,369	11,514
Michigan	25,702.46	7,150	5,945	28,125
Minnesota	20,129.20	4,150	3,192	20,492
Missouri	26,050.00	4,550	3,669	20,819
Nebraska	15,250.00	1,850	1,627	13,157
North Dakota	12,900.00	1,000	732	13,552
Ohio	38,830.00	8,250	7,190	30,710
South Dakota	11,100.00	1,000	798	10,598
Wisconsin	16,390.00	3,800	3,175	16,115
Total	248,476.66	50,000	42,000	238,745

JUNE 18, 1934.

To: Committee members, Marketing Division, Regional District No. 3.

Re: Regional Committee Personnel. Subcommittee to Study Jobber and Dealer Margins in Proposed Marketing Agreement.

The marketing committee of the planning and coordination committee, Washington, appointed the following subcommittee to study the question of jobber margins and dealer margins in the proposed marketing agreement:

E. V. Weber, chairman Eureka Oil Co., Amity Road, Cincinnati, Ohio.

F. V. Bakeman, Eastern States Conference of Independent Oil Dealers Association, 107 Monmouth Street, Red Bank, N. J.

J. W. Carnes, Sinclair Refining Co., 45 Nassau Street, New York City.

R. D. Leonard, Atlantic Refining Co. 260 South Broad Street, Philadelphia, Pa.

The following have been appointed as a subcommittee to study this question as it applies to this regional marketing district:

A. H. Sus, Sinclair Refining Co., 2540 West Cermak Road, Chicago, Ill.

Edward Conners, Chicago Service Station Operators Association, 106 East Seventy-ninth Street, Chicago, Ill.

J. M. Cushman, International Oil Co., Des Moines, Iowa.

Elwin E. Hadlick, Northwest Petroleum Association, 664 Builders Exchange, Minneapolis, Minn.

D. E. Lavin, Shell Petroleum Corporation, Shell Building, St. Louis, Mo.

R. H. McElroy, chairman Pure Oil Co., 35 East Wacker Drive, Chicago, Ill.

Very truly yours,

REGIONAL PLANNING AND COORDINATION COMMITTEE NO. 3,
By A. G. MAGUIRE, *Chairman for Marketing.*

DECEMBER 5, 1934.

To: Refinery Stabilization Committee, Petroleum Industry.

GENTLEMEN: We are here in response to and in appreciation of your invitation as representatives of the Chicago Service Station Operators Association on behalf of the resellers of advertised brands in the metropolitan area of Chicago.

It is not our intention to consume much time in survey of the conditions of the retail gasoline market in this area as it has existed for the past 16 months under the National Recovery Administration. Every member of this committee is well aware of wide-spread evasion of the code and the apparent inability of the National Recovery Administration and the committees created under it to cope with those violations.

We know what the situations in this retail market are; we know too that unrestricted violations of the code, unfair trade practices, and flagrant abuses have brought about the conditions of which the retail dealer suffers. We are not here to bring an indictment on anyone, nor to find fault. We refer briefly to the facts, with the hope we may find at least partial remedies in light of those facts with your generous cooperation and sympathy.

We rest on the assumption that the oil companies have no wish nor intent to drive the independent dealer from the field; we do not believe such an intention would benefit the community nor bring greater profits to the oil companies. We rest on the assumption that the independent dealer is necessary to the welfare of the oil industry. On these assumptions—that there is no intention to drive the independent dealer from the market—we wish to present facts and figures to show that the oil companies are unwittingly doing that very thing.

WHAT IS THE CAUSE OF REDUCTION OF DEALERS' MARGINS?

The answer is (1) decrease in price to the public necessitated by competition of independent off-brand gasoline, and (2) that the dealer can thrive on the reduced margin. Without wishing to tire this committee by delving into intricate calculations, we wish to touch upon these two points:

Point 1. The attempt to eliminate the trackside operator by reducing retail prices will doubtless fail. The Government recognizes the economic advantage to the public of the trackside station supplying gasoline at a reduced figure. This phase has had wide airing in the past 2 years and I believe we are sound in saying that the industry, the public and the Government have recognized the economic justice of the trackside'r's claim to the benefit of a differential. This differential we should like to fix at one-fourth cent, as a basis of settlement of further industrial price wars. It seems clear to us that while the off-brand competitor locks horns with the branded gasoline, we, the independent dealers who are mere disinterested onlookrs, are nevertheless the chief sufferers. The sword is thrust into the independent dealer in a fight which we have no part in. As we feel the edge of the sword we are inclined to say, "A plague on both your houses!"

An examination of the facts and figures with reference to the position of the off-brand gas and the branded gas will disclose that the competition makes little, if any, inroads on the gallonage on the branded gasoline.

There are, approximately, 150 off-brand outlets in Chicago, with approximate gallonage of 5,000,000, as against approximately 50,000,000 of branded gas. An examination will disclose that that unbranded gallonage has a tendency to diminish, even under favorable marketing conditions. For instance, taking our figures from Illinois Gasoline Tax Data, we find that for the month of July 1934 branded

gasoline shows an increase of 2.6 percent as against the gallonage of July of the previous year, whereas the off-brands show an increase of 1.6 percent; August 1934 shows a gain of 3 percent for branded as against a loss of 12 percent for off-brands. Through the months of normal retail prices there is a favorable gallonage loss or increase for the branded gas. It therefore cannot be argued that price reductions were necessitated by competition of the off-brands.

On the second point, the oil companies have even less ground to rest. During the month of May 1934 the members of this and other dealers' trade associations supplied cost sheets which showed clearly the need for a margin in excess of 4 cents. Those were required by the Department of Interior and were prepared under its direction and on blanks supplied by the Government. It is true that comparatively few of the cost sheets were filled out and supplied.

This was partly due to the harassed condition of the retailer during the early days of depression; and partly to the intricate questions propounded. Many of our dealers are not college graduates and found the sheet something to conjure with. Nevertheless, the dealers in this area supplied a large quota of these figures and they reflect the true state of affairs in this market. It must be borne in mind that the costs of this market, that is, metropolitan costs, are a thing apart from rural costs. Such items as salaries and wages, governed by unions, high land rentals, higher insurance, and burdensome licenses, various fees for inspection, etc., taxes, lights, and many undefined and unrecorded charges, which the dealers in the metropolitan area must meet, and which touch the rural dealer but lightly, if at all.

Now, gentlemen, we must assume again that the situation of the dealer is to be held in mind. We believe firmly, and believe that you will agree with us, that it is to the interest of the oil companies not to prolong a condition which will force the dealer to bankruptcy and ruin. We submit that the inroads of the unbranded gas is largely due to pressure upon the dealer. The dealer resorts to inferior and unbranded gasoline only as a grim alternative, in most instances. The high costs of a metropolitan dealer must not be overlooked in granting him his margin. For instance, this reduction of 25 percent of his gross income brings the dealer face to face with ruin. Do you know that the majority of dealers do not have a net residue for their own living of as much as 25 percent of the gross margin? If 4 percent is inadequate, as it has firmly been proven, how can he survive on 3 cents?

Finally, we appeal for cooperation and ask that a sliding-scale arrangement on margins with a 5-cent maximum be established here.

The present reduction in dealers' income cannot be defended on economic grounds. All who run may read the cost figures as daily published in the Journal of Commerce. Crude-oil prices were and are constant. That is also true of refining costs; of transportation, inspection, taxes, and all other integral costs. All these costs, reflected in the figures in the Journal of Commerce, have been practically, if not wholly, unvaried. The dealers' operating costs have been likewise constant and stubborn. What, then, is the reason for the slash in dealers' margins? We have already touched upon the fluctuations in consumers' prices. We are, in reality, not concerned about consumers' prices and do not wish to delve into what isn't our affair. But we do insist that the cut in dealers' margins has nothing to recommend it either from an economic standpoint or from a business policy. We are here, as I said at the outset, on behalf of the gasoline retail dealers in this trade area. They are awaiting your message. They must know at once if and when they will get relief.

The substantial dealers cannot be answered by pointing to premiums and discounts. These features are but additional burdens and annoyances to them. To answer us in that fashion is as if a surgeon would order a man's leg amputated as a correction for ulcers of the stomach. We are as eager as you to eliminate disruptive trade practices. We cannot more be blamed for their persistence than you can, even less, as we are eager to eradicate them, and we have thus far been denied your support in correcting the evil.

Again we do not come here to quarrel or find fault. We believe that it is to our mutual best interest to cooperate—and it is for cooperation that we are here to plead.

We should like once for all to avoid having tossed at us the responsibility for marketing conditions in the retail field. I have reference to the granting of premiums, prizes, and discounts. That situation was practically cleared up in this market with the advent of the code. But the Waggoner outfit took advantage of the dealers' compliance with the code.

The code was a boon to the Waggoner stations. The mounting gallonage of the organization will attest to the benefits reaped. Nevertheless, the dealers hewed to the line in the hope that the promises of the oil companies and the committees might bring relief. When we found no relief forthcoming, we caused a suit to be brought before the Federal court. But the law appears to be against us, and Waggoner continued his practices unabated. With that situation we could not longer control the practice in various sections of the city. Our appeals to the oil companies for assistance were and are without avail.

We say this to you, that if you, the oil companies, really desire to stop the premium and discount evil, it can be done, and we can prove to you that it can be accomplished.

We have always stood ready, and do now, to assist in every possible way to stabilize this market. We have had satisfactory results until the Barnes decision. Had it not been for that decision, we would have cleaned up the market completely. But in view of that decision we must have your help. With your help we can succeed. Some of us have suspected that for some reason or other the oil companies are disinclined to help stabilize the market, that they were even gainst stabilization. Be that as it may, we know that it can be accomplished with the cooperation of the oil companies.

Planning and Coordination Committee for the Petroleum Industry, Aug. 1, 1934—Indiana stabilization plan

	Population		Population
Anderson	50,504	Lafayette	26,210
Bedford	13,208	LaPorte	15,755
Bloomington	18,227	Logansport	18,508
Connersville	12,195	Marion	24,496
Crawfordsville	10,365	Michigan City	26,735
East Chicago	54,784	Mishawaka	28,630
Elkhart	32,949	Muncie	46,548
Elwood	10,685	New Albany	25,819
Evansville	102,249	New Castle	14,207
Fort Wayne	114,946	Peru	12,730
Frankfort	12,106	Richmond	32,493
Gary	100,426	Shelbyville	10,618
Goshen	10,397	South Bend	104,193
Hammond	64,560	Terre Haute	62,810
Huntington	13,420	Vincennes	17,564
Indianapolis	364,161	Whiting	10,880
Jeffersonville	11,946		
Kokomo	32,843		1,497,877

PLANNING AND COORDINATION COMMITTEE FOR THE PETROLEUM INDUSTRY

Marketing committee:
A. G. Maguire, chairman.
P. J. Martin, secretary.

A SUGGESTED PLAN FOR STABILIZATION

The attached plan for stabilization in Indiana is presented with the following thoughts in mind:

(a) Any plan placed in effect must have uniformity as relating to cities of equal size.

(b) There is no particular credit due a stabilization committee for lowering prices or for stabilizing on a subnormal basis.

(c) Any plan placed in effect must be thoroughly understood by all factions and all marketers.

We have grouped on another page all of the cities in Indiana with a population of 10,000 or over, and find that we have 34 falling in this classification, with a total population of 1,487,877, or approximately 45 percent of the total population of the State.

In all of these cities the following schedules would be placed in effect:

Major companies, third grade, regular; ethyl, normal; 1 cent above.

Trackage, one-half below; 1 cent or more above.

In the event that trackage or cut-price merchants in cities over 10,000 population reduced the markets below the normal schedule, then the majors would immediately meet grade for grade and price for price until such time as all of the offenders should appear before the price-stabilization committee and there be given consideration. Stabilization of markets should always be done on the basis of the "normal" for the State.

IN TOWNS ABOVE THE 10,000-POPULATION CLASS

Let us first consider the cities of more than 10,000 population. In effect the major position would be this: Mr. Price Cutter and Unbranded Merchant, we are going to meet within one-half a cent the lowest price posted in this city. We would naturally like to get the very top price, but when we do, we are going to be certain that you get within one-half a penny as much for your merchandise as we do for ours. And we are willing to go as low as you wish, but when you arrive at the point where you are giving your merchandise away, we will be getting at least a half cent per gallon for ours.

This plan would have the effect of banding all price cutters together and the group would always be working on the lowest price merchant to get him to stay in line.

Most people judge quality largely on price. The immediate effect would be to place the price cutters at a disadvantage.

It may be argued that the price cutters give a better quality. Under the present system of staying right on their market you tell the public virtually this: Our standard brands are just as good as the price cutters. Why not change this and be able to say: Our goods are better than the price cutters and we get more for them.

If price cutters are not allowed to get as much for a gallon of gas as the majors, the natural reaction in the world is to reduce quality. The most natural reaction in the world is for the price cutter to think: 'Why should I give equal quality when I don't get the full price?

The program in the larger cities would give to majors the long-lost argument of quality, which combined with more convenient locations and nationally advertised products should give them more than an even break.

Honesty of purpose would be a big factor and once the plan is laid down it is vitally necessary that any "Saturday special" or low price be immediately met, even though the gallonage is not large. That is the only way you can secure the desired result of having all the price cutters banded together to hold up the price.

In towns of under 10,000 population a different picture is presented. Cut-price merchants have better locations, as a rule, and it is not necessary to go down in the railroad section to secure their product. Word-of-mouth advertising gets about more quickly; and the only advantage that would be given the price cutter would be his argument of better quality.

However, he would only have this argument just so long as he retained a normal price posting to compare with the third-grade price of the majors.

To attempt to adjust each individual market on local conditions is more of a task than can be accomplished. To adjust on one basis in one town and on still another in some other town of equal size is not logical. Already the price cutters have learned that in order to get a price advantage they must make themselves marketing pests.

In short, the attitude of the majors in the past has been to place a premium of bad practices of price cutters.

The stabilization program should be known to every marketer in the State by holding meetings in every section. Once the program is announced and explained to all interested marketers, then a date should be set for carrying it out. All markets should be restored to normal, and then if reduced by the price cutters, it should be promptly met at each town.

Most price cutters are banded together on their buying program. Therefore, when in cities of equal size you have different schedules, all know of the differentials and also know that to obtain a wider differential they only have to persistently cut the market.

It has been proven time and again that when the price is brought down to a point where there is no profit for the price cutter that he begins to buy from a commission agent for a larger company and we have the picture that price wars are fought at the expense of some major.

Some different plan than the present must be evolved regarding tank-wagon prices. At the present time many legitimate jobbers do not always understand that a subnormal service-station market does not necessarily mean a 2-cent tank-wagon differential. They immediately cut tank wagon 2 cents below the service station when the later market is cracked and it then is difficult to raise the tank wagon.

To cut only in a town and then protect a dealer just outside the city limits also confuses the situation. Cut markets should be clearly defined at least to other major operators.

The meeting of prices is done primarily to discourage additional members in the ranks of the cut-pricers and the fight against the cut-rate marketers has been intensified to such an extent that all thought has been lost of the great gallonage in between, namely, that gallonage controlled by other majors and legitimate independents.

Lack of a definite program is rapidly leading independents to the theory that they can better afford to become marketers of unbranded merchandise. Employees of major companies are secretly wondering if they could not better themselves financially by entering that phase of the business.

It would seem then that the crying need is a definite program, and one that will be adhered to by the majors.

IN TOWNS BELOW THE 10,000 POPULATION CLASS

In smaller towns and cities no operator shall be permitted to sell his product for less than the normal third-grade price and his high test at any price he chooses above his normal price for the lower-grade material.

In the event that the operator insists upon a lower price structure than is maintained by majors on their third grade, the majors will reduce their houses brand or middle grade to the price maintained by the price cutter and will meet his high test posting with ethyl.

Under this plan the price cutter still has his argument that he has regular quality at the third grade price and this advantage remains just so long as he maintains the market. When he decides to reduce the market, this argument of quality is taken from him by meeting his regular grade with the "middle grade or house brand" product.

Restoration of markets would only be done by the stabilization committee in Indianapolis before whom all interested factions would have to appear for a hearing.

Tank-wagon and service-station adjustments made at stabilization meeting, Dec. 5 to 9, inclusive

State	Date	Kerosene (tank wagon)	District	Tank fuel	Gasolines	
					Service stations	Tank wagons
Iowa	Dec. 11	All normal	All normal	All normal	302	349
Illinois	do	do	do	do	371	367
Indiana	do	do	do	do		
Minnesota	do	do	do	do	74	48
Kansas	Dec. 13	do	do	do	63	115
Minnesota	do	do	All normal but 2.		110	57
North Dakota	Dec. 17	do	All normal	All normal	8	7
South Dakota	do	do	do	do	[1] 57	[1] 21
					1,310	1,269

[1] All normal except Sioux Falls (1 cent under).

MINNESOTA PRICE STABILIZATION COMMITTEE,
Minneapolis, Minn.

ELWIN E. HADLICK, *Chairman.*
N. B. CURTICE, J. D. ALLENBERG GEO. GOLDSNOW.

NOTICE OF RESTORATION OF GASOLINE PRICES

To Distributors of Gasoline in Minnesota:

As a result of meeting held by the committee, by mutual arrangement with a substantial portion of the industry, the gasoline prices indicated on the attached

sheets are scheduled to become effective at the opening of business, Friday, August 31, 1934.

You will please make arrangements to put these minimums into effect as indicated.

It is not intended to disturb any prices which may be above the levels indicated on the attached sheet. Therefore, if any of your present prices are above those indicated, there will be no change in such prices.

72-HOUR NOTICE AGREEMENT NOW EFFECTIVE

Also shown on the attached sheet are the names and addresses of the chairmen of the various county price stabilization subcommittees. The entire membership of each subcommittee will be announced at an early date.

In any case where you encounter competition below the market as established in your town, make a report to the chairman of the proper subcommittee and allow him 72 hours time within which to attempt to correct the situation. Make a duplicate report to Minnesota Price Stabilization Committee, 648 Builders Exchange, Minneapolis, Minn. The 72-hour rule is effective on Friday, August 31, 1934.

In contacting the State committee, write, wire, or telephone. The telephone numbers are Atlanta 2959 and Geneva 4339. Collect wires and telephone calls will not be accepted.

MINNESOTA PRICE STABILIZATION COMMITTEE.

Minnesota gasoline prices for the State of Minnesota, effective at the opening of business Friday, August 31, 1934.

NOTE.—The prices shown are minimums. It is not intended to disturb any prices which may be above the levels indicated on this sheet. Therefore, any present prices higher than those shown will not be changed.

Gasoline prices

County	Third grade		Regular grade		Chairman of county price-stabilization committee
	Tank wagon	Service station	Tank wagon	Service station	
(1)	(2)	(3)	(4)	(5)	(6)
Aitkin					George Crosby, Jr., Cuyuna Oil Co., Crosby.
Aitkin	16.1	18.1	17.6	19.6	
McGrath	15.7	17.7	17.2	19.2	
McGregor	15.9	17.9	17.4	19.4	
Palisade	16.1	18.1	17.6	19.6	
Tamarack	15.9	17.9	17.4	19.4	
Anoka	14.0	16.0	15.5	17.5	F. F. Swanson, Main Oil Co., Anoka.
Becker	15.4	17.4	16.9	18.9	V. J. Sauer, the Texas Co., Detroit Lakes.
Beltrami	16.3	18.3	17.8	19.8	Ben Munig, Bemidji Oil Co., Bemidji.
Benton	14.5	16.5	16.0	18.0	Joe Salzbrun, Quality Gas & Oil Co., Rice.
Big Stone	14.5	16.5	16.0	18.0	A. R. Soubs, Graceville Oil Co., Graceville.
Blue Earth	14.2	16.2	15.7	17.7	W. T. Bannister, Standard Oil Co., Mankato.
Brown	14.2	16.2	15.7	17.7	Ed. McGowan, Brown Co., Coop Oil Co., Sleepy Eye.
Carlton	15.4	17.4	16.9	18.9	John Bero, Northern Oil Co., Duluth.
Carver	14.0	16.0	15.5	17.5	E. B. Plocher, Minnesota Victoria Oil Co., Victoria.
Cass					George H. Crosby, Jr. Cuyuna Oil Co., Crosby.
Backus	15.7	17.7	17.2	19.2	
Bena	15.8	17.6	17.1	19.1	
Cass Lake	15.7	17.7	17.2	19.2	
Federal Dam	15.6	17.6	17.1	19.1	
Hackensack	15.7	17.7	17.2	19.2	
Pillager	15.4	17.4	16.9	18.9	
Pine River	15.7	17.7	17.2	19.2	
Remer	15.4	17.4	16.9	18.9	
Walker	15.7	17.7	17.2	19.2	

Gasoline prices—Continued

County	Third grade		Regular grade		Chairman of county price-stabilization committee
	Tank wagon	Service station	Tank wagon	Service station	
(1)	(2)	(3)	(4)	(5)	(6)
Chippewa	14.8	16.5	16.0	18.0	C. R. C. Blom, Blom Oil Co., Milan.
Chisago	14.0	16.0	15.5	17.5	J. B. Windahl, Windahl Oil Co., North Branch.
Clay	15.4	17.4	16.9	18.9	Elmer Wickum, Deep Rock Oil Corporation, Moorhead.
Clearwater	16.3	18.3	17.8	19.8	G. B. Courtney, Bagley Oil Co., Bagley.
Cook	17.4	19.4	18.9	20.9	John Bero, Northern Oil Co. Duluth.
Cottonwood	14.2	16.2	15.7	17.7	A. McKinney, Windom Oil Co., Windom.
Crow Wing					George H. Crosby, Jr., Cuyuna Oil Co., Crosby.
Brainerd	15.5	17.3	16.8	18.8	
Crosby	16.2	18.2	17.7	19.7	
Deerwood	16.2	18.2	17.7	19.7	
Ironton	16.2	18.2	17.7	19.7	
Pequot	15.8	17.8	17.3	19.3	
Dakota	14.0	16.0	15.5	17.5	John Bartelt, Rosemount Oil Co., Rosemount.
Dodge	14.2	16.2	15.7	17.7	Albert Roth, Roth Oil Co., Mantorville.
Douglas	14.8	16.8	16.3	18.3	Otto Tessmer, Tessmer Oil Co., Alexandria.
Fairbault	14.2	16.2	15.7	17.7	George H. Andrews, Independent Oil Co., Winnebago.
Fillmore	14.2	16.2	15.7	17.7	Henry Meinke, Western Oil & Fuel Co., Spring Valley.
Freeborn	14.2	16.2	15.7	17.7	C. C. Sondergard, Albert Lea Oil Co., Albert Lea.
Goodhue	14.2	16.2	15.7	17.7	Max Feigel, Pine Island Oil Co., Pine Island.
Grant	14.8	16.8	16.3	18.3	Paul J. Hanson, Grant Co., Oil Co., Elbow Lake.
Hennepin	14.0	16.0	15.5	17.5	S. M. Burnap, Direct Service Oil Co., Minneapolis.
Houston	14.2	16.2	15.7	17.7	Sam Abraham, Houston Oil Co., Houston.
Hubbard	15.4	17.4	16.9	18.9	F. D. Long, Pure Oil Co., Park Rapids.
Isanti	14.0	16.0	15.5	17.5	Dwaine Erickson, Cambridge Independent Oil Co., Cambridge.
Itasca					Frank Sherman, Northwestern Oil Co., Grand Rapids.
Bigfork	17.0	19.0	18.5	20.5	
Bovey	16.0	18.0	17.5	19.5	
Calumet	16.0	18.0	17.5	19.5	
Coleraine	16.0	18.0	17.5	19.5	
Deep River	16.5	18.5	18.0	20.0	
Grand Rapids	16.3	18.3	17.8	19.8	
Nashwauk	16.0	18.0	17.5	19.5	
Jackson	14.2	16.2	15.7	17.7	J. M. Wolf, Cities Service Oil Co., Fairmont.
Kanabec	14.5	16.5	16.0	18.0	J. B. Vandermyde, Kanabec Co. Cooperative Oil Co., Mora.
Kandiyohi	14.5	16.5	16.0	18.0	A. B. Mickelson, Bartles Scott Oil Co., Willmar.
Kittson	16.8	18.8	18.3	20.3	Frank Kiene, Kennedy Trading Co., Kennedy.
Koochiching					J. L. Stinson, International Oil Co., International Falls.
Big Falls	17.0	19.0	18.5	20.5	
International Falls	17.0	19.0	18.5	20.5	
Littlefork	16.9	18.9	18.4	20.4	
Northome	17.0	19.0	18.5	20.5	
Lac qui Parle	14.5	16.5	16.0	18.0	Matt Heinzen, White Eagle Oil Corporation, Madison.
Lake	15.7	17.7	17.2	19.2	John Bero, Northern Oil Co., Duluth.
Lake of the Woods	15.5	18.5	18.0	19.0	
Le Sueur	14.2	16.2	15.7	17.7	Fred Schultz, Deep Rock Oil Corporation, Le Center.
Lincoln	14.2	16.2	15.7	17.7	J. H. Curtis, Hoffman & Curtis Oil Co., Ivanhoe.

Gasoline prices—Continued

County	Third grade		Regular grade		Chairman of county price-stabilization committee
	Tank wagon	Service station	Tank wagon	Service station	
(1)	(2)	(3)	(4)	(5)	(6)
Lyon	14.2	16.2	15.7	17.7	L. T. Andrew, Tri County Cooperative Oil Association, Tracy.
McLeod	14.2	16.2	15.7	17.7	C. J. Heigl Oil Co., Winsted.
Mahnomen	15.7	17.7	17.2	19.2	A. H. Thoelke, Mahnomen Oil Co., Mahnomen.
Marshall	16.3	18.3	17.8	19.8	C. E. Peterson, Home Oil Co., Stephen.
Martin	14.2	16.2	15.7	17.7	J. M. Wolf, Cities Service Oil Co., Fairmont.
Meeker	14.5	16.5	16.0	18.0	E. H. Kopplin, Litchfield Oil, Litchfield.
Mille Lacs	14.5	16.5	16.0	18.0	R. J. Herdliska, Princeton Oil Co., Princeton.
Morrison	14.8	16.8	16.3	18.3	C. L. Stadolka, Central Oil Co., Little Falls.
Mower	14.2	16.2	15.7	17.7	A. F. Anhorn, Mower Oil Co., Austin.
Murray	14.2	16.2	15.7	17.7	R. W. Burnham, Murray County Cooperative Oil Co., Slayton.
Nicollet	14.2	16.2	15.7	17.7	Henry Epper, Nicollet Oil Co., Nicollet.
Nobles	14.2	16.2	15.7	17.7	E. A. Meester, Farmers-Merchant Oil, Ellsworth.
Norman	15.7	17.7	17.2	19.2	Charles O. Herman, Herman Oil Co., Ada.
Olmsted	14.2	16.2	15.7	17.7	A. J. Osman, Home Oil Co., Rochester.
Otter Tail	15.1	17.1	16.6	18.6	C. H. Dale, Standard Oil, Fergus Falls.
Pennington	16.3	18.3	17.8	19.8	J. McKennie, the Texas Co., Thief River Falls.
Pine	14.5	16.5	16.0	18.0	James Sullivan, Cehi Oil Co., Pine City.
Pipestone	14.2	16.2	15.7	17.7	T. T. Steinberg, Steinberg's, Inc., Pipestone.
Polk	16.3	18.3	17.8	19.8	L. W. Durner, Standard Oil Co., Crookston.
Pope	14.5	16.5	16.0	18.0	L. W. Jorgenson, Standard Oil Co., Glenwood.
Ramsey	14.0	16.0	15.5	17.5	S. M. Burnap, Direct Service Oil Co., Minneapolis.
Red Lake	16.3	18.3	17.8	19.8	Jos. J. Helm, Red Lake Falls Oil Co., Red Lake Falls.
Redwood	14.2	16.2	15.7	17.7	W. C. Roth Oil Co., Lamberton.
Renville	14.2	16.2	15.7	17.7	W. E. Hertal, Farmers Oil Co., Oliva.
Rice	14.2	16.2	15.7	17.7	J. H. Bumeister, Faribault Oil Co., Faribault.
Rock	14.2	16.2	15.7	17.7	Emil Frick, Luverne Oil Co., Luverne.
Roseau	16.8	18.8	18.3	20.3	George Berglund, Lake Oil Co., Warroad.
Scott	14.0	16.0	15.5	17.5	C. M. Grommesch, Scott Co. Oil Co., Jordan.
Sherburne	14.5	16.5	16.0	18.0	E. A. Leger, Elk River Oil Co., Elk River.
Sibley	14.2	16.2	15.7	17.7	J. M. Bredemus, Henderson Oil Co., Henderson.
Stearns	14.5	16.5	16.0	18.0	H. E. Dougherty, Phillip Petroleum Co., St. Cloud.
Steele	14.2	16.2	15.7	17.7	A. P. Bartsch, Central Cooperative Association, Owatonna.
Stevens	14.5	16.5	16.0	18.0	Fred Kranz, Phillips Petroleum Co., Morris.
St. Louis					John Bero, Northern Oil Co., Duluth.
Aurora	16.0	18.0	17.5	19.5	
Biwabik	16.0	18.0	17.5	19.5	
Chisholm	16.0	18.0	17.5	19.5	
Duluth	15.7	17.4	17.2	19.2	
Ely	16.4	18.4	17.9	19.9	
Eveleth	16.0	18.0	17.5	19.5	
Hibbing	16.0	18.0	17.5	19.5	
Virginia	16.0	18.0	17.5	19.5	

Gasoline prices—Continued

County	Third grade		Regular grade		Chairman of county price-stabilization committee
	Tank wagon	Service station	Tank wagon	Service station	
(1)	(2)	(3)	(4)	(5)	(6)
Swift	14.5	16.5	16.0	18.0	Mr. Strand, Nat'l Ref. Co., Benson.
Todd	14.8	16.8	16.3	18.3	A. J. Dvorachek, Grey Eagle Oil, Grey Eagle.
Traverse	14.8	16.8	16.3	18.3	C. F. Ewing, Wheaton Oil Co., Wheaton.
Wabasha	14.2	16.2	15.7	17.7	E. Roehike, Plainview Oil Co., Plainview.
Wadena	15.1	17.1	16.6	18.6	J. J. Blaha, Sinclair Ref. Co., Wadena.
Waseca	14.2	16.2	15.7	17.7	M. O. Quast, Janesville Oil Co, Janesville.
Washington	14.0	16.0	15.5	17.5	Wm. J. Madden Oil Co., Stillwater.
Watonwan	14.2	16.2	15.7	17.7	H. E. Hegstrom, St. James Oil Co., St. James.
Wilkin	15.1	17.1	16.6	18.6	N. F. Doleman, Tri County Oil Co., Nashua.
Winona	14.2	16.2	15.7	17.7	O. F. Koetz, Cities Serv. Oil Co., Winona.
Wright	14.5	16.5	16.0	18.0	Chas. J. Johnson, Montrose Oil Co., Montrose.
Yellow Medicine	14.2	16.2	15.7	17.7	E. J. Johnson, Standard Oil Co., Hanley Falls.

PLANNING AND COORDINATION COMMITTEE FOR THE PETROLEUM INDUSTRY—REGIONAL DISTRICT NO. 3

Marketing committee:
A. G. MAGUIRE, chairman.
P. J. MARTIN, secretary.

PRICE STABILIZATION CONFERENCE

OMAHA, NEBR., *September 12, 1934.*

WITH REFERENCE TO THE PROPOSAL TO STABILIZE PRICES THROUGH THE ALLOWANCE OF PRICE DIFFERENTIALS

The possibility of obtaining some measures of price stabilization through the granting of price differentials was discussed. It was suggested that no differential should be considered on third-grade gasoline since the public accepts all brands as of even quality but that a differential might be tried on unleaded middle grade and premium gasolines against leaded gasoline of middle grade and premium quality.

It was moved by Mr. Dippel, seconded by Mr. Finch, that the chairman appoint a committee whose duties shall be as follows:

1. To secure an expression of opinion from all integrated companies relative to the granting of price differentials in Nebraska towns of 4,000 or greater population to certain marketers.

2. To endeavor to enlist the support of such integrated companies to some workable plan whereby markets may be stabilized in subnormal areas.

3. If successful in the above, to endeavor to enlist the support of the Standard Oil Co. as the largest marketer in the State, to this proposition, with the recommendation that, in the event "normal" prices are not materially reduced through the adoption of some plan similar to that recently made effective in Standard of Indiana territory, the price shall be stabilized by gradual and reasonable advances over a period of time.

4. Proceed to negotiate with those marketers who are demanding price differentials in an effort to effect a settlement and adopt a program of stabilization that will be supported by all the above-indicated companies.

The motion was carried without a dissenting vote, six not voting. Chairman Sutherland appointed the following: Chairman R. E. Osborn, Sinclair Refining

Co.; O. J. Finch, Lincoln Oil Co.; E. T. Hompes, Hompes Tire Co.; Marshall McArthur, Quaker Petroleum Co.; and E. E. James, James Poultry Co.

Representatives of various companies were requested to communicate with their home offices in connection with this matter. Correspondence relative to the subject of this letter should be addressed to the chairman of the committee.

Respectfully submitted.

H. H. HAHN, *Secretary.*

MEMORANDUM TO MR. A. G. MAGUIRE RE GENERAL STABILIZATION MEETING, BLACKSTONE HOTEL, CHICAGO, FRIDAY, JANUARY 4, 1935

Introduction was made by Mr. C. E. Arnott commending much favorable procedure which had transpired throughout region no. 3 since the December 5 meeting. He, however, very much regretted the odium which certain companies had reflected upon other companies by their not explaining to dealers why dealer margins were reduced and that the action had been unanimously agreed to by all companies. He stated that some companies had actually accused other companies of forcing them into such a program.

Mr. Reeser and Mr. Miskell wanted the matter of differentials injected into this meeting to ascertain if something could not be worked out regarding this. Mr. Miskell was very positive that no lasting program of stabilization could be maintained until this important question was worked out and in someway settled.

Mr. Arnott explained fully his reason for not wanting to inject into this meeting the question of differentials. He explained that in similar meetings in other parts of the country and in a general meeting in Washington, it was impossible to arrive at any satisfactory conclusions.

Mr. Majewski and Mr. Ashton brought up the matter of protection for jobbers in mutiliated territories and also pay-back features which were being used.

The meeting was about evenly divided as to whether this practice of jobber protection in excess of dealer margins should continue or not. No definite decision was reached. This matter is in the hands of a committee appointed at the December 5 stabilization meeting.

The practice of refiners in selling to price cutters was again discussed and it was the unanimous sense of the meeting that this should be discontinued, either for all of the price cutters supplies or part of them.

Mr. Miskell urged that better contact be kept with the group 2 refiners as to the activities of group 1 (major refiners) so that the plans of the two could be worked out together. Mr. Humphrey said that group 2 refiners had registered vigorous complaints against local protection on jobber contracts in excess of dealer margins. Mr. O'Shaughnessy complained against this practice.

Mr. McDowell urged jobber protection of one-half cent above dealer margins as a necessity. Mr. Ashton said that in cases they were allowing 1 cent. Both of these gentlemen said that their companies insisted upon the repayment of such protection.

Mr. Lakin said that all companies should discontinue the broadcasting of the protection feature. He stated that most salesmen were advising prospective accounts that their respective companies would protect the jobber in excess of the dealer margin in times of stress in mutilated areas.

Mr. Coffin and Mr. Ashton wanted a committee of three appointed from group 1 (major refiners) to meet with a committee of three from group 2 refiners to work in closer harmony and also to settle the matter of jobber protection above dealer margins.

Mr. McDowell wanted to limit taking any jobber contracts in subnormal zones and this was agreed to for 30 days following January 11.

General discussion of commissions and commission agents followed and the evil effects caused by excessive commissions were mentioned. A committee, consisting of Messrs. Lewis, Wixon, Wright, Sus, Smith, Merritt, Humphrey, and Lavin, was appointed to work out schedules.

A committee composed of Messrs. Ashton, Bullock, Miskell, Hughes, and Van Eeghn was appointed to work out a program for a strong and active tank-car market for 1935.

Mr. Ball made the explanation that to create a more stable and better market probably narrower margins would be made effective for both jobbers and dealers.

Mr. Majewski advocated the discontinuance of all station construction and no new acquirements by leases or acquirements of other facilities by any members.

Mr. Lakin was answered that the acquirement of already existing stations by other suppliers was perfectly permissible. Mr. Arnott suggested that all companies investigate carefully the matter of increasing the facilities.

Mr. Reeser and Mr. Humphrey brought up the matter of proper price posting, proper advertising features, premiums, and the use of proper placards at stations. Mr. Lewis advised the meeting that the Standard Oil Co. of Ohio had adopted an additional bracket for consumer discounts in Ohio, which allowed one-half cent per gallon more for accounts of over 10,000 gallons per month than for accounts of only 1,000 gallons. This makes the total discount 1½ cents, plus one-half cent, or 2 cents off tank-wagon price.

Mr. Majewski wants the 1,000 gallon per month discount to stand without the adoption of any other bracket or larger discounts.

Mr. Ball brought up the matter of a partial boycott in Chicago and northern Indiana against the Standard Oil Co. because of new dealer margins adopted and also because the margins in Michigan remain 4-4-" because of the Sun Oil Co. refusing to adopt the new schedule. Dealers are refusing to purchase oils.

Mr. Ball injected into the meeting the possibility of no margin penalty to dealers for the first 1 cent cut everywhere if the Michigan situation continued and after the first cent below normal, then the dealer to absorb one-half of the subnormal price.

Mr. Skelly vehemently talked regarding there being no change from the adopted schedule because of many reasons which would be decided adverse to the various oil companies. Mr. Skelly talked at considerable length and was followed by several others regarding what was being done in stabilization efforts to hold the prices at points which were advanced as the result of the December 5 stabilization meeting.

Mr. Humphrey mentioned that there had been some slipping back and others added the opinion that prices would not hold without additional efforts. There was discussion as to what was being done or what was contemplated being done concerning the possibility of going ahead and advancing some 600 subnormal points which were not adjusted during the December 5 program. The program of continued stabilization efforts and the appointment of two stabilizers were vigorously and generously supported. Mr. Atkins suggested that the stabilizer now designated at Tulsa could better perform if he were located in Kansas City.

Mr. Majewski spoke regarding secret rebates to dealers, excessive of the prescribed margins and also discounts to consumers larger than those prescribed by the new dealer contract.

Mr. Arnott closed the meeting with considerable emphasis that all companies should adhere to the policies which were unanimously agreed upon at the December 5 meeting and in a fair way, so that no company should work injury or hardship upon another.

He further advised that there would be considerable work done regarding the groups 1 and 2 refiners and also that he hoped the Michigan situation would be worked out quickly or at least in the very near future.

A. H. BLACKALL.

MEMORANDUM TO MR. A. G. MAGUIRE RE MICHIGAN STABILIZATION MEETING JANUARY 5, 1935

Mr. Majewski presided for Mr. Arnott at this meeting.

Mr. Coffin advised that in the past 9 months since April 2, 572 tank cars of gasoline have moved through cut-price outlets. Of these cars, 746 contained Michigan gasoline. The remaining 1,826 cars were shipped in from everywhere—east Texas, Pennsylvania, Ohio, and St. Louis, East Chicago, and Hammond.

Mr. Raupagh of the Standard Oil Co. took the position that it was Michigan gasoline which was causing the cut price trouble in Detroit and other points in Michigan. He stated that he believed it would be an easy matter to handle the Michigan gasoline. At the present time there are 287 cut-price stations in Detroit alone, doing approximately 20 percent of the Detroit total gallonage at prices under posted third-grade prices of Standard Oil, Gulf, and Sun of from a half cent to 3½ cents.

Mr. Raupagh exhibited three charts in which he attempted to substantiate that suppliers were not controlling their jobbers and that much of the cut price gasoline was coming from companies which were parties of the stabilization program. Mr. Coffin substantiated Mr. Raupagh.

Mr. McDowell, whose company was involved through the operations of J. Tyson, referred the matter to Mr. Tyson and he denied responsibility for supplying Cross and Plymouth, who were reported to be extraordinarily bad operators.

It was also brought out that the gasoline was being hauled from the Zug Island Terminal where both Mid-Continent and Cities Service have storage and that it was being transported by the Overland Trucking Co.

Inasmuch as both of these companies denied responsibility for supplying these two price-cutters, it was decided that the operations of Overland Trucking Co. should be investigated because it was definitely determined that the Overland trucks were going to many cut-price stations.

Mr. Harrison brought up the matter that he thought that no company could sell a price-cutter all or part of their merchandise and that if any company was selling even one grade of gasoline, this should be stopped immediately.

Mr. Stover advised that the Lincoln Oil & Refining Co. was going to cancel their Mich-I-Penn contract and others in Detroit which they were unable to control in conformity with stabilization agreements.

Mr. McSweeney (Shell) advised that April 5, they were going to cancel the contract with the Fisher Industries and also the Argo Oil Co. because they were unable to properly "police" same.

Inasmuch as there was considerable dissention regarding the effect of Michigan gasoline upon the Detroit and Michigan market, it was decided to table the handling of Michigan gasoline until the balance of the Michigan situation was handled.

Mr. Bullock agreed to check the Benzoil movement of the United States Steel subsidiaries to Ford. A considerable amount of this material is being resold and the aim is to stop sales insofar as possible where the markets are being adversely affected.

It was agreed that independent terminal supplies are to come from one supplier only (all grades)—no terminal operator to sell to jobber unless all of his supplies are handled, for which the terminal operator is to be responsible.

Dealer supplies are to come from one source only and to be policed by jobber and terminal supplier. All suppliers are to assume responsibility for sales through jobbers, dealers or consumers. Benzoil blend sales in Detroit are exclusive of this agreement contract, that is as to 100-percent sales.

The meeting became very tense and upset with Mr. Harrison advising that his company would not go along on the changed dealer margins; namely, 3½ cents with a 50-percent reduction down to 3 cents. He advised that a normal price of 18 cents in Detroit was too high but that he was willing to give 3½ cents dealer margin from a 17 cents price and in case of subnormal market to cut the dealer 50 percent on reductions below 17 cents down to a 3 cent minimum.

Mr. Ball agreed to Mr. Harrison's plan in Detroit and Michigan but said that for his company it would occasion a 1 cent cut throughout their entire territory and they could not do differently in Michigan than elsewhere.

This matter is to be handled by Mr. Arnott with the officials of the Sun Oil Co. and the outcome will be made known, probably during the week of January 7.

A. H. BLACKALL.

MICHIGAN SENATE CONCURRENT RESOLUTION NO. 13

A concurrent resolution authorizing an investigation of conditions confronting the independent oil jobbers of Michigan.

Whereas there are in the State of Michigan more than 300 independent concerns engaged in the marketing of petroleum products; and

Whereas said concerns regularly employ between 55,000 and 65,000 residents of Michigan; and

Whereas said concerns have in Michigan a capital investment of between $25,000,000 and $35,000,000; and

Whereas said concerns operate almost exclusively in Michigan and comprise distinctly a Michigan industry; and

Whereas one of the said concerns is the farm bureau service corps which alone serves more than 15,000 Michigan farmers; and

Whereas the virtual suspension of Federal antitrust laws under the national recovery and associated acts, largely removed restraints on monopoly; and

Whereas codes of so-called "fair competition" affecting the petroleum industry are alleged to have been administered by special interests within the industry

itself in such manner as to encourage and restore vicious monopolistic practices; and

Whereas certain major and integrated companies of the petroleum industry, which companies control practically all of the operations from drilling to gas station, are alleged to have been enabled to employ said monopolistic practices in an effort to destroy independent competition; and

Whereas because of such practices the above Michigan independent concerns are said to now face a situation which if not corrected may mean their eventual abandonment; and

Whereas such abandonment would (*a*) bring about the destruction of an essential Michigan industry; (*b*) imperil the welfare of all of the citizens of Michigan because of the increased retail prices of gasoline. Now, therefore, be it and it is hereby

Resolved by the senate (the house of representatives concurring), That a joint legislative committee consisting of three members appointed by the president and the speaker be authorized to examine into the aforesaid to the end that it may be determined whether or not additional legislation is needed to protect the public interest; and be it further

Resolved, That said committee be given full power and authority to subpena witnesses, administer oaths, and examine all persons, records, and documents deemed proper by said committee, and to incur any necessary expenses including those of witness fees, council fees, auditing and stenographic services in making such investigation, such expenses not to exceed a total of $5,000, the same to be paid out of the general fund of the State, not otherwise appropriated upon itemized vouchers, duly certified by the president of the senate and the speaker of the house of representatives; and be it further

Resolved, That said committee report its findings to this legislature as speedily as possible.

(Clipping)

JOBBERS PROTEST DEALER RENTALS BEING EXCLUSIVE OF MARGINS

STEVENS POINT, WIS.

The difficulties of a governmental agency endeavoring to regulate retail gasoline prices were evident at the Wisconsin department of markets hearing March 5 at Stevens Point, Wis., on the order establishing minimum State-wide motor-fuel prices until June 30.

Opinions expressed by marketers present, jobbers predominating, indicated now wide-spread dissatisfaction with the order, except for that part requiring dealer rentals to be exclusive of margins. Comment, as the order was discussed paragraph by paragraph, indicated, however, that the varied types of marketing problems clashed with the order, and that provisions satisfactory to one type of operation are not satisfactory for another type.

The hearing was called by the department to hear complaints, and to obtain additional data, as a basis for changes, if any, in the order that became effective February 13 to stabilize retail markets in Wisconsin. About 125 marketers attended. F. Schultheiss, department commissioner, and R. M. Orchard, department counsel, presided. Cost data was presented by jobbers during the morning session, and the order was discussed generally during the afternoon.

The dealer-rental provision was the major point of discussion. The order establishes a minimum dealer margin, a percentage of the spread, and then requires that any rentals be in addition to the margin. Jobbers object to this rental requirement.

Mr. Orchard explained that the provision was to prevent any unfair practice through rentals. Elmer H. Pedley, Kenosha jobber, and president of the Wisconsin Petroleum Association, summed up the case by relating to the commission that he was aware of dealers not being protected, under lease and agency instruments, as to rentals, but that under the order's provisions the field was thrown open in bidding for dealer business to granting of big rentals by major suppliers, to the detriment of the jobber.

That the provision should be dropped entirely, or the word "exclusive" changed to "inclusive", was the suggestion of Roy L. Brecke, secretary of the Wisconsin Petroleum Association. A. J. Moser, Milwaukee, said this provision meant his ruin as an independent jobber.

Harry S. McGaughey, Pugh Oil Co., Racine, then pointed to the giving of rentals in addition to margins as a violation of the order. The order, he contended, prohibits below cost selling, and establishes the percentage of dealer and jobber margin in the spread. Consequently, if the supplier gives the dealer a rental in addition to the margin, that rental comes out of the suppliers' margin, and constitutes selling below cost. (Published in full, Nat. Petroleum Nes. Feb. 20, 1935, p. 28.)

Mr. Schultheiss explained that when this provision was written he had in mind that the dealers were in need of protection on contracts involving rentals, and he realizes that some change is necessary to protect the independent jobber on vicious bidding up of rentals to obtain dealer business. He then asked for a representative of various branches of marketing to meet with him after the hearing for a conference on how the provision should be altered.

The 50-gallon minimum dump to obtain the tank-wagon price was another point of considerable controversy. Country jobbers were in favor of a 25-gallon minimum, those in the city for the present for or a higher minimum.

Two evils of the 50-gallon minimum were cited. First, that delivery costs mount, since the farmer unable to take that amount on the first call will not buy, thereby requiring a second call to make the sale. Second, the tank wagon salesmen may get around the provision by making small deliveries to farmers, then withholding the delivery ticket until the total 50 gallons have been purchased.

A. F. Podvin, Northwestern Oil Co., Superior, asked that the limitation on dumps be such that a farmer can take that amount on one delivery, and that a ticket can be made out for the amount.

Mr. Orchard brought up the question of a change in the question of quantity discount (the order permits a 1-cent discount off tank-wagon price on total monthly deliveries of 1,000 gallons or more) by jobbers. Several communications were read, mainly from trucking companies, protesting the provision, and one trucking company was represented in the meeting. Large consumers are said to be considering bulk plant installations to obtain a lower price if the present tank wagon quantity discount is not increased.

Numerous jobbers spoke in favor of a lower quantity price, to retain business of large commercial consumers but Walter Wingrove, Wingrove Oil Co., Sheboygan, scored such tactics, questioning the seeking of business when there is no profit involved. He told jobbers his company did not sell dealers or commercial accounts, did not solicit commercial accounts, as it could not see a profit in such sales.

The petroleum administrative board's "employee" definition came out in the meeting when Roy L. Brecke, association secretary, charged that Louis Faber, Milwaukee, was speaking not as a dealer but as an "employee of a local oil company." Mr. Faber said he was a retailer as he had a $2,000 investment in lubrication equipment and merchandise in his station and was permitted to buy merchandise from any supplier, although he held the station under lease from a jobber who also owned the gasoline equipment.

During the morning, additional cost data was submitted by jobbers. Mr. Podwin presented figures showing a 6.25-cent minimum cost, dividend 3.5 cents to dealers, 1.25 cents agent's commission, 0 5 cent depreciation, 0.2 cent bad debts, 0.25 cent bad debts, 0.25 cent shrinkage, 0.2 cent advertising, 0.15 cent for all types of insurance, and 0.2 cent for taxes. Mr. Podwin added that these figures did not include executive's expenses, interest on bank loans, general office expense, or stationery and postage.

H. L. Broyles, Smith Oil & Refining Co., of Wisconsin, Janesville, reported that with 3 bulk plants and 14 service stations, cost was 5.6 cents last year, with an average margin of 5.7 cents.

M. H. Teige, Wisconsin Petroleum Co., Stoughton, reported a profit of $8,300 last year, before charging off bad debts, reduced to about $5,000 after bad debts, a return of 0.7 cent on 700,000 gallons, or only about a 6-percent return on the company's investment of $70,000.

Mr. Pedley then reported a wholesale expense for gasoline only of 4.02 cents for last year, and for gasoline and kerosene combined of 3.95 cents.

Mr. Moser reported a wholesale cost of 2.12 cents a gallon, and on sales of 1,500,000 gallons last year, from a $118,000 investment, the company lost $500, without considering any interest on capital invested.

Several jobbers from smaller towns reported approximate costs of 2 cents, without consideration of several items, such as bad debts, wages for executives, or interest on investment.

Several discussions brought out the point that an item of expense frequently overlooked in wholesale costs is that of advertising or merchandising aid given dealers, that is in addition to a guaranteed margin.

At the conclusion of the meeting Mr. Broyles suggested a graduated schedule of margins for various types of retailers, such as a small margin for country store outlets considering gasoline as a sideline, a higher margin for garages, and a still higher margin for drive-in station outlets.

Wisconsin Jobbers Seek 6.5-Cent Margin

Milwaukee, January 28.—The establishment of a 6.5-cent jobber margin for marketing gasoline and repeal of the Federal gasoline tax, are among the objectives of the Wisconsin Petroleum Association for 1935, according to its latest bulletin.

Resolutions covering these subjects were approved by the jobbers at the January convention.

Jobbers express a wish to continue to live up to the labor provisions of the National Recovery Act but stated that present marketing margins are not profitable and that a 6.5-cent margin is necessary to stay in business.

A copy of the jobbers resolution on the Federal gasoline tax field properly belongs to the States; that it is unjust and discriminatory double tax; it tends to encourage States to divert gasoline tax funds for other than road-building purposes; and it makes gasoline sales taxes excessive, lifting the average to above 40 percent of the retail price.

Dealer Association Asks Increase in Margin

Cleveland, January 21.—Protesting their recent cut in margins, Associated Independent Oil Dealers, Inc., of Cuyahoga County (Cleveland) have wired Administrator Ickes as follows:

"We representing 626 independent oil dealers of Cuyahoga County, Ohio, had our margin of profit reduced from 4 to 3½ cents per gallon. The continued increase cost of operations makes this impossible for us to exist. We are protesting same as our suppliers have recently increased the commercial discounts to 4½ cents per gallon, and we demand our margin be restored to us at once."

Commercial consumers in Ohio who take 10,000 gallons of gasoline or more per month are given 2.5 cents discount from posted tank wagon, or equivalent of 4.5 cents under service station. This is maximum discount allowed to commercial consumers. Consumers taking 1,000 to 9,999 gallons per month get 1.5 cents off tank wagon or equivalent of 3.5 cents under service station. Those taking less than 1,000 gallons per month pay full tank wagon price.

Retail Price Differential Allowed "Temporarily" in Chicago Area

Chicago, *July 9.*

The retail gasoline situation in the Chicago area appeared to be on a fairly stable basis today. Major companies and some independents were selling regular gasoline at 17.3 cents, including 4 cents tax, and other independents (including trackside stations) were selling mostly at 16.3 cents for their regular grades. These prices have been in effect since July 5.

Early last week Administrator Ickes announced that the Standards of New Jersey and Indiana had agreed to allow a price differential of 1 cent to certain classes of independent dealers in the middle Atlantic States and that plans for similar settlements in other areas were being worked out.

While price differentials of 1 cent on regular and 0.5 cent on third grade were being allowed in the Chicago area, the Standard of Indiana was emphatic that it had not agreed to a general policy of allowing such a differential.

E. G. Seubert, president of the company, July 5 stated the company's willingness to do anything reasonable it could to eliminate price wars, even to allowing a price differential and welcomed the intervention of Administrator Ickes in the gasoline marketing situation.

However, Mr. Seubert said: "S. O. Indiana has reserved the right to determine when, where, and how long it will tolerate the differential without fully meeting competitive prices on trackside or other competing brands. It has not agreed

to a general policy of tolerating a differential and has reserved the right to continue meeting competitive prices in the areas not excepted and to resume meeting prices in the excepted areas if later developments require such action in protection of its share in the gasoline business.

"This company does not recognize the validity of any of the arguments trackside and other cut-rate marketers have advanced in an effort to obtain government enforcement of a price differential between advertised and nonadvertised brands. It stands now as before on the principle that it has the same right as any other marketer to meet any price at which a competing marketer offers his products and must continue to have that right, regardless of any deviations which special conditions may cause to be made."

One angle of the situation is whether all the so-called "trackage stations" will remain in line at price differentials of 1 cent and 0.5 cent under Standard's prices. In the past, some of these companies have asked for a larger differential. Apparently none of these concerns can undersell the major companies more than 1 cent on regular grades of gasoline if the present marketing set-up is to be maintained.

If the present arrangement of prices fails, many traders are of the opinion that the Government will step in with price-fixing. Most of the majors and the so-called "price cutters" want to avoid this. This price-fixing threat, it was said, was dominating factor in bringing about the present adjustment of differentials.

PETROLEUM ADMINISTRATIVE BOARD TO MAKE QUICK STUDY OF RETAILERS' MARGINS

WASHINGTON, *July 28.*

A study of the margins granted by gasoline-distributing companies to their retail dealers, and the policies reflected in such margins is to be made by the Petroleum Administrative Board.

The survey will be in the hands of the marketing division of the Petroleum Administrative Board, it was explained by Chairman Margold. Questionnaires are to be sent to refining companies and to marketers who are representative of the various sizes and classes of companies engaged in the distribution of motor fuels.

Information supplied by individual distributors will be regarded as confidential and for the use only of the Board in studying the effect of margins and the margin policies of oil companies on the general retailing of gasoline.

Companies who do not desire to answer the questions in the questionnaire are asked to give such comment on the subject as they wish. The questionnaire recognizes the 3-4-4 margin as one in wide use and asks what percentage of business is written on this basis. This provides a 3-cent margin for the dealer on third-grade gasoline, 4 cents on regular and 4 cents on premium grade of motor fuel.

Whether the same margin is allowed on split as on 100-percent accounts is another point on which the board wants information.

In part 2 of the questionnaire, information is sought as to desirability of guaranteed margins to both jobbers and dealers and as to other protective conditions in sales' contracts for both jobbers and dealers. Oil companies' answers are asked by August 19.

The complete questionnaire, entitled "Margin Policy on Motor Fuel", follows:

PART I

1. Do you determine the price policy of service stations on motor fuel supplied by you?

2. If you determine the price policy for one type of service station supplied by you and not for another, what is the approximate percentage in each class?

3. What is the approximate percentage of your total sales of motor fuel through service stations?

4. (*a*) Do you guarantee a fixed margin on motor fuels sold to service stations?

(*b*) If you guarantee a margin is the margin the same for 100-percent and split accounts?

(*c*) What is the approximate percentage of your service-station accounts to which you guarantee a 3-4-4, margin?

(*d*) Do you write guaranteed contracts for service stations for larger margins than 3-4-4? If you write guaranteed margins in excess of 3-4-4, give examples of characteristic larger margins and approximate percentage of your business so involved.

(e) Do you write guaranteed contracts for service stations for smaller margins than 3–4–4? If you write guaranteed margins below 3–4–4, give examples of characteristic smaller margins and approximate percentage of your business so involved.

5. (a) Do you write split-margin contracts for service stations (e. g. 4 cents on regular with one-half cent decline on each cent decline below normal)?

(b) What are the usual terms of such split contracts?

(c) What is the approximate percentage of your service-station business so involved?

(1) Do you sell motor fuel on the open-tank-car market?

(2) If you sell motor fuel on the open-tank-car market, what is the approximate percentage of your total sales that are sold under such conditions?

PART II

1. What is your opinion concerning the desirability or undesirability of guaranteed-margin-dealer contracts?
2. What is your opinion concerning guaranteed margins to jobbers?
3. Do you favor split-margin contracts with dealers?
4. Do you believe that sales of motor fuel to jobbers and/or dealers should be made without any protective conditions? Why?
5. What do you consider the proper margin for dealer [indicate area]?
6. What do you consider the proper margin for jobbers [indicate area]?

MICHIGAN JOBBERS TO PUT LACK OF CODE ENFORCEMENT BEFORE ROOSEVELT

DETROIT, *August 2.*

"Equitable enforcement of the whole code, or no code at all," was the sentiment expressed by Michigan jobbers at a meeting here today, sponsored by the three jobber associations.

They talked of setting October 1 as a deadline for relief from "inequitable enforcement," after that date each jobber seeking his own preservation in whatever manner and by whatever means may be open to him.

The jobbers expressed the belief that rules 4 and 6 of the oil code have been deliberately ignored by the planning and coordination committee and the State code enforcement committee. Rule 4 forbids selling below cost. Rule 6 provides that the division of an integrated company, in producing, refining, and marketing must stand on their own feet, financially speaking.

The jobbers who attended plan to present the situation direct to President Roosevelt and to ask the planning and coordination committee to remove present distinctions and put all marketers on an equal basis.

A resolution also was adopted asking that octane ratings be posted on pumps and dispensing equipment and that refiners furnish jobbers with certified statements regarding the octane rating of their gasoline sold to the jobbers.

The subject of jobbers' margins came in for extended discussion at the meeting and a committee was to be appointed to study unsatisfactory refinery contracts offered individual jobbers.

It was stated that, prior to the adoption of the code, the customary margin to jobbers in Michigan was 2.5 to 3 cents a gallon, and that after the adoption of the code jobber margins decreased to 2 cents and to an even lower figure on new contracts offered by integrated companies.

Likewise, it was stated that dealers' margins had increased from around 3 and 3.5 cents a gallon to 4 cents. The weighted average cost of jobber distribution was 3.67 cents a gallon, according to a survey taken by the jobbers at the request of the Petroleum Administrative Board.

The jobbers decided to ask President Roosevelt to call a hearing to compare jobbing costs of major companies with the margins which those companies allow their jobbers. We have asked the refiners to meet with us for this purpose but have had no response to our requests and have appealed to the Petroleum Administrative Board to no avail, the jobbers stated at Detroit.

The oil cooperatives situation, the present retail situation, and the track-side station problem were other subjects discussed at the meeting.

Neil Staebler, Staebler Oil Co., Ann Arbor; Charles Goff, secretary Michigan Petroleum Association, Lansing; T. R. Strong, F. & S. Oil Co., Ithaca; and J. F. Wilson, Star Oil Co., Port Huron, opened the subjects for discussion. Mr. Wilson acted as chairman.

Another combined meeting will be held in Detroit the latter part of September. The associations sponsoring the meeting were Michigan Petroleum Association, Independent Petroleum Association of Michigan, and Dixie Distributors, of Michigan.

DAYTON DEALERS APPEAL TO ICKES TO RESTORE CUT IN MARGINS

DAYTON, OHIO, *September 7.*

To Oil Administrator Ickes' office last week went a petition heavy with the names of some 450 independent oil dealers of Dayton and vicinity who are finding the weight of unstable price conditions too heavy to bear. It asked for the return portion of the independents' margin recently reduced by the supplying majors.

On regular accounts the margin dropped from 4 cents to 3 cents and on split accounts, from 3.5 to 2.5 cents.

Not unlike the telegram sent last July by 16 of Dayton's independent jobbers to Ickes hoping for some remedy to the price muddle that still exists within the city and surrounding area, the dealers' petition reads in part:

"The major oil companies of this country have developed a monopolistic stranglehold on the retail sale of gasoline so that they have the power to determine through secret agreements, obviously in restraint of fair competition, not only prices at which gasoline should be sold to retail dealers but also the price which retailers should charge the customer.

"In 11 counties within this State there has been, for the past several months, a period of unrestrained competition commonly called a "price war" between the major companies and smaller independent wholesalers of gasoline.

"The undersigned were in no way responsible for the commencement or continuation of this price war. We have now been advised by the major refiners that our dealer's margin is arbitrarily cut from 4 cents per gallon to 3 cents per gallon and from 3.5 cents per gallon to 2.5 cents per gallon. This 25 percent cut in our gross profit is limited to those counties in which the price war is in effect and is no more than an effort on the part of the refiners to force the dealers to bear half the cost of this competition for which no blame can attach to us. Unless we can be relieved from this unjust and unreasonable cut we shall be forced to disregard the hour and wage provisions of the code under which we operate, and return our 'Blue eagle.'"

The signing of the petition was accomplished in 2 days. It bears the names of 325 of the 350 Montgomery County dealers and 125 from Clark County. To further the effort a new independent dealers' association has been launched.

Dayton's dealers heretofore have been unorganized but there has resulted this concerted movement now headed by R. L. Belton, president of the Belton Tire Service. Other officers of the association are H. L. Karns, vice president, Trotwood, and C. J. Nicholas, secretary-treasurer, Dayton. A board of nine members has also been selected.

Rumors to the effect that unless the margins were restored the independent dealers would strike and picket major companies were denied by President Belton.

"We are willing to cooperate with the majors to the limit to get this matter straightened out. If the suppliers would stop selling to cut-price stations the trouble would be greatly lessened", said Mr. Belton. Radical proposals or actions are not being considered by the new association.

Membership in the organization is not open to any cooperative gasoline station dealer or cut-price operator. Tank-car buyers are not eligible to membership.

Officers of the association believe they will be able to win over many so-called "price cutters" and thus aid stabilization. In Springfield, Ohio, independent dealers, who also added their names to the Dayton petition, have moved two or three dealers to raise their prices.

STANDARD OIL OF INDIANA PRICE CUT MAY BRING CHANGES IN MARGINAL CONTRACTS

TULSA, *September 16.*

The annual study of contracts to be offered jobber customers in 1935 already is under way by Mid-Continent refiners as a result of the recent readjustment of retail price levels by the Standard Oil Co. of Indiana.

Serious consideration of the type of contract to be offered each year does not develop normally until later in the fall. The Standard company's action, how-

ever, precipitated this study. In the first place, a majority of existing contracts between Midwest jobbers and Mid-Continent refiners contain a marginal guarantee of 6 cents a gallon. It is generally believed, however, that Standard has discharged its former plan of determining retail price levels and now is using the spot market, plus freight from group 3 to destination, plus a margin of 5.5 cents.

With refiners guaranteeing a 6-cent margin, this new retail price level has resulted in a still smaller net-back at refinery for them. And those net-backs, particularly from areas of good, healthy price wars, have been a source of considerable misery.

The first consideration has been what to do about existing contracts. There probably will be an attempt made to cancel those which carry cancelation clauses, and to offer some other form of contract in its stead. The study has not gone far enough as yet, however, to say with any certainty what this new contract will contain. It was generally expected more information would be available within the next week or 10 days.

In the meantime Mid-Continent refiners generally are writing no marginal guarantee contracts of any kind.

Another factor which is being given consideration in connection with the revamping of contracts is the so-called "4–4–3 dealer contracts." It is reported in some quarters that an attempt is being made to get that particular contract either thrown overboard or modified by reduction, or by having the dealer share with his source of supply his normal margin when there are local price disturbances. As the contracts now are written the dealer gets his 4 cents for regular and premium gasolines and 3 cents for third grade, regardless of what the retail price level might be. He accordingly has no incentive to see the price structure maintained.

That type of contract has cost some refiners writing them a tidy sum, and several independent refiners nor offering them an enormous amount of tank car gasoline business this year.

Widespread retail price disturbances have kept the margin between the spot market tank-car price and the tank-wagon price and the tank-wagon-price as extremely narrow in many areas. If the jobber continued to buy in tank-car lots and maintain his bulk plant, his margin for operating expenses has been thin.

On the other hand, that he could reach for his phone, if he had a 4–4–3 contract, order the amount of gasoline he needed, have it delivered where he wanted it, and be assured of a margin of 3 to 4 cents, regardless of tank car gasoline prices or local price wars. He ran no risks to speak of, and had little overhead to worry about. Under the conditions naturally he grabbed at the 4–4–3 contract and left the independent refiner with no retail outlets holding the sack as far as tank car business was concerned.

(Clipping)

ASKS STATE ASSOCIATIONS TO URGE 2.5-CENT JOBBER MARGIN

CLEVELAND, *October 9.*

A committee, representing independent marketing interests in Michigan is urging upon similar interests in other States, legal action to prevent the refiners' stabilization committee from putting into effect any plan whereby the jobber's margin would be reduced to less than 2.5 cents a gallon on gasoline.

This committee, which represents the Michigan Petroleum Association, the Independent Distributors Association of Michigan, and the Dixie Distributors of that State, makes its proposal public in a letter to the State executive council. The council which is made up of executive officers of the State marketing associations, meets in Chicago, October 18, and the Michigan interests hope to have their proposal discussed there. The refiners' stabilization committee met in Chicago late in September, when the subject of jobber margins was discussed. Another meeting is schedules for October 12 at Chicago.

"Supposedly, at this second meeting, the refiners' stabilization committee will be presented with a plan which has been approved by Administrator Ickes for uniform application to all refiners in dealing with jobbers and dealers", states the communication of the Michigan committee to the State executive council.

It goes on to say that it is understood that two proposals were made at the refiners' meeting in September; one calling for a reduction in dealer margins to 3.5 cents and the maintenance of jobber margins at 2 cents; the other calling for a 3.5-cent dealer margin and an increase in jobber margins to 2.5 cents.

It also states that it has been conclusively shown that jobbers cannot adhere to the code and exist on a 2-cent margin; also that the major companies are not holding the cost of their jobbing operations within the 2-cent margin they offer to independent jobbers on their own products. In concludes:

"If the refiners' stabilization committee secures the approval of the oil administrator upon a plan designed to allow the jobber less than 2.5 cents margin, we believe that the State executives council should be prepared, at its meeting in October, to institute legal action to restrain the refiners from applying their plan to the oil industry."

New Schedule of Dealer Margins Proposed in the Middle West

CHICAGO, *October 13.*

A reduction in dealer margins is scheduled for November 17, based on action taken by midwestern refiners in a meeting at Chicago, October 12, to discuss dealer and jobber margins. The action applies only to companies operating in Standard Oil Co. of Indiana territory.

The new proposed schedule will reduce dealer margins 0.5 cent in Chicago and 1 cent outside Chicago on second-grade gasoline. On third-grade gasoline there will be no change for dealers in Chicago and a 0.5-cent reduction for dealers outside the city. The schedule provides for dealers to share equally with oil companies any reduction below normal service-station prices, down to a fixed minimum.

Following are the proposed new dealer margin schedules, figures being in cents per gallon:

	First grade	Second grade	Third grade
For Chicago dealers:			
Maximum	4.0	3.5	3.00
Minimum	3.5	3.0	2.50
For dealers outside Chicago:			
Maximum	3.5	3.0	2.50
Minimum	3.0	2.5	2.00

The maximum margin is to apply for both types of dealers when the service-station price is normal. On any reductions, the dealer and oil companies share equally down to the minimum.

With the total spread between cost of gasoline laid down plus taxes, and the service station normal price, amounting to 5.5 cents since September 11, the jobber will benefit by a 0.5 cent additional margin on second grade in Chicago, and by 1 cent outside Chicago, under the new margins.

Formal announcement of the new margins is to be made next week, with effective date now scheduled for November 17 to provide time for exercising customary notification of 30-day clauses in dealer contracts.

The meeting here on October 12 was attended by about 40 midwestern refiners, presided over by C. E. Arnott, member of the planning and coordination committee and in charge of the national stabilization program. A first meeting on margins was held in Chicago, September 21.

A moratorium on solicitation of dealer accounts that was supposed to have been effective from September 24 to November 1 was under fire at the meeting yesterday. Charges of chiseling were made, also that some companies had difficulty in getting instructions to branch managers. Debate became heated at times, with one refiner announcing that he would go his own way. Finally, the meeting settled and a continuation of the moratorium until the end of the month was agreed upon.

Debate was vigorous also on jobber margins, now 1.5 cents on second-grade gasoline.

What action the dealers will take in regard to the proposed margin reductions remains to be seen. If the resolution adopted at their national convention in Milwaukee this week reflects their universal opinion, some action to combat the reduction is expected.

The resolution stated, in effect, that the convention strongly opposed a reduction in dealer margins at this time, but indicated a willingness to enter a discussion with a view to stabilization, equitably based on integrated company operations.

JOBBERS LOOK TO GOVERNMENT CONTROL TO END CURRENT PRICE WARS

CHICAGO, *November 17.*

The close of the second month of the current midwestern gasoline price war finds opposition to major oil company price policy centered in many quarters on the hope of market restoration through Government price control, or on allowing price cuts to run their course for a thorough housecleaning.

Sentiment for allowing price wars to run their course comes from those marketers labeled "price sellers." Several marketers of this type have indicated a desire for a prolonged price war to see whether so-called "price sellers" or majors have more economic distribution.

Trackage stations can market gasoline on a 3-cent margin, one marketer explained, while major company distribution cost is 6 cents, as a minimum.

While the "price seller" may desire a fight to the finish, to determine what type of marketer has an economic right to exist, the jobber is the one caught in the middle along with his source of supply. Retail prices in a vast number of larger points in the Middle West are below the cost of the gasoline in the tank-car market, plus freight and taxes, and jobbers who have followed major company distribution methods are heavy losers.

To many jobbers the only hope for fair prices now seems to be in Government regulation. Wisconsin jobbers have a markets department already in operation and the groundwork laid for a minimum State-wide price order, but jobbers in other States are beginning to consider the benefits of Government control.

Sentiment among jobbers for Government control so far has not taken definite shape. It is in the talk stage now but jobbers are asking what course legislatures would take, if local oil men should ask protection against out-of-the-State major companies. These jobbers believe the legislatures might set a fair retail price to insure oil men staying in the picture and on the tax rolls.

The industry's first experience with price control, in Milwaukee county by the Wisconsin markets department, has been ended technically. Actually the maneuvers of the State itself to prevent the order from coming into Federal court in effect made the State ask for a temporary injunction on its own order, so the State court had to issue its injunction in the *Wadhams case.*

There is the belief also that the order would have been knocked out, in spite of the State's own efforts, as a result of defects in the order as written.

The legality of the law on which the order was written, however, has not come to court test. Attorneys in Wisconsin thoroughly familiar with the markets department orders in other industries hold that a legal order can be written if on a State-wide basis and that a differential for unbranded gasoline can be defended successfully in court.

A movement for a State-wide minimum-price order has been started in Wisconsin. At a meeting with the markets department officials in Madison this week a group of substantial jobbers discussed the situation, and a series of hearings in the State is being planned for the latter part of this month.

While jobbers are interested mainly in their own business they believe that the current price war is a "squeeze" play on the refiner as well as the jobber.

No matter what type of relief the jobber may obtain, the refinery source of supply ultimately pays the bill. If the jobber has local protection in a contract, the refiner's net-back is slim. If the jobber has been buying on the open market he now finds it more attractive to buy from dealers or major company bulk plants.

Jobbers buying from dealers is a strange marketing method but profitable for both. The major company dealer with a 4-cent margin can share his spread with the local jobber, each taking a 2-cent margin.

Another variation is for the jobber to close his bulk plant, quit buying on the open market, and buy gasoline delivered into his trucks at a major company bulk plant.

Price wars also have dislocated business, so losses are abnormally large. The normal volume of business in any point where prices are cut increases as motorists from other towns drive in for gasoline.

The reasons for the current price war are not entirely clear to jobbers.

Resistance to Dealer Margin Cut Slight, Executives Say

Tulsa, *December 1.*

Dealer margin reductions have met with less resistance than had been anticipated, according to a majority of marketing executives in this area who have distribution in various portions of the Standard of Indiana territory.

"There has been a little friction in Chicago and St. Louis," the executive of one of the major marketing companies said December 1, "but elsewhere our division managers report little difficulty had been encountered in re-signing our accounts. Latest report from Chicago indicates only three or four of our accounts there have failed to re-sign, and there have been a few dealers elsewhere but well over 90 percent of our accounts have been lined up on the new contract. It looks now like we may have been lined up on the new contract. It looks now like we may lose some 10 or 15 accounts out of several hundred."

The Barnsdall Refineries, Inc., held a general sales meeting about 10 days ago at Excelsior Springs, Mo. At that time division managers reported they had experienced very little difficulty in renewing contracts, and reports since that time indicate no change has been experienced.

The executive of another large company said today: "It has been gratifying to us that we have encountered a minimum of resistance to date. We already have more than 90 percent of our accounts lined up again. This has led me to believe most of the dealers were expecting a cut in margins. There have been some 'squawks' but most of them have centered around Chicago and St. Louis."

Other executives report their accounts also have been re-signed by 90 percent more, and in most instances their experiences check closely with those quoted above.

There is some speculation in a few quarters as to the 10 percent not signed. There probably will be some shifting of accounts, it was pointed out, but in the end it was not expected the shift would amount to the full 10 percent. Most of the executives anticipated a portion of those now holding out would re-sign within a short time.

Sliding Differentials Scale Asked to End Texas Price Wars

Dallas, *July 21.*

A schedule of differentials for service station and tank wagon gasoline prices in Texas will be asked of Oil Administrator Ickes by the stabilization committee for marketing for that State.

The proposed schedule is shown in the accompanying table.

The schedule has been drafted following an investigation of several months' duration to determine the seat of the troubles revolving around the disastrous price wars in Texas.

The committee has held stabilization meetings at all of the principal centers in Texas and has obtained expressions and suggestions from representative marketers responsible for the sale of approximately 80 percent of the gasoline marketed in the State, according to Fred M. Lege, Jr., chairman.

"After a careful study of the facts secured," states the notice issued by the committee, "it is the definite opinion of the committee that one of the principal contributing factors to gasoline price wars in Texas is the distorted relationship or differential between service station prices and prices in effect on tank wagon deliveries to the various classes of trade, which invariably leads to unethical practices and cut price tactics, resulting in a demoralized price structure.

"The committee is also of the opinion that, unless immediate action is taken to correct the evil, no permanent headway can be made toward curbing prevailing price wars, and the situation will be further aggravated, in the near future, by additional price wars developing in areas not yet affected."

The committee has sent the proposed schedule of differentials to all refiners, distributors, jobbers and wholesalers in the State. Request is made for a careful study of the differentials, and notification to the committee as early as possible whether the schedule is agreeable in the event it is approved by the Oil Administrator.

(The schedule referred to will be found on file with the committee.)

Schedule of differentials for service-station and tank-wagon gasoline prices, State of Texas

[Prices shown below per gallon do not include State and Federal tax and are subject to State tax of 4 cents per gallon and Federal tax of 1 cent per gallon]

ABOVE 70 OCTANE (PREMIUM)

Service-station price	Consumer tank-wagon price (single deliveries of 25 gallons or more)		Undivided dealer		Divided dealer		Commercial-consumer price under official CD-1 contract (single deliveries of 25 gallons or more)			
							3,000 to 10,000 gallons per month		Over 10,000 gallons per month	
	Discount off service-station price	Net price	Discount off service-station price	Net price	Discount off service-station price	Net price	Discount off net consumer tank-wagon price	Net price	Discount off net consumer tank-wagon price	Net price
19	2	17	[1] 5	14	[1] 4½	14½	1	16	2	15
18	2	16	4⅝	13¼	4¼	13¾	1	15	2	14
17	2	15	4½	12½	4	13	1	14	2	13
16	2	14	4⅜	11⅝	3¾	12¼	1	13	2	12
15	2	13	4	11	3½	11½	1	12	2	11
14	1⅞	12¼	3⅞	10¼	3¼	10¾	1	11¼	2	10¼
13	1½	11½	3½	9½	3	10	1	10½	2	9½
12	1¼	10¾	3¼	8¾	2¾	9¼	1	9¾	2	8¾
11	1	10	3	8	2½	8½	1	9	2	8
10	¾	9¼	2¾	7¼	2¼	7¾	1	8¼	2	7¼
9	½	8½	2½	6½	2	7	1	7¾	2	6½
8	¼	7¾	2¼	5¾	2	6	1	6¾	2	5¾
7		7	[2] 2¼	4½	[2] 2	5	1	6	2	5

60 TO 70 OCTANE (HOUSE BRAND)

17	2	15	[1] 5	12	[1] 4½	12½	1	14	2	13
16	2	14	4⅝	11¼	4¼	11¾	1	13	2	12
15	2	13	4½	10½	4	11	1	12	2	11
14	2	12	4¼	9¾	3¾	10¼	1	11	2	10
13	2	11	4	9	3½	9½	1	10	2	9
12	1¾	10¼	3¾	8¼	3¼	8¾	1	9½	2	8¼
11	1½	9½	3½	7½	3	8	1	8½	2	7½

[1] Maximum.

[2] Minimum.

Schedule of differentials for service-station and tank-wagon gasoline prices, State of Texas—Continued

[Prices shown below per gallon do not include State and Federal tax and are subject to State tax of 4 cents per gallon and Federal tax of 1 cent per gallon]

60 TO 70 OCTANE (HOUSE BRAND)—Continued

Service-station price	Consumer tank-wagon price (single deliveries of 25 gallons or more)		Undivided dealer		Divided dealer		Commercial-consumer price under official CD-1 contract (single deliveries of 25 gallons or more)			
							3,000 to 10,000 gallons per month		Over 10,000 gallons per month	
	Discount off service-station price	Net price	Discount off service-station price	Net price	Discount off service-station price	Net price	Discount off net consumer tank-wagon price	Net price	Discount off net consumer tank-wagon price	Net price
10	1¼	8¾	3¼	6¾	2¾	7¼	1	7¾	2	6¾
9	1	8	3	6	2½	6½	1	7	2	6
8	¾	7¼	2¾	5¼	2¼	5¾	1	6¼	2	5¼
7	½	6½	2½	4½	2	5	1	5½	2	4½
6	¼	5¾	2¼	3½	2	4	1	4¾	2	3¾
5		5	[2] 2½	2½	[2] 2	3	1	4	2	3
BELOW 60 OCTANE (THIRD GRADE)										
15	2	13	[1] 4	11	[1] 3½	11½	½	12½	1	12
14	2	12	3¾	10¼	3¼	10¾	½	11½	1	11
13	2	11	3½	9½	3	10	½	10½	1	10
12	2	10	3¼	8¾	2¾	9¼	½	9½	1	9
11	2	9	3	8	2½	8½	½	8½	1	8
10	1¾	8¼	2¾	7¼	2¼	7¾	½	7¾	1	7¼
9	1½	7½	2½	6½	2	7	½	7	1	6½
8	1¼	6¾	2¼	5¾	1¾	6¼	½	6¼	1	5¾
7	1	6	2	5	1½	5½	½	5½	1	5
6	¾	5¼	1¾	4¼	1½	4¾	½	4¾	1	4¼
5	½	4½	1½	3½	1	4	½	4	1	3½
4	¼	3¾	1½	2½	1	3	½	3¼	1	2¾
3		3	[3] 1¼	1½	[3] 1	2	½	2½	1	2

[1] Maximum.

[2] Minimum.

TESTIMONY OF HUGH H. OBEAR, WASHINGTON, D. C.

(The witness having been first duly sworn by the chairman, testified as follows:)

Senator KING. State your name and residence, please.

Mr. OBEAR. Hugh H. Obear, Washington, D. C.

Senator BARKLEY. For whom do you speak?

Mr. OBEAR. I speak for no one, sir, no organization. I have been requested to come before the committee, I presume, because I was counsel for the Purity Ice Co. in the case recently decided by the Federal Trade Commission.

Senator BARKLEY. By whom were you requested to appear?

Mr. OBEAR. I was requested, I believe, was it not, by Senator King?

Senator KING. Your name was sent me and I transmitted it to our assistants here, and they have asked you to appear.

Senator BARKLEY. I just wanted to get you identified.

Senator GORE. You did not finish your address. What is your address?

Mr. OBEAR. Southern Building, Washington, D. C.

Senator BARKLEY. Are you a lawyer?

Mr. OBEAR. I am a lawyer; yes, sir.

Senator KING. Proceed. Your time will be limited, Mr. Obear.

Mr. OBEAR. Yes, sir. I presume that what the committee wants principally to know is about the facts of the case that we had before the Federal Trade Commission which furnishes an excellent illustration of the attempted control of production feature of the Ice Code.

The Ice Code, article XI, contained a provision that no one could engage in that industry, no one could erect a plant in that industry unless he had first obtained a certificate of public convenience and necessity from the deputy administrator. In the *Purity case*, this little man, a small ice manufacturer, then in Birmingham, had a nephew and he was anxious to get his nephew into the ice business. Quite some time prior to the adoption of the code, he made a survey, particularly in ths State of Florida, and finally decided that in the town of Lakeland, Fla., where there was but one ice plant, that one a large ice manufacturing plant of about 325 tons per day, owned by the Federal Ice Co., a company that had 18 plants in the State of Florida and was itself in turn a subsidiary of the largest ice-producing company in the world, the City Ice & Fuel Co. The City Ice & Fuel Co. has plants in 26 States and in Canada.

Senator GORE. Where are its headquarters?

Mr. OBEAR. I think in Cleveland, Senator; I am not positive. At all events, Mr. Veletzy, who is an Italian by birth, but a naturalized citizen, a good little man, decided that he would like to erect this plant in Lakeland, Fla. He had a considerable amount of surplus ice machinery at his plant in Birmingham. He did not apply for any certificate of public convenience and necessity; he simply went ahead and erected a little plant of a total maximum capacity of 15 tons per day and an actual output of around 10 tons per day. Almost immediately he was proceeded against by the code authority.

Senator KING. In Florida?

Mr. OBEAR. He was called, I think, before their local board, and then he was summoned to Washington to appear before the compliance division.

Senator GERRY. When had he erected this plant?

Mr. OBEAR. He erected the plant in January 1934. It was subsequent to the adoption of the code, sir. The code authority in the ice industry was, I believe, largely dominated by the larger manufacturers of that industry.

Senator CLARK. What is the basis of the selection of the code authority, do you know?

Mr. OBEAR. I do not know. At all events, it was at that time when I was called into the case when Veletzy was called before the compliance board. We appeared over there and stated the facts, most of which I have recited to you, and the compliance section said that they would let us hear from them. We did not hear from them at all. They never communicated with us further, and the next thing we knew——

Senator GORE (interrupting). What was the date of that conference?

Mr. OBEAR. Senator, I do not remember the exact time. I could not find it from my record.

Senator KING. Approximately?

Mr. OBEAR. It was in the spring of 1934. The next thing we knew was the citation from the Federal Trade Commission to appear and show cause why a cease and desist order should not be issued against him.

Senator KING. How did it reach the Federal Trade Commission?

Mr. OBEAR. It reached the Federal Trade Commission through the National Recovery Administration.

Senator KING. They referred it to the Federal Trade Commission?

Mr. OBEAR. The proceeding was really upon the relation of the National Recovery Administration, and is, I believe, the only proceeding that the Recovery Administration has initiated in the Federal Trade Commission.

Senator CLARK. What was the basis of the complaint? That this man had moved his machinery down there and started a plant down there?

Mr. OBEAR. The sole basis of the complaint was that he had dared to go into business without having obtained the consent of the deputy administrator. He dared to engage in what the Supreme Court of the United States has unmistakably said he has a perfect right to do, to engage in a lawful occupation. There was absolutely no question in this case of any violation of any provision of the code except this provision section 11. No price-cutting, no unfair competition of any kind or character; simply that he exercised his constitutional right to engage in business.

When the matter came on before the Federal Trade Commission, the trial examiner did not undertake to pass on constitutional questions, but after all of the evidence was in, the trial examiner found that to enforce section 11 of the code in this particular case would result in the granting or the creation of a monopoly in this small area of about 27 by 11 miles in and around Lakeland, Fla.

When the case came on for a hearing——

Senator CLARK (interrupting). In other words, what this code set out to do was to set themselves up as public utilities and make the code authority a public service commission for the purpose of granting certificates of necessity and convenience?

Mr. OBEAR. Yes, sir; and that is exactly what I am told was done in the initial stages. The code authority itself undertook to pass upon whether anybody else should come into the industry. Some complaints, I have been informed—or rather, some requests—were acted upon by the code authority, requests to engage in business, without their ever having reached the deputy administrator.

When the case came on before the Federal Trade Commission, not only was the deputy administrator there—it was defended by the counsel for the National Recovery Administration but counsel for the code authority——

Senator GORE (interrupting). Do you remember his name?

Mr. OBEAR. Mr. Gregory Hankin, a very able lawyer. He filed a 380-page brief. But not only was the Recovery Administration permitted, as they had a perfect right under the law to carry on the case, but the code authority appeared through its counsel and the code authority undertook to state and conduct its particular case. We objected rather strenuously to the code authority appearing, but the trial examiner ruled that they could appear and so they also filed a long brief.

Senator CLARK. As a matter of fact, under the code they have a practice, do they not, of setting up the people who happen to be in the ice business in any community as the local code authority, to prevent anybody else from engaging in the business in that community, and regulate their own practices, and also to prevent anybody from shipping any ice in from the outside?

Mr. OBEAR. I have been advised that that is a fact, Senator. I have not checked that procedure.

Senator CLARK. I was advised the other day by a man who is in the business himself and who said it is a very satisfactory thing to him, because he and his only competitor in this town in Missouri are the local committee with authority to keep anybody else from engaging in the business there, and since they are not permitted to ship in, he and his competitor, associated on the code authority, have been able to add 10 cents a hundred pounds onto the price of ice in that community.

Mr. OBEAR. I think it is quite significant that the recent report of the City Ice & Fuel Co. shows an increase—and that is the largest one, and that is a competitor of this little man down there in Florida—showed an increase of 13 percent in their earnings in 1934 over 1933.

Another significant feature was that when they came on to try this case before the Federal Trade Commission, they produced three expert witnesses, and the three expert witnesses were all affiliated with the code authority. One was the secretary for the code authority, one had been the counsel to the code authority, and one was the chairman of the code authority.

Senator GORE. That is, in the proceedings before the Federal Trade Commission?

Mr. OBEAR. That was in the proceedings before the Federal Trade Commission.

Senator GORE. Do you know whether that particular code authority was incorporated or not?

Mr. OBEAR. Senator, I do not know that. I do not believe it was.

Senator GORE. Some are and some are not, as I understand.

Senator BARKLEY. None of the code authorities is incorporated, is it?

Senator GORE. Some of them are. I was told that yesterday by a person connected with the N. R. A. organization.

Senator BARKLEY. I do not think any of them are incorporated They are just selected.

Senator GORE. I was told yesterday by a person connected with the consumers that some of them are incorporated.

Senator CLARK. They incorporate the trade associations, and they have the code authorities, which were the trade associations.

Senator GORE. They have told me that some of the code authorities were incorporated, and they had strenuously protested against it, and it had been done over their protests. I may be wrong.

Senator KING. I wish you would ascertain that fact, whether any of the code authorities are incorporated, and if so, which ones, Mr. Whiteley.

Senator BARKLEY. The National Industrial Reocvery Act does not authorize the incorporation of code authorities.

Senator GORE. He said they were incorporated to limit their liability so that they would not be responsible for damages. I may be wrong, but that is a point that ought to be cleared up. Let us call on Mr. Richberg to submit a list of those which are incorporated, if there be any such.

Senator KING. I have just asked Mr. Whiteley, who is assisting the committee, to submit such a list.

Senator BLACK. Why did they have experts in a hearing of that kind?

Mr. OBEAR. To show the general economic situations in the ice industry and the necessity for control, and generally to try and build up some findings. The Government proceeded on the theory originally that the only findings that were necessary—they made the statement that the only findings that would be necessary were the original findings made at the time of the adoption of the code, but they were not quite willing to rely on that, and therefore they went ahead and proved the general situation in the ice industry, and more or less the necessity, in their opinion, for control of production.

Senator BLACK. These were experts on production control?

Mr. OBEAR. Experts on just generally the ice industry, and I presume also in an effort to show the influence of ice or the attempt to show that the manufacture of ice affected interstate commerce. As a matter of fact, the complaint in this case originally charged that the respondent Veletzy was engaged in interstate commerce.

Senator GORE. What was that?

Mr. OBEAR. The complaint charged that Veletzy was engaged in interstate commerce.

Senator CLARK. Had he sold any ice outside of the State?

Mr. OBEAR. He never sold a pound of ice outside of the town of Lakeland. Every sale was right there and for cash.

Senator KING. Were these complainants from the State of Florida?

Mr. OBEAR. No; one was Mr. Mount Taylor, the chairman of the code authority.

Senator KING. Where is he from?

Mr. OBEAR. I think he was originally from Texas; and then a former counsel for the code authority, and then the secretary of the code authority.

Senator KING. They were the expert witnesses, as well as the prosecutor for the code?

Mr. OBEAR. They were the expert witnesses, as well as the prosecutor.

Senator CLARK. Did they show how the sale of ice in Lakeland, Fla., manufactured and sold there, amounted to interstate commerce?

Mr. OBEAR. No; as a matter of fact, the Recovery Administration was compelled to abandon that, and they specifically and definitely abandoned that in their brief, and they did not contend that the respondent was engaged in interstate commerce, but they contended that the business of manufacturing ice so directly affected interstate commerce, because this big Federal ice plant sold ice to the railroad company, and the railroad company used the ice in icing cars, therefore Mr. Veletzy directly affected interstate commerce.

But the Federal Trade Commission held, of course, as it was bound to hold, I submit, that there was no interstate commerce involved in the transaction, and hence there was no jurisdiction for the Federal Trade Commission to proceed.

Senator GORE. So that the proceedings collapsed in the Federal Trade Commission?

Mr. OBEAR. The Federal Trade Commission itself dismissed the complaint; yes, sir.

Senator KING. Is that all?

Mr. OBEAR. Only one thing further. I am reliably informed that the Consumers Division of the National Recovery Administration has always opposed from the beginning this control of production feature of the Ice Code.

Senator BARKLEY. Who has opposed that? I did not get it.

Mr. OBEAR. The Consumers Advisory Council of the National Recovery Administration.

Those, in brief, are the facts of this particular case, which furnish, I think, Senator, a very excellent illustration first of monopolistic feature of such codes and of the danger of control of production, and of its absolute unconstitutionality.

Senator GORE. What was that last word?

Mr. OBEAR. Unconstitutionality. The production control feature of codes insofar as they affect small local manufacturers.

Senator GORE. When was this case dismissed by the Federal Trade Commission?

Mr. OBEAR. The past week.

Senator GORE. You do not know whether this little concern will try to come to life again?

Mr. OBEAR. The little concern has gone steadfastly on; it has never stopped. It would have required the effective cease and desist order of the Federal Trade Commission to put him out of business. Of course, they could have proceeded, as you know, Senator, by an indictment against him for having committed the crime of engaging in what the Supreme Court of the United States said in the *New State Ice case* was equivalent to the business of the butcher, the baker, and the shoemaker.

Senator BARKLEY. I understand, briefly, that the Ice Code, as many of the other codes, contained a provision requiring a certificate from the code authority or the administration of the N. R. A. through the code authority with reference to the expansion of the ice business or to the entry into it of new ventures?

Mr. OBEAR. That is correct.

Senator BARKLEY. And when this matter came up, they referred it to the Federal Trade Commission for hearing?

Mr. OBEAR. Yes.

Senator BARKLEY. And the Federal Trade Commission decided that inasmuch as the ice company was not in interstate commerce they had no jurisdiction?

Mr. OBEAR. That is correct.

Senator BARKLEY. That is the sum total of it?

Mr. OBEAR. That is the sum total of it.

Senator GERRY. And if they had had this power to go into intrastate matters, then they could have considered that investigation?

Mr. OBEAR. Yes.

Senator GERRY. I know that the Federal Trade Commission now has a bill before the Senate giving them this power.

Mr. OBEAR. Yes.

Senator LA FOLLETTE. Do you know how many of the codes contain a similar provision to section 11 of the Ice Code?

Mr. OBEAR. I have been advised, Senator, but I have forgotten. I think it is 27 codes that contain control of production features.

Senator LA FOLLETTE. Could you furnish a list of those?

Mr. OBEAR. I would be glad to.

The following data was subsequently submitted by Mr. Obear.

WASHINGTON, D. C., *April 13, 1935.*

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

(Attention Hon. Robert M. La Follette.)

SIRS: During the course of my testimony before your Committee on April 11, 1935, with respect to control of production clauses in the codes, I was requested by Senator La Follette to submit a list of codes containing such provisions.

The most complete and accurate summary of this problem which I have found is the report of the Committee on Capital Goods Industries of the American Society of Mechanical Engineers. This report was made on December 3, 1934, and was published in a recent issue of the magazine Mechanical Engineering.

The report shows that in 108 codes there are 163 provisions limiting the extension and use of plant capacity and restricting industrial production. The report classifies the restrictive provisions in the codes as follows:

	Number of codes where provision is found
A. Capacity and equipment control:	
(1) Direct prohibition upon extension of capacity	1
(2) Requiring authorization for extension of equipment	21
(3) Restrictions to be recommended by Code Authority:	
Shall be recommended	15
May be recommended	8
(4) Restrictions by agreement	3
(5) Restrictions on rearrangement of equipment	5
(6) Disposal of obsolete equipment	2
(7) Registration of only required productive machinery	5
(8) Restrictions on offering machinery as inducement to sale	1
Total	61
B. Productivity and production control:	
(1) Allocation of production inventory and quotas	5
(2) Regulations permitted	8
(3) Regulations to be recommended	8
(4) Restrictions of operating time	60
(5) Restrictions on number of machines per operator	6
(6) Restrictions on productivity	16
Total	102

The 108 Codes containing Machinery and Production restrictions are:

Code No.

1. Cotton Textile
3. Wool Textile
5. Coat and Suit
6. Lace Manufacturing
7. Corset and Brassière
9. Lumber and Timber Products
10. Petroleum
11. Iron and Steel Industry
15. Men's Clothing
16. Hosiery
18. Cast Iron Soil Pipe
19. Wall Paper Manufacturing
23. Underwear and Allied Products Manufacturing
27. Textile Bag
28. Transit
29. Artificial Flower and Feather
34. Laundry and Dry Cleaning Machinery Manufacturing
36. Glass Container
43. Ice
48. Silk Textile
51. Umbrella
53. Handkerchief
54. Throwing
64. Dress Manufacturing
66. Motor Bus Industry
67. Fertilizer
78. Nottingham Lace Curtain
79. Novelty Curtain Draperies, Bedspreads, and Novelty Pillow
82. Steel Casting
90. Funeral Supply
92. Floor and Wall Clay Tile Manufacturing
99. Asphalt Shingle and Roofing Manufacturing
108. Motor Fire Apparatus Manufacturing
109. Crushed Stone, Sand, and Gravel and Slag Industries
111. Air Transport
112. All Metal Insect Screen
113. Limestone
118. Cotton Garment
119. Newsprint
120. Paper and Pulp
123. Structural Clay Products
125. Upholstery and Drapery Textile
128. Cement
135. Cigar Container
140. Waterproofing, Dampproofing, Caulking Compounds, and Concrete Floor Treatments Manufacturing
143. Wool Felt Manufacturing
146. Excelsior and Excelsior Products
147. Motor Vehicle Storage and Parking Trade
148. Pyrotechnic Manufacturing
149. Machined Waste Manufacturing
151. Millinery
156. Rubber Manufacturing
157. Hair Cloth Manufacturing
164. Knitted Outerwear
166. Wax Paper
168. Refractories
172. Rayon and Silk Dyeing and Printing
174. Rubber Tire Manufacturing
175. Medium and Low Price Jewelry Manufacturing
183. Household Ice Refrigerator
188. Velvet
190. Paper Stationery and Tablet Manufacturing
192. Cast Iron Pressure Pipe

194. Blouse and Skirt Manufacturing
202. Carpet and Rug Manufacturing
211. Robe and Allied Products
212. Drapery and Upholstery Trimming
214. Slit Fabric Manufacturing
215. American Glassware
217. Dental Laboratory
220. Envelop
226. Light Sewing Industry Except Garments
227. Wet Mop Manufacturing
235. Textile Processing
237. Alloy Casting
245. Corrugated and Solid Fiber Shipping Container
253. Animal Soft Hair
256. Schiffli, The Hand Machine Embroidery and Embroidery Thread and Scallop Cutting
259. Hat Manufacturing
262. Shoulder Pad Manufacturing
264. Foundry Equipment
269. Carbon Black Manufacturing
276. Pleating, Stitching and Bonnaz and Hand Embroidery
281. Laundry Trade
283. Ready Made Furniture Slip Covers Manufacturing
302. Candle Manufacturing and Beeswax Bleachers and Refiners
303. Cordage and Twine
309. Solid Braided Cord
311. Ready Mixed Concrete
312. Narrow Fabrics
324. Textile Print Roller Engraving
328. Tapioca Dry Products
336. Covered Button
364. Clay Drain Tile Manufacturing
368. Print Roller and Print Block Manufacturing
388. Sandstone
389. Clay and Shale Roofing Tile
393. Soft Fiber Manufacturing
400. Celluloid Button Buckle and Novelty Manufacturing
401. Copper
408. Undergarment and Negligee
436. Fur Manufacturing
442. Lead
457. Cap and Cloth Hat
479. Cold Storage Door Manufacturing
494. Merchant and Custom Tailoring
496. Collective Manufacturing for Door to Door Distribution
499. Refrigerated Warehousing

I trust that this is the information which is desired.

Respectfully,

HUGH H. O'BEAR.

Senator CONNALLY. You spoke a while ago about production. Is that based on the theory that, until an article is actually produced, it is not in the stream of interstate commerce, although ultimately it may be?

Mr. OBEAR. Yes, sir.

Senator CONNALLY. That is your theory?

Mr. OBEAR. We contended that the proceeding was invalid on quite a number of grounds, but that was one.

Senator CONNALLY. I am speaking of that particular one.

Mr. OBEAR. Yes, sir. We said that in view of the clear decisions of the Supreme Court of the United States, particularly in the case of *Hammer* v. *Dagenot*——

Senator CONNALLY (interrupting). That is the North Carolina child-labor case?

Mr. OBEAR. That was the Massachusetts child-labor case. But it was a child-labor case.

Senator CONNALLY. It is a North Carolina case, and Hammer was the district attorney there, and afterwards in Congress. They held that you could not regulate a product, because of the method by which it was produced, because the interstate commerce did not attach until it was finished and started in the stream of commerce.

Mr. OBEAR. That manufacture was not commerce, and that the Federal power cannot reach out and control the individual manufacturer because his product must flow into the stream of interstate commerce before the Federal Government has any power to control.

Senator BARKLEY. In spite of which the courts have held that you can get an injunction against a lot of miners in the mining of coal, and where the acts involved are all localized at the mine.

Mr. OBEAR. That is the *Coronado Coal case*, Senator. The differentiation of that case, which the Supreme Court made there, was that that was a conspiracy, a conspiracy to obstruct the flow in interstate commerce, but it did not repudiate *Hammer* v. *Dagonet* and held that they could not step in and regulate and control the little individual manufacturer.

Senator GORE. And the conspiracy involved both coal that was moving in interstate commerce and coal that was being mined and perhaps not interstate commerce mined.

Mr. OBEAR. No, sir.

Senator BARKLEY. It was mere mining.

Mr. OBEAR. It was mere mining of coal. It was an extension of the interstate commerce power, but was based on conspiracy to obstruct interstate commerce.

Senator BARKLEY. Do you suppose that under a charge of conspiracy, where the owners of mines or factories got together to reduce wages, that the Supreme Court would sustain an action growing out of that sort of conspiracy that might indirectly and remotely affect interstate commerce?

Mr. OBEAR. No, sir; I do not think the Supreme Court would ever uphold anything remotely or indirectly. It has said over and over again, it used the very inverse of your phrase, that it must directly and substantially affect interstate commerce, and that if the effect is remote, that there is no Federal power.

Senator BARKLEY. What I am wondering is, if a conspiracy among the owners of factories or mine owners could be sustained, as well as among the workers.

Mr. OBEAR. Well, of course, there is a possibility that it might on some conspiracy charge, but you would clearly have to have a conspiracy there. There would have to be cooperation between many, and it could not be just a regulation of one little man.

Senator CLARK. If I understood you correctly, in this particular case it was not the contention of N. R. A. that the product of this man actually crossed the interstate line.

Mr. OBEAR. No.

Senator CLARK. As I understand, the contention was that a competitor sold to a railroad, ice which was used in icing cars, which cars went across the State line.

Mr. OBEAR. Even the competitor did not sell.

Senator CLARK. The ice went across the State line after the railroads got it, and that was the basis for the contention that this man's business was also engaged in interstate commerce.

Mr. OBEAR. That is the whole thesis.

Senator CONNALLY. On the question that Senator Barkley asked you, if the court would have jurisdiction to entertain a conspiracy in which the miners who mined the coal were engaged, and whose object, of course, was to get higher wages, to get more out of the mines, why would it not be just as sound to hold that the operators who might conspire to reduce the production costs or to increase the price, either one, would just as vitally affect interstate commerce? It seems to me what is sauce for the goose ought to be sauce for the gander.

Mr. OBEAR. It seems to me that is logical. Of course, you have to have a product which is destined to flow in interstate commerce.

Senator CONNALLY. I am talking of the same question. It is the same question that the unions were conspiring about.

Senator KING. Has not the Supreme Court said in many cases that coal which would sooner or later find its way into commerce was not interstate commerce but was intrastate commerce?

Mr. OBEAR. Yes. In the *Hysler case.*

STATEMENT OF FRANCIS BIDDLE, CHAIRMAN NATIONAL LABOR RELATIONS BOARD

(The witness was first duly sworn by the chairman and testified as follows:)

Senator KING. State your name and residence.

Mr. BIDDLE. Francis Biddle, chairman of the National Labor Relations Board. My address is 1302 Eighteenth Street, Washington.

Senator KING. How long have you occupied that position?

Mr. BIDDLE. I was appointed on the 19th of November.

Senator KING. Last year?

Mr. BIDDLE. Yes. To succeed Mr. Garrison.

Senator BARKLEY. You are not a permanent resident of Washington?

Mr. BIDDLE. No, sir.

Senator BARKLEY. Where do you come from?

Mr. BIDDLE. Philadelphia.

Senator BARKLEY. What was your position there?

Mr. BIDDLE. I was a lawyer, a Philadelphia lawyer. [Laughter.]

Senator BARKLEY. That used to be a good recommendation. I do not know if it still is.

Mr. BIDDLE. I hope so.

Senator KING. With that recommendation, we will have some of these insoluble riddles solved now.

Mr. BIDDLE. I have carefully read those provisions of Senate bill 2445, which is a continuation of the National Industrial Recovery Act, now before your committee, dealing with the rights of employees to organize without interference from employers.

Senator KING. May I just inquire? Are you proceeding now to analyze this new bill which has been offered by Senator Harrison?

Mr. BIDDLE. Yes, sir; only those provisions of the bill which deal with my particular field; that is, the field of labor relations.

I am opposed to these provisions; that is, the provisions dealing with labor relations, or to inserting section 7 (a) in this statute, although I know that several leading representatives of labor have advocated a continuance of section 7 (a). My associates on the National Labor Relations Board share my view.

Senator GORE. How many associates have you on the Board?

Mr. BIDDLE. There are three on the Board.

Senator GORE. Who are they?

Mr. BIDDLE. Dr. H. A. Millis, who is the head of the economics department of the University of Chicago, and Mr. Smith, who was former commissioner of labor in Massachusetts.

Senator GORE. Do you know his initials?

Mr. BIDDLE. Edwin S. Smith.

Senator WALSH. He was commissioner of industry and labor?

Mr. BIDDLE. Yes; excuse me.

Senator GORE. They agree with you?

Mr. BIDDLE. They agree with me; yes.

Senator BARKLEY. Mr. Chairman, may we proceed?

Mr. BIDDLE. The text of section 7 (a), subdivisions 1 and 2 in the proposed bill are identical with those in the present National Industrial Recovery Act. There is, it is true, a change in the introductory sentence of this section. The present act reads:

> Every code of fair competition, agreement, and license, approved, prescribed, or issued under this title shall contain the following conditions—

And then the significant words which are added—it is slightly changed—in the proposed bill section 7 (a) is introduced as follows:

> Every code of fair competition, approved, prescribed, or entered into under this title shall contain the following statement of rights of employees, which are hereby declared and affirmed.

The significant words are, of course, "which are hereby declared and affirmed." The National Labor Relations Board has held that section 7 (a) of the present act is not applicable to uncoded industries; and I presume that this language was inserted in an effort to declare the rights of employees, irrespective of the incorporation of their employer's business in a code, and thus afford the basis for application to the inherent power of equity courts to provide remedies to effectuate statutory or other rights. But I do not believe that the phrase to which I have referred extends the protection of 7 (a) to uncoded industries, but increases the uncertainty. The express enforcement provisions of the proposed bill, as under the present act, are addressed to and apply only to violations of codes. And this phrase is in a section tied into the administration of an act which comes into operation only when a code is promulgated.

Senator KING. Do you favor the labor provisions being applied to industries that are not under the code?

Mr. BIDDLE. I do. When I say labor provisions, I am speaking of section 7 (a), that is, the right to bargain collectively and not to have interference with unions.

Subdivisions 1 and 2 of the section in the proposed act are, as I have said, identical with those in the present law. There are thus perpetuated the existing uncertainties and ambiguities, particularly with regard to the duty of an employer to bargain collectively, the majority rule, and as to whether the section outlaws closed-shop agreements.

The language of section 7 (a) has been variously construed, and these constructions have been vigorously debated since the passage of the act. The right of employees to organize and to bargain collectively was a right already amply recognized by American law. But this right, taken alone, means nothing more than a recognition of labor unions as legal social entities; and this board has held that this right, inserted in a statute, implied a corresponding duty on the part of the employer to bargain collectively. Without such a duty the right becomes sterile. Congress could not have so intended.

The National Labor Relations Board in construing the right to bargain collectively thus expressed, with the accompanying provisions for an election, has formulated the so-called "majority rule", a rule already accepted for years in actual practice, and recently in express terms, in the Railway Labor Act. The Board concluded that Congress would not have set up the machinery of election if the result of the election was to have no meaning.

The election was to determine the majority, and the majority was to represent all of the employees in matters properly the subject of collective bargaining. But this construction—founded on an essentially practical consideration that to make a bargain there must be one controlling representative of the employees—has been bitterly assailed. It seems to me obvious that the majority rule should be clearly stated in legislation. It is not so stated in the act under discussion.

The National Labor Relations Board has never decided whether section 7 (a) outlaws closed-shop agreements. I am of the personal opinion that it was not intended to do so, and does not affect them. But there have been opposite interpretations by those administering the National Recovery Act. The Wagner labor disputes law expressly provides that such agreements are not affected, leaving their legality to the law of the particular state which governs. The act before your committee fails to clarify this vital point.

I have said that I was opposed to placing 7 (a) in the statute. The history of section 7 (a) has been stormy. On August 5, 1933, the President appointed the National Labor Board, with Senator Wagner as chairman, to pass on disputes arising under the President's reemployment agreement. No specific powers were granted to this Board, nor were its duties or policies more clearly defined. The Board, on its own initiative, instituted the very interesting technique of using elections among workmen to determine what representative they really wished to bargain for them.

Senator GORE. Who employed that plan?

Mr. BIDDLE. Senator Wagner's old labor board. They began elections by consent to see whom they wished really to represent them.

But before long it became apparent that where employers refused to cooperate in holding elections, the result could not be accurately gaged in the absence of pay rolls to use for checking those eligible to vote. The Wagner board, hastily organized, its members acting without compensation, with no defined powers, nevertheless performed during nearly a year extraordinarily efficient services in hearing and settling complaints, and in handing down a group of carefully reasoned decisions, constituting a real contribution to the field of law.

Last year when the Wagner bill was withdrawn in Congress, Public Resolution 44 was adopted, authorizing the President to appoint

boards "to investigate issued facts, practices, and activities of employers or employees in any controversies arising under section 7 (a)." The resolution authorized such boards to hold elections, and gave them authority to order the production of documents or the appearance of witnesses to give testimony. Under this authority it was intended to give the boards power to subpena pay rolls essential to hold elections where the employer would not consent. Section 2 of the resolution made the election orders of the board subject to review in the manner provided under the Federal Trade Commission Act. The President appointed the National Labor Relations Board under this resolution, and in an Executive order issued June 29, 1934, defined its jurisdiction, its relations to other labor boards, and its relation to other executive agencies of the Government. The life of the board is coextensive with the National Industrial Recovery Act, and expires on June 16, 1935.

The resolution, therefore, added substantially nothing to the powers of the Board, except the power to subpena pay rolls in holding elections. Since, however, a review was provided, this powe has proved to be ineffectual. In 6 cases where this Board has ordered an election, I might say the last 6 out of the last 7 cases in which we have ordered elections, the employers have filed petitions to review under the provisions of the resolution, in the circuit court of appeals and have successfully blocked the election proceeding. None of the cases have yet been argued. An election should be ordered where there is a dispute as to which union represents a majority of the employees, and where court action substantially delays the election the very point of holding one disappears.

Before discussing the enforcement features of the proposed bill, I shall speak of our experience with enforcement under the present act. Between July 9, 1934, the date of the creation of the National Labor Relations Board, and March 2, 1935, the Board issued findings and decisions in 111 cases. In 86 of these the Board found that a violation had occurred. In only 34 did the employer make appropriate restitution in accordance with our decision. No compliance was obtained in the other 52 cases. Thirty of these were referred by the Board to the Department of Justice. In one case a bill in equity has been filed in the district court. Seven cases have been referred to local United States attorneys on the understanding that further evidence should be secured before suit was instituted. In one of these, the *Carl Pick Manufacturing Co. case*, a criminal complaint was filed on March 21. In 9 cases the Department has advised the Board that further investigation is necessary; in 3 cases the Department is of the opinion that no suit is justified on the record; and in the remaining cases the Department has not proceeded for various reasons.

Therefore, in the 8 months of the Board's activities 1 suit only has been instituted, and 1 criminal prosecution begun.

In the *Weirton case*, which came up from the old National Labor Board, the events which constituted the basis of the suit occurred in the summer and fall of 1933; a bill in equity was filed in the Federal District Court of Delaware in the spring of 1934, and amended in September 1934. The case was tried in the winter of 1934, and a decision finally rendered at the end of February 1935, a year and a half after the events complained of had occurred.

In the *Houde Engineering Corporation case*, the only case in which a bill in equity has been filed on failure to comply in cases handled by the present Board——.

Senator GORE (interrupting). What was the style of that case?

Mr. BIDDLE. Houde. It was rather a famous case, in which Mr. Garrison of the National Labor Relations Board declared unmistakably the so-called "majority rule."

The acts complained of started in the latter part of 1933 and have since continued. The final decision of the National Labor Relations Board in the case was in August 1934. A bill of equity was filed in November 1934 and an amended bill and answer recently filed. As yet there has been no trial.

This failure to enforce the law affects and undermines not only the right to collective bargaining, but the respect with which the public holds the Board and the courts. I am not here criticizing the office of the Attorney General. The causes are not hard to find. The Board is responsible for the administration of section 7 (a), but is devoid of the power to carry through this responsibility, having no power to subpena witnesses, so that records adequate for the immediate institution of court proceedings cannot be made up. Unlike other administrative boards, such as the Federal Trade Commission, it cannot enforce its decisions, but can merely refer them to the Department of Justice. The Department, then, instead of using the records that have been made up at the hearings, must start proceedings de novo. In fact, the recommendation of the National Board is nothing more than an opinion.

Moreover, adequate enforcement requires agents who are sympathetic with the basic purposes of the act, to stimulate collective bargaining agreements. Division of responsibility creates chaos. More particularly in this field of law than in ony other speed is essential. The man who is out of a job gets no satisfaction through a lawsuit. Where an election is advisable it should be held at once, or either disputing union may disappear. If discrimination against a new union by the employer is not promptly dealt with, the union may vanish over night.

It is true that the removal of the "blue eagle" by N. R. A., or the threat of removal, is occasionally an effective means of obtaining compliance. But it operates unevenly if we consider its incidence on different employers. If the defendant is selling labeled goods, or has substantial Government contracts, or has applied to the R. F. C. for a loan, taking away his "blue eagle" may actually ruin him, or at least seriously cripple his business. But to most employers the removal of the "eagle" makes absolutely no difference.

I do not wish to be understood as saying that the removal of the "blue eagle" should now not be resorted to where the law has been violated. The Government obviously should not do business with known lawbreakers. Nor am I suggesting that where codes are preserved the use of some such mechanism is necessarily inadvisable. But I believe that discrimination cases, which do not involve violation of minimum wage or work standards—the chief labor subjects of codes—can more justly be handled by directing the employer to remedy the wrong done through the use of cease-and-desist orders, as is provided in Senator Wagner's national labor relations bill.

At this point let me say that we have continually enjoyed the prompt cooperation of the Compliance Division of the N. R. A. Under Executive order creating this Board, our findings of fact are final; and, in accordance with a mutually satisfactory understanding with N. R. A., which reserves the final discretion before taking action, "blue eagles" have been regularly removed except in a few cases where unusual circumstances were presented.

The procedure under the proposed National Industrial Recovery Act—assuming that a board, or boards, similar to the present National Labor Relations Board is created by the President—is identical with the procedure of the existing act; that is, the procedure under your act so far as these matters are concerned, are identical with the procedure in the old act, with one important exception.

Section 12 (f) of the proposed bill before your committee makes available the subpena powers provided in the Federal Trade Commission Act. But substantially the enforcement procedure is the same as under the present act, under which there has been no enforcement. All cases are routed through the Attorney General. The power of any board, appointed under this act, would still be to investigate, condemn, and refer. The records, findings, and opinions of such a board would have no more validity than they do now, since they could not be certified to court, as provided in the Wagner bill; and the futile, wasteful, and ineffective practice would be continued.

Senator GORE. Mr. Biddle, your suggestion is that you would authorize someone to issue this cease-and-desist order. You would put that into effect and let the litigation continue to determine the validity of that order?

Mr. BIDDLE. I am suggesting that all of these provisions be taken out of this act, since the very carefully drawn expressions in the Wagner Labor Disputes Act——

Senator BARKLEY (interrupting). Suppose it does not pass?

Mr. BIDDLE. I am coming to that. I think that putting it in without enforcement is intellectually dishonest where we have known by our own experience that it cannot be enforced. If the section is this act without adequate enforcement, it is an invitation to do the same thing which has been going on for a year.

Senator GORE. You think the section ought to be contained here or elsewhere and that provision for its enforcement should be made?

Mr. BIDDLE. No, sir; I do not. I have said that the section is ambiguous and should be clarified on three important issues, and proper enforcement provisions added, and that proper enforcement provision is simply the provisions that the Federal Trade Commission under which the record made before the board is certified to court and cease-and-desist orders are issued on that.

Senator GORE. By what authority?

Mr. BIDDLE. By the authority of the board.

Senator GORE. I know. But who would issue the order?

Mr. BIDDLE. The cease-and-desist order would be issued by the board.

Senator GORE. You made reference to the Federal Trade Commission and I was wondering——

Mr. BIDDLE (interposing). The orders would be issued by the court, the circuit court of appeals or the district court or whatever machinery is provided in the act.

Senator BARKLEY. Regardless of the defects, is it not true that section 7 (a) has been the instrument by which a great deal has been accomplished for the workers in dealing with their employers?

Mr. BIDDLE. I think in the first year that was true. I think that is no longer true.

Senator BARKLEY. In what respect? The codes are still in force and in many cases they have never reached your Board. Probably there were many more cases that did not reach your Board than did reach it. They have had their elections and they have had their representatives. There have been disputes about the method in many cases, but on the whole my impression is that it has been the instrument through which employees have been able to select their representatives to negotiate with their employers about wages and one thing or another, and the agreements entered into as a result of that are still in force.

Mr. BIDDLE. I think that was true at first. But once you know that section cannot be enforced, and it is clearly evident in our work hat that is known, that employers will not comply, and they have these disputes.

Senator WALSH. What you mean is that where the disputes have arisen, your Board has found itself powerless.

Mr. BIDDLE. Powerless to enforce the law.

Senator WALSH. But that there has been general good because of the result of this section, you do not dispute?

Mr. BIDDLE. I do not dispute it, but I do not think that general good will continues because many complaints were appropriately and satisfactorily settled. Why? Because the employer knew that if he did make some sort of a settlement a complaint would be filed against him and presumably enforced against him.

Senator GORE. Who, under your suggestion, would be authorized in the first instance to issue this cease and desist order? I do not understand that.

Mr. BIDDLE. I will read the provisions from the Wagner bill.

Senator WALSH. Your board would have the power.

Mr. BIDDLE. Originally, and the court would enforce it.

Senator WALSH. They have an appeal to the courts?

Mr. BIDDLE. Yes.

Senator WALSH. And the Wagner bill provides that an appeal should be expedited and not long drawn out?

Mr. BIDDLE. Yes.

Senator GORE. Have any of these cases that you have alluded to, reached the Supreme Court of the United States?

Mr. BIDDLE. No, sir. The only two cases, one case was the *Weirton case*, that was decided by the district court, and the other case has not yet been tried, which is the *Houde case*.

Senator GORE. What is the status of this Delaware case?

Mr. BIDDLE. I presume that will be appealed. Shall I continue, Mr. Chairman?

The CHAIRMAN. Yes.

Senator BARKLEY. I suggest that the Wagner bill is intended of course as permanent legislation regardless of codes and regardless of N. R. A.

Mr. BIDDLE. Yes, sir.

Senator BARKLEY. This is only predicated on a temporary situation which it seems to me should be self-containing and self-operating without relying upon some other acts independent of this.

Mr. BIDDLE. Is not this the situation? If the Wagner bill is passed, not only is this legislation unnecessary, but it becomes confusing. You have one right to collective bargaining clearly and definitely stated in the Wagner bill. You have another right to collective bargaining stated in another act. The machinery provided in the Wagner bill does not affect the machinery provided in the other bill. You have that confusion.

I believe the way that this bill is now drawn is simply writing down a right on paper which is unenforceable, in my opinion, and I do not think that that is helpful.

Senator BARKLEY. Would it not be better to try to correct any defects in the act we are considering, so that in the event that the other bill does not become a law, you still have a peg on which to hang your hat?

Mr. BIDDLE. If you want to put in the provisions of this bill the very carefully drawn provisions of the Wagner bill with respect to the classification of enforcement, I think that is all right. I cannot see precisely the advantage of it. I was going to come to that aspect of it in a moment.

It should be noted, at this point, that the provisions of section 12 (d), authorizing damage suits by aggrieved employees, and making the findings of the Government agency prima facie evidence of the facts, are not applicable to violations of section 7 (a). The subsection applies in terms only to violations "of any provisions of any code relating to minimum wages or maximum hours of labor."

The criminal provisions of the existing act are continued in section 12 (b). I do not believe that this law should include criminal punishment. The object should be to compel collective bargaining or to reinstate men discharged for union activity and not to fine a violating employer. The Wagner national relations labor bill contains no criminal penalty.

Nor do I believe that these vastly important labor problems, far-reaching and intricate, often involving difficult technical questions and requiring careful and balanced judgment, should be handled by temporary bodies, summoned hastingly to placate a particular demand, or ease a pressing situation. Under section 2 (a) of the proposed bill, as under the present act, the President is authorized to establish a labor board similar to the one of which I have the honor to be chairman, with similar powers and functions. But, as I have intimated, a labor court, if it is to have any dignity or usefulness, should be permanent, like any other court, and not subject to any jurisdictional control, even that of the Chief Executive. That is the very essence of our theory of justice, that the courts should be completely divorced from the Executive. And if collective bargaining and freedom from coercion are principles worth establishing, they should be applied to all workmen, and not limited so as to exclude any particular industry.

It seems to me, therefore, that the inclusion of section 7 (a) in the proposed bill, without any further clarifying definition of the section, and above all, without any adequate accompanying enforcement machinery, would not only prove to be ineffective, but would be

writing in the statute books the emptiness of a law which we know cannot be enforced. In view of the history of the section, if Congress believes in collective bargaining and wishes to prevent discrimination against men for belonging to labor unions, it should not merely express such a pious wish in a few words, but should pass adequate and appropriate legislation.

It is true that of the 5,000 cases coming before our regional boards during these 8 months of operation, the great majority have been satisfactorily terminated. But such willingness of employers to settle complaints on a basis acceptable to the employees will certainly undergo a drastic decline if it becomes a matter of common knowledge that the law is not being and cannot be enforced. Already we are encountering a marked stiffening of resistance on the part of employers.

The Wagner bill now pending before the Senate Committee on Education and Labor is adequate and complete. I can see, therefore, no reason why the right to collective bargaining and the accompanying machinery of law enforcement should be the subject of this bill.

It has been suggested that the constitutionality of an act setting up codes and code machinery and including section 7 (a) would be more easily sustained than that of an act similar to the Wagner bill. I do not concur with this logic. It seems to me that to wrap up the constitutionality question in a package considered more innocuous would not particularly strengthen the situation. The Wagner bill is a part of the Government's comprehensive scheme for national recovery, an economic measure called for by the vicious circle of the concentration of wealth in a shrinking market. Because its basic purposes are expressed in separate legislation does not make them any less pertinent to this larger plan.

Thus, in his recent opinion in the gold cases, Chief Justice Hughes spoke of the joint resolution of June 5, 1933, abrogating the gold clauses, as—

> one of a series of measures relating to the currency. These measures disclose not only the purposes of the Congress, but also the situation which existed at the time the joint resolution was adopted and when the payments under the gold clauses were sought.

The opinion then reviews the Government's monetary program, including the banking holiday, the Emergency Banking Act, the various Executive orders and other pertinent legislation. While pointing out that the question before the court touched the validity of these measures at only one point, the Chief Justice said:

> The resolution must, however, be considered in its legislative setting and in the light of other measures in pari materia.

It has also been said that if the Wagner bill fails of passage, labor should at least be left with section 7 (a).

Senator GORE. You said, Mr. Biddle, it is related to a general scheme dealing with concentrated wealth. Do you have any plan of your own for distributing or sharing this concentrated wealth?

Mr. BIDDLE. No, sir.

Senator GORE. Do you have any choice among the several schemes?

Mr. BIDDLE. No, sir; I am not an economist; I am a lawyer. I do believe, Senator Gore, that the basic purpose of collective bargaining is to raise wages. It would seem natural that if men can

bargain through their unions, that there is a better chance of increasing wages than if they are left to bargain as individuals, therefore I believe that works in with the general economic plan to which I have referred.

Senator GORE. And that it would be invoked to raise wages only when the general economic situation required it, and would not be invoked when the economic situation did not require it?

Mr. BIDDLE. Certainly. I repeat, it has also been said, that if the Wagner bill fails of passage, labor should at least be left with section 7 (a). That, it is argued, is better than nothing. With this I do not concur. Section 7 (a), unenforceable as it now is in actual practice, is merely the expression of a paper right, a sort of innocuous moral shiboleth. Such paper rights raise hopes, but when they are shattered the reaction is far worse than if they had never been written in the statute books. It is surely more intellectually honest to face the situation squarely, and either pass an adequate bill or refuse to pass any.

Senator HASTINGS. Have you any doubt about the constitutionality of the Wagner bill?

Mr. BIDDLE. Yes; I have doubt about the constitutionality of the Wagner bill, Senator. I think it would be a very brave man who would say he had no doubt upon a question.

Senator GORE. Mr. Chairman, may I prefer this request? I would like to request that a catalog or list be submitted showing the application on the part of different individuals, firms, and corporations to establish new plants or to enlarge old plants under the N. R. A., showing those which have been granted and those which have been denied.

The CHAIRMAN. I wish, Mr. Smith, that you would procure that for the committee.

The committee will recess now until 2 o'clock this afternoon, in the District of Columbia Committee room, in the Capitol.

(Whereupon at 12 o'clock noon, recess was taken until 2 o'clock 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.)

The CHAIRMAN. Mr. Soranno?

(No response.)

The CHAIRMAN. Mr. Rieve.

TESTIMONY OF EMIL RIEVE, PHILADELPHIA, PA., REPRESENTING AMERICAN FEDERATION OF HOSIERY WORKERS

(The witness having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. You represent the American Federation of Hosiery Workers?

Mr. RIEVE. That is right.

The CHAIRMAN. How much time do you want?

Mr. RIEVE. Not over 10 minutes.

The CHAIRMAN. Very well. Try and finish in 10 minutes.

Mr. RIEVE. The American Federation of Hosiery Workers is a national labor organization affiliated with the American Federation of Labor through the United Textile Workers of America. It has a membership of some sixty thousand workers located in some 18 States of the Union.

We wish to testify in support of the economic policies which were embodied in the National Industrial Recovery Act and we urge the enactment of legislation that will not only continue the National Recovery Administration but will extend and expand this type of control in American industry.

The American Federation of Hosiery Workers has offered much criticism of the administration of the N. I. R. A., and the manner in which codes were adopted and administered. We must, however, testify to the fact that the adoption of a code of fair competition in the hosiery industry has been of great benefit to the employees in this trade and has also saved many manufacturers from extinction. We do not claim that the adoption of a code of fair competition in the hosiery industry worked miracles; but it did double the weekly wage of a number of our workers and put an end to the practice of forcing employees to labor as many as 70 and more hours per week.

Senator KING. What position do you have in the code?

Mr. RIEVE. I am a labor representative of the Hosiery Code Authority.

Senator KING. Did you help to draft the code?

Mr. RIEVE. I helped to some extent; yes.

Senator KING. Who were the principal factors in the drafting of the code? Who prepared it?

Mr. RIEVE. The code was drafted jointly in conferences between representatives of the National Association of Hosiery Manufacturers and the committee representing the American Federation of Hosiery Workers.

Senator KING. Give me the names of them.

Mr. RIEVE. The committee consisted on the part of the American Manufacturers of Earl Constantine, the managing director of the National Hosiery Manufacturers' Association.

Senator KING. Is he a manufacturer?

Mr. RIEVE. No; he is not. He is an employee of their association.

Senator KING. Who are the employers, if anybody, the manufacturers?

Mr. RIEVE. William Meyers, of the Apex Hosiery Co.

Senator KING. That is a large concern?

Mr. RIEVE. That is a large concern.

Senator KING. One of the largest?

Mr. RIEVE. One of the largest. Mr. Kincaid, of the Magnet Hosiery Co. of Quincy, Tenn.; Mr. Carr, of the Durham Hosiery Co. of Durham, N. C. Mr. Kincaid——

Senator KING (interposing). You mentioned him.

Mr. RIEVE. Mr. Mettler, of the Interwoven Hosiery Mills; I believe that was about all.

Senator KING. There was just a half a dozen of those manufacturers?

Mr. RIEVE. Joseph Haynes, of the Haynes Hosiery Co.

Senator KING. Were there more than a half dozen of the large manufacturers who drew the code?

Mr. RIEVE. I do not think there were a half dozen large manufacturers.

Senator KING. They were the ones who with representatives of labor, drew the code?

Mr. RIEVE. No; I would not say that. I would say that the small manufacturers had perhaps by far the largest representation on that committee. Of course, I want you to bear in mind, Senator, when we speak of the small manufacturers in the hosiery industry, that they must employ at least 100 people, otherwise the business is not a success.

Senator KING. How many do you say participated in the preparation of the code? How many individuals?

Mr. RIEVE. About eight manufacturers. But the code was submitted to the representatives of all the manufacturers for approval.

Senator KING. Are you receiving a salary from the code authority?

Mr. RIEVE. No.

Senator KING. Who pays you your salary?

Mr. RIEVE. The American Federation of Hosiery Workers.

Senator KING. How much do you get a year?

Mr. RIEVE. I get exactly $68 a week.

Senator KING. Who is the deputy administrator of the code?

Mr. RIEVE. Mr. Oppenheim.

Senator KING. Is he engaged as a manufacturer?

Mr. RIEVE. No.

Senator KING. What is his business?

Mr. RIEVE. I don't know. Frankly, to date I think he is about the tenth or eleventh administrator that we have had since codes went into effect.

Senator KING. Who are the members of the code? Are they all manufacturers?

Mr. RIEVE. There are 8 manufacturers, 2 representatives of the Government, and 2 labor representatives.

Senator KING. Thank you.

Mr. RIEVE. Excellent statistics now being compiled and published by the Hosiery Code Authority established the fact that more than 21 percent more persons have found employment in the hosiery industry after the first year's experience with the N. R. A.

Senator KING. What was the number of employees in 1927?

Mr. RIEVE. In 1927 we had probably 130,000 employees in the industry.

Senator KING. In 1928?

Mr. RIEVE. Then it began to drop, so that I will say that by 1930 we probably do not employ more than 100,000 employees.

Senator KING. 1931?

Mr. RIEVE. About the same number.

Senator KING. 1932?

Mr. RIEVE. In 1932 our employment fluctuated so that on the peaks we probably reached 100,000, and when we reached the valleys I doubt if we employed half that many.

Senator KING. The number of employees and the wages paid in the aggregate in 1927, 1928, 1929, and 1930 exceeded 1933 or 1934?

Mr. RIEVE. By far.

Senator KING. Proceed.

Mr. RIEVE. In March 1934, some 19,000 additional persons had found jobs in hosiery mills employing about three-fourths of all those in the industry. We estimate that between 25,000 and 30,000 persons found reemployment as a result of the N. R. A. in the entire hosiery industry, which now has a total force of over 145,000. This is a substantial contribution to the total economic recovery from one industry.

Senator KING. Where were those statistics obtained?

Mr. RIEVE. Taken from the pay rolls.

Senator KING. When?

Mr. RIEVE. We are taking them monthly. Monthly statistical information is supplied to the code authority.

Senator KING. Proceed.

Mr. RIEVE. The hosiery code authority estimates that there has been an increase of 37 percent in the average wages paid per thousand dozens pairs of hosiery after the code went into effect.

Senator KING. That is over 1930, 1931, and 1932?

Mr. RIEVE. That is right.

Senator KING. The low valley?

Mr. RIEVE. That is right. I will cover 1929 as I go along.

The greatest increase in wages occurred in the seamless branch of the hosiery industry, which employs about 60,000 persons. The manufacturers of seamless hosiery had become virtually a "sweatshop" trade before the N. R. A. Hosiery manufacturers testified at public hearings that $3 and $4 per week were customarily paid to adult full-time workers in many southern seamless hosiery mills working on the cheaper grades of hosiery.

Today virtually no productive employee in the industry is making less than $12 for a full-time week in the South and no one is making less than $13 weekly in the North. True, these are miserable wages; but it is a fact that $12 weekly is a fortune compared to $3 and $4 per week. If a whole series of such increases had been made in American industry, economic recovery would have been further advanced.

Before the N. R. A. hours of labor in the hosiery industry were excessive. In some parts of the country mills ran 24 hours per day and 7 days per week. Workers were unable to get off from their jobs to go to church on Sundays. Of course State laws limited the hours of women workers to some extent, but the men were obliged to work cruel and inhuman hours, except in those districts where the union controlled the situation. The 11- and 12-hour night shift for knitters was the curse of the hosiery industry. For years the largest full-fashioned mill in the country enforced a workweek of 11 hours and 20 minutes per day for the largest number of its men operatives.

Today we have a 40-hour work week; 2 shifts are permitted, however, which makes a partial night shift obligatory. The all-night shift has been ended and the 5-day week and the 8-hour day is enforced for the vast majority of the approximately 145,000 workers in the industry.

It is essential that still shorter hours be enforced in the hosiery industry to enable the workers to have full-time employment the year round and to enable the manufacturers to cope with a condition of serious overdevelopment of productive capacity. Congress must enact legislation which will enable the hosiery and other industries

to consolidate the very real gains that have been made and to continue the advance toward stabilization.

Figures on the production and shipments of hosiery show a very definite improvement in the condition of the industry. There have been fluctuations in volume of employment and production since N. R. A., but on the whole the industry is on the upgrade, whereas before N. R. A., it was fast sinking into a hopeless situation.

Senator KING. Was that through 1925, 1926, and 1927, 1928, and 1929?

Mr. RIEVE. Up to 1929 it was prospering. Some branches of the industry increased their productivity as high as 400 percent in 1 year.

In 1933, before the N. R. A. prices of hosiery had sunk to a level of 65 percent of the price average of 1926, without increasing the consumption of the product. A number of mills had gone into bankruptcy, and many others were on the brink of closing down.

The situation of the union in the industry was critical. Wage scales of from 35 to 60 percent below the wage rates of 1928 had been accepted by the unionized workers in the full-fashioned section of the trade, to enable the union mills to compete with the nonunion mills. Earnings in 1933 had been cut to half of the 1928 earnings. The situation had become chaotic. In the spring of 1933, the N. R. A. changed the picture.

The union took an offensive position and by a wide-spread organization campaign forced wages up all along the line in the full-fashioned section of the industry. Today, some 85 percent of the production of full-fashioned hosiery is made in mills that pay wages identical with the union scale, wages that are more than 30 percent above the rates prevailing in the nonunion shops before June 1933. Over 100 nonunion manufacturers in eastern Pennsylvania alone raised their rates up from 30 to 178 percent to bring wages to the union scale in July 1933, in order to forestall unionization of their plants.

Total and average seamless earnings have increased as a result of the Hosiery Code but the minimum wages have become the average and usually the maximum wages in this section of the industry. This is, of course, due to the fact that we had virtually no union strength in seamless prior to N. R. A. On the other hand, in the full-fashioned section of the trade, where the union was effective, actual wages are now far above code minimum rates.

Incidentally, it should be pointed out, the Hosiery Code provides for graded minima. A minimum is set up for various grades of labor in the mill, ranging from $8 per week for learners to $27.50 per week for the skilled knitters.

Seamless-hosiery workers rates change from $13 to $18. Southern workers earn 10 percent less than northern workers. The minimum rates quoted above are for northern workers. This differential is being fought by the union but represents a very real narrowing of the differentials in rates that existed between southern and northern mills before the code.

Speed-up is prevented, and definite prohibitions are placed in the code to forbid the stretch-out as practiced in the textile industry.

Hourly productivity has undoubtedly increased with the shortening of the work week but the union has so far been able to prevent the worker from being driven beyond his or her strength in the great majority of cases.

Small mills have not been put out of business or penalized. Our experience has shown that the talk of the N. R. A.'s hurting the little fellow is not borne out by the facts.

There are two labor-union representatives on the Hosiery Code Authority of 12 members. We attach much importance to that fact. There has been an exceptional degree of compliance in the hosiery industry, and this we attribute mainly to the fact that there has been an effective union in the industry and the union representatives on the code authority were able to secure cooperation from the manufacturers' representatives. Prior to N. R. A. when all labor-law enforcement was necessarily left to the various State governments, we had a situation which was deplorable. First of all, the laws were all different and all inadequate; secondly, enforcement could be had in only a few States where the State administration was capable and favorable to labor.

Wide-spread extension of labor unionism is a fundamental requisite for the rebuilding of our economic order and the new N. R. A. should be drafted with that objective in mind. The American Federation of Hosiery Workers strongly favors the renewal of the present act, but we must point out unless the Wagner-Connery labor disputes bill becomes a law at the same time the whole N. R. A. structure is weakened. Section 7–A, as now written in the bill, has become worthless and merely defrauds the workers who are still simple enough to think the law means what it says. We assume that the labor disputes bill must and will pass.

The N. R. A. system of regulation would become facist and distinctly oppressive in character if the collective bargaining rights of labor are not made operative.

The CHAIRMAN. Do I understand that you want section 7 (a) to be stricken from this bill?

Mr. RIEVE. If it is not enforced any better than it is now; yes.

The CHAIRMAN. To strike it out?

Mr. RIEVE. Yes.

The CHAIRMAN. That is your position?

Mr. RIEVE. Yes; because it has no value.

The CHAIRMAN. Does labor agree with you on that, generally?

Mr. RIEVE. I presume it does. Labor favors the Wagner labor disputes bill——

The CHAIRMAN (interposing). That is in another committee.

Mr. RIEVE (continuing). And feels it should be enacted into law.

The CHAIRMAN. Proceed.

Mr. RIEVE. Self-regulation of industry, in the true sense of the term, is impossible unless labor, the most important element in industry, has an equal vote and a free voice in this set-up.

The Government of the United States, we assert, cannot grapple with the present evils of monopoly or price-fixing unless an effective social order of industry is devised.

Senator KING. By that you mean socialism?

Mr. RIEVE. No; I mean self-regulation of industry. I stated that the N. R. A. has made an excellent start in that direction.

Senator KING. By self-regulating do you mean that the Government must step in and fix prices?

Mr. RIEVE. No; personally I am opposed to any price-fixing.

Senator KING. Do you believe in monopoly?

Mr. RIEVE. I do not.

Senator KING. Do you believe in any policy that permits monopolistic control of any industry?

Mr. RIEVE. I do not, but I am questioning sometimes whether anything can be done to prevent monopoly, whether it is not a natural economic development.

Senator KING. Is not that the view of the Fascists? Is not that the view of Mr. Trotsky when he was one of the leaders of the Bolsheviks in Russia?

Mr. RIEVE. If industry and labor jointly regulate the industry under Government supervision, I do not think we can fear any Fascsism or any Communism.

The CHAIRMAN. That is what you mean by self-regulated industry?

Mr. RIEVE. That is right.

The CHAIRMAN. All right; proceed.

Mr. RIEVE. An excellent beginning has been made along these lines by the National Recovery Administration; enough now is known of the weaknesses and benefits of this plan to be able to frame a bill that will remedy the defects and increase the social values of the law.

It would be criminal folly on the part of Congress to pass a law which is weaker than the present measure. For instance, the new bill should require the writing of codes which would provide minimum wages not merely for the least skilled workers but also for the semiskilled and the skilled.

This is necessary to prevent the employers from cutting the wages of the better paid to make up for those whose wages must be increased. Equal representation for labor representatives should be obligatory on all code authorities. If labor has proper representation on all code authorities the rights of the consumer will be protected as well as the laborers in the industry.

Industry in America has never paid what may be described as its "Inevitable social overhead costs." By that we mean costs such as proper inspection to enforce hours standards; child labor laws and laws for the protection of the wage earner. Under N. R. A. at last industry is gaining real benefits thereby. We are halting the increase of the sweatshop employer but at the same time making possible the decentralization of industry. Codes today permit all sorts of regional differentials which should be eliminated. Nevertheless, many dangerous and vicious examples of substandard competition from small towns or rural regions have been mitigated by the application of even these very loose codes now in effect.

When small town factory workers are assured standard wages we shall witness a tremendous economic advance in the now backward sections of this country. This cannot be unless we pass a stronger bill than the present N. I. R. A. Industry in the larger cities will not be undermined by the rise of low wage plants in isolated sections and, as a result of this new situation, we shall be able to develop genuine regional planning in the country and avoid the evils of haphazard development which brought ruin to so many investors in recent years.

Attacks have been made on the National Recovery Administration because it has not performed magic. The National Recovery Administration has not achieved as great a measure of reemployment and added consumption as was anticipated; but this was not due to any

underlying defects in the principle of the bill. The National Recovery Administration must be improved and strengthened, not abandoned. This has been the most significant and important economic and social experiment in our whole history and it will be treachery and folly on the part of Congress to drop this effort now, merely because some of the problems that have arisen are more complicated than had been anticipated.

The CHAIRMAN. Can you put the balance of your statement in the record?

Mr. RIEVE. All right, I can do that.

The CHAIRMAN. Thank you.

(The balance of the statement of the witness is as follows:)

Those who were candid and clear sighted expected the courts, committed by tradition to an outworn system of special privilege, to fight the new legislation. Congress dare not quit just because a few prejudiced and partisan Federal judges have attempted to force society to return to the practices which have produced ruin and misery. The people of this country demand the preservation of the system of economic control which we have named National Recovery Administration; employers of labor who think for themselves see that their salvation lies in fighting for a type of economic regulation that eliminates cutthroat competition and puts a premium on efficiency and fair dealing. Consumers as a class are willing to pay the necessary costs of ending child labor and the elevation of wage standards.

What is continually forgotten is that consumers are also producers and it is exceedingly harmful if the joint interest of individual citizens in both functions is made to seem hostile to each other. Unemployment cannot be cured until there is more consumption; the consumer cannot be protected unless his producer rights are insured also.

We strongly urge the reenactment of the National Recovery Act along with the labor disputes bill and recommend that the terms of the law be so modified as to provide for a much greater measure of genuine social control in the interest of all employers, employees, and the public at large.

STATEMENT OF ANTHONY SORANNO, REPRESENTING AMALGAMATED RETAIL ICE & COAL DEALERS ASSOCIATION, INC., BROOKLYN, N. Y.

(The witness was first duly sworn by the chairman and testified as follows:)

The CHAIRMAN. How much time, Mr. Soranno?

Mr. SORANNO. I need a week, but I will check myself ——

The CHAIRMAN (interrupting). We will give you 10 minutes. If you have a written statement, I wish you would put it in the record because our staff and the committee will read it. Just give us the high points now.

You represent the Amalgamated Retail Ice & Coal Dealers Association?

Mr. SORANNO. Yes, sir.

I reside at 407 Clinton Street, Brooklyn, N. Y., and I wish to state the iollowing with respect to the National Industrial Recovery Act and its relation to the ice industry in the city of New York:

I am president of the Amalgamated Retail Ice & Coal Dealers Association, Inc., a membership corporation consisting of about 3,000 ice peddlers in the Boroughs of Brooklyn and Queens, the purpose of which corporation was to combine all the retail ice peddlers in said boroughs to protect their industry from destruction, price cutting and racketeering, and so forth.

Since January 1934, I have been engaged daily in matters affecting the ice industry. During the year 1934 I was secretary of this organization. I have spoken to and listened to the troubles, complaints and experiences of about 3,000 ice peddlers with whom I have come in contact during this period of time. I have conferred with Mr. Small, president of the Knickerbocker Ice Co.; Mr. Rubel, president of the Rubel Ice Co.; Mr. Byrnes MacDonald, trade practice compliance director of the National Recovery Administration; Mr. Scott, National Recovery Administration regional adviser; Mr. Strauss and Mrs. Rosenberg, National Recovery Administration State directors; Mr. Morgan, commissioner of public markets of the city of New York; Mr. Moss, commissioner of licenses of the city of New York; Hon. Fiorello H. LaGuardia, mayor of the city of New York; Mr. Dudley, secretary of the committee of arbitration and appeals, National Recovery Administration; with members of said committee and code authority and with attorneys and other parties representing all interests in the ice industry.

The CHAIRMAN. What is your opinion as to the National Recovery Administration? Should it be continued or not?

Mr. SORANNO. If it is enforced, yes. Up to now I have not seen any effect in New York City. I think it has been one of the worst cities throughout the United States.

Senator KING. I have here a resolution which purports to have come from your organization, signed by the president and by the secretary, which contains this language [Reading:]

Whereas this Code of Fair Competition for the Ice Industry has been a means of fostering trusts, monopolies, and other combinations among the large members of the industry with the result that the small dealers have been affected thereby and their business and investments threatened with extinction; and

Whereas this association finds that said Code of Fair Competition for the Ice Industry has in no way accomplished the policy set forth in article I of said Code of Fair Competition, as heretofore stated, but has, on the contrary, oppressed, harassed, hindered and put out of business and threatens to continue to put out of business small dealers who are unable to meet the situation, evil conditions and abuses, created by the enforcement or lack of enforcement, as the case may be, of the provisions of the Code of Fair Competition: Now, therefore, be it

Resolved, That the Amalgamated Retail Ice & Coal Dealers Association, Inc., consisting of 3,000 ice dealers in the Boroughs of Brooklyn and Queens, do hereby recommend to the Senate and House of Representatives of the United States of America that the National Industrial Recovery Act under which the Code of Fair Competition for the Ice Industry was promulgated, be repealed because it is unsound, fosters monopolies, benefits large members of the industry and oppresses and drives out of business the small dealers of this industry; and be it further

"*Resolved*, That should the National Industrial Recovery Act be not repealed in toto, then and in that event, the act be so amended that the Code of Fair Competition covering the ice industry will not cover the ice industry in New York City, thereby loosening the fetters of production in intrastate commerce; and be it further

"*Resolved*, That a thorough and unbiased investigation be conducted by the respective committees of both the Senate and House of Representatives of the United States into the practices conducted by the large members of the industry with their resulting abuses under the provisions of the Code of Fair Competition for the Ice Industry; and be it further

"*Resolved*, That copy of this resolution be forwarded to the Senate and House of Representatives of the United States, and the President of the United States."

Mr. SORANNO. That is right.

Senator KING. That is the voice of your organization?

Mr. SORANNO. Exactly.

Senator KING. Was there anything else you wished to say, or is there something additional?

Mr. SORANNO. Do you want me to subject myself to questions, or do you want me to read this statement first?

The CHAIRMAN. We would rather have you put your statement in the record and give us the glaring defects in this proposition, if you will, and tell us what it is you are complaining about.

Senator KING. Your statement there may go in the record and you may give us a synopsis of it if you desire.

The CHAIRMAN. Your statement may go in the record, and this resolution may go in the record.

Mr. SORANNO. In New York City, conditions are worse than in any other city in America today. We are oppressed by a monopoly which is held between ice manufacturers.

Senator KING. Have you appealed to the code authority for relief or to the law enforcing agencies?

Mr. SORANNO. Yes; several times. I have been here in Washington five times, and I have been unable to do anything. The code authority is composed of all large manufacturers, and our voice was never heard by them. First, I say that Mount Taylor, the chairman of the code authority, is one of the large manufacturers from Texas. Charles Small, the president of the American Ice Co. and the Knickerbocker Ice Co. of New York is also one of the large manufacturers.

Senator KING. The code authority then is composed of the large manufacturers?

Mr. SORANNO. All of them. The committee of arbitration and appeal which is dominated by the code authority, are also a member of the code authority.

The CHAIRMAN. May I ask you, is your organization made up of salesmen of ice?

Mr. SORANNO. We call them peddlers.

The CHAIRMAN. In other words, you do not produce ice at all?

Mr. SORANNO. That is right.

The CHAIRMAN. You buy the ice from the manufacturers?

Mr. SORANNO. Yes.

The CHAIRMAN. And your complaint is that some of the manufacturers are charging too high a price for their ice?

Mr. SORANNO. Not only that, and also the practices that are used to force these men out of business in order to gain the entire volume of the tonnage from these men. That is the real important point.

The CHAIRMAN. I am just trying to get the picture. Formerly, these people in your organization could make arrangements with some particular manufacturer of ice to get it at a very cheap price and they could make a better profit than they could if they had to pay a higher price?

Mr. SORANNO. The manufacturers have refused totally to recognize such an agreement. The only purposes in their mind is to drive these men out of business.

Senator KING. So that they can sell the ice themselves in a retail way?

Mr. SORANNO. Exactly.

The CHAIRMAN. They can still buy the ice, can they not?

Mr. SORANNO. No; you cannot. The condition in New York is that it does not permit you to buy the ice from anyone you want.

That is just what I was going to state, by saying that Rubel, with his many plants, has a capacity of 1,900,000 tons in Brooklyn and New York, and the Knickerbocker Ice Co., operating 21 plants, sold 1,250,000 tons. These are approximate figures.

The independent ice plants in New York, which are about 27, and 4 are out of business, and there were 3 more that were taken over by Mr. Rubel's corporation—in other words, with the cooperation of the code authority, made these men surrender their business to Mr. Rubel so that he could strengthen his monopoly in New York City.

Senator KING. Is Rubel connected with one of the big producing companies?

Mr. SORANNO. It is one of the largest in New York.

Senator KING. Do I understand, then, that the smaller ice producing companies have been strangled, or at least some of them, and others are having their financial strength impaired by these large ice producing companies?

Mr. SORANNO. Yes.

Senator KING. And that strengthens monopoly?

Mr. SORANNO. Yes. And they actually raise the price.

The CHAIRMAN. Is the price fixed in the ice code?

Mr. SORANNO. It was, as a matter of fact. We did everything we could to cooperate with Robert K. Straus, the deputy administrator of the ice industry, at several hearings which were held in New York. We had a public hearing last July 12, where about 3,000 men or more attended in New York, and Mr. Mount Taylor, the chairman of the Code Authority of the Ice Industry, presided at that meeting.

They fixed the price some time ago of $1.50 for 300 pounds for resale for the peddler, and they fixed a price of 48 cents per cake to the manufacturer, and $1.20 per cake for a jitney box. A jitney box does not employ anyone to sell ice; they just locate themselves in an empty lot. They storage their ice there, the consumer goes there and purchases ice, and he gets 50 pounds for 5 cents. They sell at the rate of about 60 cents per cake. They pay 48 and they sell for 60.

Senator KING. Let me make an inquiry. Is this a controversy between the independent ice producers and the big ice producers, who, as I understood you, control the code authority?

Mr. SORANNO. It is all joined together. In other words, there is a pool between the jitney box or what we call the cash-and-carry station——

Senator KING (interposing). Will you answer the question? Is it a controversy between the independent ice producers and the big manufacturers of ice?

Mr. SORANNO. Yes.

Senator KING. And have the large ice producers, such as Mr. Rubel's company and the Knickerbocker, attempted to crush the independent producer?

Mr. SORANNO. Exactly.

Senator KING. And are they succeeding in so doing?

Mr. SORANNO. Yes, sir.

Senator KING. Do you get your ice, that is, the 3,000 whom you represent, from the big manufacturers, from the independents or from both?

Mr. SORANNO. From the big manufacturer only, because we are forced to do so.

Senator KING. Why cannot you get it from the independent producers?

Mr. SORANNO. The methods used by the large manufacturer is either that you buy your ice from them or you are going out of business. Suppose you want to buy ice from an independent ice plant, the following morning you will find that you are followed by three or four wagons full of ice, which follow you around to your route where you deliver your ice, solicit your customers on your route, and offer ice to them for 25 cents a month for all the quantity that they can use.

Senator KING. And are those wagons sent out by the manufacturer?

Mr. SORANNO. By the large manufacturer.

Senator KING. And in that way they are crushing the independents?

Mr. SORANNO. Yes.

Senator KING. And your organization, the 3,000 or any number of them, if any of your buy from the independents, they will soon have the big producers following them with their wagons and undercutting their trade.

Mr. SORANNO. It happens when you try to buy ice from an independent ice plant, in other words, they are trying to take you away from them.

Senator KING. So that then you are driven to buy from the big producers?

Mr. SORANNO. This has been for years.

The CHAIRMAN. This was before the code started?

Mr. SORANNO. I should say since 1929, and when the code came in effect, we surely thought that was the spirit and the sentiment of all men to feel that there would be some relief, which thousands and millions of dollars, I must say, were lost, and out of 17,000 men, they were lowered to 14,000, and now we are only 6,000 men left in New York in the business.

The CHAIRMAN. In other words, you thought you were going to get some relief and you have not gotten the relief that you desired?

Mr. SORANNO. Exactly.

The CHAIRMAN. It is an old condition that existed up there.

Senator KING. Is it better or worse?

Mr. SORANNO. It is worse now since the National Recovery Act came in effect. Things were pretty good before. We used to manufacture our own ice, we used to be competition and buy a cake of ice from a manufacturer for 24 cents, and the National Recovery Act came along and said to us, "Stop production, you cannot manufacture your own ice", and we were forced to go in the hands of these men and pay 65 cents for ice.

Senator KING. You could manufacture your own ice?

Mr. SORANNO. For 24 cents a cake.

Senator KING. And now you have to pay the big producers?

Mr. SORANNO. Sixty-five cents.

The CHAIRMAN. Are you a member of the code?

Mr. SORANNO. No; we never were given recognition. We are too small to be considered.

The CHAIRMAN. Why did they not give you recognition?

Mr. SORANNO. Well, you see, Mr. Chairman, you see, the small man is never heard anyway. That is what it is.

The CHAIRMAN. If you want to elaborate on your statement in any particular, very well.

Mr. SORANNO. I am not going to elaborate. I am just going to tell the truth. [Laughter.]

The CHAIRMAN. I am glad you are going to respect your oath.

Senator KING. Just file your statement.

The CHAIRMAN. We are very much obliged to you for your information.

Senator KING. Put in any statement you have there.

(The balance of the statement of Anthony Soranno is as follows:)

I have attended all hearings, conferences and meetings held in New York City for the purpose of harmonizing the ice industry. I have been out on the street where ice is sold and observed conditions. I have personally made a survey of conditions affecting the manufacturers, wholesalers, peddlers, cellar men, and cash-and-carry station operators. In view of such experiences I feel that I have a fair knowledge of the situation and the matters that are hereinafter set forth are not mere conjectures or speculations, but are facts based upon close observation, personal experiences, personal contact with the ice peddlers, manufacturers, cash-and-carry station operators, affidavits, agreements, records, testimony, and investigations conducted by myself in the city of New York and National Recovery Administration offices.

At the outset, let me say that I represent the peddler who owns his own vehicle, operates the same and conducts his business on a route established by him over many years of labor. I represent the man who buys his ice from the ice plant and then takes that ice on his route and cuts it into pieces which are thereafter sold to the public. In other words, he is a small individual dealer. In the city of New York there are two leading and large manufacturing companies, i. e., the Rubel Corporation and the Knickerbocker Ice Co. These two companies control almost 90 percent of the output of ice in New York City. I wish to emphasize the point that these two companies are also in the retail business of selling ice to the public and therefore in competition with the small individual peddler.

While conditions in the ice industry with respect to the small individual peddler were bad, the burden cast upon the industry by the National Recovery Administration has made matters worse. Prior to the National Recovery Administration the small individual peddler was free to trade wherever he wished. In other words, if he did not care to buy his ice from Rubel Corporation, he was able to purchase the same from the Knickerbocker Ice Co. and in the event that both refuse to sell him ice, he had no choice of buying ice from independent concerns, then doing business in New York City. However, it is a matter of common knowledge in New York City, particularly in Brooklyn and Queens, that the Rubel Corporation has bought out every single independent ice plant and has created a virtual monopoly by the output of ice in those boroughs. Before the National Recovery Administration, the individual small dealer was not entangled in any mesh of rules which tell him do one thing or not to do a thing. Before the National Recovery Administration, the individual peddler was in some position to fight unfair competition with competition.

When the National Recovery Administration was created it was thought that a fair and just code for the ice industry would be enacted, which would be beneficial to all the branches of the industry. Let me say, however, that the ice code was drawn by manufacturers only and that at such time that it was drawn, the retail branch of the business or the small individual peddler comprising over 10,000 in the city of New York, were not represented at all. The Ice Code was prepared and we were forced to accept it despite the fact that there are provisions in it which hurt the individual dealer.

After 1½ years of National Recovery Administration, I am convinced that it has miserably failed to accomplish its purpose. Instead, it oppresses those who honestly wish to comply with its provisions and not protect those who disregard its provisions and who chisel and take advantage of the fact that the others are complying with the code. For example, in New York City, the Knickerbocker Ice Co., as I am informed, maintained a wage scale set forth by the Ice Code with the result that its costs of operation were increased and therefore it had to maintain the prices of ice.

On the other hand, the Rubel Corporation and other manufacturing concerns have totally disregarded the provisions relating to wages and have not paid their employees with the result that their cost of operation was less and therefore they were able to sell ice at a lower price.

I wish to say that while the price of the ice per cake in the city of New York is uniform in all companies, it is a matter of common knowledge that the Rubel Corporation, because of its failure to comply with the code, sells its ice at a cheaper rate not by advertising it or offering it for sale at a lower rate than the others, but by a system of rebates. Yet the National Recovery Administration has done nothing to remedy this situation. As I said before, the fellow who complies with the code is at a disadvantage because the fellow who does not comply with the code gets away with it and eventually steals all the business. The Ice Code has encouraged a monopoly in the city of New York.

As previously stated, the Rubel Corporation and the Knickerbocker Ice Co. own practically all of the ice plants in the city of New York. They have maintained the price of ice uniform during the past 2 years and while the small retailers have been obliged to reduce their prices to the lowest extent possible because of the economic condition of the people and because of the decrease in the volume of business due to mechanical refrigeration, yet the wholesale price per cake of ice of these two companies to the individual peddler has always remained the same. The reason why this price has remained the same is due to the stong monopoly that exists in the city of New York today. The Rubel Corporation and the Knickerbocker Ice Co. are the backbone of this monopoly. The National Recovery Administration Ice Code, with its control production clause, has fortified this monopoly to a far greater extent than can be realized. The monopoly for the sale of ice in this city works in the following manner:

If a peddler is a customer of the Rubel Co. and desires to purchase his ice from the Knickerbocker Co., the Knickerbocker Ice Co. will tell that peddler that he cannot purchase any ice at this plant but must go back to the Rubel Co. to buy his ice.

The Rubel Co. will likewise do the same with Knickerbocker peddlers. The result is that there is absolutely no competition and unless the peddler remains where he is put by the manufacturing companies, he will be unable to purchase any ice and the result is that he must go out of business. If by chance a peddler should succeed in purchasing his ice elsewhere instead of either the Rubel Corporation or the Knickerbocker Ice Co., either one of these two companies will exert punitive measures against that peddler. The company will either send a truck load of ice on that peddler's route and give ice away free to his customers, or the company will establish three or four ice docks on that man's route and sell the ice way below cost.

Naturally, the result that followed was disastrous to that individual peddler's business. The individual peddlers have attempted to combine themselves into a corporation by which they could manufacture their own ice at a cheaper price (at about 24 cents per cake) than that of the Rubel Corporation and Knickerbocker Ice Co. and that way pass that benefit on to the public, but under the present code these peddlers are prevented from establishing their own plant because of the fact that they must first obtain a certificate showing the necessity for such ice plant.

There is grave necessity in the city of New York for such ice plant today from which these ice peddlers can purchase their own ice and therefore do not have to depend upon the large manufacturing companies which are in competition with these peddlers. These individual peddlers are subjected to the will of the large manufacturing companies and if it is the will of one of these companies to put a peddler out of business it can very readily do so. We are desirous of breaking this iron-clad monopoly but we cannot do so under the present code as will be explained further on.

The Ice Code also contains many provisions whereby a peddler is prevented from buying ice from a person who is not manufacturing ice in a normal market. In other words, a peddler in Queens cannot buy his ice from a manufacturing plant located just across the boundary line in Nassau County because under the code that is considered a violation. The code's provisions with respect to acts which are considered those of unfair competition are restrained upon the ice trade. The code is controlled by the manufacturing companies and is used as an instrument or a weapon to force their wishes upon the individual dealers and consumers.

One of the most vicious features of the National Recovery Administration, is the type of the personnel charged with the duty of handling the code. Take for example, the present code authority for the ice industry.

The code authority for the ice industry is composed of the following men: They are Mount Taylor, chairman, owner of a large manufacturing interest in Texas; C. C. Small, president of the Knickerbocker Ice Co.; Robert C. Schure,

another large manufacturer; Ralph J. Hancock; and Milton C. Robbins, both of whom are also large manufacturers. There is no representative whatsoever for the retail end of the industry or a representative of the small dealers on this code authority. It is natural, therefore, that whatever amendments to the code or suggestions for its operation are made, they will be made primarily for the interests of the manufacturers. The local committee of arbitration and appeal in the city of New York is also controlled by manufacturers. Its membership consists as follows:

J. J. Fitzgerald, chairman, owner of Corcoran, Fitzgerald & Co., Inc., a large distributing company, but closely associated with the manufacturers; F. H. Genervosa of Rubel Corporation, another manufacturer; W. B. Kirkpatrick, of Greater New York Ice Manufacturing Corporation, another manufacturer; William B. Johnson of Knickerbocker Ice Co., another manufacturer; Albert W. Conklin of Long Island Ice Corporation, another manufacturer; and the wholesalers are represented by Joseph A. Boccia of the New York Ice Loaders Association, and our attorney, Charles E. Sorace who represents the small retailers of Brooklyn and Queens. It is obvious that on this committee the manufacturers are in absolute control.

Furthermore, only recently we had as regional adviser, James W. Scott, who was a very large shareholder of the Knickerbocker Ice Co. As secretary we have Pendleton Dudley, who is closely allied with the large manufacturing interests. So it is apparent that the manufacturers are in absolute control of the unfair industry and that the small owners have little or no representation whatsoever in the operation of the code. Under the provisions of the Ice Code, before an ice plant should be built, approval must first be obtained from the local committee of arbitration and appeal. In view of the set-up in the New York State area, it is obvious that no one can obtain approval to build an ice plant because on every application for such ice plant, that was heard before the committee of arbitration and appeal, the manufacturers' representatives always voted, irrespective of any merit to the application, against it. During the period that the code has been in operation we have attempted to lay out problems before such committees and code authority.

Although we have been promised action, none was taken for the reason that the interests of the manufacturers conflicted with that of the small dealer. I submit that with the personnel as it is presently constituted on the committee of arbitration and appeal and code authority, it is impossible for the retail small dealer to obtain just and fair consideration. Whatever is done by such bodies, it is done solely to benefit the large manufacturing interests and in total disregard of the interests of the retail peddlers who number over 10,000 in New York City. The local committee, during the past year and a half has heard many complaints from individual peddlers and I can safely say that in no instance was any action taken by the local committee. However, when the interests of the manufacturers are adversely affected by an act of a small dealer, the local body immediately sets its machinery in motion and brings that small dealer to task for an alleged violation of the code.

For example, recently in the city of New York, a small dealer was successful in the bid of selling ice to the city of New York. I am informed that one of the large companies also submitted a bid, but lost. Immediately the large companies concerned began an investigation and brought a complaint before the local body that the successful small dealer was violating the code and immediately the force and power of the N. R. A. was borne down against this individual with the result that he lost his bid to the city and I understand that one of the large companies obtained that business. This is one example of many other illustrations of how the N. R. A. is used by the large manufacturers to restrict the business of the small dealer.

With respect to the enforcement of the code I can definitely say that there is absolutely no enforcement. In the first place the procedure for enforcement is cumbersome. All complaints ordinarily must go through the committee of arbitration and appeal, and as I stated before, if a complaint is against the large manufacturing concern, the local body, in some way or other manages to squash that complaint. On the other hand, if the complaint is against the small dealer, prosecution for that complaint is carried to its fullest extent by the committee. In other words the code is enforced in accordance with the will of the manufacturing interests. If it is to the advantage of the manufacturers to enforce the code it will be so enforced. If it is to their disadvantage there is absolutely no recognition to the complainant.

In the summer of 1934, hundreds of complaints were given to the N. R. A. officials showing violation after violation of the code as well as of the minimum price order in the city of New York. What happened to these complaints? Although there was a great deal of bustle and noise as to the threats of prosecution and enforcement, there was absolutely nothing done. The result was obvious. The small dealer who had submitted these hundreds of complaints against others as well as the manufacturers have lost complete confidence in the N. R. A. The failure on the part of these N. R. A. officials to fairly enforce the code has created a feeling of disrespect on the part of all concerned for law and order. There was not one single instance of enforcement of any action because of unfair competition set forth in article IX of the Ice Code, although it was a matter of common knowledge that all the ice companies in New York City were daily violating each and every one of such provisions, particularly that referring to rebates. Hearing after hearing was held; conference after conference took place. All of these produced absolutely nothing but disgust on the part of the small man who was and now is helpless to protect himself. I could go on citing many instances showing that the code was violated by the manufacturing interests and nothing was done to compel them to obey and yet on the other hand, when the small dealer violated the code, that dealer was oppressed and forced to submit to obedience to something which was not beneficial to his business.

The members which I represent, as well as the other peddlers of Manhattan and Bronx have lost faith in the N. R. A. code. It has not accomplished in any way any of its objects. It has cast a burden upon their shoulders. It has oppressed them and most important of all, it has given the large manufacturers the weapon by and through which they can drive the small dealer who competes with them out of business. We strongly feel that this governmental interference is unwarranted. We believe that we can manage our own business and we do not wish to be dictated to by the people who desire to do us harm. I dare say that if the code insists throughout this summer when the season of the sale of ice is at its peak, it will mean more dealers being driven out of business.

I wish to thank the Senate Finance Committee for affording me this opportunity to come here on behalf of these small dealers in the city of New York. I know that I expressed their sentiments in saying that they do not desire an extension of the N. R. A.

STATEMENT OF JACK N. BERKMAN, REPRESENTING LOUIS BERKMAN CO., STEUBENVILLE, OHIO

(The witness, having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. How much time will you require, Mr. Berkman?

Mr. BERKMAN. I will try and be as brief as I possibly can. suppose about 10 or 15 minutes.

The CHAIRMAN. Whom do you represent?

Mr. BERKMAN. I want to set that forth in my statement. I represent the Louis Berkman Co. I am an attorney, practicing law in Steubenville, Ohio. I was called in by half a dozen fairly large concerns engaged in the brokerage business of the scrap-iron division of the waste-material industry in Pittsburgh.

The CHAIRMAN. We will give you 10 minutes?

Mr. BERKMAN. In presenting these facts I wish to point out that all of the merchants I represent have tried to cooperate with the N. R. A. I was first requested to represent these certain members in the Pittsburgh district about September 1934, when a proposed budget and assessment plan was submitted the scrap-iron industry. These men conferred with me and informed me of the entire situation but were afraid and are still afraid to reveal their identity openly. They are afraid of open reprisals by the mills or by the concerns in their particular district who have monopolistic control of the situation.

My interest, therefore, although limited in this particular investigation to the scrap-iron division of the waste-material industry, is not

exclusively that, because I happen to be counsel for the local Automobile Code throughout our county districts, and I have also been affiliated with the Coal Code.

After consulting with these firms in the Pittsburgh district, a circular letter was prepared which was mailed to the trade by the Louis Berkman Co. of Steubenville, Ohio. I am also interested in this concern which operates as a brokerage house in the scrap iron industry. This letter went forward on September 15, 1934, and presented a series of questions analyzing the proposed budget and assessment plan.

Senator KING. What is the extent of the industry? Just lay a foundation.

Mr. BERKMAN. The extent of the industry is this: According to General Johnson's statement in a talk delivered about 2 or 3 weeks ago, about 25 million tons of steel are produced in this country. Sixteen million tons of that production is scrap iron. It takes about 5 tons of raw material to produce 1 ton of finished iron. It represents approximately 80 million tons of raw material, natural resources conserved through that industry.

Senator KING. Who purchases the scrap? That is the industry you are representing here today?

Mr. BERKMAN. The industry today, I might say, is controlled in various steel districts by possibly 2 or 3 brokers. In the Pittsburgh district it is in the hands of 2 or 3. They dictate. They in turn are more or less friendly with the mills; in other words, they are direct agents of the mills.

I have one example strikingly set forth in these notes, and I even have the telegrams with me to reveal a restraint of trade and illegal practice that is so glaring it is really a shame that a condition like that should exist.

Senator KING. Will you briefly state where the 15 or 16 million tons of scrap iron are used, and by whom? What fabricators?

Mr. BERKMAN. I come from the Steubenville district. There the Wierton Steel Co. and the Wheeling Steel Co. are located. There is the Pittsburgh district, the Steubenville and the Wheeling district, the Youngstown district, the Cleveland district, the Milwaukee district, and possibly a little bit around Chicago. They are really the great users of the raw material.

Senator KING. When you say the raw material, you mean the scrap iron?

Mr. BERKMAN. The scrap iron, yes.

Senator KING. What do they use it for?

Mr. BERKMAN. In making new ore, or making new ingots or billets which the ingots are made into. They can use ore with coke and silicon, and so forth, and produce a new material, or they can use 60 to 100 percent old scrap iron. They remelt it and it becomes a new ingot out of which they afterward manufacture all kinds of shapes, bars, and angles, so that it is actually the same as the raw product.

Senator KING. So there are hundreds of firms and organizations that use these so-called "ingots" after they have been formulated by the steel mills?

Mr. BERKMAN. Yes. But there are about 3,000 concerns actively engaged in the selling or collection of the scrap iron. However, the end that I am really interested in or representing are brokers who do

not even see this scrap iron. All they do is just brokerage it, just the same as you would brokerage cotton or brokerage wool.

Senator KING. But they have their clients throughout the country?

Mr. BERKMAN. They have their clients throughout the country. The Louis Berkman Co., for instance, will have clients in the South and in the New England States, and Michigan, and possibly they will buy from the General Motors 50 or 100 cars at one time, and ship it down to one of the mills.

Senator KING. And any monopoly in the scrap-iron business would be reflected in higher prices?

Mr. BERKMAN. To the contrary, it would be reflected in lower prices.

Senator KING. Is not that an advantage to the consumer to get lower prices?

Mr. BERKMAN. It is not an advantage to the consumer for the simple reason that the mill actually derives the benefit of it. The broker himself, possibly the 10 or 15 brokers who dictate the situation, are friendly to the mills. This is what will happen. A concern like the Wellsville Co., located in Pittsburgh, are the exclusive brokers for the Wheeling Steel Corporation, on the one hand, and the Wierton Steel Co. on the other hand with regard to no. 1 and no. 2 steel. The Wellsville Co. will take an order for 10,000 or 15,000 tons. When we talk in this industry, we talk according to the code—there was $900,000,000 worth of business in 1929, and we are not talking in small figures.

They will take an order of 10,000 or 15,000 tons of scrap iron to be filled in 2 or 3 months, or possibly 30 or 90 days. This is what will happen: They will allot to their friends, 5,000 tons to this broker and 3,000 tons to that broker. They might take an open order with the mill and say, "I will try and buy you the stuff as cheaply as I can." When they are buying material from sources that are close to the mill, against whom threats will prevent a shipment to other districts, they will force that fellow to sell that material a dollar or two less a ton.

They will give the mill the advantage of that reduction, in other words, the closer they are to the mill or if they are within proximity of the mill, so that we can be taken advantage of, you will get your freight cut accordingly. If you are far away, then you can sell to these brokers for an open price.

You send this material down to the mill. The material is bought subject to acceptance or subject to an inspection. What does the mill do? The mill and the broker are usually very friendly—I mean this set-up that exists. The mill will have inspectors pass over the cars. If the price of scrap iron or the use has gone up a little bit, that material will be accepted. If it has gone down, that material will be rejected.

Of course that has nothing to do with the contract. If you try or dare to buck them or try to indicate a test case, they will tell you, "We don't want your business any more." That is the response. So that you have about 1 out of every 4 cars shipped into a mill rejected, and the rejection is played according to the market.

This monopolistic broker will come back and say, "Car so and so is rejected; replace it." On the other hand, if the market is such that it might weaken, he will say, "rejected and no replacement." He plays his own game.

The Alleghany Steel Co., about 3 or 4 months ago, let out a contract for 5,000 or 6,000 tons of steel. Two or three days later, they held up the order because the market had weakened. They held up that shipment that represented so much capital and material, but that could not be moved because contracts had been let by him, and in that way the monopolistic broker and the monopolistic mill—I am not talking of all the mills, I am just talking of those that take advantage of this set-up—they have speculated at the advantage of the little dealer all throughout the country or the little broker, and they have speculated in terms of millions of dollars. I know for a fact that one mill last year bragged about the fact that it had profited more than $1,000,000 on rejections.

Where did this $1,000,000 come from? Let me analyze that situation in a few words. When a car is rejected and the material may come from Massachusetts or from the South, the material cannot be shipped to another mill because there will be a dollar or 2 or 3 dollars freight against it, so the mill is in a position to say, "I offer you so much reduction." You will either take it or you will have to ship the material somewhere else. In other words, you are at the mercy of that particular mill. When the material is rejected and you receive a reduction, and very often the reduction is put in effect even after the material is unloaded, you will just get a wire, "Reduction of so much." The material is already unloaded, and possibly for the reason that there is too much rust or any plausible or implausible excuse that can be thought up.

They also charge the demurrage charge. There might be too many cars on the track that cannot be unloaded. The mill is on an average demurrage schedule. They cannot cash in this average demurrage schedule. The railroads will not rebate that demurrage which they are entitled to, so they will reject a lot of cars and let them stand around and charge the poor innocent shipper with 5 or 6 dollars a car. In that way, you will see that the freight money that should have gone to the railroads, this demurrage, is going to the mill and it is totalling millions of dollars at the expense of the industry and to the advantage of the mill.

Senator KING. Then it is collusion between certain brokers and certain mills?

Mr. BERKMAN. Exactly.

Senator KING. To the disadvantage of the small broker and ultimately to the disadvantage of the consumer?

Mr. BERKMAN. Yes, sir. The disadvantage to the consumer, if I may just hurry along—I am going to touch the high lights of what I am trying to convey and my argument to the N. R. A. as far as this set-up is concerned.

I attended the chapter meeting at Pittsburgh and the open protest to the budget and the assessment plan was finally resolved in a motion to prepare a brief wherein the budget and assessment plan were attacked as being not clearly defined, inequitable, discriminatory, and unfair.

Senator KING. Who imposed the assessment? The code authority?

Mr. BERKMAN. Supposedly. I received a wire just as I received a wire to attend this meeting here.

Senator KING. The Scrap Iron Code?

Mr. BERKMAN. There is an institute, a scrap-iron institute. It is called the "Institute of Scrap Iron and Steel, Inc." It existed since 1927.

Senator KING. Is it incorporated?

Mr. BERKMAN. It is incorporated. The chairman of this institute, who calls himself the director general, is Mr. Benjamin Schwartz. He was supposedly in charge of this institute which had chapters in about 10 different districts, It consisted of a membership of some 2 or 3 hundred brokers.

It was at the last stage of existence when the N. R. A. came in. Over 7 years it had spent thousands of dollars and had not helped the situation. Mr. Schwartz is a trade organizer. At the time that the code came in, Mr. Schwartz had written into the code that the institute should through some manner elect the code authority.

Senator KING. That Institute then elected the code authority?

Mr. BERKMAN. The Institute elected the code authority.

Senator KING. And wrote the code?

Mr. BERKMAN. And wrote the code. The code is really a labor code with one section on restraint of unfair practices or something like that, which has not been enforced, is not intended to be enforced, and will never be enforced.

Senator KING. When you say it is a labor code, what do you mean?

Mr. BERKMAN. It is a code purely regulating labor. It has no other provision in it. But Mr. Schwartz set himself up as the chairman, and when I attended the meeting at Pittsburgh and the meeting at Cleveland, where about 50 members and executive committees were present, the code authority members did not even know who had proposed the budget and the assessment plan, what was going on or what was happening.

Senator KING. Who was to be assessed?

Mr. BERKMAN. Every member. He was supposed to be assessed one-twentieth of 1 percent up until the first $500,000 worth of business that that particular concern did. That meant $3,000 or $4,000 of assessments to some brokers. They had no idea how this assessment had come about and blamed each other.

Senator KING. Who got the money?

Mr. BERKMAN. That is what I am coming to.

Senator KING. All right. Proceed.

Mr. BERKMAN. The waste-material industry was divided in five or six divisions. The scrap iron division was one of them. There was the metal dealers division and there was the waste material division, and there was the wool council division, and the entire budget was about $260,000, and the budget for the scrap iron was $50,140.

The Hyman-Michaels Co., one of the really big concerns in Chicago, and possibly an organization that does a $25,000,000 business a year——

Senator KING (interposing). Brokers?

Mr. BERKMAN. Brokers. They wrote a circular letter. This is just two paragraphs from their letter. [Reading:]

> We believe the budget as set up is entirely out of proportion to the amount of policing necessary for the industry, and that it is entirely topheavy in regard to the contemplated compensation of its employees.
>
> We believe that an equitable budget substantially endorsed by the Industry would not require 15 percent of the total allocated for collection purposes.

We believe that a matter so vitally important to the entire industry should have been presented to the industry as a whole for its consideration and approval.

On September 20, Mr. Joseph Michaels, of the Hyman-Michaels Co., wrote to Louis Berkman Co. [Reading:]

We are of the opinion that the Institute of Scrap Iron and Steel and the code authority as at present constituted, are more inclined to create and agitate disputes and differences rather than the reverse. We know that it is not the purpose of the Federal administration to have this occur and believe that a sound and strong protest will correct this evil.

As stated previously, the institute had been organized in 1926, and the feeling when I was present at the Cleveland meeting ran so high that a resolution was passed demanding that this chairman of the code, Schwartz, be asked to resign from the code.

Senator KING. He was the man who got $10,000 a year salary?

Mr. BERKMAN. Yes; he got $10,000 salary.

Senator KING. And had two assistants at $4,500?

Mr. BERKMAN. Yes.

Senator KING. Did he have a lawyer?

Mr. BERKMAN. I think he acts as his own lawyer. This is the set-up. Very cleverly, according to the records of Ward & Paul that I investigated the last time I was here, the court stenographers for the N. R. A., those records reveal that he also represents the National Scrap Metal Dealers Association, and the Wool Stock Council, and I also understand that he also represents two or three other concerns.

Those other divisions, if we examine the budget, it will be found that the attorney's fees are listed $11,000, secretaries fees, $10,000. I do not know how much and we have never been able to find out, and I happened to be present at one meeting when Mr. Schwartz came down to testify and to explain everything about the code. I could not get him to answer any of my questions, however, questions that had been given me on a slip of paper by members whom he represented, what his salary was, and all of those questions were very cleverly evaded.

In other words, the salary, if I am correct, runs probably from $20,000 to $40,000 a year.

Senator KING. After you leave the stand, give the names to our assistants of those corporations that you think he represents, and their addresses, and we will perhaps summon him as a witness here. Proceed.

Mr. BERKMAN. Very well. After I found out this condition here, he has approached me, and I might say to this committee that I have never received a dime for any of the work I am doing except my actual expenses. That I am so close to the industry that in my youth, before I went to the Harvard Law School and to college, I knew this situation and I was close to the steel mills there, and to the coal mines, and the interest that my personal family had, and I became intimate with it. It is a matter of good will with me.

Senator KING. Proceed.

Mr. BERKMAN. I came here and saw Mr. Connolly, Deputy Administrator J. J. Connolly, and he told me the entire situation, that the code authority presumably spent this budget, and that the code authority were acting for the industry and writing all of the

rules, and took this back and I wrote a letter to Mr. Harry Grant, a very big concern of Detroit. Mr. Grant is the president of the Cleveland & Detroit Chapter of the Institute, which incidentally was supposed to disband and be replaced with the code at the time when the code came into effect.

I wrote a letter to Mr. Grant setting forth all of the statements made to me by Mr. Connolly, which I had noted down personally while in conference with Mr. Connolly, and I set copies to all of the executive committee members and the officers of the institute and the code, and shortly thereafter I received a letter back from Mr. Connolly—I have the letter in my file—which plainly led me to believe that Mr. Schwartz had undoubtedly conferred with Mr. Connolly, and there were also mimeographed letters sent out from the institute at the expense of the code and the institute attacking every personality that had anything to do with these questionnaire letters, attacking every organization, calling them un-American and unpatriotic and using those pet phrases that would try to throw a scare into you, and using an emotional reaction instead of straight and logical reasoning.

Senator KING. Was that Connolly's letter?

Mr. BERKAMN. No; these were letters sent by Mr. Schwartz. Mr. Connolly's letter to me, however, tried to tell me that the data which I had sent out to Mr. Grant to the effect that that code budget had been in Mr. Schwartz's possession on August 27, 1934, and had not been submitted to the industry until September 17, 1934, two days after or three days after the Louis Berkman Co. had sent it out to the industry, tried to tell me that that was not a fact and that I had not gotten that information correctly. I wrote Mr. Connolly back and told him that his own assistant had furnished me the information and would he kindly look it up in his file.

I also forwarded him a brief on this code. They had tried to assess the gross amount of business, in other words, the purchasing and the sales, and they also tried to include freights. Although the budget was not changed when it was finally passed, the assessment plan was changed in that it allowed only gross sales less freights, so we won that point. I would like to submit my brief at this time as an exhibit in evidence with my testimony?

Senator KING. Yes; put it in.

Mr. BERKMAN. At the same time when I was at the Cleveland-Detroit meeting, I there delivered a talk, and the Louis Berkman Co. afterwards saw fit to make a pamphlet of this talk and circulate to the industry. It set forth some of these abuses and how absolutely far the monopolistic concerns and the mills have gone in this situation, and I would also like to make that pamphlet an exhibit in this case as further showing exactly what has happened in the industry in the last few years.

Senator KING. We will receive the pamphlet. Can you abbreviate it and state the abuses that you have referred to, in succinct form so that that can be incorporated in the record. The pamphlet will be filed but not printed in the record, but you may hand to the stenographer a statement of the abuses as you contend them to be, and that statement will be inserted in the record.

Mr. BERKMAN. I will summarize just these abuses.

I wrote a letter to Mr. Donald R. Richberg after nothing seemed to be done about the entire situation, in which I summarized the entire evils:

For the past 7 or 8 years, the various branches of the waste-material industry, such as the scrap-iron trade, the scrap-metals trade, and the paper, wool, and rag units have been unfortunate victims of professional organizers. Trade organizations are, of course, highly valuable assets to an industry if they actively promote the general welfare of that industry. But speaking for the scrap-iron and steel industry, the consensus of opinion today is that indeed very few benefits have been received from its trade organization during these past years.

These trade organizers have been named as chairman, secretaries, and official members of various industrial divisions of Approved Code No. 330. Ordinarily, such officers should receive the confidence and trust of the industry. Yet, we are prepared to make the positive statement that several of these officers are thoroughly distrusted by many members of the trade, and that they do not have the confidence of practically a majority of the trade. Indeed, one trade chapter recently went on record requesting the resignation and removal of the code chairman, and I have heard attacks against these code officials made deliberately in their presence, as well as to their backs.

According to the official reports of Ward and Paul, the chairman of the Scrap Iron Code represented at least three trade associations on November 22, 1933, before the N. R. A. These trade associations are now made several divisions of the Waste Material Code No. 330. It is the general opinion among members of the scrap-iron division that several officials of the code are receiving multiple salaries from these various divisions, and that these salaries will aggregate $20,000 or more per year for certain of these officials.

If the Waste Material Code were other than a labor-regulating code and provided actual constructive measurements for the benefit of the industry, such salaries would probably be reasonable. But in view of the single labor-regulating purpose of this code, insofar as most of the trade divisions which it governs are concerned, such salaries, if true, are neither more nor less than a racketeering abuse, deceitfully foisted upon an innocent and highly meritorious recovery program. They represent the motive of these professional organizers which many members of the trade charged them with, prior to the enactment of the N. R. A. Yet, even if these salaries do not reach the above amount, many members desire to know why the scrap-iron division should pay its code chairman $10,000 a year merely to enforce labor provisions. Such figure is even out of proportion with salaries paid by our own Government to truly executive officials. Accordingly, I may say that various members of the trade have already written to their Congressmen and Senators with regard to this situation, but it is our purpose to write directly to your good offices requesting a fair and thorough investigation of this condition.

We believe that the budget named and the assessment stipulated could be substantially reduced once these evils were corrected. We believe that total outsiders, entirely nonpartisan in their interest, would indeed become more proper and effective officials for the administration and enforcement of the code; and we further feel that such change in the personnel and a reduction of the assessment would materially aid in winning further cooperation of the industry for the recovery program.

Here I want to stress this point why I believe that outsiders are best for this industry. The members of the industry do a great deal of interdealing. It is not like an automobile dealer who sells to the consuming public. Therefore, if the members try to enforce these regulations, they will be stepping upon the toes of a very man whom they are doing business with possibly two or three times a week, and they will be cutting off their nose to spite their face. Therefore, they cannot act as members to enforce their own code, and these violations are therefore allowed to pass by.

Senator KING. The code authorities were all interested in some of the big mills?

Mr. BERKMAN. Yes; and usually they were fellow playmates of Mr. Schwartz, so that actually the chairman was doing all of the manipulation.

Actually, brokers employ very little labor. They purchase material from manufacturing concerns, railroads, or mixed dealers. In most of these cases, the seller would use his labor to load the material and the mill purchasing the material from the broker would use its labor to unload this material. Yet, there was a budget of $50,140 which covered an organization doing a great dollar volume of business and which therefore ostensively seemed to employ considerable labor. Consequently, whereas the gross sales ran into millions, the result was that large concerns who employ little labor were and are being taxed in an inequitable manner in order that some small concern employing one or two men might be punished for some mere code infraction. The code is merely a labor code with the exception of a singular provision under article VII called "Trade practices."

Thus, if a Mr. Jones in Indiana or Oregon, who happened to employ one or two men and who barely made a living chanced to commit a labor infraction, funds paid by a large brokerage concern employing no labor either would or could be used by these heavily paid executives and assistants, who could travel to Indiana or Oregon and arrange to punish this Mr. Jones. Summarizing this point, I found from my experience with the automobile and coal codes that local compliance boards in certain localities could certainly have done the job of enforcing the labor provision of a code a great deal better and a great deal cheaper than this expensive set-up forced upon the scrap-iron industry.

This situation further leads me to state that certainly this code authority, and, I dare say, other code authorities have been exploited and commercialized for the personal gain of professional trade organizers. The industry, in fact, has suddenly been confronted with the problem of supporting professional parasites. Labor, as far as the scrap iron industry is concerned, certainly does not require $50,000 worth of policing. However, when concerns like the Hyman-Michaels Co. and other large brokerage and dismantling organizations threatened to break up this situation—and I wish to call particularly attention to this point—when these large concerns threaten to break up this situation, word was immediately reported that Coordinator Eastman was considering the possibility of having railroads sell their scrap equipment unprepared for the mill. In view of the amount of capital required, as well as the machinery which would be needed in handling unprepared scrap purchased from the railroads, the competition among brokerage houses and dealers would be limited and the possible purchasers would only be a very few large concerns. In short, as soon as the larger companies began to find fault with the code, budget, the code authority chairman attempted to hold out a "plum" to appease these concerns.

I therefore suggest that if the N. R. A. is extended, salaries of executives should be regulated and that no paid director, secretary, counsel, executive, or other employee of one code authority should be permitted to serve on another code authority either with or without pay.

(2) This takes me to the further point that the N. R. A. has done nothing to help the smaller enterprise and that by reason of the N. R. A. cliques have been formed which have jeopardized the small concern and have created monopolistic conditions, fraught with ill legal practices which are definitely in restraint of trade.

I cite this one example that happened within the last month. The Wellsville Iron & Metal Co., of Pittsburgh, has become the exclusive broker for the Wheeling Steel Corporation. This situation creates an absolute monopoly in a particular district because the producer or dealer would have to pay a further freight if he were to send his material to another point. The mill and the friendly broker set the price and there is nothing that a producer of scrap iron or a subbroker can do about it. The other mill in the same locality is subject to the same arrangement or controlled by the same firm. Thus, the Wellsville Co. is also the exclusive broker of the Wierton Steel Co. for no. 2 steel and no. 1 steel.

Now, the A firm, located in the district of the Wheeling Steel Corporation, offered to sell the Wellsville Co. two carloads of heavy melting steel about March 11, for delivery to the Wheeling Steel Corporation. The Wellsville Co. refused to buy from the A firm and claimed that it was not in the market. The reasons may be the following: The Wellsville Co. might have wanted to punish the A company because the A company had refused to sell the Wellsville Co. at some previous date. Or the A company might have competed in the purchase of other material with the Wellsville Co. Or the Wellsville Co. might want to purchase this material at a lower price. In any event, when this material is located in the A company's district, freight would be against the shipment of this material to another district.

In the particular case I cite, after the A company was turned down by the Wellsville Co., the A company called the Continental Iron & Steel Co., of Pittsburgh and sold these two carloads to the Continental Co. for delivery to the Wheeling Steel Corporation. The Continental had a contract with the Wellsville Co. for shipment to the Wheeling Steel and were trying to fulfill the contract. However, when the Wellsville Steel Co. learned that the original shipper was the A company, it ordered its contract with the Continental Co. canceled and the A company was wired on March 15 that the Wellsville Co. refused to accept those two cars.

In short, the material was rejected before it has even reached the mill. But the material was in transit, did reach the mill, passed inspection, and was unloaded. I understand that the Wellsville Co. tried to communicate an order to the mill to have this material rejected, but that the order did not reach the proper party. Here was an absolute dictation, a concern ordering another company on the threat that it would not buy any further material from that other company, ordering with whom that other company should deal; here was an act in restraint of trade; a positive violation of the free competitive movement of material. Such acts occur every day but the code has done nothing about them. As a matter of fact, mills are now using, and have been using, the weapon of rejection of cars for any cause whatsoever upon the least pretext, and certainly, whenever the market slips slightly downward or the mill has too many carloads of scrap on its tracks. In rejecting these cars, the mills cash in upon an average demurrage arrangement by charging the shipper with demurrage and upon handling charges of various kind which money should actually go to the railroads.

Senator KING. Can you not put the rest of that statement in the record? That part of your letter to Mr. Richberg?

Mr. BERKMAN. No. That is not my letter. This part I did not write to Mr. Richberg.

Senator KING. You may put that in without reading it.

Mr. BERKMAN. I will just summarize this. One paragraph summarizes my whole pamphlet.

I say that the code did nothing about preventing this abuse. This abuse has actually become a racket because shippers and steel mills may be hundreds of miles away, and after the car is rejected upon one pretext or another, the mill can then dictate its own purchase price by forcing the shipper to take unreasonable reductions. This abuse is costing the industry millions of dollars per year and I would estimate that 1 out of every 4 cars shipped to a mill is rejected.

There are numerous other abuses and evils such as holding up shipments, a system which violates any contract but is used by the large brokers and particularly by the mills to speculate at the expense of the smaller fellows. There is the matter of keeping down prices and breaking prices through monopolistic control; there is the problem of direct buying whereby mills purchase directly from railroads and manufacturing concerns.

I have telegrams with me to show these various situations where a mill will reject and demand replacement in one instance and not a replacement in another.

It is true, there is a provision in the code known as "Article VII, Trade Practices" which would seem to deal with some of these abuses particularly monopolistic practices. But the effect which this section has had upon the industry is less than negligible and no effort whatever has been made or will be made to enforce it.

We therefore have a budget of $50,100 per year, saddled upon an industry which is virtually bankrupt when we consider what this trade has been forced to undergo during the past 5 years. Thus the magazine, Steel, in its September 1934 issue, comparing prices with 1929, showed that the finished iron and steel composites had dropped 11 percent while the comparative drop in the scrap iron composites was 42 percent. The Iron Age, in its issue of March 28, 1935, states, "Steel scrap prices continue to be weak and the Iron Age composite has declined from $10.75 a ton, the lowest level of the year. The finished steel and pig iron composite are unchanged at $17.90 a ton."

It has been continuously dropping, in other words, by the mills having group meetings now, they can designate one mill to buy at a time and another mill to buy at another time and keep out of competition that way and use their friendly broker to break the market and stop buying as soon as the market goes up to any figure, but the selling price of the steel is the same.

Senator KING. Then the consumer has to pay just the same?

Mr. BERKMAN. Yes.

Senator KING. So that the fall in prices is merely a subterfuge by the mills and the broker for the purpose of protecting themselves, but at the same time the public has to pay the same price or a higher price?

Mr. BERKMAN. Yes.

Senator KING. Just put it in the record.

Mr. BERKMAN. In conclusion, I have these 10 points in summary—

Senator KING (interrupting). Put them in the record. It will be read.

Mr. BERKMAN. All right. May I also call the committee's attention to a waste material article that has just appeared. It is an editorial in the last issue of April 6 of the Waste Trade Journal. There

are three paragraphs in it which are directed directly to this committee.

Senator KING. Mark them and hand them to the reporter, and he will put them in as part of your testimony.

Mr. BERKMAN. It states just exactly how these abuses come out and have happened.

Senator KING. The committee will be glad to receive them.

Mr. BERKMAN. And I will say that the very identical stiuation that is existing in the scrap-iron industry is succinctly put in this editorial.

(The same is as follows:)

The board manufacturers have been acting as though the N. R. A. has thrown a cloak of immunity over them. They are now doing openly and brazenly those very things that they used to do surreptitiously and for which they were indicted by the Federal Trade Commission and found guilty in years gone by.

The N. R. A. has proved a handy tool for these board mills. They adhere to it and abide by their code religiously, and why not. On the one hand their code has enabled them to act collectively and present a united front to the consumer of their products. Hence the sharp mark-up in board prices. On the other hand, they have been able to present a united front to the waste-paper dealer, thereby forcing the price of waste paper down to ruinously low levels, so low, indeed, that the entire waste-paper industry is threatened with extinction.

It is this pressure of the Board Mill Trust that makes it virtually impossible for the waste-paper dealer to pay the minimum N. R. A. wage scale or to abide by the maximum working-hour provision. * * *

One of the largest board manufacturing companies in the country increased its profits in 1934 by exactly 689 percent over 1933, from a net profit of $140,921 in 1933 to a net profit of $1,112,711 in 1934. Another board company showed a gain of over 700 percent, from a net loss of $355,500 in 1933 to a net profit of $360,648 last year. Still another enjoyed a rise in profits amounting to 198 percent, from $313,477 earned in 1933 to $935,422 in 1934, and yet another had increased profits last year of 122 percent, from $814,222 in 1933 to $1,819,688 in 1934. * * *

The Senate Finance Committee is investigating price fixing and price control in other lines of industry. It's high time an investigation of the waste-paper price control was started. Something must be done, and quickly. If the present conditions continue for only a short time longer, there won't be any waste-paper industry left. Packers are being forced to the wall by the dozens daily; the industry is flat on its back, completely licked because of the price control and buying policy exercised by board manufacturers.

Investigation by the Senate Finance Committee is only one step. But these investigations may not result in immediate action, and what the waste-paper industry must have above all else is a quick remedy. Hence, no time should be lost in bringing the board-mill trust to the attention of the Federal Trade Commission. Let that body rip aside the veil of immunity under which it has been operating. Let it expose the unethical practices, the ruthless business methods and the criminally oppressive measures that these mills have resorted to in order to squeeze every dollar they can out of the waste-paper dealer on the one hand by paying him next to nothing for this paper, and virtually holding up the consumer of their products by compelling them to pay exorbitant prices for their board.

(The balance of Mr. Berkman's statement is as follows:)

My talk before the Cleveland-Detroit chapter included an analysis of the conditions, the abuses, and evils with which the industry was faced and I earnestly hope that some of the illegal practices which are now going on in this industry will eventually reach our Department of Justice or our Federal Trade Commission, and, if necessary, through full prosecution, be corrected.

Returning to the question of the code, it appears to me, as far as the scrap iron division of the Waste Material Code is concerned, that the code was merely a back-door medium to enforce labor legislation, previously voted down by Congress. Labor legislation would, indeed, have been much cheaper and much more effective than a code in this industry.

(3) Finally, I come to the question of the code authority, and I again wish to quote one paragraph from my letter to Mr. Richberg:

"It may be said that these proposals should be taken up and considered by the code authority, but the code authority, as constituted today for the scrap-iron division, at least, is disunited, filled with factional strife, competitive jealousy, and personal animosity. I understand that certain members of the code authority have been asked to resign by the groups electing them, that others have acted without reporting their work to their individual chapters, and that even factional strife has been promoted among the code authority members by certain of the Waste Material Code officials."

I might read further from the letter of the Hyman-Michaels Co. of September 20, which states:

"We are of the opinion that the Institute of Scrap Iron and Steel and the code authority as at present constituted are more inclined to create and agitate disputes and differences rather than the reverse. We know that it is not the purpose of the Federal administration to have this occur and believe that a sound and strong protest will correct this evil."

Although this situation was therefore specifically pointed out to the administration in my letter to Mr. Richberg, in the reply which I received from H. S. Brown as assistant to the administrative officer, I was informed as follows:

"The code, at the present time, is being administered by the duly elected code authorities of the various divisions of the industry and these code authorities were elected in accordance with the provisions in the code. If it is your belief that the code authorities of the various divisions of the waste materials trade are not truly representative of the members of the respective divisions, it is your privilege to petition the deputy administrator in charge of the code, asking that a hearing be called in order to consider amending the code to provide a different method of selecting code authority members."

Subsequently in answering Mr. W. M. Galvin of the Compliance Division of the National Recovery Administration, I analyzed this situation in my letter.

"Mr. Brown suggests that a petition might be filed with a deputy administrator of the code asking that a hearing be called on the question of changing the selection of the code authority members. Although I represent a number of members of this industry, what possible effect could such petition procure? Neither I nor these members could afford to visit Washington during innumerable hearings and compete in such spending of time and money with code authorities, who need merely charge their expenses.

"I kindly request you to read paragraph (a), article VII of the industry's code, with regard to the manner in which the code authority is selected. The entire set-up is such that there is hardly a fair representative selection of members to act as the code authority. Indeed, just as the institutes and trade organizations are dominated by professional organizers, so, unfortunately, have the divisions of the code bowed to the same domination. I therefore personally think and sincerely believe that any housecleaning should be started upon the inititative of your fine administration. I would be happy if you would kindly convey the above thoughts to Mr. Brown."

The code provides that 15 individuals are to be selected of which 10 individuals are to be selected by the board of directors of the institute from among the members of the trade, and 5 individuals are to be selected from the mixed dealers in a manner to be prescribed or approved by the administrator.

I have further, however, found that the workings of the code authority have not only been shrouded in mystery but groups of code authority members have formed little cliques to oppose and annoy and threaten other groups of code authority members. In fact, code authority activities have been so shrouded in mystery that in most cases, the code authority members themselves had no idea as to what was happening. What actually was happening was that rules, half explained and subtly propounded were being railroaded through for the benefit of either a parasitical element or the professional organizers. The response to my letter to Mr. Richberg reveals the manner in which complaints were treated.

"A thorough investigation has been made of the complaints registered by you and this investigation discloses that a great many of the practices mentioned are those which the code was designed to help eliminate."

The acknowledgment is there, but there is no answer to the question, what has been done about it? Nor have these complaints been open to a free and open presentation and hearing of the complainant's evidence. This definitely occurred at the time I requested an open hearing to present objections to the proposed budget and assessment plan.

Finally, I say that the code authority was an inner circle of the institute and that the chairman of the institute in glad-handing a few members and in bestowing

a few titles, obtained control over the code authority, as well as the institute and was thereby able to hang his own rules and regulations upon the industry.

CONCLUSION

In conclusion, I am forced to summarize the situation in the following terms:

1. The Waste Material Code has been used by professional organizers to exploit an industry for their own parasitical gain.

2. The Waste Material Code is merely a labor code and attempts to do what labor regulating legislation would have done far better and far cheaper.

3. Although the gross sales amount to millions in the scrap-iron industry, the comparatively small amount of labor used makes a labor code unnecessary for this industry. There is the further fact that the industry pays its labor unusually well and certainly above the code.

4. That a budget and assessment plan was railroaded through and imposed upon this industry for the benefit of these trade organizers, thereby placing an unjust and inequitable tax upon the industry.

5. That if the N. R. A. is to continue, no paid director, secretary, counsel, executive, or other employee of one code authority should be permitted to serve on other code authorities, either with or without pay, and that salaries of code officials should be carefully regulated.

6. The N. R. A., by indulging and playing bed fellow to vicious trade organizers has allowed a code authority to be appointed which is (*a*) not representative of the industry, (*b*) shrouded in mystery, (*c*) divided into cliques, (*d*) which cliques and factions are in turn exploited for the personal gain of these trade organizers and a chosen few monopolistic companies.

7. That neither the code authority nor the administration has been completely open to full hearings and the complete presentation of a complainant's case.

8. That small enterprises have been oppressed to the point where they are in a final death grip struggle.

9. That monopolistic practices in the industry and acts in restraint of trade have increased a thousandfold since the enactment of the N. R. A.

10. That the voice of the small enterprises has been subdued and subjected to the whisper of the large concerns, and that these large concerns are now engaged in more open and notorious illegal practices than ever before, without any ostensible interference by the N. R. A.

(By direction of the committee, the following brief is inserted in the record in connection with Mr. Berkman's testimony:)

BRIEF ON BEHALF OF THE LOUIS BERKMAN CO., AND ITS CORRESPONDENTS BEFORE THE NATIONAL RECOVERY ADMINISTRATION

(Approved Code No. 330—In the matter of proposed plan of assessment and proposed budget of the Code Authority for the Scrap Iron and Steel Trade)

I. STATEMENT OF FACTS

On or about September 7, 1934, a waste-material paper, the Daily Metal Reporter, published certain information regarding a plan of assessment of individual members of the waste-material trade presented by the National Recovery Administration. An itemized statement of these budgets was not included. Various chapters of the Institute of Scrap Iron & Steel, Inc., thereafter called executive committee meetings and motions were passed to protest the assessment plan presented, on the basis that it was not clearly defined and that it was inequitable, discriminatory, and unfair to the scrap iron and steel trade.

On September 15, 1934, the Louis Berkman Co. of Steubenville, Ohio, mailed a circular letter to members of the Scrap Iron & Steel Institute submitting the method of assessment, the proposed itemized budget for the scrap-iron industry, and certain pertinent questions with regard to the code and the operations of the institute for the past 7 years. Prior to the date of this letter, members of the industry had failed to receive any information from the chairman of the code for the scrap iron and steel division, revealing an itemized statement of the proposed budget. The chairman of this division of the waste-material trade, who had previously acted as director-general of the institute, still acting in his capacity as director-general of the institute, then undertook to make a personal issue of this letter. The Louis Berkman Co. however received numerous replies from members of the trade covering 10 States, as far apart as Alabama, Massachusetts, and

Missouri, in which the attitude of this company was praised and full authority extended it to act in their behalf.

The Louis Berkman Co., in its letter of September 15, 1934, had further promised to retain legal counsel and proper representation at Washington, D. C., for itself and correspondents who sought an equitable revision of the plan of assessment and the proposed budgets and subsequent amendments to the Scrap Iron Code. In response to the approval which this letter and the suggestions therein contained received, a representative and legal counsel for the Louis Berkman Co. met with J. J. Connolly, Esq., Assistant Deputy Administrator of the National Recovery Administration, at Washington, D. C., on September 24, 1934. The problems which were discussed were then impartially reported through a letter to Mr. Harry M. Grant, president of the Cleveland-Detroit chapter of the Institute of Scrap Iron & Steel, Inc., and a copy of this letter was mailed to every chapter president and officer of this association.

J. J. Connolly, Esq., further graciously extended the privilege to the Louis Berkman Co. to file its brief on or about October 2, 1934. This brief is therefore respectfully submitted on behalf of the Louis Berkman Co. and the numerous correspondents who authorized it to act upon their behalf.

II. THE PROPOSED PLAN OF ASSESSMENT

Although the members of the scrap-iron division of the waste-material industry, herein represented, fully realize the importance of procuring funds to enforce their code, and desire fully and fairly to cooperate with the National Recovery Administration in this purpose, these members herewith submit that the proposed plan of assessment for the scrap-iron industry would operate unfairly and inequitably for this division of the code. Several definite factors must be considered in the application of this plan to the industry. These factors are: (1) Gross volume of business; (2) freights; (3) market values at different scrap-iron centers; (4) the uncertainty of the amount realized.

(1) *Gross volume of business.*—In view of the fact that J. J. Connolly, Esq., informed the representatives of the Louis Berkman Co. that gross volume of business undoubtedly meant gross volume of sales, we feel that this feature need only be treated briefly. Mr. Connolly further realized the dual taxation feature involved if the plan of assessment were to be based upon both the purchase price and sales price of the same merchandise, and he agreed to confer with other members of the Administration regarding a correct interpretation of this point. Although the Louis Berkman Co. has not received a letter from Mr. Connolly up to the present date relating to the outcome of this conference, we believe that the Administration will definitely agree that such duplicate assessment would be inequitable and will interpret this provision to mean volume of gross sales.

(2) *Freights.*—This item may at first glance appear to be of lesser importance than our first point, but when we realize that freight is often 50 percent of the sales price received for materials delivered to its mill destination and that shipments are often forwarded from a producing plant to a scrap-iron yard, and then reforwarded from the yard, wherein the merchandise is prepared, to the consuming mill, resulting in payments for freight of 35 percent and upward of the sales value of the material, we can more readily understand why freight plays such an important factor in this industry.

However, may we specifically illustrate this point with concrete examples in order that a true and equitable picture of the situation might be presented to the Administration. Thus if a car of no. 1 heavy melting steel is shipped from Massachusetts to Pittsburgh, the present sales price will be about $10.50 per gross ton delivered Pittsburgh, whereas freight will amount to $5.70 per gross ton. Again, a car of no. 1 heavy melting steel, shipped from Detroit, Mich., to the Youngstown district will sell for approximately $11 per gross ton today, although freight will amount to $3.53 per gross ton.

If the dealer or broker in Michigan of Massachusetts were to pay an assessment based upon gross sales to Youngstown or Pittsburgh and if freight were to be included in such gross sales, the broker or dealer would be paying an assessment on 32 or on 54 percent, respectively, of the sales volume which in fact was consumed by freight charges. Certainly, this dealer or broker had received no financial gain or benefit through these freight charges and, as a matter of fact, such freight charges had necessitated a surplus capital to cover freight payments if the material was shipped to his yards, out of which the dealer or broker had failed to realize any profits.

On the other hand, the problem of calculating freights in the volume of gross sales presents a decidedly complicated situation. When a carload of merchandise

is purchased by a broker in Pittsburgh or Cleveland from a dealer in Michigan or Massachusetts, for delivery to a mill located in the Pittsburgh or Cleveland district, such freights are often paid directly by the consuming mill although the merchandise was purchased at a price f. o. b. cars shipping point or delivered to the consuming mill. Again, the broker or dealer may ship this material to his own yard or to his own city and pay the freight himself.

However, if he ships the material to himself to his own city for billing purposes, so as to keep the identity of the shipper concealed, he may reorder the car forwarded to the consuming mill which would then pay a switching charge or a comparatively short haul freight charge. If the merchandise is shipped to the broker or dealer's yard, he will necessarily be forced to pay the freight himself, and only after the material is prepared, reloaded, and reshipped to the consuming mill will the mill pay any part of this freight.

But this does not conclude our complications. The material may be bought from a dealer in Virginia or Missouri, delivered f. o. b. the broker or dealer's yard in Pennsylvania, and such purchaser will then pay the freight to the railroad and deduct this amount from the seller's invoice. Again, the broker or dealer will reship this material to the consuming mill and either the broker or dealer or the mill will pay the last freight. If the mill should pay this freight, it will in turn deduct the payment from the invoice. In short, our point is that the problem of freights presents an unusually complicated bookkeeping situation and that its many variations and differences would make any plan of assessment in which freights were included, a difficult method to administer.

This difficult feature must necessarily supplement the inequality which would be created in an assessment program covering and including freights upon which the seller receives no profit. Finally, there might be an attempt upon the part of the broker or dealer to sell material f. o. b. shipping point to avoid such assessment on freight, thereby further complicating the situation.

We therefore respectfully submit that in the event the present plan of assessment is established, that such assessment should be based upon the sales value of merchandise less freight.

(3) *Market values at different scrap iron centers.* It is a proven fact that the value of scrap iron and steel varies considerably in various market centers of the United States. This difference in price has readily varied from the small margin of 5 or 10 percent to the large and extensive margin of 40 or 50 percent.

If assessments were therefore based upon gross sales, a dealer or broker in the Pittsburgh district would be paying approximately twice the amount of assessment taxed against a dealer or broker in Boston or Louisville, or approximately 25 percent in Cleveland or Birmingham or Detroit.

Yet, in spite of the fact that a broker or dealer in Chicago would be contributing a considerable percentage more than a broker or dealer in Virginia or in Oklahoma, and in spite of the fact that this extreme variation would exist throughout the country, all of such brokers or dealers would be realizing the same average commission or profits on the merchandise handled.

We therefore believe that the administration will readily perceive the apparent unfairness of a plan of assessment which creates these disproportionate and inequitable results, and we further urge that if this plan is adopted, its scope should be modified whereby the burden of assessment might be more equally distributed.

(4) *The uncertainty of the amount realized.* There is assuredly no fixed rule which might guide the fluctuations of the value of scrap iron during the ensuing year. In view of present conditions, a statistical analysis covering the past 5 years, for instance, would hardly seem applicable. According to the September issue of Steel, the composite price for scrap iron on September 8, 1934, was $9.54. During September 1929, this composite price was $16.30. The margin of values in present quotations is therefore approximately 42 percent if we examine the wide difference in these composite prices.

How can we therefore reasonably ascertain what possible amount of funds will be realized through a plan of assessment based upon prices which are subject to a 42 percent variation or even to a 21 percent variation?

On the other hand, prices in the scrap iron and steel industry vary from day to day and often vary extensively from week to week. They do not remain fixed and practically standardized from quarter to quarter in a manner comparable to the steel industry or the pig-iron industry. These extensive variations presenting an uncertain basis upon which the present plan of assessment might be calculated must in turn present an extremely variable sum which might be realized through such assessment plan. Indeed, according to this extreme variation in the price

of scrap iron, an assessment figured upon such uncertainty might produce less than $50,000, or might, in fact, produce more than $100,000.

We therefore again respectfully urge that a plan of assessment based upon gross dollar sales presents an uncertain and undesirable condition which would be difficult to rectify through any modification.

III. PROPOSED ASSESSMENT BASED UPON GROSS TONNAGE SALES

The Louis Berkman Co. and its correspondents nevertheless realize that if a plan of assessment based upon gross sales appears unworkable, a substituted plan must necessarily be presented to provide funds for the proper enforcement of the industry's code. Such plan may be found in the one heretofore adopted by the Institute for Scrap Iron and Steel, which was based upon gross tonnage sales and which appeared to receive the approval of the greater majority of members of the trade.

(1) *Gross volume of business.*—This plan has already been approved and practiced by the industry. It would therefore eliminate the application of a new speculative plan. It would further eliminate the problem of duplicate taxation if the proposed plan of assessment is to be based upon the gross dollar volume of business, covering both purchases and sales. But most assuredly, it would eliminate the uncertainty in calculating what items were to be included in the category of the gross volume of business or, for that matter, in the category of the gross volume of sales. Finally, it would present a definite and simple bookkeeping figure upon which to base a company's assessment.

(2) *Freights.*—In eliminating the problem of what items are to be included in the category of gross sales, a plan of assessment based upon gross tonnage would also eliminate the confusion of any method which would include freights. This item would no longer need to be subtracted or added to the basic figures upon which assessments might be charged. Thus again, a member of the industry would be presented with a simplified problem when calculating his share of an assessment figured upon his gross tonnage of business. Nor would he be forced to seek avenues of escape from an assessment which included freights by attempting to purchase material f. o. b. a dealer's yards, or by sale of this material f. o. b. shipping points.

(3) *Market values at different scrap-iron centers.*—We further respectfully submit that an assessment based upon gross tonnage would eliminate the disproportionate burden placed upon dealers and brokers in various scrap-iron centers by reason of the variation in market prices for scrap iron in such various centers. A gross tonnage plan of assessment would therefore prove decidedly more equitable by actually distributing the burden upon the profits realized by brokers or dealers because a broker or a dealer, whether situated in Boston or situated in Chicago, naturally received the same approximate commission or profit per gross ton.

(4) *The uncertainty of the amount realized.*—Finally, a plan based upon gross tonnage would more or less eliminate speculation in the amount of funds which a gross dollar sales assessment plan might realize. Through past statistics, it would be far easier to calculate the approximate tonnage of scrap iron and steel to be used for the coming year and such figures would not be subject to the violent fluctuations and gyrations which the scrap-iron prices might suffer from day to day or from week to week. In short, the plan suggested could readily be developed to produce approximately $60,000 and there would be definitely greater certainty as to whether this sum would in fact be raised, then could be ascertained under an assessment program based upon gross dollar sales which might readily yield $50,000 or $100,000.

We therefore respectfully submit that an assessment plan based upon gross tonnage would be easier to calculate, would eliminate items upon which the dealer or broker receives no profits, would prove a more equitable distributed burden, and would be subject to a more exact calculation as to possible yield.

IV. PROPOSED BUDGET

Although we are happy to submit the suggested assessment plan for the reasons presented, we feel that this plan of assessment should be treated and studied in the light of the proposed budget, in order that both points might be carefully and properly coordinated. We further realize the necessity of a budget to guide the production of funds and their expenditure in the enforcement of the Scrap Iron Code. In this respect, we wish to emphasize that we are emphatically in favor of our code as far as it extends in the regulation of the industry, and that we are

equally in favor of the policy of this administration and the National Recovery Administration.

Yet while we fully realize that the proposed budget is intended as a flexible guide in the expenditure of funds required to enforce the code for the scrap iron and steel industry, we respectfully wish to call the attention of the Administration to the itemized statement of the proposed budget for the scrap iron and steel division. It may readily be true that the plan of assessment and the gross figures of the several budgets were received on or about September 20, 1934, by certain members of the industry from the chairman of the code, but we submit that it is equally true that the itemized statement of the proposed budget was neither published by a trade periodical nor in fact circulated prior to the letter which enclosed this feature and which was mailed by the Louis Berman Co. to members of the institute on September 15, 1934.

With complete impartiality and restrained frankness, we state and feel that this matter should absolutely have been brought to the attention of the entire trade from coast to coast. As a matter of fact, the impression which was prevalent at chapter meetings of the Institute of Scrap Iron and Steel during the past week or 10 days was that the budget was drawn up and fixed by the N. R. A. Indeed, the impression and belief of executive members and officers of the institute was that the proposed budget was the positive act of the N. R. A. and that the code authority had no hand whatsoever in its preparation. At this late date, through communications which we have received, the trade still generally seems to believe that the proposed budget was entirely the work of the N. R. A. and that the code authority at no time ever gave the proposed budget its approval or sanction. In view of these communications, we must express some doubt as to whether the industry's code authority did formulate the proposed budget or were in fact acquainted with its final form. May we state further as a matter of fact, that the impression created by the code chairman and which prevailed at chapter meetings and continues to prevail among members of the trade is that the N. R. A. was forcing the acceptance of the proposed budget and plan of assessment much to the personal regret of the code chairman. Yet we do feel that the correct interpretation of the situation is that the N. R. A. is merely interested in justly attempting to propound a budget and plan of assessment, regardless of its form, which would prove reasonable in order that funs might be raised to enforce the code.

We therefore believe that a fair and tolerant question would be to ask why this proposed budget did not receive at least a modicum of publicity? Why was not this itemized budget included with the circular letter which was sent only to certain members of the Institute of Scrap Iron and Steel by the code chairman, stating the plan of assessment and the gross sums of the respective budgets for the several divisions of the waste-material industry?

Yet in the realization of the fairness and equitableness of the policy of this administration and the N. R. A., we feel that a budget for an industry to enforce its code should not be made a medium for private gain. With this cooperative and definitely reasonable viewpoint in mind, let us examine the proposed budget in relation to the proposed plan of assessment, respecting: (1) Salaries and personnel; (2) the problem of enforcement; (3) the compensatory benefits of the code; and (4) the method of collection.

(1) *Salaries and personnel.*—Although the salary for two assistants in the Scrap Iron Code division named at $4,500 each may be intended as a flexible feature and more assistants may be employed at a lesser figure, the salary for the chairman of the code is stipulated as $10,000. The chairman named for the Scrap Iron Code was the director-general of the Institute of Scrap Iron and Steel, Inc. Yet according to a transcript of the hearing held on November 22, 1933, and reported by Ward & Paul in volume 2, page 149, this director general of the Institute then also represented the National Scrap Metal Dealers Association. Again, according to the transcript of a hearing also held on November 22, 1933, and reported by Ward & Paul, the same director general further represented the Wool Stock Council which included 80 percent of the annual business of the wool stock trade, and which amounted to approximately $40,000,000.

We do not know whether this director general who is now chairman of the Scrap Iron Code is serving in any capacity upon the Code for the Nonferrous Scrap Metal Trade, the Code for the Wool Stock Trade or whether he is affiliated with other divisions of the waste-material industry. In the event that he is, his full attention could assuredly not be devoted to the scrap iron and steel trade, and we submit that the reasonableness of the salary named for the scrap iron division chairman would therefore be inequitable when compared and considered with the services and salaries to be paid by the other divisions of the Waste Material Codes.

Again, we submit that further serious question presents itself with regard to the personnel of the Scrap Iron Code. The chairman thereof was formerly director general of the Institute for Scrap Iron and Steel, Inc., and this feature must seriously handicap the problem of neutrality of enforcement. In short, a total outsider who was entirely nonpartisan in his interest would indeed have been a more proper code chairman and would far more readily have been able to act as a go-between or code executive acting between the industry and the administration.

We therefore respectfully submit that both the salaries and the personnel should be seriously scrutinized by the N. R. A.

(2) *The problem of enforcement.*—On the other hand, if the salary of $10,000 for a code chairman or the combined salaries which such chairman might receive from several divisions of the waste-material industry, were proper under normal conditions, we must still view the reasonableness of this figure as well as the reasonableness of the total amount of the proposed budget for the scrap-iron trade, in relation to the provisions and remedies to be enforced under this code. It is openly admitted that the code for the scrap-iron industry primarily a labor code and that the remedial features which appear in the codes for other industries have unfortunately been omitted from the Scrap Iron Code.

Does the mere enforcement therefore of the administration's just and equitable policy with regard to labor, as included in the Scrap Iron Code, require an expenditure of $50,140?

Does such enforcement require the valuable services of a code chairman at $10,000 per year salary?

And finally, does such enforcement also require the services of two assistants at $4,500, per year and the large office expenses and traveling expenses as set forth in the proposed budget?

Certainly, in view of the impoverished condition of the industry at the present time, a plan could be developed whereby local compliance boards could assist in the enforcement of this code, thereby saving a great part of the staggering sum included in this proposed budget. The Institute of Scrap Iron and Steel might have required the valuable services of an able executive and the operation of extensive offices, providing such institute were in full charge of the industry and were actively engaged in presenting and prosecuting remedial legislation and litigation for the betterment of the industry. Whether or not the institute, as it was formerly constituted for approximately 6 years, accomplished any improvement in the Industry would present a question involving personalities, and we sincerely wish to refrain from such issue.

But we submit that the code for the scrap-iron industry as now passed, does not present a situation requiring or utilizing such executive ability or extravagant expenditures in view of the fact that remedial features for the industry are distinctly omitted. Definitely, therefore, the code presents only the question of enforcing labor regulations and we respectfully request the administration to compare the salaries stipulated in the proposed budget, with the salaries of able Government officials, whether they are members of the National Recovery Administration or members of other Federal agencies. And we further respectfully request that the executive requirements of both personnels be equally and courageously compared.

(3) *The compensatory benefits of the code.*—This feature must necessarily include the latter part of the statements made above, under our second point, and we therefore considerately incorporate these statements, herein by specific reference.

The proposed budget is $50,140. At present, and for several years past, the scrap-iron industry has suffered decisively as the result of business depression and inadequate prices forced upon it by certain monopolistic mills and associated monopolistic practices. Its depleted financial condition almost approaches a state of bankruptcy. Yet, although the industry is uniformly in favor of the administration's policy, and although by far the larger majority are anxious to carry out the labor regulations adopted in the Scrap Iron Code, the burden of raising the amount of the proposed budget in addition to the burden of complying with these labor regulations should at least have been met and offset by equitable and honest profits gained through many remedies which might have been provided in the Scrap Iron Code by the administration.

We, therefore, respectfully submit that if the proposed budget is approved and charged against the industry, the administration should immediately investigate the abuses which confront the industry and which have brought the industry almost to its present point of bankruptcy, with a view of the incorporation of remedial legislation in the code which might equitably compensate the members

of the trade, not only for these additional burdens, but also the burdens borne by the industry prior to the enactment of the National Recovery Act.

(4) *The method of collection.*—Our points herein might readily have been included under several paragraphs touching the personnel of the code officers.

In order that full equity might be performed, we respectfully suggest that the national treasurer should be an official of the Federal Government. In the event that it became necessary to investigate the records of a company to ascertain whether proper assessments have been paid, such Federal official would be met with a far more receptive and favorable attitude by the members of the industry.

In the event that this suggestion does not meet with the policy of the N. R. A., we respectfully submit that in view of the importance of the national treasurer, that the several code authorities for the divisions of the waste-material industry, rather than the several code chairman, name this official. Such action would eliminate any political or factional arrangement.

V. CONCLUSION

In conclusion, may we first respectfully urge that a plan of assessment based upon the gross tonnage sales be adopted for the reasons already presented in place of and in preference to the proposed assessment plan based upon the gross dollar volume of business or the gross dollar volume of sales.

Secondly, we respectfully suggest that no paid chairman, secretary, counsel, executive, director, or other employee of one code division be permitted to serve on another code division whether with or without pay. Obviously, the administration must view the reasonableness of this request when we find the present chairman of the Scrap Iron Code to be the former representative of at least the Wool Stock Council and the National Scrap Metal Dealers Association. Although there may be no conflicting interests between these several divisions, each division of the waste-material industry should assuredly be favored with an impartial representative.

Finally, we wish to conclude this brief which the Administration gratefully permitted the Louis Berkman Co. to file on behalf of itself and its correspondents with several analytical questions.

(1) Is it necessary to provide the position of a chairman of the Scrap Iron Code at such exorbitant salary, entirely out of porportion with the services to be rendered under the code, in face of the virtual bankrupt state of the scrap-iron industry due not only to the lack of compensatory benefits as provided in codes for pig iron, steel, and other industries, but to the questionable benefits accomplished for the scrap iron industry by its trade organizations for approximately the past 6 years?

(2) Should not the questionable value of the stipulated salary for the code chairman, the assistants provided, and the traveling and office expenditures proposed, be substantially reduced and the proposed budget thereby decreased approximately 40 percent or 50 percent in view of the existing, tremendous loss and burden carried by the scrap-iron industry and in view of the National Recovery Administration's anxieties in the interest of recovery in which local compliance boards could further help and play a considerable part in economical recovery.

Respectfully submitted,

J. N. BERKMAN,
Counsel for the Louis Berkman Co.

STATEMENT OF MRS. BARTON WISE, RICHMOND, VA.

Senator KING. Mrs. Barton Wise, Richmond, Va.

Mrs. WISE. I want to tell you about my experience with the code and under the President's Reemployment Agreement. When it first came out, I went to see the head of the chamber of commerce. I went to the chamber of commerce in Richmond, and I told Mr. Munk that I did not like to sign this thing because it prohibited homework, but I said that I know that is a wise provision to break up the sweatshops, but I pay the same price to a homeworker as the people working in the factory. He said, "That is exactly right." I said, "You are taking away employment from 10 to 15 women who badly need

it." He said, "We are trying to create employment and my advice to you is to sign."

And then I was notified that I was to work under the Infants and Children's Code. My business is so small as to make it ridiculous, but I said that I would be glad to do it.

Last September, the first N. R. A. inspector, a Mr. Heretta or Calmetta, came from Lynchburg as the accredited representative of the N. R. A. He looked at all of my books. It was made easy for him in every way to look at my books, and he called my attention to the fact that we had homework done, and I said "Yes; we do have it done. We pay 30 cents an hour just as we pay in the shop." He said, "I don't think you will have any trouble with that.", and went on and made several suggestions.

I said, "Now you have told me several things that favor the employee. What help is the N. R. A. to the employer?"

He said, "The one thing I can tell you madam is that you are paying your janitor too much." Mr. Munk looked at my list and said, "You are paying him too little." I said, "I am paying $12.50." He said, "You must pay $14."

My janitor is an old colored man who cleans the floor and he is so shiftless that he would be on relief if I had not employed him. He is dismissed three or four times a month. His name is Henry. I said, "Henry, you are one of the N. R. A. and you will get $14 and you are not worth 14 cents." Henry was delighted.

So Mr. Calmetta came a year later and I had paid $14 a week and he said, "I will tell you, you are paying your janitor too much." I said, "I quite agree with you." He said, "Anybody can look at him and see that he is superannuated." I said, "I think so." I said to Henry, "How old are you?" He said, "The folks that raised me say I must be most 50." I said, "Henry, I am over 60 and I think you are nearer my age than that."

I promptly reduced his salary to $9 a week. And that pay roll, Mr. Calmetta showed us how to fill in a pay roll and I said, "How about a woman who makes hats here?" I had only one. He said, "There is not anything like a millinery department unless there is two." I said, "I have one and she is not busy all the time."

Then he went in and in the presence of my stenographer and bookkeeper, he said, "You are working under the Infants and Children's Code. You don't have to pay but 30 cents an hour to anybody." That was an N. R. A. inspector. He showed us how to fix our pay rolls. They were sent on regularly every month. No protest was ever received about paying too little.

And then at the end of February, Mr. Donald Levy came to see us, and Mr. Donald Levy discovered that I was paying too little to everybody, especially to Henry. [Laughter.]

I am not trying to be humorous, gentlemen. I am telling you a very solemn thing. So I said that I did have political influence. My brother is a national committeeman, but I have never mentioned the subject to him. I said, "I will fight it out." I did not feel that the President meant it to be political pull on the part of the manufacturer, and I said, "You will have to find out the ways that other people are doing."

They are perfectly easy to evade if you wish to have them evaded. I have not tried to evade anything, but I am going to fight the question

of the janitor and the milliner, and I was asked by these same people what I did, and I said, "I don't have contractors. My agents go in and set up the thing, and we make a garment and send it direct to the customer." I am not, properly speaking, a manufacturer. I told him that and he said, "Oh, yes, you signed the code. In order to comply with the 'blue eagle', and fly the 'blue eagle', you must pay." I said, "I don't use the 'blue eagle.' Nobody cares anything about the 'blue eagle' in a dress. The first thing they do is to take the label out. I don't sell wholesale in any sense." But they insisted that that is the rule.

They said, "How do you price your garment?" I said, "I give to a colored woman who works in the room with other colored people and they are afraid of each other and I ask her how long she takes to make the garment, and if she tells me 10 hours, I put down $3. If she tells me 5 hours, I put down $1.50. I cannot do any more than that."

But some of the women are old, very slow, and they could not make $12 a week to save their lives, but they told me when I signed the code that if I was to pay the basic rate of 30 cents an hour, that my way of pricing the garment was satisfactory. Everyone who comes in says it is.

About a week ago, from the code headquarters in New York I received a most cordial invitation, "Dear Madam, you will be delighted to know that the Infants and Childrens Manufacturers Association has been formed." This was from the code headquarters. It was signed by Mr. Zuckerman, who is one of the administrators of the code. He wanted to tell me that I would be perfectly delighted to know that this association was formed, it was for the mutual benefit of the trade, and that the dues were on your gross sales and a minimum of $50 and a maximum of $150, and during the pendency of the invitation, the initiation fee on $50 would be waived. I consider that graft, pure and simple. I believe the people who declined to join that association will have every bit of unpleasant pressure brought upon them, possibly, and I am very sure I am going to have a great deal of it brought upon myself for appearing before this committee. I am very much obliged to you.

Senator KING. May I ask you one question? I suppose your janitor is not engaged in interstate commerce, is he?

Mrs. WISE. I do not think he has ever been out of the State of Virginia. I don't think he has ever been out of the city of Richmond.

Senator KING. And his work there does not relate to interstate commerce?

Mrs. WISE. It does not.

Senator KING. And the dresses which you make there are sold in your own community?

Mrs. WISE. No; they are sold all over the country. My agents go to different cities. They take the merchandise to the ladies' houses or they give an exhibit at a hotel, and the lady comes in and gives her order, and the order is sent to Richmond, and it is filled, and every garment made to an individual order.

About this Henry—after Mr. Levy said that I must prove that he was superannuated, I sent for an application blank which the State statistician at first refused to issue, but Mr. Levy went down

with me and told him that for the workers at home it was mandatory to give me a blank which I must fill out. So he gave it to me and they then told me I must have Henry sent to a physician, and the other day the physician said that he had hardening of the arteries but they did not think a little light work would hurt him.

Senator KING. Thank you. We will take a short recess now.

(Whereupon at 3:30 p. m., recess was taken until 3:40 p. m., whereupon the hearing resumed.)

The CHAIRMAN. Mr. R. Lee Griffith.

(No response.)

The CHAIRMAN. Mr. P. F. Harris.

TESTIMONY OF P. F. HARRIS, WASHINGTON, D. C.

(Having first been duly sworn by the chairman, testified as follows:)

Mr. HARRIS. I have a little statement here I would like to read and place in the file. It is very short.

My appearance here is to object to the wording of the Insecticide Code because it is vicious to American insecticide interests and gives to the Japanese pyrethrum insect powder all the benefits of the application of the code, which I consider from my many years' experience in the insecticide business a complete surrender of all the benefits that may be gained by the code, to the Japanese interest in the United States.

I wish to call the committee's attention to article II, definitions, paragraph 2, of the Insecticide Code; also to paragraph 4 of the same article. These two paragraphs alone take away from the American insecticide industry all the benefits of the code, penalizing the American, placing them at a disadvantage before the public to sell their products?

The CHAIRMAN. Do you belong to the N. R. A.?

Mr. HARRIS. I belong to the N. R. A., but I was excluded. My product was excluded from the code.

The CHAIRMAN. It is excluded from the code?

Mr. HARRIS. Yes, sir.

The CHAIRMAN. Why?

Mr. HARRIS. I cannot tell you. That is why I came here to try to find out.

The CHAIRMAN. You have come to a pretty bad place to try to find that out. [Laughter.]

Mr. HARRIS. I have tried to find out from Mr. Johnson and the code authorities, but I failed. I use borates in our manufacture, and here it says in the code [Reading:]

> The term "insecticide", as used in this code, shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insects which may infest animals, household or other buildings, excluding moth-proofing substances or compounds, borates, arsenicals, fluorides, cyanides, and fumigants.
>
> The term "disinfectant", as used herein, means any chemical or drug or combination of chemicals or drugs intended to destroy one or more kinds of disease germs, or other harmful micro-organisms (not including bacterial spores) when applied to all inanimate objects that might harbor disease germs.

That opposes all of the American principal ingredients that are used in manufacturing insecticides in the United States, and giving all of the benefit that can be given from the code to the Japanese in this country.

The CHAIRMAN. Is your ingredient or concoction as good as this Japanese concoction?

Mr. HARRIS. That is hardly for me to say; but I have been manufacturing the product in Washington, selling not only to the public but to the Government without dissatisfaction.

The CHAIRMAN. Did you have anything to do with the making of that code?

Mr. HARRIS. I tried to, but they rejected me. I was the first one to offer a proposal for a code, but they paid no attention to me at all.

The CHAIRMAN. Have you any trade association?

Mr. HARRIS. The association that they accepted is what we call a Japanese association manufacturing powders in the United States and selling here, which is in direct competition to our American manufacturers, and for that reason no American would want his name in their association.

Senator KING. Do you mean that it is a Japanese association?

Mr. HARRIS. It is an association composed of Japanese representatives in the United States.

Senator KING. And do they sell any commodities except those produced in Japan?

Mr. HARRIS. Their principal commodity is Parisian powder. Raised in Japan and shipped to the United States. That is the principal commodities they deal in. They deal of course in some others, but I do not think it amounts to anything.

Senator KING. How many are there in that organization?

Mr. HARRIS. It is about 106, I believe, as they claim.

Senator KING. That are in that so-called code?

Mr. HARRIS. Yes, that was recognized by the code authorities.

Senator KING. How many are outside of it?

Mr. HARRIS. About two or three thousand. I could not say how many.

Senator KING. And the two or three thousand who were not, but a hundred who were largely engaged in selling a Japanese product were recognized and became the code authority?

Mr. HARRIS. It seems to me that is the way it turned out.

Senator KING. Do you pay an assessment to that Japanese organization?

Mr. HARRIS. I do not. I paid $5 in until I found out where I paid the five, but I never paid any more.

Senator KING. Do they try to supervise your conduct?

Mr. HARRIS. They have not said a word to me. They don't care about the Americans. All they want is the Parisian powders, and the Japanese.

Senator KING. What objection have you to their activities other than that they may take some of your market?

Mr. HARRIS. It is a cheap market produced by cheap labor in Japan and sold by the millions of pounds in the United States in competition with our American products which we can't do anything with, duty- and tax-free.

Senator KING. Is not your only relief or remedy, if you are entitled to any, and I make no comment upon that, to secure some legislation by Congress?

Mr. HARRIS. I have here a request to Congress to look into this, and I would like to see them take all of the insecticides that are im-

ported into the United States off of the free list and put them on the duty list where they are in competition with American manufacture.

Senator KING. When the Finance Committee meets for the purpose of drafting a tariff bill, I suppose that would be the proper place for you to present your case, or you might go over to the Ways and Means Committee of the House.

The CHAIRMAN. Have you ever brought this matter to the attention of the Tariff Commission?

Mr. HARRIS. I brought it down there, but they are no friends of the American manufacturers. I can say that much.

The CHAIRMAN. The Tariff Commission?

Mr. HARRIS. I mean the tariff organization down here that represents the Government, not the Tariff Commission on the Hill.

Senator KING. Would you be surprised if you should learn that we ship abroad for years from 5 to 7 billion dollars worth of American commodities as against about half of that value in foreign products; we ship twice as much abroad as we import.

Mr. HARRIS. How much do we ship, if I may ask, in competition with the commodities of foreign countries? We ship a lot of raw materials.

The CHAIRMAN. Has this product been coming into this country a good while before the N. R. A.?

Mr. HARRIS. This product prior to 1914 was raised in California. It was a young and growing industry before the war. In 1914 Japan, taking advantage of the war, began to flood this country with a cheap product from Japan which throws out our American industry in California and all of them down the Pacific coast there. They killed them. They sent it in here at about 10 or 11 cents a pound when it costs 40 or 50 cents to produce in this country. Gentlemen, this country cannot compete with that, so the American industry in that line in the western country is now dead.

The CHAIRMAN. So you could not get a code on your product?

Mr. HARRIS. No; I could not get a code.

The CHAIRMAN. That is unfortunate. You have, in my opinion, two avenues to travel; perhaps three. If this act is extended, they can give you a code. Get someone else in the business. But do not have a monopoly on it.

Mr. HARRIS. I have a monopoly? The Japanese have a monopoly in the code.

The CHAIRMAN. In your particular product.

Mr. HARRIS. I have a patent on that.

The CHAIRMAN. Under the law today in the N. R. A. Act there is a provision there that any product in which there is a code, that the Tariff Commission may raise the prices or may even put an embargo to protect the code product in this country. There is a very broad provision. So that is a question to be handled by the Tariff Commission. Then whenever they get to writing another tariff bill, you had better get active and go before the Ways and Means Committee or come before the Finance Committee on the proposition.

Thank you very much for bringing it to our attention.

Mr. HARRIS. Well, when will they be acting?

The CHAIRMAN. I cannot say. But the Tariff Commission is up there at work all the time.

Mr. HARRIS. I will be glad to bring it before them and put the facts up there.

The CHAIRMAN. Mr. Shearman.

STATEMENT OF F. E. SHEARMAN, REPRESENTING MADDOX TABLE CO., JAMESTOWN, N. Y.

(The witness was first duly sworn by the chairman and testified as follows:)

The CHAIRMAN. You represent the Maddox Table Co.?

Mr. SHEARMAN. That is correct. It won't take me long.

The CHAIRMAN. All right; proceed.

Mr. SHEARMAN. We are engaged in the manufacture of household (wood) furniture, known in the industry as case goods, namely, furniture for the bedroom, dining room, and living room, employing from 275 to 300 employees. 1934, the first full year under the N. R. A. and the Furniture Code, was one of the most disastrous ever experienced by the furniture-manufacturing industry. We would quote the following figures for the industry, showing losses per $100 of sales:

1929, $2.97 (profit); 1930, $3; 1931, $10.93; 1932, $23.26; 1933, $4.04; 1934, $8 plus (preliminary).
Data supplied by Seidman & Seidman.

The following losses are for our particular branch of the industry (northern manufacturers only):

1931, $5.90; 1932, $15.47; 1933, $4.65; 1934, $13.78.
Data supplied by National Association Furniture Manufacturers.

The CHAIRMAN. You belong to the N. R. A., do you?

Mr. SHEARMAN. Yes; I do. We did sign it.

The CHAIRMAN. You abide by it, do you?

Mr. SHEARMAN. Surely.

The CHAIRMAN. Those figures you last read, you mean the industry as a whole?

Mr. SHEARMAN. No, sir; that is in our branch of the industry, but I believe that involved approximately $47,000,000 of production.

Senator KING. Do you mean to say that that branch of the furniture industry with which you are identified produced approximately $47,000,000?

Mr. SHEARMAN. Yes.

Senator KING. How many manufacturing plants are there?

Mr. SHEARMAN. I think involved in those figures there are about 250.

Senator KING. Scattered all over the United States?

Mr. SHEARMAN. Scattered all over the United States.

Senator KING. Not concentrated in Detroit or Grand Rapids?

Mr. SHEARMAN. They are scattered all over the North.

The CHAIRMAN. What is your objection to the N. R. A.?

Mr. SHEARMAN. Do you mind my reading this? I won't take but a few minutes.

The CHAIRMAN. Go ahead.

Mr. SHEARMAN. The sales volume from which the above figures were computed were approximately the same in the years 1933 and 1934.

As to our particular case, we operated at a profit in the years 1930 to 1933, inclusive. In 1934, the first full year under the N. R. A. we

experienced a substantial loss, even though our sales volume varied only a few thousand dollars in the years 1932 to 1934. We have carefully analyzed our 1934 operations and are convinced that it is chargeable to the following:

First. Excessive labor costs under the N. R. A., the average hourly earnings of our employees being increased 55 percent over June 1933. It may be assumed that due to our 1930–33 experience that our wage rate were low. This is not the case for we have always paid, and are paying, as high as any which prevail in the industry.

Second. Excessive material costs.

N. R. A. increased lumber prices from 50 to 100 percent and other items from 25 to 50 percent. There has recently been a slight recession in lumber prices due to the cancellation of lumber-code prices, but the total amounts to very little due to the production control which has existed in the lumber industry, which created a substantial shortage in numerous lumber items. Some items are now higher than those existing under the code.

Third. Limiting operating hours to 40 hours per week (45 hours permitted if averaged to 40 over any 6-month period).

No manufacturing plant can be operated economically upon an arbitrary weekly basis. Bottle neck and peak operations occur which must be relieved in order to avoid shut-downs. Additional workers cannot be employed for a few hours or days. In the latter months of 1934, we were offered a substantial volume of business which we could not accept due to the maximum hours. This business of necessity went to our competitors and, as a result, we have lost customers whom we have been years in developing.

Fourth. The demand for our product is seasonable.

Through many years we have done from 35 to 40 percent of our yearly volume in the first 6 months of the year and from 60 to 65 percent in the last 6 months, the extreme demand occurring in September through December. Prior to N. R. A., during these months we always operated upon an overtime basis, which increased production permitted us to recover any losses which might have accrued during prior months and, as a consequence, we could close the year with a profit. Under the limited production permitted by N. R. A. this is impossible. Regardless of legislation, the consumers still insist upon purchasing their requirements at their convenience.

There has been no compensating increase in selling prices. They are as low or lower than those which existed in 1932 and the same vicious competition still exists. The industry is highly competitive and consists of some 2,000 medium and small units spread over the entire country. It is ridiculous to even consider regulation or control of prices. They are only controlled by the law of supply and demand.

It is true that we have spread employment, now employing some 30 percent more employees than in June 1933. However, this has been strictly at the expense of our employees and ourselves. The overtime which our employees enjoyed during the latter part of the year has been eliminated under the N. R. A. and his yearly earnings curtailed accordingly. This, together with the increased cost of living has resulted in lower net year earnings.

Senator KING. You mean that the employees get less than they did before?

Mr. SHEARMAN. His net yearly earnings.

We feel that this is partially responsible for the unrest and dissatisfaction which exists among the laboring classes.

Prior to June 1933, we always worked in harmony with our employees, never having had labor trouble even of a minor character. Since the enactment of N. R. A., while we have had no serious difficulty still it seems to be impossible to satisfy our employees. They are continually demanding more and more, even though our operations show a loss. It seems to be impossible to satisfy them. Where in the past we were able to hire and fire on a basis of merit, now this is impossible without the possibility of developing serious labor difficulties.

The CHAIRMAN. They do not demand more than the code price for wages, do they?

Mr. SHEARMAN. Oh, yes, they do. They came into us the other day. We are permitted to operate at times 45 hours a week. They refused to work over 40. They want more money but they won't work the other 5 hours for it.

The CHAIRMAN. What does the code provide?

Mr. SHEARMAN. Forty hours. But you can operate 45 for a period, as long as you do not average over 40 for a 6-month period, but they won't work that other 5 hours.

The CHAIRMAN. Are they organized in your industry?

Mr. SHEARMAN. Yes; we have an independent company union.

The CHAIRMAN. And they always had organization?

Mr. SHEARMAN. No; they never had prior to the N. R. A.

The CHAIRMAN. They have organized since N. R. A.?

Mr. SHEARMAN. Yes.

The CHAIRMAN. Proceed.

Mr. SHEARMAN. The problems of the large manufacturer are not those of the medium or small manufacturer; neither are the problems of the well-organized industry those of the disorganized industry and no rule can be laid down which will operate with equal justice to all. We cannot appreciate why the minimum wage in the metal industry in Jamestown should be 40 cents per hour, while that in the wood-furniture industry is 34 cents per hour. If we must have a minimum wage, then it should be uniform in all industries.

After nearly 2 years' experience under the N. R. A., we can see nothing to recommend it or its extension.

Senator KING. You think that that is a wise conclusion; that if some industries pay 34, that others should not pay 40?

Mr. SHEARMAN. I do not think it should be 34 or 40, but I do not see why a certain type of man should be worth 34 cents in one factory making metal furniture and 40 cents in wood.

The CHAIRMAN. Are they different in skill?

Mr. SHEARMAN. No; just the same.

The CHAIRMAN. Did you take part in writing the code?

Mr. SHEARMAN. I think there are 12 or 14 on the code authority. I had a hand in selecting one of them.

The CHAIRMAN. Thank you very much.

STATEMENT OF FRANK J. DUFFEY, REPRESENTING RETAIL GASOLINE DEALERS' ASSOCIATION OF DELAWARE COUNTY, PA.

(The witness, having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. Mr. Duffey is from Media, Pa., and represents the Retail Gasoline Dealers' Association.

Mr. DUFFEY. That is correct, Senator. I have a brief here which I am going to ask the privilege of leaving with you. I just want to touch on one or two points in that brief, and I want to clarify just exactly whom I do speak for.

The Retail Gasoline Dealers' Association of Delaware County, Pa., of which I am secretary, represents 268 retail gasoline dealers in that county, despite the fact that the United States census for 1933 only shows 167 in the county, but that is a fact. We are affiliated with the Pennsylvania Independent Petroleum and Allied Trades Association. In Pennsylvania we are functioning above these county set-ups, and that same census gives us some 7,700 and some odd, I think, gasoline merchants in the State of Pennsylvania. We are also identified with the National Association of Petroleum Retailers from Milwaukee, Wis.

Senator KING. Would you call a station where they sell, out on the highway, would you call him a dealer?

Mr. DUFFEY. Yes, sir. The National Association of Petroleum Retailers is the only proper organization representing that class of merchant that Senator King mentioned, and the most recent figures on that showed some 350,000 in the country.

We voice no opposition to the Petroleum Code. The purposes of it and its aims we are 100 percent with. We think it means the salvation of the independent retailer in the petroleum industry. We will go even further than that and to the limit of our knowledge and information, we believe the same thing applies throughout the entire industry.

The only problems directly relating to the Oil Code are those of the machinery set-up for its enforcement, and we recognize that the Government in setting up that machinery faced a problem of the first magnitude. In the final analysis, it would be next to impossible for the Government to be conversant with all of the various industries and their devious problems, from their own knowledge. They do not have that actual, practical experience, and the most natural recourse was to turn—if it were oil—to turn to Mr. Teagle, Mr. Sinclair, Mr. Mellon, or whoever it might have been. I think that would have been perfectly logical. It is understandable, too, that they could not obtain the benefit of any information as to the problems of the independent retail merchant. At the time of the origin of the codes, they were not organized, and today they are deplorably lacking in organization in many sections of the country, and when all is said and done, in order to get information, you must have a point of contact.

That we are trying to remedy and I want to emphasize that fact, that the Oil Code offers the future salvation of the retail merchants in the petroleum industry, and by the same token, it is the salvation of the motoring public in the country.

Today in Pennsylvania, the figures show in the Department of Commerce census that the retail distribution, one-third of the number

is chain retail outlets in the oil business, to those of the independents, and that one-third—in other words, two thousand and odd chain outlets to seven thousand and odd independents, and despite that fact, the figures show that those independent chains, the actual expenses reported were something around $2,000,000 greater than for their maintenance or operation than the total reported for the number of the independent businesses.

At the same time, you might be interested in knowing that those chains enjoyed about 46 percent of the total volume of business on the dollars and cents basis.

In the petroleum industry we have a condition, as far as the marketing is concerned, that is unique. I don't know of my own knowledge anything like it. We have an industry that is controlled from the origin all the way along the line right into the gasoline tank on the back of your car, by one and the same group. When I say control, I mean this: the independent retail merchant has no more to say, has no definite or concrete idea as to what his margin of profit or operation cost is, where he is going to get it from, or what it is going to amount to, from one day to the other. That is absolutely controlled by the organization first who produce, refine, and market the product.

In this brief here I comment; first, I say:

We emphatically urge continuation of the Petroleum Code as a vital necessity in order to safeguard the welfare of the independent branches throughout the industry.

Senator KING. Did you hear the testimony this morning by Mr. Blackall?

Mr. DUFFEY. Yes, sir, I did.

Senator KING. About the situation of the independent producers, and he represented over 3,000, as worse than ever before.

Mr. DUFFEY. I might, Senator King, make a statement to you that I represented 100 men, and I am not discounting Mr. Blackall's statement at all, but I do not think he produced any credentials whatsoever. I do not think he represented any specific organized group. I am not—and I want you to please understand that I am not simply sitting here expressing a personal, or an individual opinion, but I am sitting here representing those whom I say I represent. Further, I state:

In future code organization, we urge balanced representation for all branches of the industry throughout its entire structure.

What we mean by that is simply this: We are thoroughly satisfied and particularly happy with our petroleum administrator, and the petroleum administration board, and that set-up, but between them and the actual practices of the enforcement of code laws, the planning and coordinating committee, the various break downs of that organization, in other words, your actual enforcement groups, and those are made up about 99 percent of the integrated companies or the major oil companies, as you might describe them.

The CHAIRMAN. Do you believe it would be advantageous if the Government had a greater representation there?

Mr. DUFFEY. Emphatically so. I happen to be a member of the Delaware County code committee. On that code committee it seems absolutely essential that each oil company that is doing business in Delaware County must have a representative on it. That is

just nonsense. It would be just as logical if every dealer in the county was on the committee.

The CHAIRMAN. The committee thanks you, and you may put your statement in the record.

Mr. DUFFEY. All right, sir. I make mention, Senator Harrison, about this Blazer survey committee which was appointed by Administrator Ickes, and certain comments on that, as our friend this morning here, and I sincerely urge that your committee review that committee's survey findings and give some consideration to those recommendations which are specifically covered in my brief there.

The CHAIRMAN. Thank you very much.

(The following statement was inserted in the record at the direction of the chairman:)

RETAIL GASOLINE DEALERS ASSOCIATION OF DELAWARE COUNTY,
Media, Pa., April 11, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

MY DEAR MR. CHAIRMAN: We recognize the difficulties which face your committee in the tremendous task which involves the reviewing of the National Industrial Recovery Administration codes organization, enforcement and their effects, and the importance of your project which involves the development of revisions and reinforcement plans. The sincere thanks of the independent retail merchant in the petroleum industry is due the Petroleum Administrator, Secretary Ickes, for his courageous and intelligent efforts in behalf of the small, or independent, units of our industry. Where these efforts have failed, we know it has been due to conditions beyond his control, and it is our wish to assist in a correction of these circumstances that we appeal to you.

The magnitude of organizing all industry under codes of fair practice naturally required assistance from within those industries, and it is here, at the very inception of the program, that many of the defects originated. Such an opportunity to utilize this plan for selfish gain was too great a temptation for many shortsighted and greedy business leaders w..ose advice was sought.

Supplementing our suggestions filed with your committee February 22, 1935, we wish to submit these additional recommendations for your consideration:

1. We emphatically urge continuance of the Petroleum Code as a vital necessity in order to safeguard the welfare of the independent branches throughout the industry, the consuming public, the United States Government, and even the best interests of those stockholders who so helplessly tolerate the unwarranted waste and ruinous tactics so prevalent in this essential industry.

2. In future code organization we urge balanced representation for all branches of the industry throughout its entire structure. In every enforcement authority this balance should be maintained, both local and national; independent and integrated equally given a voice, with neither a monopoly nor domination.

3. Such police powers or penalties as may be provided should be of a kind as to be enforceable and stringent enough to be effective. This could well be accomplished in the retail branch of the industry by granting certain privileges to suppliers in compliance with designated responsible code authority or enforcement agency. These same agencies could control "emergency" measures, general policies of regulation and enforcement, but must have genuine authority vested in them. And the lop-sided picture of the present Planning and Coordinating Committee and its regional and subcommittees is no longer to be tolerated. It is further urged that as much authority be placed in local jurisdiction as is practicable in order to simplify the functioning of the code and expedite the handling of its problems.

4. Absolute divorcement of the several branches of the industry is our goal but we insist prompt and serious consideration must be given to divorcing the pipe lines from any other branch and that they be established as the "common carriers" they are under the proper governmental regulation. This would remedy at once the evil of a handicap which is entirely too great a temptation to ignore, and ruinous in its demoralizing effect upon the whole structure.

Of more direct interest to the retailer is the divorcement of wholesalers, or any other branch of the industry than retailers, from the operation of retail service stations. Study of this subject must develop the unalterable fact that

company owned or controlled retail outlets serve no economic purpose, are purely parasites nurtured by profitable branches of the business, and exist solely for restraint of free trade. Surviving from the revenues from producing, refining, pipe-line operation or dealer distribution, their only hope lies in the extermination in the future of the independent retailer and higher fuel costs. which the public will then be burdened with to offset these useless and idiotic palaces or mausoleums.

We commend the Petroleum Code Survey Committee of Chairman Blazer for their candid recognition of these two major evils, but differ with them as to the solution. Mere dependence on separation of management is insufficient; these groups have shown how callous they are to their industry and their stockholders too often. Absolute divorcement of pipe lines and of retail service stations is the only answer.

5. In the above-mentioned committee's findings regarding tank-wagon consumer business we concur heartily, believing this represents a threat to sound marketing structures next in importance only to those above mentioned.

In conclusion, we reiterate our stand for governmental regulation of petroleum, and to that end pledge our full cooperation with the Federal agencies designated by our President and the Petroleum Administrator, and in furtherance of such supporting State measures as may be feasible and possible of accomplishment. For the security of future individual endeavor in our Nation, appealing to you for sincere support of our "rugged individualism", and in recognition of the real obligation and responsibility to conserve this vital resource and our national wealth, we ask your assistance in these aims with an oil code and enforcing authority such as we propose.

Yours respectfully,

FRANK J. DUFFEY.

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

(Whereupon, at 4:10 p. m., the committee adjourned until Friday, Apr. 12, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

FRIDAY, APRIL 12, 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, Walsh, Barkley, Costigan, Clark, Black, Gerry, Couzens, Keyes, La Follette, Metcalf, and Hastings.

The CHAIRMAN: The committee will be in order.

STATEMENT OF JOHN E. EDGERTON, PRESIDENT SOUTHERN STATES INDUSTRIAL COUNCIL, NASHVILLE, TENN.

(The witness having been first duly sworn by the chairman, testified as follows:)

The CHAIRMAN. How much time will you require, Mr. Edgerton?

Mr. EDGERTON. I do not think, Mr. Chairman, it will take me more than about 20 minutes to present my testimony.

The CHAIRMAN. I hope you will try to present it in at least 15 minutes, because we have about 20 witnesses here this morning and we want to get along.

You represent the Southern States Industrial Council?

Mr. EDGERTON. Yes, sir; I represent that council.

I had drafted, Mr. Chairman, a statement which I first expected to read, but I think I can give you the gist of it.

The CHAIRMAN. Put that statement in the record.

Mr. EDGERTON. Yes, sir; I wish to do that.

The CHAIRMAN. And then give us the high points that you have in mind.

Mr. EDGERTON. The first thing I wish to say, Mr. Chairman, is that I am not a lawyer or a professional advocate. My bread and butter business is that of a manufacturer, and I am testifying not only in my capacity as president of the Southern States Industrial Council, but out of my experience as a textile manufacturer, woolen textile manufacturer.

However, I wish first to give facts as I have gathered them and interpreted them from the membership of this organization, explaining that this organization is made up of approximately 8,000 industrial units of all trades and sizes scattered throughout the 14 Southern States, embracing a territory that is about 1,200 miles long from north to south and 1,500 miles wide from east to west.

Eighty-five percent of the constituency of that organization consists of manufacturers who employ from 1 to 50 people, and approximately 90 percent of them employ not more than 200 people.

Senator KING. Did you state the number who were employed in the aggregate?

Mr. EDGERTON. No, sir; I have not those figures, Senator.

This council may be called a child of the N. R. A. It sprang into what was thought to be necessary existence, spontaneous existence, immediately after the codes began to become operative. Many manufacturers in the Southern area ceased to do business. They did not know at first and many of them do not know now, perhaps, just why they did, but nevertheless they found themselves encountering a competition that they could not successfully meet, and so a conference was called among manufacturers all over the South, about 500 of them, for the purpose of considering the situation, and their testimony on that occasion—and all of them testified—was that the sudden elevation of the productive costs consisting largely—the largest item being the radical increase in the labor cost that so suddenly catapulted the South upon a plane of productive cost that made it impossible for it to compete successfully, that is, for many of them. And they became initially interested in the question of wage differentials.

Through the years of the South's industrial development, which was about the first third of this century, the natural laws of competition had established certain differentials in wages varying, but on the whole something like 25 or 30 percent, which accounted for the natural differences in living costs and other elements, like assistance from consuming markets, added transportation costs that did not enter into the cost to anything like the same extent with their Northern competitors.

Practically all of these trades, outside of the cotton industry, which is the major industry of the South, found themselves in hopeless minorities when these codes were written, and they were written, as we all know, very hastily and without adequate opportunity for taking into consideration these various elements of cost, the differences in living conditions, those differences that would naturally enter into the determination of wage levels.

So, for the most part, their codes were written for them. Not only were their codes written for them, but they have been interpreted and enforced by their competitors, no matter however fairly it may have been done, but that is a fact.

Out of 546 codes that were approved and for which code authorities have been appointed, there were 6,255 individuals on those code authorities. Of that 6,255 number of individuals, 481 of them came from the 14 Southern States. In many of them, in two or three hundred of the codes, there was no representation whatever, and when these great questions affecting the welfare of the respective industries in the South were taken up, very often there was no representation whatever for those who were in the minority in the South.

There were in these 14 Southern States, according to the Department of Commerce Census of Manufactures in 1933, 21,295 plants of all sizes. They manufacture in the aggregate, of their manufactured products, 15 percent of all of the manufactured products in the Nation. They employed approximately 18 percent of all of the wage

earners in American industry. They have felt, therefore, and I am trying to reflect accurately their feeling, as they have expressed it to me, that they have deserved a larger representation on code authorities and a larger voice in the determination of those conditions under which they shall try to operate their plants.

In January I sent out a questionnaire to 6,000 of these manufacturers, from which I received more than 1,000 replies, and which, when they were digested, showed that as far as their attitude toward the N. R. A. in its present form is concerned, 22.4 percent of them——

The CHAIRMAN (interrupting). When were those questionnaires sent out?

Mr. EDGERTON. In January, Mr. Chairman.

The CHAIRMAN. Have you a copy of it here?

Mr. EDGERTON. I have, and I expected to file it with my paper.

The CHAIRMAN. Let me see it, please.

Mr. EDGERTON. Certainly.

Senator KING. What area did those 1,000 replies cover?

Mr. EDGERTON. Of the 14 Southern States covered by our council. Those are the States south of the Ohio and Potomac Rivers.

Senator KING. You did not send any questionnaires outside of those 14 States?

Mr. EDGERTON. No, sir. Those questionnaires showed that 22.4 percent expressed themselves as being in favor of the N. R. A. as it is; 34.2 percent expressed themselves as being in favor of it, with certain modifications, and most of them indicated the modifications which are set forth in that digest.

Senator LA FOLLETTE. Was that in addition to the 21 percent, or is that 34 percent of the total?

Mr. EDGERTON. That is 34 percent of the total.

The CHAIRMAN. Let us get that exactly straight. I understood you to say that 22 percent were in favor of continuing it as it is?

Mr. EDGERTON. Yes.

The CHAIRMAN. And that 34.2 percent were in favor of continuing it with modifications?

Mr. EDGERTON. With modifications.

The CHAIRMAN. That would be about 56 or 57 percent that are in favor of continuing it with modifications and continuing it without modifications, is that right?

Mr. EDGERTON. That is right. And 43.4 percent expressed themselves as against it in any form.

I may say, Mr. Chairman, that I invited the National Recovery Board to send down and check up our figures, and they sent a man down who stayed for a week and studied these questionnaires, and practically verified these figures in their report.

The CHAIRMAN. Are those figures based upon industries, or are they figured upon volume, or are they figured upon the number of employees in each industry? Have you those figures?

Mr. EDGERTON. No, sir; I have not the exact number of employees in each industry. Those were the percentages of the replies that I got to that questionnaire, of all sizes. There were 50 different trades represented. Of course, the cotton was the largest number of replies that we had, although it was not a majority of the cotton industry.

The CHAIRMAN. That is, cotton textiles?

Mr. EDGERTON. Yes, sir; cotton textiles.

The CHAIRMAN. What percentage of the cotton-textile industry of the South was in favor of it and what percentage against it, if you know?

Mr. EDGERTON. I have not that in that classification.

Senator LA FOLLETTE. Can you tell us what percentage, if you have that information, were for some wage and hour provisions?

Mr. EDGERTON. 34.2 percent, Senator, expressed themselves as being in favor of it, with certain modifications, and they specified—and that is shown in that report there. So far as I know, there was not a single, solitary one of them expressed himself as being against the minimum-wage provision, provided it is properly based and the conditions of life in the areas that are governed by similar conditions of life, are taken under consideration. That, in other words, it is not a question of being in favor of low wages. I think 95 percent of them, however, altogether, mentioned that fact, that as far as low wages were concerned, they were not interested in that. What they were interested in is the competitive wage. If the wages of their competitors had been raised exactly the same amount, it would not have made any difference to them about the amount of the minimum wage set for themselves.

Senator LA FOLLETTE. Would it be a fair statement that the questionnaires show practical unanimity of opinion in favor of some proper application of minimum wages?

Mr. EDGERTON. Yes, sir.

Senator LA FOLLETTE. And maximum hours?

Mr. EDGERTON. Yes, sir; those two things. Those two things were the two things in which all of them, practically all of them, expressed an interest.

The CHAIRMAN. I think it is very interesting from this data that you procured, and I believe it would be very well for you to read it. You say here that outstanding suggestions for modification of the N. R. A. were made by a vast majority of those reporting?

Mr. EDGERTON. Yes, sir.

The CHAIRMAN. Won't you give to the committee, just read, the constructive criticisms, because that is what the committee wants?

Mr. EDGERTON. Of those who expressed themselves in favor of N. R. A. with modifications, 92.2 percent of those were in favor of maximum hours, 93.7 percent of them were in favor of minimum wages, and I believe that is an accurate reflection of the general sentiment.

Senator HASTINGS. Have you stated how many replies you got?

Mr. EDGERTON. Yes, sir; approximately 1,000. They have just come in all along. There are more than that now. There were approximately 1,000 when I got those figures.

Senator KING. And those that have come in more recently, do they maintain substantially the same proportion?

Mr. EDGERTON. Yes, sir; just about the same thing.

The CHAIRMAN. Proceed and give us the criticisms.

Mr. EDGERTON. The Southern wage differential on sectional basis, 88.8 percent of them expressed themselves in favor of that. In other words, they are in favor of some sort of zoning plan by which areas in this country that are governed by similar conditions of life, those things that enter into the determination of economics and wages, and so forth, that there ought to be some sort of a differential there to account for the differences.

In the matter of price fixing, of those in favor of N. R. A. at all, 34.9 percent expressed themselves against it, 10.7 percent for it, and of distribution or production control, it was 18.4 percent for it——

Senator KING (interrupting): That is, of the 34 percent?

Mr. EDGERTON. Yes, sir; 6.9 percent against it. Then, in fair-trade practice, 85.3 percent were for it and 27.9 percent against it.

Senator KING. What do you mean by fair-trade practice?

Mr. EDGERTON. Some sort of fair-trade provisions.

The CHAIRMAN. You mean a code that will guarantee fair-trade practices?

Mr. EDGERTON. Yes, sir.

Senator KING. Is that something like the code, if I may use that expression—at any rate, the plans which have been approved by the Federal Trade Commission, those fair-trade practices?

Mr. EDGERTON. While they did not specify in their answers, I interpreted that what they mean by that is that there ought to be in the codes fair-trade provisions that are agreeable to everybody, but they did not specify just what those fair-trade provisions should be.

Senator LA FOLLETTE. Mr. Edgerton, when you were quoting those percentages, they did not seem to me to be quite correct. Did you misstate this at all? I thought you said 85 percent in one case, and 27 percent in another.

Mr. EDGERTON. Of what, Senator?

Senator LA FOLLETTE. Of the fair-trade practices.

Mr. EDGERTON. Fair-trade practices, 85.3—of 34 percent.

Senator LA FOLLETTE. What percentage did you say was against it?

Mr. EDGERTON. 27.9 percent, but that would make more than a hundred. It would be the difference there.

Senator LA FOLLETTE. There is something wrong there.

The CHAIRMAN. I did not understand your 85 percent of the 34 percent.

Mr. EDGERTON. Of those, Senator, who expressed themselves in favor of the N. R. A. with modifications.

Senator LA FOLLETTE. Even so, taking the 34 percent, you could not get more than 100 percent, and dividing that group——

Senator HASTINGS. Why don't you read the paragraph through?

Senator KING. Let me see if I understand you. You have 34 percent that were favorable to the N. R. A. with various modifications?

Mr. EDGERTON. With various modifications.

Senator KING. Now you are breaking down that 34 percent?

Mr. EDGERTON. Yes, sir.

Senator LA FOLLETTE. My point is, you cannot break down that group and get more than 100 percent. His figures say 88 percent in one case and 27 percent in another. There must be some typographical error somewhere.

Mr. EDGERTON. 85.3 percent and 27.9 percent.

The CHAIRMAN. All right, proceed; we will check it in the record.

Mr. EDGERTON. I will say one thing, Mr. Chairman. In the cotton industry, we have gethered from the Bureau of Labor Statistics that in that industry, the increase in wages during the first year of the operation of the code from July 1933 to August 1934, the increase was 70 percent.

Senator LA FOLLETTE. Are you speaking of the industry as a whole?

Mr. EDGERTON. No; in the South. These 14 States, the increase was 70 percent as against 48.8 percent in the rest of the country, the competing areas. Illustrative of the fact of the rather violent manner in which the costs of the South were elevated out of proportion, disproportionately to the costs in competing areas.

Senator LA FOLLETTE. What was the situation before so far as discrepancy or difference in wages between the section that you are speaking of and the other section?

Mr. EDGERTON. I cannot give you that mathematically.

Senator LA FOLLETTE. That would be rather important in making any sound comparison.

Mr. EDGERTON. As to what the wages were before?

Senator LA FOLLETTE. What I was interested in finding out is this: You make this statement, as I understand it, as an indication that wages were increased proportionately too high in the southern area, and it seems to me it would be a matter of some interest to know what the differences were prior to this time? You say you cannot give it?

Mr. EDGERTON. I cannot give it by trades. I know of the differences as a whole, that they were about 25 percent for all of the industry of the South.

Senator LA FOLLETTE. You are speaking in this particular connection of the cotton industry?

Mr. EDGERTON. Yes, sir.

Senator LA FOLLETTE. You cannot give us any figures on that prior to the code?

Mr. EDGERTON. No, sir; I cannot. That was for male labor, 70-percent increase almost overnight, against 48.8 percent. For female labor, it was 100-percent increase, practically doubling, as against 61.3 percent in competing areas.

The common labor in the South since 1929, when it was at its peak, is today 24.3 percent higher than it was at its peak in 1929, and skilled labor is 14 percent higher than 1929.

Now, Mr. Chairman, much has been said and much was said as we took these matters up with the administrative authorities in N. R. A. from time to time during this past year when we were trying to dispel the idea that the South is traditionally attached to low living and low wage standards, trying to explain some of those things to those who did not seem to be able to understand them, explaining the difference in the cost of living. May I give you some figures on that, recently revealed by the report of the Federal Emergency Relief Administration? That report we had was for the month of last September—September 1934. We understand that the relief distributed by that organization was on the basis of the living costs within the various areas. In 14 Southern States, that amount of relief averaged $12.05 per family for the month of September. For the entire country it averaged $24.10; exactly twice as much for the entire country as for these 14 States.

Taking my own State of Tennessee, where it was the smallest amount, there was distributed on this basis—presumably of living costs—$7.38 per family for the month of September. In the State of

Maine, which was the largest single State receiving such aid, it was $37.92 for the same period; or in other words, about five times as much, or 500 percent differential.

Senator HASTINGS. Are you talking now only of the Federal aid, or is that a combined aid?

Mr. EDGERTON. That is the Federal Emergency Relief Administration, their report. The amounts that they distributed for relief.

Senator HASTINGS. Do you know whether any other organization was distributing relief to these families also, or was that all they were getting from any source and all sources?

Mr. EDGERTON. As far as I know, from the Federal Government that was the only agency that was created for that primary purpose. I do not know of any other Federal agency from which relief was being gotten. There might have been local State agencies; I don't know.

Senator HASTINGS. Are your Maine figures confined to the Federal money that was paid out?

Mr. EDGERTON. Yes, sir. It varied from State to State.

Senator KING. Maine got $37 per family and Tennessee got $7.

Mr. EDGERTON. Those were the extremes.

The CHAIRMAN. All right. Proceed, Mr. Edgerton. Let us get on to some criticism of the N. R. A. This emergency relief we will take up later.

Mr. EDGERTON. Yes, sir. That was merely, Mr. Chairman, to substantiate our contention that there is a very decided difference in natural living costs, which accounts for something. It is not that different; I know that.

Mr. Chairman, there is only one other major fact that I want to bring out with reference to southern industry.

The CHAIRMAN. This questionnaire may go in the record. You have already put that in the record?

Mr. EDGERTON. Yes. (The same will be found at the conclusion of Mr. Edgerton's testimony.)

The CHAIRMAN. It is a very interesting document.

Mr. EDGERTON. And I have some other supporting material that I will file with my paper there.

The CHAIRMAN. Does that finish your statement?

Mr. EDGERTON. Just one fact, if I may bring this out, Mr. Chairman, and that is with reference to our labor situation in the South. I think it is commonly known that employers and employees, for the most part through the Southern States, are homogeneous. They are the same blood, they speak the same language, they worship the same God, and there is on the whole, I think, a feeling of fraternity among them that is not common in the areas where there is not such a degree of homogeneity.

Until N. R. A., labor disputes of a major character were scarcely known in our section of the country, and I believe largely because of that fact. Since N. R. A. we have had more strife than we have ever known before. For the 18 months preceding the N. R. A., there were in the entire country as a whole 1,292 major labor disputes. For the 18 months following N. R. A., there were above 3,200 such disputes, and I am sure those percentages obtain in the South as in other parts of the country.

Our people have been very much disturbed over the tendency in the N. R. A., or something else, to promote instead of to ally industrial strife. It seems to have been growing all the while, and those employers and employees in these thousands of smaller plants, in particular employing from 100 to 200 people, for the first time have witnessed the new impulse of hate and discord and disloyalty, something that they have never known before, and whatever it may be attributable to, they think it is N. R. A., and my own feeling is——

Senator BARKLEY (interrupting). What do you mean by "they"?

Mr. EDGERTON. Those that have never had any trouble before and have it since N. R. A.

Senator BARKLEY. Does that group of "they" to whom you refer include both employer and employee?

Mr. EDGERTON. Yes. There have to be two to make a fuss.

Senator BARKLEY. I am trying to find out what you mean by saying that "they" think that all of this strife is due to the N. R. A. I wonder if you include in "they", which is an all-inclusive term, those who are workers as well as those who are employers of labor?

Mr. EDGERTON. Yes, sir; I include them all.

Senator BARKLEY. Has that strife or those frictions grown—any of it—of efforts to enforce section 7 (a) of the N. R. A. which gives to labor the right to collective bargaining?

Mr. EDGERTON. I should say, now, speaking out of my own personal experience as a manufacturer—I have a small plant employing about 200 people native to the community in which I live, an agricultural community, and that is where 90 percent of all of these plants are located—in agricultural areas and far removed from one another for the most part instead of in a few communities—all my employees are native to that area, every person in the plant from the president, myself, down.

We have never had any difficulty of any sort. I am glad to say we have not had any as far as the labor conflict is concerned since N. R. A., but I do know that immediately following N. R. A. we were invaded by emissaries from afar who undertook to stir up trouble by arbitrarily appointing themselves as agents through which the principle of collective bargaining would be put into effect.

Well, we did nothing to stop them, and said nothing about it; let nature take its course. But in our own case, their proffers of assistance were rejected. That was not the case, however, in many other instances where, for the first time, through these activities of outsiders, strangers to the community and to the employees, resulted in very serious conflicts.

Senator BARKLEY. Did any of those disagreements or conflicts grow out of the efforts of these people who came into the community to organize or unionize the laborers?

Mr. EDGERTON. Yes, sir.

Senator BARKLEY. Most of it did?

Mr. EDGERTON. Yes, sir.

The CHAIRMAN. Mr. Edgerton, with all that, as I understand it, 57 percent of those who answered your questionnaire, of all of the industries in the South, were in favor of continuing N. R. A. with or without modifications?

Mr. EDGERTON. With or without modifications.

The CHAIRMAN. And 43 percent were against it? Thank you very much.

Senator KING. I want to ask one or two questions. You stated just now that nearly all or most of the plants in the South were in agricultural districts?

Mr. EDGERTON. Yes, sir.

Senator KING. And the plants were rather small, giving employment to from one to several hundred?

Mr. EDGERTON. Yes, sir.

Senator KING. Do those persons who work in the mills in those agricultural districts own their own homes, as a rule?

Mr. EDGERTON. In those agricultural districts?

Senator KING. Yes. And do work on the side around their homes or farms in addition to the work which they perform in the factories or the mills or the plants?

Mr. EDGERTON. My impression is, Senator, that that is largely true. In those communities like my own, where ours is the only plant within 30 miles, of any size at all, where our employees have their own gardens, I should say that 40 percent of them own their own homes through aids that they have gotten from us, and many of them live out of their own gardens and have an opportunity to cultivate those at those times of the day when they are not at work. I would be afraid to say just how general that is or just what the percentages are.

Senator KING. Do these smaller plants in the agricultural communities account in part for the differential in wages and account in part for the larger relief given to the Northern States than to the Southern States by the F. E. R. A.?

Mr. EDGERTON. No doubt that is true.

Senator KING. That cost of living in the South, then, in those 14 States that you represent, is considerably less than the cost of living in some of the Northern areas?

Mr. EDGERTON. Yes, sir. If you will pardon this, I have had my own employees leave, attracted by high-wage rates in Northern areas, come to me and say, "Well, I want to go North and work. I can get twice as much." I have had them to quote such rates as that. I said, "I don't blame you; go ahead; that is the place to go."

Over the last 25 years, I have never had one leave that did not come back—and come back within 6 months. Their testimony has been uniformly the same: "I can save more money here, and be happier among those who know me best and whom I know best, than I can where I have been." I have often inquired into just why that is true. Well, various things have been cited: "My rents are very much higher; I lived far from the plant and I had to pay car fare and I lived in a large community where the costs of living altogether are very much higher than they were here when I had my own garden, and I found out that I can live better and save more money on a very much smaller wage."

Senator KING. One other question: You stated that out of the 6,255 code authorities relating to the industries which you represent, a very limited number were given to those whom you represent.

Mr. EDGERTON. Four hundred and eighty-one. About 8 percent.

Senator KING. Have you had occasion to bring this matter to the attention of the code authorities?

Mr. EDGERTON. Frequent attention to the administrative authorities; yes, sir.

Senator KING. Are any of the administrators or deputy administrators from your State or from the South?

Mr. EDGERTON. I know of some, yes, sir; a few. I know of a few. I could not say what proportion, or how many.

Senator KING. Did your organizations, those whom you represent, have anything to do with the drafting of the codes?

Mr. EDGERTON. No, sir.

Senator BARKLEY. To what extent do you know on the average were differentials given to plants in the South due to their geographical location?

Mr. EDGERTON. It varied from 6 percent, which is the lowest differential I know anything about—and that is true in the cotton industry, about 6 percent—up to about 25 percent. Some of them have no complaint whatever about their differential. They were able to get the differentials that they thought they were entitled to.

Senator BARKLEY. Those differentials were based on the very conditions you have been talking about?

Mr. EDGERTON. Yes, sir.

Senator BARKLEY. And the fact that the plants were located in small communities and they had no manufacturing background to speak of, and therefore were not as efficient as they were in other sections of the country?

Mr. EDGERTON. That is true.

Senator COSTIGAN. It is true, is it not, that you were able to undersell your competitors who are higher cost producers when you enjoyed a manufacturer's competitive advantage because of your lower costs of production?

Mr. EDGERTON. I think we have had some natural advantages; yes, sir. If we had not, there would not have been any flow of capital in that direction for some time.

Senator COSTIGAN. Do you regard the discussion of proper industrial relations by your workers as unwholesome?

Mr. EDGERTON. The discussion? I have it with them. I regard it as quite wholesome, but I have it with them and not with some outsider.

Senator COSTIGAN. Is it not an incident of free industrial relations? Whether promoted from the outside or not, do you not regard it as part of the American system of political and industrial life?

Mr. EDGERTON. It has been, but I am not sure that it ought to be.

Senator COSTIGAN. You mean by your last answer that you object to those who are employed by you discussing those questions?

Mr. EDGERTON. Not discussing such questions, but I would object to anybody coming in there and spreading strife and creating hate and class conflict when it is wholly unnecessary.

Senator COSTIGAN. Conceding that such consequences are undesirable when unnecessary, how would you prevent free discussion?

Mr. EDGERTON. How would I prevent free discussion? I have never undertaken to prevent free discussion, Senator. For 18 years in my own plant we have had what we call a chapel service every morning, and we come together in an exercise that consists of songs, prayer, spiritual reading, and when we talk over, if there is anything to talk over, and when they have been made to understand that those are their meetings and they are permitted to bring up any question they wish in that connection, and questions very often are brought

up and where we thrash those out among ourselves and without any friction whatever.

Senator COSTIGAN. Is attendance at such meetings compulsory?

Mr. EDGERTON. No, sir.

Senator COSTIGAN. In any respect?

Mr. EDGERTON. No, sir.

Senator COSTIGAN. Do those who attend have any preferential standing with employers?

Mr. EDGERTON. No, sir; because they all attend voluntarily. So far as I know, there has not been an absentee in 18 years of a man who worked that day.

Senator COSTIGAN. That is all, Mr. Edgerton.

Senator KING. Is that generally the case in the South, so far as you know?

Mr. EDGERTON. No, sir; not that I know, Senator. That is our own plant. I do not know that that is general at all.

Senator BARKLEY. There is no roll call engaged in these services?

Mr. EDGERTON. Oh, no.

Senator BARKLEY. Or quorum calls?

Mr. EDGERTON. No.

Senator LA FOLLETTE. Mr. Edgerton, what kind of a plant is it you are personally connected with?

Mr. EDGERTON. Woolen textiles.

Senator LA FOLLETTE. Can you tell me what the average wage was in your plant prior to N. R. A.?

Mr. EDGERTON. The average wages, skilled and unskilled and all?

Senator LA FOLLETTE. Yes.

Mr. EDGERTON. I am afraid I cannot, accurately.

Senator LA FOLLETTE. What was the lowest wages paid in your plant prior to N. R. A.?

Mr. EDGERTON. Ours is operated, Senator, on a piece basis, and that varied according to the amount of work they did, of course, and the amount of time they put in, and their efficiency.

Senator LA FOLLETTE. Can you not tell us what the average weekly earnings were of the people in your plant prior to N. R. A.?

Mr. EDGERTON. Taking all of them?

Senator HASTINGS. What was your weekly pay roll?

Mr. EDGERTON. Our weekly pay roll ran about $14, taking all together; $14 per week.

Senator Hastings. Per person?

Mr. EDGERTON. Per person.

Senator LA FOLLETTE. And what were the hours of work?

Mr. EDGERTON. The hours of work—just immediately preceding we went on a 5-day basis 2 or 3 years ago, about 3 years ago. We worked 47 hours. Previous to that the law in our States was 54 hours, and we had worked 54 hours, but we voluntarily cut that down, I think about 3 years ago, to 47 hours per week.

Senator LA FOLLETTE. Did you have more than one shift?

Mr. EDGERTON. No, sir; one shift. For the last 5 months it has been no hours per week, because we have not been able to operate.

Senator COSTIGAN. Are the religious services to which you referred a moment ago denominational?

Mr. EDGERTON. No, sir.

Senator COSTIGAN. How do you guard against denominational supervision?

Mr. EDGERTON. The employees themselves, more frequently than anybody else, hold the services.

Senator COSTIGAN. Do they bargain collectively for pastors?

Mr. EDGERTON. I don't know about that, Senator. If the thing meant by that question is that there was any scheme on the part of those who are to regulate the thought of our employees or to compel them to do anything against their will, such assumptions are wholly incorrect. Our motive was one in the interest of peace and brotherhood and harmony and for our mutual benefit, and it has been entirely satisfactory to our employees and to ourselves and to the community.

Senator COUZENS. Can you tell us what kind of questions were raised as to wages and working conditions in these meetings?

Mr. EDGERTON. No; I do not know that any such question was ever raised as to wages or working conditions.

Senator COUZENS. I understood you to say that at these meetings there was a free discussion outside of religious services?

Mr. EDGERTON. I say that they are permitted to bring up anything that they want to. There is a time allotted if they wish to bring up any complaint or make any suggestion of any kind or character, they are permitted to do so.

Senator COUZENS. But they did not bring any up?

Mr. EDGERTON. Facts about some correction around the plant there, but on the question of wages I do not think that has come up in one of those meetings. Not when I was there.

Senator COUZENS. Do you attend every morning, too?

Mr. EDGERTON. No, sir. I did for a while. I did for several years until I had to be away so much. I usually attend when I am there.

Senator BARKLEY. Would we Methodists get a square deal in those meetings? [Laughter.]

Mr. EDGERTON. Being a Methodist myself, I would say I see to that.

Senator COSTIGAN. Would you have any objection to placing in the record a copy of one of your pay rolls, or do you regard that as in the nature of a trade secret?

Mr. EDGERTON. I have not it with me.

Senator COSTIGAN. Could you send one to the committee for consideration?

Mr. EDGERTON. I would be very glad to.

The CHAIRMAN. Thank you, Mr. Edgerton.

(The documents submitted by Mr. Edgerton for the record are as follows:)

TESTIMONY OF JOHN E. EDGERTON, PRESIDENT SOUTHERN STATES INDUSTRIAL COUNCIL

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Whatever the result or effect of my testimony on this occasion may be, I appear before this distinguished committee in the spirit of constructive helpfulness. I shall speak to you out of my experience as a manufacturer and as president of the Southern States Industrial Council, which embraces a constituency of approximately 8,000 industrial units and 2,000 commercial, financial, and individual units.

According to the 1933 Census of Manufactures by the Department of Commerce, there were in that year 21,295 manufacturing establishments in the 14 Southern States covered by our council, and the aggregate value of their products was $4,661,392,526, constituting 14.8 of the total value of all products manufactured in the United States. These plants employed 18 percent of all the wage earners employed by all the manufacturing establishments in the entire country. Of all the people thus employed in these 14 States, 85 percent of them were in

plants which normally employ from 1 to 50. It is very conservative, I think, to say that not more than 5 percent of all these southern plants employ more than 200 people each. While, therefore, the South contains some of the largest, up-to-date, and well-managed plants in the Nation, particularly in the cotton industry, the overwhelming majority of its industrial enterprises are relatively small and are scattered over a vast, predominantly agricultural area more than 1,200 miles long from north to south, and 1,500 miles wide from east to west.

But during the 20 years from the first shot of the World War to the first code in 1933, there was a very extensive industrial development in this southern portion of our country. As a matter of fact, the South had scarcely begun its industrial growth until after the dawn of this century and is still in the infancy of its industrial possibilities. Aside from the stimulus to all industry from the World War, there have been several factors in the South's extraordinary industrial expansion during this third of the twentieth century. Among these are its abundance of a wide variety of raw materials, its equable climate, its cheaper living conditions, and its predominantly American atmosphere and social life. But the chief factor in my opinion has been its comparative freedom from industrial disturbance. Operators and operatives, employers and employees are, in this area, almost entirely of one blood, of one language, of one God, of one philosophy of life, and of the same political and moral conception and traditions. They understand one another and they invariably get along together and have faith in one another except when they are interfered with by outside elements seeking the unholy profits of industrial war. For these same reasons of homogeneity, the statute books of these States have been slower in becoming cluttered up with devastating laws of alien origin, and it is natural for capital looking for investment opportunity to seek those places where there is the largest degree of safety and protection from legislative persecution.

Nevertheless and notwithstanding the moral or other benefits which may come from the National Industrial Recovery Act, not only has industrial expansion nearly ceased in the South since the codes began to be effective, but industrial activity has been, on the whole, considerably curtailed. This has been due chiefly to the upsetting of competitive balances by the codes. As between the South and older and more highly developed industrial sections, the disproportionate increase in manufacturing costs has in many instances made it impossible for Southern plants to operate at all for long periods of time. The largest item of this increase has been in the radically increased labor costs. As pertinently revealed in a recent study of the Bureau of Labor Statistics into the wage rates and weekly earnings in the cotton-textile industry, we find that average hourly earnings in that industry during the year from July 1933 to August 1934 increased for male labor in the South 70 percent as contrasted with 48.8 percent in the North, and for female labor the increase was 100 percent in the South in comparison with 61.3 percent in the North. From facts gathered by the Southern States Industrial Council, we find that common labor in the South in 1935 averaged 29 cents an hour, as compared with 23.3 cents in 1929, while skilled labor in 1935 averaged 46.6 cents, as compared with 40.9 cents in 1929. Thus, we see that common labor in the South is 24.3 percent higher than it was in the peak year of 1929, and skilled labor is 14 percent higher.

In other words, the failure on the part of code makers and administrators to take into serious account natural conditions and natural laws in the determination of wage rates and manufacturing costs has resulted in the serious crippling of the competitive power of the adolescent South. As a matter of fact, the very large majority of the industrial trades in the South have had little or nothing to do with the writing of their codes and the fixing of the conditions under which they shall try to operate, for codes are written by majorities, and competing majorities write codes to suit themselves. And not only do majorities write codes, those who interpret and administer those codes come, for the most part, from the same majorities. For instance, there have been up to this time 546 code authorities appointed consisting of 6,255 individuals, from which total number only 481, or about 8 percent, have been taken from the 14 Southern States. All of which clearly illustrates the impracticalities in the present system of codification for not only do the natural conditions of life differ in varying degrees of distinctiveness from industry to industry and from community to community, but from section to section as has been clearly pointed out.

Let statistics again speak on this point. And the witness is the Government itself. From the recent report of the Federal Emergency Relief Administration, the benefits distributed to families in these 14 Southern States during the one month of September 1934, averaged $12.05, whereas, the average for the same

month for the entire country was $24.10, or exactly twice the amount for the Southern States. And these benefits or this relief is presumed to be calculated on the basis of living costs.

The lowest State average was for Tennessee, whose objects of Governmental charity obtained relief to the extent of $7.38 per family during last September, while those in Maine averaged $37.92, which was the highest State average. Thus, the living conditions were calculated by the Government to entail living costs five times as high in Maine as in Tennessee, and twice as high on the average in continental United States as in the 14 Southern States. In the distribution of its relief benefits, therefore, the Government recognizes apparently a differential in living costs of from 200 to 500 percent, as between sections and States. We would not, however, insist that there should be any such differential in wage rates between these areas.

But, gentlemen of the committee, one of the primary objects of the National Industrial Recovery Act, as I understand it, was to reduce labor disputes and to promote more harmonious relations between employers and employees. Yet notwithstanding the tremendous increases in the wage rates of most of those who have the jobs, as well as the numerous other concessions to the demands of the organized element, there were more than two and a half times as many disputes during the 18 months following the enactment of the National Industrial Recovery Act as there were during the 18 months preceding it. The working days lost because of such disputes were four times as many during the latter period as there were during the former. The total cost of these disputes to employees, employers, and the public during these respective periods was $765,000,875 for the latter, and $189,630,277 during the former. From these significant facts, therefore, it appears that the act has failed in one of its chief purposes. As far as the 14 States which I represent on this occasion are concerned, labor disturbances were even much less numerous during precode days. Of the 21,000 establishments in these States, it is, I believe, conservative to say that in at least 95 percent of them there had never been any labor disturbances of any sort prior to July 1933.

The employees in literally thousands of these smaller plants and in many of the larger ones had never felt the impulses of hate, distrust, and disloyalty toward their employers until National Recovery Administration exposed them to invasions of outside influences. The overwhelming masses of these pure-blooded, native working people are intelligent and know the difference between right and wrong, justice and injustice. They know what their rights are without instruction from those who have specialized in the science of developing class hatred by the method of creating the impression that there is a natural antagonism of interest between employer and employee which calls for frequent applications of physical force. The masses of these good American people in these States don't naturally believe in this philosophy of hate and distrust which is not native to our soil. In whatever legislation that is enacted, they want protection against unnecessary exposures to strife breeders who think only in terms of human rights without reference to duty and responsibility, from the performance of which all rights proceed. Such protection can be effectively accorded if in the enactment of every law where specific rights of specific groups are recognized there shall be corresponding imposition of specific responsibility and legal liability. The very weakest thing, in my opinion, about the present National Industrial Recovery Act is the absence of any impressive suggestion that those upon whom most of its rights are specifically conferred have any duty, responsibility, or liability whatever. Such one-sided legislation must inevitably result in conflict.

Now, Mr. Chairman, two of the highly worthy purposes set forth in section 1 of title 1 of the Recovery Act were "to eliminate unfair competitive practices", and "to promote the fullest possible utilization of the present productive capacity of industries." May I respectfully venture to say that neither of these objectives has been reached, and progress towards them has been apparently more handicapped by the Government itself than by anything else. The unfairest competition that a citizen or a group of citizens can have is that which is often offered by their Government. And certainly such competition cannot possibly promote "the fullest possible utilization of the present productive capacity of industries." With our Government now manufacturing and distributing more than 200 different commodities in competition with citizens who not only have to supply their own capital but that of their strongest competitor, how can the Government consistently insist that their citizens not engage in unfair competitive practices? The Government not only can but does undersell the market made by the laws of fair competition. If a citizen does such a thing, he is branded as a "chiseler" and is held up to public scorn. If, therefore, National Recovery

Act is to be extended in any form, either these two purposes ought to be left out of the act, or the Government should set an example of compliance that will inspire its citizens.

Now, very naturally, gentlemen of the committee, you will want to know whether or not the manufacturers, as a whole, are in favor of extending National Recovery Administration in any form. The best answer that I can give to that question is from a report issued by our council January 4, 1935, on the results of a questionnaire sent out by it to 6,000 manufacturers in these 14 States, and answered by approximately 1,000 of them, representative of 50 different trades and of every size of manufacturing unit. We believe it fairly represents in its percentages what the sentiment of Southern manufacturers is. This report shows that 22.4 percent were in favor of National Recovery Administration as it is, 34.2 percent are in favor of it with various modifications, and 43.44 percent were against it in any form. The report is also quite illuminating in its larger details, such as, what modifications are desirable, and I am asking the privilege of filing a copy of it with this brief. From my own experience as a manufacturer as well as from impressions gathered from innumerable contacts, my conviction is that any act designed to extend the present law should specifically require in its administration that a serious, a searching, study shall be made by a properly constructed governmental agency of the distinctive conditions of life, economic, moral, racial, and social, which govern different sections and large communities in our Nation; and that on the basis of such thorough investigation and study some zoning plan shall be worked out as a basis for any process of modification, so that large areas and communities which are governed by distinct conditions may be properly and adequately protected.

Using part of the language of another Southern organization affiliated with the council, I would insist, as an interpreter of our organization's thought, that if any new legislation is enacted, or if the present Recovery Act is modified and extended:

1. It should be limited to businesses engaged in, or affecting competition in, interstate commerce.
2. Each industry, through appropriate regional action of the industry, should be permitted to formulate and to put into effect rules of fair competition which receive governmental approval.
3. The governmental agency should have only the power of approval or veto, without power of modification or imposition but with power to indicate conditions of approval.
4. The governmental agency should be a board or tribunal appointed by the President.
5. Rules of fair competition formulated by appropriate regional action of each industry by a clearly preponderant part of such industry as suitable for the industry in that region with due consideration of small units and approved by the governmental agency should be enforceable against all concerns in the industry in that region.
6. It should be made unmistakable that collective bargaining is bargaining with representatives of all groups of employees that desire to act through spokesmen, without the right of a minority group to deal collectively or the direct right of individual bargaining being precluded.
7. It should be made explicit that the right of employees to choose their own representatives is to be free from coercion from any source.
8. There should be extension of the condition against requiring membership in one type of employees' organization to a condition against requirement of membership, or nonmembership in any type of labor organization.
9. Rules of fair competition established by appropriate regional action by the industry in each region should always contain provisions for minimum wages, for maximum hours of work, and against child labor.
10. There should, upon reasonable notice, be an express right of termination corresponding to the right of initiation and presentation of rules of fair competition which have been approved.
11. There should be opportunity for members of an industry to enter into agreements other than rules which when approved by the governmental agency will be enforceable against parties to the agreement.
12. It should make clear that its provisions, so far as compliance with them is concerned, supersede any other statute which might appear to conflict.
13. There should be included a Federal law requiring the incorporation of all labor unions seeking to deal with employers, making same responsible for their breaches of contracts and the torts of themselves and their members committed against employers and other employees or their property, and also prohibiting

any interference by coercion, intimidation or violence with the right of any person or persons desiring to work, and that said laws be enforceable by criminal action and injunction.

The Government itself recognizes differences in cost of living in various sections of the country. Through the report of the Federal Emergency Relief Administration, benefits per family per month for the 14 Southern States were, for the States as a whole $12.05; for the principal cities, $16.76; and for the remainder of the States $11.11, as compared with an average for the continental United States of $24.10 for the States as a whole; $31.42 for the principal cities; and $18.93 for the remainder. Below is a table indicating the specific averages for each of the Southern States and for representative States in other sections of the country.

	Relief per family, September		
	State as whole	Principal cities	Remainder of State
SOUTHEAST			
Florida	$12.17	$11.00	$12.75
Georgia	12.18	18.26	10.32
North Carolina	9.92	14.15	9.31
South Carolina	9.86	11.89	9.67
Virginia	10.42	12.00	9.93
West Virginia	15.16	19.89	14.58
Average for area	11.02	14.53	11.09
SOUTH CENTRAL			
Alabama	14.15	16.24	12.59
Kentucky	8.23	21.63	7.74
Mississippi	10.33	15.42	10.14
Tennessee	7.38	11.18	5.40
Average for area	10.02	16.12	8.97
SOUTHWEST			
Arkansas	11.90	25.50	11.26
Louisiana	21.85	27.08	17.77
Oklahoma	12.84	15.77	12.59
Texas	12.32	14.66	11.55
Average for area	14.73	20.75	14.29
Average for 14 Southern States	12.05	16.76	11.11
Maine	37.92	42.00	37.50
Massachusetts	36.71	38.15	35.38
Illinois	29.17	36.15	22.24
Oregon	26.85	29.26	22.87
Average for Continental United States	24.10	31.42	18.93

BRIEF RELATING TO EFFECT OF LABOR PROVISIONS OF CODES UPON SOUTHERN INDUSTRY, PRESENTED BEFORE LABOR PROVISIONS HEARING OF THE NATIONAL INDUSTRIAL RECOVERY BOARD IN WASHINGTON, D. C., JANUARY 30 TO FEBRUARY 2, 1935, BY JOHN E. EDGERTON, PRESIDENT SOUTHERN STATES INDUSTRIAL COUNCIL, NASHVILLE, TENN.

EFFECT OF LABOR PROVISIONS OF CODES UPON INDUSTRY IN THE SOUTH

Gentlemen of the Board, although I am both an employee and employer, as chief executive of a manufacturing establishment, also a hard working, and an honest laboring man from among the 45 millions of workers in this Nation who do not appear to have any authorized representation at this important hearing, I address you primarily on this occasion in my capacity at president of the Southern States Industrial Council. This organization embraces a directly affiliated constituency of 8,000 industrial concerns, of all trades and sizes, plus 2,000 banking and commercial units, scattered through the geographic area traditionally known as the "Southern States."

The question of wage differentials as between these States as an economic unit and those of other sections is the one with which this council is the most concerned, and to which matter, I shall largely address myself at this time. This might not be necessary if it did not seem to be a fact that in the making of the codes, and in the changes which have been taking place from time to time, there has been a

quite manifest tendency to either disregard or to discount the importance of the conditions which necessitate such differentials.

But, in the beginning, I wish to emphasize the utter truth of the following statement in the preamble of the declaration of policy of the Southern States Industrial Council:

"The purpose of the council is not only to cooperate with all other agencies in the common task of restoring prosperity to our Nation, but fearlessly and aggressively to advocate those things which are interpreted to be best for the South, without injury to the rights of legitimate interests of any other section. It is, and will continue to be, strictly nonpartisan in all of its considerations and activities. It abhors sectional prejudices from whatever source, and will stand firmly and always for our established American institutions and for a national unity based upon a just consideration of all interests."

In other words, we proceed in our considerations upon the well-known fact that every section of this tremendously large and widely diversified country is governed by very distinct bodies of conditions which make extremely difficult, if not impossible, any program of national standardization, except as to the broadest and most fundamental principles which govern national political units. We disavow, therefore, everything of a narrowly partisan or invidious spirit.

We feel that the proper treatment of this vital question is absolutely essential to the very life of southern industry. While the National Recovery Administration has recognized, in one of its policy positions, the fact of the relationship of wage differentials to our industrial welfare, we want to submit to you what we believe is convincing evidence, after 18 months' experience under the codes, that the subject is far more important than appears to have been realized in administrative circles.

Previous to the enactment of the National Industrial Recovery Act, the operation of natural and economic laws had established certain differentials in wage rates as between the South and other sections, as well as between smaller competitive units in the same section. Differences in climate, in supplies of trained labor, in degrees of mechanization, in population distribution, in remoteness from consuming markets, and the existence of a freight-rate structure discriminating against the South, represent the major factors in the determination of wage differences. Apparently, on the theory that these wage differences were arbitrary, and were not the result of natural and economic forces, and that the South is a low-standard section which constitutes it a particular candidate for social reform, what appears to be a very determined effort has been made to wipe out these natural effects of natural causes, and thereby ostensibly "lift" the South to the same economic level as the rest of the country. This program of standardizing wage rates in industry without reference to the prevailing general wages in a locality, has been largely at the expense of the South.

During the 18 months under code operation, there has been a gradual decrease in activity in certain of the larger southern industries, directly traceable to a disturbance of competitive conditions between the South and other sections. This is a direct result of tremendously increased labor costs without corresponding increases in the same costs of competing areas. Reference to the study made by the Bureau of Labor Statistics into the "wages, earnings, and hours in the cotton textiles" shows that the average median weekly earnings in August 1934 as compared with the previous year had decreased to a greater extent in the South than in the North. In August 1934, the ratio of average earnings in the South to those of the previous year was 83.2 percent for male, and 82.2 percent for female; while in the North, the ratio was as high as 91.9 percent for male, and 90.8 percent for female. In other words, where average weekly earnings in the South had decreased 18 percent, the decrease in the northern mills was only 9 percent. This difference in the extent to which earnings dropped in the North and South between August 1933 and August 1934 was due in part to the exceptions granted by the curtailment order; but, since August it has become apparent that the difference was also due to a shift in production.

This shift was not immediately noticeable, since there was a great rush to buy after the Textile Code was put into effect, and the mills throughout the country were able to dispose of stocks on hand. During the intervening year, it has, of course, been necessary to replace these stocks under the increased costs imposed by the code. As a consequence, we find a shift of business to northern mills due to a disproportionate increase in the production costs of the two sections.

Another outstanding example is the situation in the coal industry. The weekly coal production reports of the Bureau of Mines, Department of Interior, show that from January 1, 1933, to September 30, 1933 (9 months prior to the introduction of the Bituminous Coal Code), the total production in the southern coal

fields of Alabama, Tennessee, western Kentucky, eastern Kentucky, Virginia, and southern West Virginia was 95,810,000 tons. In the same period, the total production in the northern fields of Indiana, Illinois, Ohio, Michigan, Indiana, and Illinois (including the Great Lakes), and the Northwest, which is beyond all doubt the largest coal-consuming territory in the United States. The relative proportions of the productions stated were southern fields, 44 percent; northern fields, 56 percent.

The immediate effect of the increased costs, due to increased wages, shortening of the working time, etc., brought about by the code was to lessen the relative production in the South, and to corresponding increase it in the North. The coal had to be marketed in the central freight territory and the Northwest, and the increased production costs lessened the ability of the southern producers to sell in competition with northern producers who had suffered no increases.

This is further borne out by the weekly reports of the Bureau of Mines, which show that for the period from the introduction of the code, October 1933 ,through through December 8, 1934, the total production in the 2 sections was 384,255,000 tons, and in that time, the proportion of the southern fields fell from 44 percent to 41.5 percent, and the northern fields rose from 56 percent to 58.5 percent, a net shift of 2.5 percent. Practically 10,000,000 tons of coal were shifted from the southern to the northern fields. If we assume 5 tons per day per man, the 10,000,000 tons lost by the South would have given full-time employment to 6,666 miners for a year of 300 working days.

This is only part of the whole loss. That 10,000,000 tons of coal would have provided employment for the railroad men necessary to operate 3,333 freight trains hauling 3,000 tons, or about 10 trains a day for a solid year.

LABOR COSTS GREATLY INCREASED

Again referring to the study of the textile industry, we find conclusive evidence that average hourly wage rates have been increased to a far greater extent in the South than in the North. From July 1933, which was pre-code, to August 1934, the following percentage increases occurred in the cotton textile industry: North, male, 48.8 percent, female, 61.3 percent; South, male, 70 percent, female, 100 percent. (See also table 1 in supplement of this report.)

From a study of reports made to us by 400 representative manufacturing concerns scattered throughout the South, we find that minimum wage rates for common labor have increased 49.4 percent since 1933, pre-code, and are now 24.3 percent above the rate paid in 1929. In the skilled-labor group, exclusive of the textile industry, we find an increase of 28.8 percent over 1933 and skilled-labor rates are only six-tenths of 1 percent less than for 1929. Including the textile industry, the average skilled rate for 1935 is 45.1 percent higher than for 1933, and 14 percent above the rate for 1929. (See also table II in supplement of this report for complete analysis.)

EMPLOYMENT NOT INCREASED MATERIALLY

While these drastic increases in the per hour rate of pay have been effected, there has been but slight increase in the number employed; and, due to reduced hours, either because of codes or because of dwingling sales, the weekly wage is comparatively little more than before the codes, despite an increase of about 10 percent in living costs.

From figures furnished the council by 400 manufacturing plants, we find that there was an employment increase of 4.7 percent between June 15, 1933, and June 15, 1934. Since June 1934 there has been a decrease of approximately 1 percent, which may be attributed largely to the textile industry. (See table III, in regard to the number of workers and types of industries reporting.)

Despite an increase of 15.8 percent in sales during the first 6 months of 1934, as compared with the first 6 months of 1933, these southern manufacturers reported an increase of only 2.2 percent in their net worth. (See table IV.)

When we consider that wholesale prices increased sharply during this period, even the small increase in net worth can be attributed to increased inventory value, and certainly is not the result of increased profits derived from greater sales. As a typical example, may I quote the case of one Georgia manufacturer who reports that in 1934, as compared with 1933, his sales increased $48,500, wages increased $28,188, but operating profits for the year were only $1,635.

WAGE DIFFERENTIALS

While it is difficult to determine the most important factor responsible for the existence of the difference in wages paid workers in the South, and those paid in other sections of the country, perhaps an analysis of the principal variations in basic characteristics of the South as compared with other sections will emphasize the economic reasons for such a differential.

AGRICULTURAL PACKGROUND OF LABOR

Thirty years ago the South was a predominantly agricultural section. It accounted for approximately one-third of the value of all farm products in the country, while at that time its value of manufactured products was about 13 percent of the total value for the United States. At the present time the South is still responsible for about one-third of the total value of farm products, but its portion of manufactured products had increased to 18 percent of the total in 1931.

Outside of the variety and abundance of easily accessible raw materials, the chief attraction to capital investments in the South has been its continuously ample supply of intelligent, but untrained, native labor, a very large portion of which has had no background of industrial or craft experience and is unaccustomed to machinery.

One has only to glance at a list of the more prominent industries in the South to be astonished at the almost total absence of such industries as automobiles, radios, typewriters, watches, and electrical machinery. These industries require highly trained technical workers. A majority of the highly skilled workers in those industries requiring technical training have been secured from the North and East, and southern labor has been and is now being trained largely by foremen and supervisors from the North.

A concrete illustration of the difficulties encountered by an industry requiring skilled operatives is supplied by the southern harness-making and leather-goods industry. In this industry, there is relatively little common labor employed, except on cheap harness parts. Previous to the code unskilled workers who were learning the harness-making trade were receiving 30 cents an hour. Since the code this rate has been increased to 37½ cents an hour, representing an increase of 25 percent. Under the code this industry has been forced to pay the skilled wage rate of 52½ cents per hour to workers who are semiskilled, and since adequate provision has not been made for a learning period of sufficient duration to train workers to a point where they can earn the skilled-wage rate, the labor costs of this industry have been increased tremendously.

RELATIVE EFFICIENCY OF WORKERS

The southern worker is not relatively as efficient as the average northern worker. As previously stated, he does not come from an industrial background; therefore, speaking of southern workers as a whole, there is a wide variation in both the number of skilled workers as well as in their productivity. A southern enameling plant determined from actual time studies carried on in a modern southern plant and one similarly equipped in St. Paul, Minn., that there is an actual difference in efficiency of from 12 to 18 percent. The occupations included in this study were spraying, dipping, and firing. Furthermore, it was found that the cost of supervision was much greater in the southern plant.

Closely allied to the problem of relative inefficiency of white labor in the South is the problem of subnormal labor, represented by the Negro. It is a well-known fact that Negroes are being displaced by white workers to an alarming extent, thus creating an acute relief and social problem, the burden of which the South will be compelled to carry alone. I know of no better method of presenting this problem than to illustrate from the actual experience of a manufacturer who has plants in a small southern town as well as in a large northern industrial center.

In the southern community referred to the population of the county is composed of approximately 40,000 Negroes and 15,000 white people. Their first experience with the employment of colored operatives was not very satisfactory, since they learned slowly and were satisfied with comparatively low weekly wages. In fact, they refused to exert the effort necessary to increase their weekly pay. However, through diligent training and supervision they were able to secure a fair rate of production. Daily records were kept to determine accurately the relative production costs in each locality. On October 10, 1934, the records for the two plants indicate that the average cost per thousand bags produced in the southern plant was 50.4 cents as compared with an average of 30.4 cents in the northern plant, or the equivalent of approximately a 65 percent greater cost in the South.

In the northern plant the sewing machines have an attachment which enables the operators to clip the twine between the bags and pile the bags as they are sewed. This is done without interfering with the production of the operator. At the southern plant this clipping attachment cannot be used, since the Negro girls are unable to master the operation of the machine and the secondary attention necessary to use the clipping attachment. A clipper for every two machines must be provided. Furthermore, since the character of the work turned out by the Negro girls cannot always be depended upon, it is necessary to inspect every bag. In the northern plant one inspector and no pilers are provided for every 12 machines, while in the southern plant 6 pilers and 4 inspectors must be provided for every 12 machines. (See production analysis in table V in supplement.)

DECENTRALIZATION OF INDUSTRY

The Southern States embrace an area which is more than 1,200 miles long from north to south, and more than 1,500 miles from east to west. In this area, the vast majority of the 31,425 manufacturing plants in the South are scattered, representing in large measure the typical small manufacturing plant of the country; in fact, 85 percent of these southern plants employ 50 or less workers and as a rule are owned by one individual or partnership. Thus, we see that the backbone of southern industry is the small manufacturer, and upon his well-being and relative prosperity depends the well-being and prosperity of the majority of southern industrial workers. None of the 32 major industrial areas outlined by the Bureau of the Census is located in the South, and only 26 percent of the total value of manufactured products in the South is produced in the 20 southern cities with populations of 100,000 or over.

MECHANIZATION OF INDUSTRY

It must be remembered that since the South is far younger industrially than most other sections of the country, its industry has not been able to mechanize its processes to anything like that which exists in older and more highly developed sections. That means, of course, that even if the labor were of equal efficiency, in the aggregate, it requires more workers to produce in the South, the same amount of a given product than it does in other sections. Consequently, the number of man-hours required to manufacture a product is considerably greater. With man-hour wage rates increased under the codes, the cost of labor involved in manufacturing has been increased to even a greater extent than is recognized in actual per-hour increases. Therefore, to remain in business, many manufacturers have been compelled to add new machinery and thereby reduce the cost as nearly as possible to a competitive level. While some of them have thus increased production as much as 40 percent, they have added relatively few workers.

Manufacturers in the South are obviously confronted with the inescapable necessity of adding machinery to replace hand labor, and of installing, more generally, high-speed modern equipment comparable with that used in competing areas.

Such improvements, it must be remembered, are ordinarily made out of surpluses created over long periods, or from new investments. Because of its comparative youth, Southern industry has not in most instances accumulated such surpluses, and present conditions do not encourage new investments. Furthermore, the South has been considerably far removed from the chief money centers, and its operating capital on the whole has cost considerably more than that used in the older competing areas. Labor has not carried alone the burden of these competitive disadvantages. Employers, investors, and every other element of the southern population have shared the burden, as evidenced by the generally lower salaries, by relatively smaller profits and investment returns, by lower rents and, of course, lower prices.

RELATIONSHIP OF WAGE RATES TO COST OF LIVING

Wage rates over a long period adjust themselves to the relative cost of living within a community; therefore, it is important that the product manufactured should be in line with the purchasing power of the public, and so related to the prevailing wage paid in that community as to insure normal consumption by the public. In the South, minimum wages under the codes have been increased to such an extent that corresponding increases in the prices of manufactured products have been imperative. A vast majority of Southern products are such items as work clothing, including shirts, overalls, work pants, cotton gloves, etc.,

purchased by the worker whose rate per hour has been increased, but whose average weekly pay check has decreased because of fewer hours worked. Thus, the individual worker is the actual loser even though his rate per hour has increased.

The manufacturer is handicapped by lack of volume when consumers fail to purchase; thus, he cannot hope to absorb the increased labor cost by spreading it over a larger volume of production. In the case of the cotton-garment industry, we note that spokesmen for that industry assert that increased wages have resulted in price increases of from 40 percent to 50 percent. Most of these goods are bought by the industrial worker and the high prices have canceled the effect of any wage increases. In consequence, there has been a shrinkage of volume, and a decrease in employment.

REMOTENESS FROM MARKETS

The Southern manufacturer does not depend primarily upon the Southern market for the distribution of his goods. His main markets are in the consuming centers of the East and Middle West. It is obvious, therefore, that his cost of distribution is necessarily greater than that of a manufacturer located within easy reach of the metropolitan areas. He not only suffers the disadvantage of the higher distribution costs, but the time element, which enters into prompt delivery, must be overcome by accepting a slightly lower price for his commodities. In those instances where manufacturers depend chiefly upon the southern markets, the expensiveness of the Southern area, the relative sparseness of population, and distances between consuming centers add greatly to the cost of distribution. In the North and East, the density of population offers opportunity for a much quicker and cheaper distribution, thereby rendering it unnecessary to warehouse large stocks which add to the cost of handling.

FREIGHT-RATE DISCRIMINATION

Directly tied up with the problem of remoteness from markets is the problem of transportation costs, since as previously stated, the industry of the South is dependent in a large measure upon the distribution of its products in the North and East. In recent years, Northern carriers have applied a higher rate on goods originating in the South, to be delivered in the consuming centers of the East and North, than on goods transported over the same routes from the northern factories. As an illustration of this, the first-class rate south of the Ohio River on a 100-mile haul is 76 cents; north of the Ohio River, it is 56 cents. With this spread in freight, it is impossible for the southern price to be competitive with that in the North unless a saving is effected through lower production costs. It has been the tendency of National Recovery Administration with its increased costs of production and overhead to bring costs in the South up to a nominal level with Northern costs. The nearer this common level is approached, the more certain will be the gradual elimination of all industry in the South, and the more remote the possibility of expanding its industries and developing its industrial resources.

BORDER STATES

In some of the codes, parts of the South, particularly the border States, have been lifted out of their traditional setting and grouped with States whose industries are governed by different conditions. Virginia, Kentucky, even Arkansas, and in a few instances other States south of them have been classified with States in other sections. While socially the association is not at all uncongenial, nevertheless this practice has been in disregard of the factors of distinction to which attention has been called.

These border States are as truly Southern in all those things that make for a homogeneous economic unit as are any of the other Southern States, and we very respectfully insist that they shall be so treated, and that all codes should be harmonized with this fact in mind.

Another quite unhappy fact is to be noted. Codes for the most part are written by majorities in the first instance. Those majorities in most instances are obviously in areas which compete with the industries of the South. Not only have nearly all of the codes been written by the South's competitors, but they are interpreted and administered by them. For the first 500 codes written, there are approximately 3,500 individual members of code authorities. Less than 10 percent of this membership is drawn from the Southern States. While this is quite a natural outcome of the application of the majority principle, it is nevertheless a matter to which Southern industry cannot be expected to reconcile itself.

It has been urged that organized labor should be represented in code administration. Such a right, it seems to me, cannot be consistently admitted unless it is admitted at the same time that the overwhelming majority of unorganized labor elements shall also be permitted to participate in proportion to their numbers. Such participation could be as easily effectuated by executive appointment as by election, and I can see no just reason why these large majority elements of our laboring masses should not be equally recognized on all proper occasions.

But, as a matter of fact, gentlemen of the board, these clamorings for recognition and advantages, as well as the multitudinous complaints about discriminations and other unjust treatment only indicate the difficulties involved in trying to codify American industry.

As far as the industry of the South is concerned, as I interpret it, its attitude is one of sympathetic cooperation with those who are sincerely and earnestly trying to surmount the difficulties made manifest by our common experience during the past 18 months. We have no sympathy with any who may be striving to use our present general situation, or the machinery set up under the National Industrial Recovery Act, as the occasion or the vehicle for purely selfish ends. We have enjoyed in the homogeneous South, an industrial peace which we want to maintain, and will maintain if our Government will protect us against the machinations of those whose business it is to make war. Take the profit out of industrial war, and it will be as effectively stopped in this country as taking the profits out of wars between nations will stop those unnecessary conflicts.

We don't want our working people exploited either by their employers or by those who would teach them that their employers are their natural enemies and that they can't get justice except with some sort of club. We think that the South's future lies in the development of its industrial possibilities. It is for the unhampered opportunity of preserving our present industrial status and of expanding that position harmoniously with the rest of the Nation, that we are here today. We wish no advantages of any sort to which we are not justly entitled, and we shall continue to stand resolutely against those false, un-American theories and philosophies which tend to promote hatred and discord among our people, and to split up this great democracy into warring classes and groups.

Taking advantage of the Board's kind permission to file with a brief, for the Board's consideration, any other data pertinent to the subject, I beg to say that with this presentation of mine, I am filing statistical information supporting our position, and copies of several hundred telegrams and letters from southern manufacturers, setting forth their views. I am also filing a very illuminating article from Mr. Donald W. Comer, of Birmingham.

SUPPLEMENT 1

TABLE 1.—*Average (median) hourly earnings in cotton textiles, 1933–34*

	July 1933	August 1933	August 1934	Percentage increase	
				July 1933–August 1934	August 1933–August 1934
North:	*Cents*	*Cents*	*Cents*		
Male	28.3	40.9	42.1	48.8	2.9
Female	23.1	36.1	37.3	61.3	3.1
South:					
Male	19.9	33.2	33.9	70.0	2.0
Female	16.1	32.0	32.1	100.0	.3

NOTE.—From Bureau of Labor Statistics report on Wage Rates and Weekly Earnings in the Cotton Textile Industry, table 8, p. 43.

TABLE 2.—*Average hourly wage rates in the South for skilled and common labor*

	1935	1933	1929
	Cents	*Cents*	*Cents*
Common labor	29.0	19.4	23.3
Skilled labor:			
Textile	38.75	21.3	26.8
Industries exclusive of textile	54.9	42.6	55.5
All industries	46.6	32.1	40.9

Percentage increase—1935 compared with 1933 and 1929

	1933	1929
	Cents	*Cents*
Common labor	49.4	24.3
Skilled labor:		
Textile only	82.0	44.3
Other than textile	28.8	−1.0
All industries	45.1	14.0

Wage rates derived from an analysis of 400 reports to Southern States Industrial Council from representative manufacturers throughout the South.

TABLE 3.—*Industrial employment in the South*

Reports from 400 manufacturing concerns indicate that on June 15, 1933, there were 106,770 workers; June 15, 1934, there were 111,824 workers; percentage increase, 4.7. January 15, 1935, there were 110,826 workers; percentage decrease, 1.0.

Distribution of industries reporting:	
Textile	129
Forest products	71
Iron and steel	51
Food products	26
Stone, clay, and glass	24
Chemicals and allied products	16
Miscellaneous	83
Total	400

TABLE 4.—*Sales and net worth of 400 Southern plants*

	Sales	Net worth
6 months to—		
June 1933	$114,415,662	$219,100,929
December 1933	154,414,224	236,649,844
June 1934	153,116,568	224,063,070

Percentage increase in sales comparing 6-month periods to June, 33.8 percent. Sales figures corrected for increase which occurred in wholesale prices between June 1933 and June 1934, indicate increase of only 15.75 percent. From reports to Southern States Industrial Council.

TABLE 5.—*Analysis of production Southern-Northern location*

PRODUCTION OF BAGS IN NORTHERN FACTORY—OCT. 10, 1934

[With white operators sewing small bags to 10-pound bags, inclusive]

12 operators sewed	136,500	
Average per operator	11,375	
Total amount paid	$39.81	
Average cost per M		$0.284
1 inspector	$2.80	
Cost of inspection per M		.020
Cost per M in Northern plant		.304

TABLE 5.—*Analysis of production Southern-Northern location*—Continued

PRODUCTION OF BAGS IN SOUTHERN FACTORY—OCT. 10, 1934

42 operators sewed	311,600	
Average per operator	7,420	
Total amount paid	$83.03	
Average cost sewing per M		$0.266
21 pilers and clippers	$37.80	
Cost of piling and clipping per M		.121
14 inspectors at $2.60 per day	$36.40	
Cost of inspection per M		.117
Cost per M in Southern plant		.504

Increase at Southern plant equivalent to 65 percent plus.

Operators required per 100,000 bags daily in North, 9; operators required per 100,000 bags daily in South, 14; piling and clipping, 7; inspecting, 5.

CODE AUTHORITIES

Number of code authorities appointed	546
Number of men on code authorities	6,255
Number of men from 14 Southern States	481
Number of codes without Southern representation	394

The above condition has been brought about by the theory of "self-government in business" advanced under the National Recovery Administration.

The unanimous complaint from the South with respect to National Recovery Administration is based on the fact that it has little or no voice in this "self-government" theory. While it is true that the code authority members were selected by each industry carrying out the theory of self-government, yet industry in the 14 Southern States had little or no voice in selecting the members of the code authorities, as evidenced by the fact that of the 546 code authorities approved with a membership of 6,255, only 481 members came from the 14 Southern States.

Furthermore, there are today 394 code authorities in existence governing, controlling and dictating to a particular industry without a single representative from the vast area comprising the 14 Southern States. Consequently, the South, industrially speaking, is taking orders from its competitors in the North and East, and living under a dispensation fixed by these competitors who seem to feel that the South should produce raw materials, ship them North and East, and buy the merchandise when it is returned to the South.

In our complaints to National Recovery Administration against the creation of code authorities, the answer has invariably been that we are now living under a dispensation of "self-government in business" and that the industry itself chooses the members of the code authorities, consequently National Recovery Administration has no voice in these selections.

It is said, however, that National Recovery Administration itself appoints one or more administration members for each code authority, said member having no voice in the deliberations of the code authority procedure, but has to approve and sanction the action taken by the authority, even to the approving of the minutes of each code authority meeting.

The National Recovery Administration will not for a moment listen to suggestions as to the appointment of the administration member, holding inviolate this governmental prerogative, and yet with this power of appointment of the 546 code authorities having one or more administration members, only 7 of these members are in the 14 Southern States, showing not only that industry North and East controls the selection of code authority members, but that the National Recovery Administration for the most part has gone North and East for the administration members.

SOUTHERN STATES INDUSTRIAL COUNCIL

Nashville, Tenn., January 4, 1935.

WHAT SHOULD BE THE FUTURE OF NATIONAL RECOVERY ADMINISTRATION?

In an attempt to measure accurately the opinion of southern manufacturers in regard to the effectiveness and desirability of National Recovery Administration, the Southern States Industrial Council mailed a short questionnaire to 6,000 southern manufacturers asking only four questions, as follows:

1. Should National Recovery Administration be continued to June 16, 1935, and after that date?

2. What modifications would you propose if you are for its continuation?

3. Check code provisions of which you are in favor: (*a*) Maximum hours; (*b*) minimum wages; (*c*) southern wage differential, on sectional basis; (*d*) wage differential, on size-of-community basis; (*e*) collective bargaining; (*f*) price fixing; (*g*) production control; (*h*) distribution control; (*i*) fair trade practice.

4. Recommendations for legislation to replace National Recovery Administration if you are not for it.

The cry, throughout the country, has been that the small manufacturer was not consulted in the making of the codes, nor has he been consulted in their subsequent administration. Since 85 percent of the manufacturing plants in the South employ 50 or less workers, one realizes that the small manufacturer is the backbone of southern industry. Upon his well-being and prosperity depends the industrial future of this section, and it is safe to assume that his honest opinion of the effect which National Recovery Administration has had upon industry will reflect in large measure the criticism of small manufacturers throughout the country.

The questionnaires which were returned represent a cross-section of southern industry, since they come from each of the 13 Southern States. It is the composite opinion of this group that the National Recovery Administration must be drastically modified or abandoned altogether. Specifically, 34.2 percent want it modified; 43.4 percent want it abandoned altogether; and 22.4 percent are for the National Recovery Administration as it is. Many constructive suggestions were made for the modification of the National Recovery Administration, and those who were in favor of some sort of Federal supervision of industry were especially favorable to the following provisions: Maximum hours, minimum wages, southern wage differential, and the fair trade practice provisions of the codes. Collective bargaining also received approval, but every manufacturer was emphatic in his insistence that section 7 (a) be clarified. The southern manufacturer is not against the collective bargaining of his own employees, but insists that those with whom he bargains should be representatives of his own plant and not an organized labor group or a representative of such a group from some other section of the country. The rights of the individual and of industry should be protected, and labor groups should be held responsible for their acts just as industry is expected to.

Although we did not request information in regard to Government interference in business, over 20 percent of those reporting volunteered the opinion that there should be less interference in private business by the Federal Government and less Government supervision of industry.

Outstanding suggestions for modifications of the National Recovery Administration were made by a vast majority of those reporting. Of primary importance are the following constructive criticisms:

I. There should be greater flexibility in maximum hours to allow greater freedom during peak periods of production. The rigidity of codes with respect to maximum hours, and the subsequent inability of the manufacturer to secure prompt action on appeals for stays have caused great hardship to southern industry and especially to the smaller manufacturer who cannot afford to carry large stocks of inventory from which to supply seasonal or unusual demand. The southern manufacturer has been severly penalized by the rigidity of these maximum hours prescribed by the codes because, to a great extent, the industries of the South are not as highly mechanized as are those in other parts of the country. It is necessary to use a greater amount of manual labor, which must be skilled and especially trained.

II. Greater flexibility should also be maintained in regard to minimum wages. There were many suggestions that minimum wages should be applied on a piecework basis, and that the amount of wages to be paid in any locality should be governed by the prices which the manufacturer in that area is able to receive for

his goods in open competition with other manufacturers. As a rule, those manufacturers reporting indicated that they are in favor of both minimum wages and maximum hours, since 67.1 percent are in favor of maximum hours and 70.2 percent are in favor of minimum wages, but it is felt that greater flexibility in the designation of hours and minimum wages should be recognized.

III. A subnormal wage should be considered and approved for low-class labor. A number of manufacturers felt that even greater wage differential should be granted their industry than is already provided in the codes. Of those in favor of National Recovery Administration, 88.8 percent favored a wage differential, and many manufacturers from the border States of Kentucky, Virginia, Arkansas, and Oklahoma urged that these States be considered in southern classification.

IV. A large portion objected to the domination of the code authorities by the large manufacturers of the North and East. They feel that the small manufacturer has no voice in the planning and administration of the codes. This point is of particular importance, when we realize that 26,922 of the 31,425 manufacturing plants in the South employ from 1 to 50 persons, thus definitely placing southern industry in the small manufacturing group. This group has had no authoritative voice in the formulation or administration of the codes, for less than 10 percent of all code authority members are from the South. Southern industry is being governed and run by the eastern and northern industrialists based upon economic conditions in the North, and with little consideration for problems peculiar to this area.

V. Complexity of codes and code authorities should be reduced in order to avoid confusion occurring when one manufacturing plant must operate under five or six separate codes with different minimum wages in each. This situation has been particularly annoying. It not only causes undue hardship to the manufacturer through losses incurred by uncalled for wage increases for certain workers who are doing practically the same type of work as others under different codes; but, discord and discontent have arisen in the ranks of the workers, because the same minimum wage is not being paid to those doing approximately the same type of work and requiring the same degree of skill. Due to competitive conditions, the manufacturer has not always been able to raise the minimum wages to the highest wage prescribed in the codes under which he operates, and in order to stay in business he has found it necessary to adhere to the wage prescribed in each code.

VI. Those reporting were practically unanimous in their opinion that there should be a better administration of codes, and many suggested that compliance should be handled by the Department of Justice, and that code provisions should be enforced on large and small alike. There seems to be a great deal of disappointment in the way enforcement has been and is now being handled. A great many manufacturers who are anxious to cooperate and live up to the provisions of the code are now taking a "what's the use" attitude. This is a most serious situation, since it leads to disrespect for the law, and penalizes the manufacturer who is living up to all of the provisions of the National Recovery Act.

VII. An overwhelming majority of southern manufacturers, representing as they do, the small manufacturer, are against the price-fixing provisions of the National Recovery Act. They are in favor of open-price schedules and feel that there should be Government supervision to see that goods are not sold below cost. According to southern manufacturers, price-fixing is to the advantage of the large monopolies of the North and East and has worked to the advantage of this group in eliminating the comparatively small manufacturer from competitive markets.

VIII. The fair-trade-practice provisions of the codes received the approval of 85.3 percent of those who are in favor of the National Recovery Act or its modification. As one manufacturer states: "The fair-trade-practice provisions of the codes, if conscientiously worked out and conscientiously carried out, can cure many of the evils that have existed and can work not only to the benefit of the manufacturer but to the consumer as well. We believe there should be coordination and cooperation among the manufacturers in an industry."

Another states that "Industry should be given the right to formulate fair practice provisions with a minimum of Government supervision to give positive protection to small industry and sectional industry."

Most manufacturers recommend that the codes should contain basic features of fair-trade practice, and that each industrial group should have the right to enlarge upon these in the light of their own requirement; but, that such additions should be made and governed by the industry itself.

IX. Production control is favored by 23.8 percent of those reporting. It seems that certain industries are more favorable to this provision than is the group as

a whole. But, while no break-down of this information was made by industries, by inspection it was learned that members of the paper and pulp industry, and certain of the textile groups believe this provision to be beneficial to industry.

X. Distribution control was favored by only 13.4 percent; however, many manufacturers were of the opinion that if production control within each of the various sections of the country were practiced, that distribution control would take care of itself.

In summary, it is the concensus of opinion in the South that the National Recovery Administration must be modified or done away with altogether and new legislation be secured whereby industrial control can be achieved by industry itself with a minimum of Government supervision and interference.

Summary

	In favor National Recovery Administration	Not in favor National Recovery Administration	Total
	Percent	*Percent*	*Percent*
(a) Maximum hours	92.2	34.5	67.1
(b) Minimum wages	93.7	39.0	70.2
(c) Southern wage differential on sectional basis	88.8	43.0	69.5
(d) Wage differential, by size of community	46.7	23.2	36.5
(e) Collective bargaining	47.0	6.9	29.6
(f) Price fixing	34.9	6.9	22.7
(g) Production control	33.9	10.7	23.8
(h) Distribution control	18.4	6.9	13.4
(i) Fair-trade practice	55.3	27.9	60.4

	Percent
In favor of National Recovery Administration as is	22.4
In favor of National Recovery Administration, but modified	34.2
Not in favor of National Recovery Administration	43.4

STATEMENT OF GEORGE A. SLOAN, CHAIRMAN CONSUMERS GOODS INDUSTRIES COMMITTEE AND CHAIRMAN COTTON TEXTILE CODE AUTHORITY, NEW YORK CITY

(The witness, having been first duly sworn by the chairman, testified as follows:)

Senator KING. Mr. Sloan, how much time do you require?

Mr. SLOAN. I would like to have as near 2 hours as I can.

Senator KING. You cannot have it; time is limited. We have several witnesses and we have to recess at 12 o'clock.

Mr. SLOAN. As much as you can give me, Senator.

Senator KING. I think you had better compress it, then you can put your statement into the record.

Senator COUZENS. Will you please tell us whom you represent and what you are here for?

Mr. SLOAN. My name is George A. Sloan. I am chairman of the Consumers Goods Industries Committee, and I am also chairman of the Cotton Textile Code Authority.

Senator COUZENS. Who are the Consumers Goods Industries Committee?

Mr. SLOAN. The mass of the consumers goods—do you want their names first?

Senator COUZENS. No; just what their activities are.

Mr. SLOAN. There are 21 of those members. They were elected at a meeting of some 100 business men of the industries of that kind, as distinguished from the durable goods or service goods, held here in Washington last spring, immediately following the general meeting

of all of the code authorities. You will recall when there were some 4,000 business men here last March. Immediately following the adjournment of that convention, at the request of the administrator of N. R. A., there was held a meeting of the durable goods manufacturers in one meeting, and in the D. A. R. Building, we held a meeting of the consumers' goods manufacturers, and at the request of the administrator, that group of about 100 businessmen selected this committee to represent them in dealing with policy matters concerning the N. R. A.

The committee has met frequently during the past year, and immediately after its election, spent the greater part of 2 weeks in Washington working with General Johnson and his associates with respect to the administration of N. R. A.

Senator KING. Were any of those men from the South?

Mr. SLOAN. Yes, indeed, sir. I will give you a list of the committee.

Senator KING. Put them in the record.

Mr. SLOAN. I will file in the record a list of the committee and I shall also be glad to offer a complete list of some 222 consumers' goods industries, with which we have been working.

(The same will be found at the conclusion of Mr. Sloan's testimony.)

Mr. SLOAN. May I say, Senators, that what I shall say here, or the resolution to which I shall speak that was adopted by the Consumers' Goods Industries Committee, was approved by all of the members of this committee with the exception of about two or three. One has been ill for 5 weeks, and we could not reach him. Two—I will mention their names—Mr. Du Pont, of the chemical industry in Wilmington, while not approving of the resolution, authorized me over the long distance the night before last to say to the committee that he would not object to the continuance of N. R. A. as an emergency tapering-off proposition for a period of a year, but he thought it would be unfair and unreasonable for the new act to contemplate the imposition of codes on industries where a majority of those industries felt they did not require a code.

Mr. Francis of the General Food Corporation approves Mr. Du Pont's statement.

Here is the list of the committee, sir.

Senator KING. Include that with your testimony.

(The same will be found at the conclusion of Mr. Sloan's testimony.)

Mr. SLOAN. Because the membership of this committee is composed largely of executives and some directors of code authorities, all vitally concerned in code administration, we have had occasion to sudy very closely the process of many codes under the N. R. A. As the result of our combined experiences and following a series of meetings, we adopted a resolution which was filed with Senator Harrison for the committee some days ago. I will not read the resolution at this time, Senator King, because I wish to talk to certain aspects of it in the course of these remarks.

Let me say, though, that in addition to the members of this committee——

Senator LA FOLLETTE (interrupting). Can you state briefly, Mr. Sloan, the purport of the resolution?

Senator COUZENS. How long would it take you to read it?

Mr. SLOAN. I will read it hurriedly. I do not believe it will take me very long.

I think it would help if I read you the names of the committee, so that you will see the industries represented on it.

Senator COUZENS. I would like you to read it.

Mr. SLOAN. I may say that I am chairman of the committee. I am not in the employ of the committee, however.

Then there is—

Louis E. Kirstein, dry goods, of William Filene's Sons Co., Boston, Mass.
J. D. A. Morrow, bituminous coal, of the Pittsburgh Coal Co., Pittsburgh, Pa.
C. C. Carlton, automotive parts, of the Motor Wheel Corporation, Lansing, Mich.
L. C. Smith, ice, of the National Association of Ice Industries, of Chicago, Ill.
Clarence Francis, vice president of the General Foods Corporation, of New York.
George Mead, paper, of the Mead Paper Co., who was formerly chairman of the Industrial Advisory Board here in Washington for 1 year.
Mr. Roger Selby, of the Selby Shoe Co., Portsmouth, Ohio.
Mr. Lamont du Pont, of Wilmington, Del., chemicals.
Mr. S. A. Herzog, of the photographic supplies industry, located in New York.
Mr. W. M. D. Miller, president of the Lehigh Wholesale Grocery Co., Allentown, Pa.
Mr. George M. Gales, of the Liggett Drug Co., of New York.
Mr. S. L. Wilson, paper manufacturer, Holyoke, Mass.
Mr. J. Franklin McElwain, shoe manufacturing, Boston, Mass.
Mr. Peter Van Horn, chairman of the Silk Code Authority.
Mr. Arthur Besse, chairman of the Wool Code Authority, and head of the National Association of Wool Manufacturers.
Mr. Earl Constantine, representing the Hosiery Association.

Senator KING. Is that a hosiery producer?

Mr. SLOAN. He himself is not.

Mr. Harold Boeschenstein, vice president of the Owens Illinois Glass Co., of Toledo, Ohio.
Mr. Roscoe Edlund, of the Soap & Glycerine Products Association.
Mr. Henry Stude, of the bakers' industry. I think he is a baker himself; I am not sure.

That is the list.

Senator COSTIGAN. What types of goods do you exclude from so-called "consumer" goods?

Mr. SLOAN. Broadly speaking, all durable goods and all service industries.

Senator BARKLEY. How long do goods have to last in order to be called durable?

Mr. SLOAN. I say durable in the sense of heavy goods, like steel or automobiles.

Senator BARKLEY. Of course there is no straight line.

Senator COSTIGAN. All others are presumably covered by your organization?

Mr. SLOAN. I should say in the free broad classifications of industries in this country, the service goods, durable goods, and other than those we cover them all.

Senator BLACK. Mr. Sloan, I did hear who the southern representatives were on that committee. I thought you said there were some from the South.

Mr. SLOAN. First of all, as chairman of the committee, I am from Tennessee.

Senator BLACK. Where do you live now?

Mr. SLOAN. I live now in New York. I have since I was head of the cotton textile institute before I resigned.

Senator BLACK. Is there any representative of the South who lives there? I was simply interested because Senator King asked you.

Mr. SLOAN. I answered him promptly yes, because, frankly I was thinking of the industries. Of course, answering your question specifically, I do not see any actually living in the South or who come from the South.

Senator BLACK. There should be, should there not, if they are going to have the committee representing industry?

Mr. SLOAN. What happened, Senator, was there were 100 of these business men from these various industries in the D. A. R. Building that elected a nominating committee which brought in these committee names, and they were adopted by the group present.

Senator BLACK. Do you not think that each section of the country should be represented on any committee that is supposed to represent the entire country?

Mr. SLOAN. In practically every case here, these gentlemen are prominent in their own code authorities or industries and they speak for industries that are certainly in the South as well as in the North.

Senator BLACK. The industry might be in the South and the man might not be in the South. That is one of the troubles of the South. Is there anybody there that actually lives in the South?

Mr. SLOAN. That I cannot answer off-hand.

Senator KING. Mr. Edgerton is not there, is he?

Mr. SLOAN. No; Mr. Edgerton is not.

Senator KING. Or any of these industries that he represents in the 14 States?

Mr. SLOAN. Well, Senator King——

Senator KING (interposing). Is he?

Mr. SLOAN. I am chairman of the Cotton Textile Code Authority, and I should say that two-thirds of our industry, at least that, is located in the South, and I was selected by the southern members of that industry as well as the New England members to be the chairman of the code authority. And the southerners on our code—I should say the membership of our code authority is about 75 percent southern, as far as the spindlage is concerned.

Senator BARKLEY. You mean they own the factories but live up North?

Mr. SLOAN. Oh, no. I beg your pardon. They live in the South.

Senator BARKLEY. They do?

Mr. SLOAN. Yes, sir.

Senator KING. Mr. Edgerton testified there were 6,255 code authorities, and of the entire number, only 480 were from the 14 States that he represented.

Mr. SLOAN. I cannot speak for all of the industries as to the representation. I can say that for the cotton textile industry, there are 35 members of the code authority. There are about 25 members of our code authority running cotton mills, and at least two-thirds of them are from the South.

Senator LA FOLLETTE. Are some of the people on that committee connected with so-called "trade associations"?

Mr. SLOAN. There are, sir; three or four of them.

Senator LA FOLLETTE. Then in that respect, insofar as the trade association has membership in the Southern States, they would be representative of those concerns?

Mr. SLOAN. They do. And, Senator La Follette, I am glad you asked me that question, because the question has been raised some-

times as to what right a trade-association man has to speak for an industry. I would like to put a simple question to this esteemed body. How long do you think a president or a secretary of a trade association could hold his job if he did not reflect the prevailing sentiment in that industry?

Senator BLACK. That may be true, but what is the prevailing sentiment? How are they permitted to vote in the trade associations? Do they permit each unit irrespective of size to have an equal vote?

Mr. SLOAN. I think that is true of the best associations; yes.

Senator BLACK. Which association does that?

Mr. SLOAN. In the cotton textile industry, Senator, the votes are according to 25,000 spindles. In other words, a little fellow—we call 30,000 spindles and less a small mill—as they vote. Each 25,000 block of spindles has a vote on any problem that comes up, as an industry-wide problem. We go beyond that—that right to my knowledge has never been exercised in our industry in any proceedings in the institute, and the little fellows vote count almost as much as the man that has a half a million spindles.

Senator BLACK. Then it is your belief that the codes were formed by giving each unit of each industry irrespective of its size, an equal voting strength with each other unit?

Mr. SLOAN. It is my opinion, sir, that the group that presents a code for an industry should be truly representative of that industry. It should represent all sections, it should represent the little fellow as well as the big, the middle size, and so forth.

Senator BLACK. Truly representative is the point that came up originally in the bill. What I was getting at is, do you favor a provision in a new bill if one is created, which gives to each individual unit and each business an equal voting strength in the code with each other unit, irrespective of the volume of business or the size of the manufacturing enterprise?

Mr. SLOAN. My only hesitancy is, Senator, that I should not like to speak for all industries in answering that question.

Senator BLACK. Your individual opinion.

Mr. SLOAN. In the cotton-textile industry, I can assure you that the leaders among the little mills and among the big mills would approve of that kind of a proposition.

Senator BLACK. Do you approve, personally of that being in the law? Not speaking for your organization. I ask that because I offered an amendment of that type before and it was defeated, and I intend to offer it again.

Mr. SLOAN. Under the N. R. A., that in the formation of any rules, that the votes should be by units regardless of the size?

Senator BLACK. Certainly.

Mr. SLOAN. I personally can see no objection to that.

Senator BARKLEY. The point is, why should that not be objectionable? If is to be truly representative, why should a factory that has a hundred people working for it have the same voice as one that has 10,000?

Mr. SLOAN. I can explain my hesitancy. Perhaps you should look upon it from the standpoint of the number of employees. Let us take a very small undustry; let us assume that you had an industry with only three manufacturing units. Let us take an extreme case that one of those units only had 15 employees, and the other had 2 or 3

thousand. Do you think that that man with 15 or 20 employees should have as much to say about the rules governing that industry as the 2 with 6,000 employees?

Senator BLACK. Suppose you are going to go on the number of employees, why not let the employees fix the codes, if we are going to judge the voting strength by the number of employees. Would that be helpful?

Mr. SLOAN. If the employees wish to take over the business and put up the capital today, Senator, I should think that most business men would be perfectly willing to let them.

Senator BLACK. I have an article which has just been written by a man that helped to organize the Steel Corporation, and who was the vice president of it, and who helped to organize the Midvale Steel, who advocates that business should give to employees an equal voting strength on the board of directors. Do you think that that would be wrong?

Mr. SLOAN. I do.

Senator BLACK. You would be opposed to that?

Mr. SLOAN. I would be opposed to that. I think that the method that has been set up under the administration—this is an industrial recovery act. You are dealing with industries——

Senator BLACK (interposing). You are also dealing with employees.

Mr. SLOAN. That is correct, sir. In the preparation of any code, every code that I know anything about, your employees have been represented around the council table with General Johnson and with his associates in the preparation of those codes. And in our case they sat through all of the preliminary discussions before we came to the public hearing and they were there and were heard there.

Senator BLACK. The question was asked by Senator Barkley as to whether it would be fair to let these units each have a separate vote. Did you know—I cannot recall the exact figures, but I will put them in the record—that there are five or six counties of the United States where between 40 percent and 50 percent of all industry is concentrated?

Mr. SLOAN. I did not know that.

Senator BLACK. You did know that there is a vast concentration of industry in the Nation, and that when we pass laws to govern industry, if we pass them in the way the Constitution originally intended, that each State has an equal voting strength with each other State?

Mr. SLOAN. I did not know that there was such a vast concentration. For the past 8 years I have labored with an industry where that is not true. The cotton-textile industry is scattered from Maine to Texas, and you have many important textile-producing States from Maine to Texas. It is vital to the life of New England and it is vital to the whole South and part of the Southwest.

Senator BLACK. Do you think in passing on the codes, since we are turning over to them the authority and the power to make laws regarding an industry, that each State having an industry in it, should have an equal voting strength with each other State in the same way that a law would be passed in the Senate and the Congress?

Mr. SLOAN. I do not think so, sir. You are speaking of a particular code now?

Senator BLACK. I am talking of laws that are passed and all codes.

Senator KING. Any code; all codes.

Senator BLACK. That is the way laws have to be passed if we follow the original plan adopted when they had a considerable controversy whether they would adopt a constitution.

Senator HASTINGS. Let us find out what Mr. Sloan's attitude is. Perhaps he does not feel that way.

Senator KING. I think it is a proper question.

Senator BARKLEY. I think it ought to be said in that connection that equal representation only obtains in the Senate. In the House it is proportionate representation.

Senator BLACK. That is correct, but there is one House that has to vote on it where it is equal.

Senator BARKLEY. And one where it is unequal.

Senator BLACK. I am asking if you think there should be an equal voting strength created to the States that have a small number of industries in the formation of the code?

Mr. Sloan. I do not know that I get your question. If your question is this, that if you have three manufacturing plants in a particular industry in your State of Alabama, and Senator Couzens here has 100 manufacturing concerns making the same product, do you mean to ask me the question, do I think that Alabama should have as much to say in the preparation of that code as Michigan?

Senator BLACK. I mean this: That codes formulate laws, although we call them rules, but they have the effect of laws. If those laws governing that industry were passed in Congress, each State would have two Senators to vote on it irrespective of the volume of the business in each State. Do you believe that in the formulation of codes and rules, we should abandon that old constitutional principle, or should we give to each State an equal voting strength in that code authority?

Senator COUZENS. Is it not possible that Michigan could vote down the proposition that Alabama proposed?

Mr. SLOAN. I think as a practical proposition, it probably would.

Senator BLACK. It is also probable that Alabama might have a chance to vote, and Alabama and the other States with small industries might have a chance to vote down the others.

Mr. SLOAN. Senator Black, I do not think your method would be practical.

Senator BLACK. That is what they said originally when they argued about the Constitution.

Mr. SLOAN. Let us see what has actually happened in the administration of codes who have formulated rules. You and I are very much interested in the cotton-textile industry. There are 75 percent of the cotton manufacturers in the South. They have just that much say-so in everything that concerns this code. The South has just that much of a vote as against New England in anything that concerns this code. I think that is fair.

Senator BLACK. Do you think then that it would not be fair to give each State an equal voting strength with each other State in the formulation of rules governing the codes?

Mr. SLOAN. I do not think it would be fair because it does not take into consideration the extent of manufacturing of each State.

Senator BARKLEY. I suggest that Mr. Sloan be allowed to make his statement, otherwise he will never get through with it.

Mr. SLOAN. I was asked to present this resolution.

This is the resolution of Consumers' Goods Industries Committee re extension of N. I. R. A., adopted at a meeting of that committee in New York, March 20, 1935.

Whereas the Consumers' Goods Industries Committee consisting of 22 members and alternates, elected in March 1934 by a general meeting of code authorities of consumers' goods industries held in Washington, represents a vast area of the manufacturing industries in the United States; and

Whereas those industries have a vital concern in pending proposals for the extension of N. I. R. A.; and

Whereas the future of the N. R. A. has been the subject of intensive study and frequent meetings of the Consumers' Goods Industries Committee: Therefore be it

Resolved, that the chairman of the Consumers' Goods Industries Committee transmit to the Senate Finance Committee with the request that it be incorporated in the record of the pending hearings on the N. I. R. A. the following statement expressing this committee's considered judgment of the matter:

1. Industry, labor, and the public have adjusted themselves to the codes. To abolish the codes now would check recovery, destroy confidence, and probably create another downward spiral of bottomless deflation and financial chaos.

2. The N. I. R. A. should be extended for a further trial period of 2 years for the following reasons:

(*a*) The provisions of codes relating to hours and wages, the abolition of child labor, and other unfair conditions, have been enormously beneficial to labor. In the present economic emergency it is essential that they should be continued to prevent the resumption of the downward course of wages and contraction of employment and purchasing power, at least until greater experience had indicated a permanent policy.

(*b*) To put a bottom under wages alone, however, is not enough. You cannot stabilize hours and wages unless you stabilize the source from which these wages flow. During the emergency which still continues, it is necessary to check competitive practices which are destructive of the stability of industrial units and which, prior to the codes, were making it almost impossible for numerous concerns, particularly the smaller ones, to survive.

I shall tell you about the small concerns in the cotton industry in a minute. I have reports on them.

The flexible provisions of the N. I. R. A. make possible policies and provisions which need to be made available during emergencies with minimum delay, for preventing or mitigating the effects of undue and harmful disruption of prices and for adjusting the use of productive facilities in overcapacitated industries to what the market is able to absorb.

If the code provisions which have to a measurable extent succeeded in stabilizing business were now swept away, in our judgment there would be a return to that failing of confidence, contracting of credit, depleting of capital, and falling off in wages, all of which are now being held in check.

3. To make the administration of an extended N. I. R. A. more effective it is desirable to strengthen the present compliance provisions. The N. I. R. B. or some agency thereof should have power:

(1) To proceed directly, in its own name, for injunctions and for civil penalties against code violators;

(2) To hold hearings and issue orders against code violations; which orders shall be enforceable by the courts;

(3) To allow voluntary agreements for the payment of penalties or liquidated damages enforceable by the parties themselves, but only against those who agree to be bound thereby.

4. In the administration of the N. I. R. A. no rigid general rules affecting code provisions should be prescribed. All rules should be flexible, varying according to the circumstances in particular industries, and should not be imposed without the consent of the industry affected.

5. The committee is strongly opposed to any law prescribing either a 30-hour week or any other rigid limitations as to hours or wages. It believes that such legislation is uneconomic, impracticable, and dangerous.

Senator KING. Is that the entire resolution?

Mr. SLOAN. Yes, sir; that is the resolution. That resolution not only has been approved by the members of the committee to which I referred, but I would like to read these expressions of approval from some of the large industries.

First of all, the Wholesale Dry Goods Institute, which represents a consumer industry for our industry, in other words, they buy cotton goods from us. Mr. Flint Garrison, the head of that organization, replies:

The resolution would be approved by not less than 80 percent of the members of the wholesale dry goods trade.

Another consumer industry, that is the converters who convert the cotton cloth and then sell it, we will say, to the garment manufacturer, the Textile Fabrics Association, reports:

This association consisting of over 150 producers and converters having 10,000 employees through its Board of Directors approves and endorses the resolution.

Here is a report from a durable-goods industry, the Brick Manufacturers Association, with 1,000 concerns:

Executive committee of Brick Manufacturers Association of America endorses resolution.

Senator KING. May I interrupt right there? Do you know that the brick manufacturers have increased the prices of bricks in some places more than a hundred percent?

Mr. SLOAN. I did not know that, sir. As I say, they are not in the consumer goods groups. I have not discussed their problems with them.

Senator KING. Proceed.

Mr. SLOAN. Mr. W. D. Anderson, representing the southern branch of our industry and a manufacturer himself, and Mr. Earnest Hood, a manufacturer in Salem, Mass., and president of the National Association of Cotton Manufacturers, representing the New England branch of the industry, have both approved this resolution.

Mr. Harvey Williams may be recalled by some of the members of this committee, certainly by Senator Walsh if he were here, was the chairman of a committee of some 75 small industries that came to Washington in 1932 to try and obtain relief for industry at that time. Mr. Harvey Williams is in business for himself in drop forgings, durable goods. He is president of the American Supply & Manufacturers Association and chairman of the Institute of Wrench Manufacturers. He replied:

As your committee seems to be about the only representative of industry that reflects as well as you do what I think is the real viewpoint of the masses of industry, I cannot congratulate you too heartily and only wish I could have been of more tangible assistance.

The paper industry, the American Paper and Pulp Association, states:

We are in receipt of votes from 21 of the 24 divisions. Nineteen of these approve the resolution.

Then we have from another of the group of durable goods industries, copper and brass companies, such as the Bridgeport Brass Co. of Bridgeport, Conn., the Copper Range Co., of Boston, Mass., Phelps Dodge Corporation, C. G. Hussey & Co., Boston, and the Revere Copper & Brass Co., of New York, and the Seymour Manufacturing Co., of Seymour, Conn.

In our own situation, we sent out a memorandum of this resolution to the cotton mills of the country.

Senator LA FOLLETTE. Did you read all of the replies that you had received?

Mr. SLOAN. I have not read all of them.

Senator LA FOLLETTE. I think they might be incorporated in the record.

Mr. SLOAN. I will be very glad to submit them.

(The same are as follows:)

National Container Association: "The National Container Association with 12,000 employees before code and 16,000 after on same production heartily endorse resolution of Consumers' Goods Industries Committee."

Cap and closure industry (29 companies, 4,769 employees): "Approve resolution of Consumers' Goods Industries Committee."

Coffee industries (850 companies, 15,000 employees.): "The resolution adopted by Consumers' Industries Committee is entirely consistent with the expressed views of the coffee industry."

Cooking and Heating Appliances Industry Code Authority: "Resolved that to insure the continuous operations of the act, codes be continued in general in their present form subject to amendments which may be proposed by industry."

Glass container industry (44 companies, 25,216 employees): "Glass-container industry approves resolution."

Groceries and Chain Store Review: "I believe that 90 percent of the grocery industry would approve the extension of a new act containing the features enumerated in your resolution."

Hair and jute felt industry (18 manufacturers, 1,694 employees): "90 percent by actual count of all manufacturers in industry voted approval National Recovery Administration in its present form until expiration * * * and after * * * with modifications in agreement with resolution approved by your committee."

Macaroni Code Authority: "Resolution identical almost to Consumers Goods Industries Committee resolution submitted to Senate Finance Committee."

Boot and shoe manufacturing industry: "It is my personal opinion that a considerable number of the members of the planning and fair practice committee for this industry are in substantial agreement with the resolution of your committee."

Silk Textile Code Authority: "I am satisfied majority of our industry would approve resolution."

Slit Fabric Manufacturing Industry: "This code authority is fully in accord with resolution of Consumers' Goods Industries Committee re extension of National Industrial Recovery Act and wishes to emphasize particularly its endorsement of section 2B of the Resolution."

Mayonnaise Industry: "Resolution almost identical to resolution of Consumers' Goods Industries Committee submitted to Congress."

Peanut Butter Code Authority: "It is my belief that fully 90 percent of the peanut-butter manufacturers would endorse the resolution."

Ice Industries Code Authorities: "I have had literally hundreds of copies of communications, many of them by telegraph, to members of the Finance Committee * * * (endorsing continuation of National Recovery Administration.)"

Code Authority Cotton Cloth Glove Manufacturing Industry: "We wholeheartedly endorse all of the recommendations of the Consumers' Goods Industries Committee".

Furniture and Floor Wax and Polish Code Authority: "The respective code authorities for these industries give their complete approval of the resolution."

Candle Manufacturing Code Authority: "At least 80 percent of the members join you enthusiastically in the resolution."

Newsprint Code Authority: "Adopted resolution very similar to Consumers' Goods Industries Committee."

Broom Manufacturing Code Authority: "Believe at least 70 percent production of broom industry appreciate and will approve the recommendation of the President that the National Recovery Administration be extended."

Wholesale Coal Code Authority: "Opinion chairman and secretary is that wholesale coal industry would subscribe to resolution."

Crepe paper industry and drinking straw industry: "These industries are already on record as favoring extension of National Industrial Recovery Act."

Disc bottle cap, liquid-tight container, and sanitary closure industries: "These industries favor extension of the National Industrial Recovery Act and in my opinion would subscribe to policies expressed in your resolution."

Tag manufacturers: Acme Tag Co., Minneapolis, Minn.; Adams Sutcliffe Co., Pawtucket, R. I.; Allen Bailey Tag Co., Caledonia, N. Y.; American Tag Co., Chicago, Ill.; Atlant Tag Co., Neenah, Wis.; Campbell Box & Tag Co., South Bend, Ind.; Central Tag Co., Chicago, Ill.; Commercial Press, Inc., Southbridge, Mass.; Cupples Hesse Envelope & Litho. Co., St. Louis, Mo.; Dancyger Safety Pin Ticket Co., Cleveland, Ohio; The Denney Tag Co., Westchester, Pa.; Dennison Manufacturing Co., Framingham, Mass.; Eastman Tag & Label Co., Los Angeles, Calif.; Ennis Tag & Printing Co., Ennis, Tex.; H. M. Gifford Manufacturing Co., Philadelphia, Pa.; Haywood Tag Co., Lafayette, Ind.; The Howard Print, Inc., Brockton, Mass.; International Tag & Sales Room Co., Chicago, Ill.; International Ticket Co., Newark, N. J.; Keystone Tag Co., Westchester, Pa.; A. Kimball Co., New York, N. Y.; The J. L. May Co., New York, N. Y., Michigan Tag Co., Grand Rapids, Mich.; Michigan Tag Co., Detroit, Mich; National Tag & Label Corporation, Cambridge, Mass.; National Tag Manufac; turing Corporation, Dayton, Ohio; Reynurn Manufacturing Co., Philadelphia-Pa.; Robinson Tag & Label Co., New York, N. Y.; Salisbury Manufacturing Co., Pawtucket, R. I.; Tagcraft Corporation, Lancaster, Pa.; United Tag Co., Philadelphia, Pa.; Waterbury Buckle Co., Waterbury, Conn.

Mr. SLOAN. I should also like to place in the record the following telegram:

NEW YORK, N. Y., *April 18, 1935.*

GEORGE A. SLOAN:

Received following telegram this morning from William A. Hollingsworth, president Retail Tobacco Dealers of America. Retail Tobacco Dealers of America National Association of Tobacconists representing 780,000 retail outlets selling tobacco products in every State endorse resolution recommending Congress to extend National Industrial Recovery Act adopted by Consumers Goods Industries Committee. If N. I. R. A. is not continued, entire tobacco industry will suffer irreparable harm. Loss leader practitioners and price cutters anxiously waiting expiration of N. I. R. A. to inflict former predatory practices upon trade. Unless N. I. R. A. is continued wholesale reductions in wages increasing hours of employment and discharging of workers will take place.

J. P. BABCOCK.

Mr. SLOAN. We sent out the mimeographed form of the resolution, and we have heard from 14,000,000 spindles. There are about 25½ million active spindles in the United States.

Senator KING. What was the form of your questionnaire?

Mr. SLOAN. I will submit that and put it in the record, sir.

(And the same is as follows:)

THE COTTON TEXTILE CODE AUTHORITY,
New York, N. Y., April 1, 1935.

[Vitally important]

GEORGE A. SLOAN, *Chairman.*

DEAR SIR: There is enclosed herewith a copy of a resolution which was unanimously adopted at a meeting of the consumer goods industries committee, of which I am chairman, held in New York City on March 20, 1935. I believe that this resolution embodies basic principles which the Cotton Textile Code Authority, among many others, has consistently stood for since the inception of the recovery program. I refer particularly to the provisions of our code which make possible the two-shift limitation and other efforts to balance production with demand. You will note that the committee is unalterably opposed to a 30-hour shift which is now being urged in Congress as an alternative to the National Recovery Administration.

A determined effort is being made in some quarters to practically restrict the code under the new National Recovery Administration to hours, wages, elimination of child labor, and collective bargaining, and to forbid all forms of production control, including machine-hour limitations. Of course, you realize that if this latter view is to prevail it would open the door to three- and four-shift operation and an enormous increase in the present overcapacity of our industry.

In order that I may know the extent to which the enclosed resolution represents the viewpoint of the cotton-textile industry, I would greatly appreciate your advising me promptly (preferably by wire) whether you approve or disapprove the enclosed resolution.

Faithfully yours,

GEO. A. SLOAN.

P. S.—I would also appreciate your advising me in the same reply whether you approve or disapprove the efforts now being made by the Cotton Textile Code Authority to obtain relief from the processing taxes, increasing Japanese importations, and to secure protection for our export markets in the Philippines, Cuba, and Central and South American countries.

Mr. SLOAN. Twelve million and thirty-six thousand spindles approved the resolution, 2,000,000 opposed the resolution. That is a total of 14,000,000 that we have heard from, or at least 50 percent of the industry on that circular.

Senator BLACK. Do you know how those 2,0000,00 were divided? Has that been analyzed? That might be interesting.

Mr. SLOAN. I might analyze it to this extent, sir. The percentage of spindles in favor of the resolution, 85 percent, and those opposed, 14.7 percent.

In the small mills—that is, less than 30,000 spindles—we heard from 124 of those in favor, and only 19 of those mills opposed; in other words, in the small-mill classification, 86.7 percent favored and 13 percent opposed the resolution.

Senator BLACK. No division as to the location of the mills?

Mr. SLOAN. I have no division as to the location. It could easily be provided. As a matter of fact, I will leave here a list of the mills approving it, and they are by States, if you would like to have that.

Senator BLACK. I just want it if it is in such form that you could put it in.

Mr. SLOAN. It is in such form.

Here they are by States.

(The list referred to will be found at the conclusion of the morning session.)

Senator KING. I want to read for the record as part of this questionnaire of the Cotton Textile Code Authority. [Reading:]

A determined effort is being made in some quarters to practically restrict the code under the new National Recovery Act to hours, wages, elimination of child labor, and collective bargaining and to forbid all forms of production control, including machine-hour limitations. Of course, you realize that if this latter view is to prevail it would open the door to three- and four-shift operation and an enormous increase in the present overcapacity of our industry.

Mr. SLOAN. That persistent effort I was referring to was, of course, understood by our industry, Senator. Mr. Watson, who appeared before this committee, of Johnson & Johnson, represents a mill that has persisted, from the day this code was approved, to remove the two-shift limitation in the code. I would like to say a word about that, if I may, later.

In this resolution the committee has declared itself in the belief that "to abolish the codes now would check recovery, destroy confidence, and probably create another downward spiral of bottomless deflation and financial chaos."

It is an American characteristic to forget. We have come so far in a comparatively few short months that it is difficult to remember those critical days of late 1932 and early 1933—banks closed or clos-

ing, idle plants and mills, a steadily contracting economic life, and no one able to see the end.

Why was that so? Many reasons could be given, but certainly the practical reason was that there was a falling off in demand for products. What did that do? Everyone that had any goods to sell or had his own labor to sell had more of it to sell than could be bought. There followed a desperate scramble to get as much share as possible of the inadequate demand.

Then this happened: A factory would go to its workers and say, "We can only keep in business if we reduce wages. Shall we close down or shall we reduce wages?" And they accepted a reduction in wages, and the competitor had to do the same, and the other competitor the same, and then there was a vicious cycle that was going on and on and on, and wages had reached in some sections, and in practically all industries, a very low level.

Senator METCALF. Does the importation of these cotton goods affect your cotton mills here?

Mr. SLOAN. Very seriously, sir. Senator, I will have a word to say about that.

What did that situation do to capital? The Research and Planning Division of the National Recovery Administration recently made a statement that there was a $9,000,000,000 shrinkage in 1932. Credit shrank, and so far as the durable-goods industries are concerned, the consumers' industries, the industries which we represent, could not buy from them, we could not make the replacements and improvements, because we did not have the money to do it with.

Senator KING. There was a shrinkage also in the value of agricultural land.

Mr. SLOAN. That had a bearing on the whole situation.

Senator KING. And a shrinkage in the value of real estate and of stocks.

Mr. SLOAN. That is correct.

Senator CONNALLY. You did not mean there was any shrinkage in the actual capital, the physical capital, but in the values?

Mr. SLOAN. In the values there was a $9,000,000,000 drop in values.

Senator CONNALLY. We still had the same plants.

Mr. SLOAN. We still had the same plants, but what were they worth? Many of them going on the scrap heap.

Senator CONNALLY. I understand that, but I just want to understand what you mean.

Mr. SLOAN. It is our contention that these were the questions that Congress had to answer, and that was the situation that led to the National Industrial Recovery Act. The depression, with resulting destructive competition, was creating downward pressures that were irresistible. Employers in many industries who desired to maintain good wages and fair working conditions were unable individually to check this downward spiral. Hazards were created for society as a whole.

My own industry, the cotton-textile industry, was typical. Efficiency, or the lack of it, had little or no bearing. Overcapacity and the threat of overproduction in the fact of shrinking demand, with resultant price cutting, forced reduction in wages, increased working hours to reduce costs, impaired capital, and wrought a complete break-down in confidence.

The question was, Should we let nature take its course to our certain national ruin, or should we attempt to formulate such constructive collective action as would check the downward spiral?

We maintain that what the Congress did here was the answer. The answer to this emergency, to the everlasting credit of the Congress which enacted it, was the National Industrial Recovery Act. That act became law on June 16, 1933. It is unthinkable that any reasonable person should expect a situation which had been years in the making could be met fully in the short time that has since elapsed. Codes were evolved at a great effort and under the heavy pressure of the dire emergency. As to many, there has not been time to sufficiently gage their values or appraise their deficiencies. But experience has shown beyond doubt that to jettison codes now would throw many industries back toward the demoralization which occasioned this act.

Some accomplishments have been demonstrated beyond question. As the Consumers' Goods Industries Committee declared in its resolution, now before this committee—

> the provisions of codes relating to hours and wages, the abolition of child labor and other unfair conditions have been enormously beneficial to labor. In the present economic emergency it is essential that they should be continued to prevent the resumption of the downward course of wages and contraction of employment and purchasing power, at least until greater experience has indicated a permanent policy.

Expressed in its simplest terms, two major purposes of the act were, first, to effect reemployment by shortening the work week of those still employed, and, second, to place a floor under minimums of labor below which competition, however destructive, could not drive wages. Certainly in these respects it has justified the faith of its sponsors.

Again turning to the cotton textile industry as typical, a comparison of pre-code and post-code operations are impressive.

I would like to have the Senators have this, because you have asked some questions here this morning that this chart [indicating] will answer. I won't go over that, except to tell you briefly what it shows:

First, that under this code more than 100,000 additional workers were on our pay rolls as of January 1 of this year than in March 1933, and the employment level nearly equalled that of 1929.

Second, hourly wage rates were more than 70 percent higher than precode levels.

I wish to make the point that that was for the whole industry. There was an average increase of 70 percent for the whole industry, North and South.

Third, the weekly income—purchasing power—of cotton-mill workers, adjusted for changes in living costs, was appreciably higher than in 1929.

In our industry the work week was reduced from 48 hours in the States familiar to Senator Metcalf here, 54 in some of the other New England States, 55 in some southern, and 60 in one Southern State, and one Southern State with no restrictions as to hours of labor.

Senator CLARK. What is the explanation of that very abrupt drop in both the number of persons employed and the weekly earnings per employee, the total wages paid, and cloth processed in the latter part of 1930?

Mr. SLOAN. That was during the cotton textile strike early last fall. This very sharp drop was caused by a strike that was on for about 2 weeks, and you will see exactly what happened to the earnings and the amount of cotton processed.

These notable benefits for labor, attributable to N. I. R. A., were accomplished, it should be emphasized, in the face of the facts that the cost of raw material had been increased nearly 100 percent—we are not objecting to that—that the labor cost of processing a bale of cotton had increased 80 percent under the code, and that one employee on the average processed only 13 bales of cotton in the first year under the code as against 18 bales in the year preceding the code.

How was all this possible? Because N. I. R. A. embodied a principle which the Consumers' Goods Industries Committee believes must be an integral part of any such economic legislation.

That was the principle, we say, that to put a bottom on wages alone is not enough. The flexible provisions of the N. R. A. make possible policies and provisions which need to be made available during emergencies with minimum delay, for preventing or mitigating the effects of undue and harmful disruption of prices and for adjusting the use of productive facilities in overcapacitated industries to what the market is able to absorb.

The need of a measure to deal with overcapacity is illustrated by conditions in the cotton-textile industry. In the mills of the industry there are in place approximately 30,000,000 spindles. A demand for cotton goods equivalent to that of 1929 could be readily satisfied by the operation of 15,600,000 spindles if run 24 hours a day.

This overcapacity, even if we allow for the fact that many small mills are so located that there are no housing facilities available to accommodate employees for continuous operation, is enormous. It resulted largely from war conditions—I might say that before the war, the cotton-textile industry was largely a single-shift industry, with some notable exceptions, but, by and large, I should say that certainly 85 percent or more was single shift. The war, with its unusual demands, came along and the industry almost over night became a two-shift industry. After the war was over, that, of course, left us with great overcapacity.

Senator KING. We had that same situation in farms.

Mr. SLOAN. The same situation exactly.

The devastating results of the overcapacity thus developed are closely interwoven with the causes and effects of the great depression through which we have been passing and the national emergency which it has produced. Efforts by provisions in codes of fair competition to check these devastating results are similarly interwoven with the national effort now being made for economic recovery.

A marked overcapacity in an industry is destructive of fair competition in that industry. Where the productive capacity is reasonably in balance with demand there exist conditions for normal and fair competition. Buyers are competing actively among themselves to obtain their requirements; sellers are competing actively among themselves to dispose of their products. It is essential to the protective functioning of the competitive system that there be both this active competition among buyers and active competition among sellers.

The inevitable result of this situation is the scramble of sellers for orders in order to secure volume and a cutting of prices for that purpose without regard to costs of production.

We know from bitter experience over 10 years, that that reflects immediately on the wage earner. I explained a while ago that to meet that situation, one of the first things that is done is a cutting of wages to get costs down to get the lower price.

There is a steady pressure on the employees to accept lower wages in order to make it possible for the plant to secure orders and to keep the plant operating. There is a tendency to eat up the working capital of the concern in continuing to do work below cost in the desperate efforts of the concern at least to keep operating. When in this situation, concerns do go under, but the factory and machines are not destroyed; they merely afford a temptation for others to buy them in for a low figure and to increase the unfair and destructive competition by their being operated at fixed charges far less than those properly attributable to the capital involved.

No individual concern, no matter how clearly it saw the devastating effects of what all were doing, could make any impression on the situation. The pressure of overcapacity on each unit to get as large a part of the inadequate demand as it could, in order to keep going at all, drove each along a course which it was obvious was collectively disastrous. Concerted action by all to check these destructive forces was the only way in which the situation could be met in this national emergency. This was a fundamental reason and justification for the National Industrial Recovery Act.

Maximum hour and minimum wage provisions obviously meant greatly increased costs as has been demonstrated by charts already submitted. The industry could not carry this burden if the effects of overcapacity were to continue, if credit was to continue to shrink, and if working capital was to continue to be used up. Indeed, it was essential for credit to be restored to secure additional working capital to carry the additional costs.

In this morning's New York Times, Dr. Mordecai Ezekiel, economic adviser to Secretary Wallace, makes the statement that the industrialists first began curtailment of production, and that farmers were forced to do likewise in self-defense. He mentioned our industry in particular, and he said that we curtailed 28 percent in 1932. But he did not say that the depression had curtailed the demand for our products more than 28 percent. This industry always has and always will be willing to produce every pound of yarn and every yard of cloth that this public will buy, and I will say again in the light of experience that it has always produced more than the public would buy.

Senator CLARK. That is the same gentleman that advocated the slaughtering of hogs and the rest of that curtailment program?

Mr. SLOAN. That is the same gentleman.

Senator BLACK. The statement he made there is correct, is it not?

Mr. SLOAN. It is not correct.

Senator BLACK. It is correct if you curtailed 28 percent, is it not?

Mr. SLOAN. The way it is stated is that this industry deliberately went out and curtailed its product for some purposes other than were in the interests of the public.

Senator BLACK. I do not construe it that way. It is correct, is it not, that your industry curtailed 28 percent because it did not have the customers with an effective demand?

Mr. SLOAN. The production of the industry was 28 percent below what it would be normally, for the reason that the consumption had fallen off more than that.

Senator BLACK. In other words, you could not sell your goods at a profit?

Mr. SLOAN. That is correct.

Senator BLACK. And you did curtail 28 percent for that reason?

Mr. SLOAN. That is correct. The mills did, individually.

Senator KING. You tried to stabilize prices at a higher level than the public would buy, isn't that true?

Mr. SLOAN. I can say positively that there was not the slightest concerted effort to do that.

Senator BARKLEY. You are speaking now of the time prior to the code?

Mr. SLOAN. Prior to the code; 1932. Let me tell you what happened in 1932. Senator King, I would like you to hear this, because you said we were trying to raise prices. I want you to know how they were raised. In 1932 this industry offered its goods to the public at prices which resulted in a $69,000,000 loss according to the authoritative figures.

Senator KING. What about the loss to the durable goods and the farmers?

Mr. SLOAN. The same way.

Senator KING. We had a depression here and in other parts of the world, as the result of which prices went down in all commodities and in human labor, and in prices of the commodities that were produced by labor. Isn't that true?

Mr. SLOAN. That is true. In our industry there was this $60-, 000,000 loss—these are correct figures—and that wages in 1932 had been forced down by this problem of overcapacity and underconsumption to levels below which the public could decently ask to have its goods bought at.

Senator BLACK. Did I understand you to say overcapacity? Have you read Brookings' book on America's Capacity to Produce?

Mr. SLOAN. I have not.

Senator BLACK. What was the overcapacity in 1932 in the industry?

Mr. SLOAN. In our industry, I have just made the point, or tried to make the point, that it all depends on——

Senator BLACK (interrupting). I do not want to delay you, but I thought you could tell us briefly.

Mr. SLOAN. If every mill is going to operate 24 hours a day, including 3 shifts, all night long, as Mr. Watson advocated before this committee the other day, there was at least 50 percent overcapacity in this industry.

Senator BLACK. In other words, you could produce 50 percent more than you have produced at all?

Mr. SLOAN. If we run all the 24 hours a day, exactly.

Senator BLACK. Even more than you did in 1929?

Mr. SLOAN. We could.

Senator BLACK. So that in 1929 it is not true that you were producing to 80 percent of your capacity, is it?

Mr. SLOAN. In 1929 we were not.

Senator BLACK. What percentage were you producing?

Mr. SLOAN. It all depends on what you call capacity again.

Senator BLACK. I would call capacity, what you can do.

Mr. SLOAN. What we can do.

Senator BLACK. The power that you have to produce.

Senator BARKLEY. The maximum.

Mr. SLOAN. If you are going to count it 24 hours a day and your New England mills and a great many mills in the South cannot run 24 hours a day, they would be driven out of business——

Senator WALSH (interrupting). You have State laws that prevent it.

Mr. SLOAN. Yes; you have State laws that prevent it.

Senator BLACK. I am talking about what you could produce if you were simply producing all you could.

Mr. SLOAN. Again I do not get your question. In 1932 if every mill had run 24 hours, we would have produced more than twice as much as the public actually consumed.

Senator BLACK. I understood you to say a while ago that in 1929 you could produce all that you were producing in 1929 with a straight 15-hour week? You read that in your prepared statement, as I understood it?

Mr. SLOAN. No, I beg your pardon.

Senator BLACK. What was it you said about the 15 hours? That you could produce as much——

Mr. SLOAN (interrupting). Here is what I said. [Reading:]

The need of a measure to deal with overcapacity is illustrated by conditions in the cotton-textile industry. In the mills of the industry there are in place approximately 30,000,000 spindles. A demand for cotton goods equivalent to that of 1929 could be readily satisfied by the operation of 15,600,000 spindles if run 24 hours a day.

One-half of the spindles would have satisfied the demand, and if we had had that situation, we would have had to have scrapped one-half of the industry and all of the communities dependent upon it.

Senator KING. Your demand depends, though, upon the purchasing power?

Mr. SLOAN. Exactly.

Senator KING. And the demand for textile goods in this country or in other countries throughout the world never yet has been reached by the capacity of all of the mills in all of the world, has it? In other words, the demand for the textiles, if the people had the money or had the exchange restrictions removed, all the mills in the world could not produce the amount of textile needs that the people desired?

Mr. SLOAN. Well, Senator, I should say that they could. There is great overcapacity in England.

Senator WALSH. Has there not been a movement there recently to reduce the number of spindles?

Mr. SLOAN. It was a concerted movement on the part of the Government to scrap some 10,000,000 spindles.

Senator KING. Is that not because of the lack of purchasing power in Great Britain and China and other nations?

Mr. SLOAN. I have been told quite recently by a prominent man from Lancashire, that that was caused by the menace from Japan, which is also beginning to ruin the industry in this country. Japan pays, according to the United States Department of Commerce, 23½ cents a day for labor in the cotton mills.

Senator KING. But the production of textile goods by Japan and all of the countries in the world today fails to produce the consumptive needs of the people of the world.

Mr. SLOAN. If they were all able to buy, certainly.

Senator KING. I say, it depends on the purchasing power.

Mr. SLOAN. Everyone wants cotton in some form.

Senator BARKLEY. Demand is made up of two things, the desire to buy and the ability to buy.

Senator KING. Exactly.

Mr. SLOAN. Senator, what you mention, too, brings out this point that I hope I can get before you. The consumption of cotton that goes into wearing apparel which most people think of as the consumption of cotton, only represents about a third of our consumption. One-third also goes into household uses, like sheets and towels in your home. We are crippled today also by the durable goods industry being crippled, because one-third goes into the durable goods industry.

It was this provision; that is, to correct overcapacity, that was attacked before this committee by my friend Russell Watson of Johnson & Johnson. According to Mr. Watson, the Cotton Textile Code fosters monopoly, and in the very next breath he says that it is an utter failure because it has not eliminated one-third of the spindles in the industry. Does he want to eliminate the mills in your State, Senator Walsh?

Senator WALSH. I think he does if he is from the South. [Laughter.]

Mr. SLOAN. Senator, I am in an impartial position——

Senator BLACK (interrupting). Where does he live?

Mr. SLOAN. His mills are in the South.

Senator BLACK. Where does he live?

Mr. SLOAN. New Brunswick, N. J. I want to say to Senator Walsh, though, that I cannot agree with the Senator. There are some of the finest men in this industry in the South.

Senator WALSH. I agree with you absolutely. Some of the best and the most efficient and the most capable men are in the South.

Mr. SLOAN. And they, with the men in New England, wrote the code.

Senator WALSH. But there are sectional differences due to the difference in the cost of living.

Mr. SLOAN. This code has eliminated most of that sectional feeling; most of it.

Senator WALSH. I am sorry I cannot agree with that, in view of protests——

Mr. SLOAN (interrupting). The protests that have come to you are three or four. Three of them have nothing sectional in them at all.

Senator WALSH. I will admit that no protests have come to me from Northern cotton cloth manufacturers who have Southern mills, but those who are manufacturing alone and whose plants are wholly in New England, are all protesting the differential in prices.

Mr. SLOAN. Let me say this, that the South and the North stand together in appealing to you and other Senators, and this is unanimous, in giving them relief from the processing tax.

Senator WALSH. I agree with you on that.

Mr. SLOAN. They stand together in asking you to give us relief from this Japanese menace, with as much bleached goods shipped in here in the months of January and February—I am substantially correct now, and I have the accurate figures for you—you were challenged the other day I am told on some figures you used, and I have some accurate figures, Senator—as many bleached goods shipped into this country in January and February as had been shipped in altogether from Japan in a period of 9 years.

Senator CONNALLY. Mr. Sloan, I do not want to interject, but I want to say to Senator Walsh that there are some of those gentlemen who live in the North; they make their money in the South but they spend it in the North.

Senator HASTINGS. They are not making much now.

Mr. SLOAN. I would like to say to Senator Walsh and Senator Metcalf and Senator Black, representing the two sections, that there will be no sectional feeling in the North and South in this industry if you will give us relief from this processing tax and correct this importing proposition and let us get back our former markets. We are willing to give up the export markets. We know that we cannot hold those export markets. The Philippines, we want.

(The following was subsequently submitted by Mr. Sloan in connection with the above statement.)

We realize that with the higher labor costs under the code to which we have subscribed we cannot hope to compete in many export markets. However, we feel very strongly that because of the special relations of our Government with the Philippines, Cuba, the West Indies, and certain Central and South American countries, arrangements should be worked out whereby we can at least regain our former position with respect to these countries.

Low-cost Japanese competition is largely responsible for the situation confronting our exporters. In 1934 exports of cotton piece goods had dropped to over 300,000,000 square yards less than the average exports for such normal years as 1925–27, and exports of cotton yarns show still greater loss. This loss of export trade, of course, affects our entire industry because of the necessity of marketing additional surpluses in domestic markets which in turn contributes to an unsatisfactory market situation.

In the Philippine Islands, our former best market, imports of cotton goods from the United States fell from 67 percent of the total in 1933 to 40 percent in 1934, while Japanese imports were 23 percent in 1933 and 52 percent in 1934. The latter months of 1934 show a large increase in the Japanese percentage, as compared to the first half of that year. A similar situation is shown in most of our former Latin-American markets, including Cuba, Colombia, Haiti, Dominican Republic, and Central American markets. In countries where goods from the United States are on the same tariff basis as those from Japan the price differences are startling and are sufficiently low in Cuba where this country enjoys a preferential tariff, for Japanese goods to land in that country at from 30 to 50 percent under our prices. In the Philippines with our goods entered free and Japanese goods expected to pay regular duties, these prices are from 15 to 60 percent lower than for cotton textiles manufactured in the United States, and even on this basis our American prices do not reflect full cost of production in most instances.

Members of the Textile Export Association of the United States have made strenuous efforts to obtain relief either from our Government directly or through its sympathetic cooperation in efforts to obtain tariff relief particularly in such markets as the Philippine Islands and Cuba. In the Philippines there have not as yet been any favorable results. The Cuban Government during the past few months has issued decrees that have been of some help. Last December it denounced the most-favored-nation treaty with Japan and in March 1935, the President was empowered to put into effect the maximum tariff, also surcharges on importations of goods from nations which have an unfavorable trade balance with Cuba. The reciprocal tariff treaty now in effect between the United States and Cuba was not helpful to our cotton-textile industry.

Senator WALSH. You know that Congress cannot give that relief. We have transmitted that power to the executive.

Mr. SLOAN. No one can give us relief, and yet we are dying. We beg of you to come to our rescue and help us.

The CHAIRMAN. Let us stay on the N. R. A. We do not want to get involved in this processing tax.

Senator BARKLEY. Inasmuch as you have gotten in already, I would like to ask you if you believe that the processing tax ought to be eliminated, and thereby the increase in the price of cotton to the farmer should be eliminated, or do you believe that the farmer should be paid out of some other fund?

Mr. SLOAN. I believe he should be paid out of some other fund.

Senator BARKLEY. What fund is that? The Treasury?

Mr. SLOAN. I will get to that. Our industry is heartily in sympathy with the relief that has been given to the cotton farmer. We would like to see him given more relief if it is humanly possible. We say, though, that the processing tax is not helping the cotton farmer. It is an added burden on top of these labor costs which has caused a decrease in the consumption. The domestic consumption of cotton was 14 percent less than the year before. You asked me, Senator, how shall we get it? This processing tax is a sales tax and a very large sales tax on the necessities of life, clothing, bed sheets, and so on.

Senator CONNALLY. The tariff that you want on Japan would be such a tax too, would it not?

Mr. SLOAN. The tariff on Japan?

Senator CONNALLY. If you increase the tariff and thereby increase the price of your cotton goods, that would be a consumption tax.

Mr. SLOAN. We are not talking about increasing the price of our cotton goods. We say it is coming in at a cent or 2 cents a yard under us.

Senator CONNALLY. It would increase what it would otherwise be if you did compete with them. I am not complaining. I think you ought to have a fair differential on the tariff, but that is the same kind of a tax as the processing tax is.

Senator CLARK. The tariff is a consumption tax.

The CHAIRMAN. That matter has been presented to the Tariff Commission, has it not?

Mr. SLOAN. It is constantly being presented.

The CHAIRMAN. Let us go back to this subject now.

Mr. SLOAN. Yes. Now, what tests shall be applied to determine a mill's fitness for inclusion within the charmed circle which Mr. Watson would prescribe? Mr. Watson said that one-third of these industries should go out. Have we reached that point in our economic development and thought where we are prepared to eliminate ruthlessly cotton mills and the communities dependent upon them merely because the machinery is so many years old?

Let me give you a little history and a very brief picture of this matter.

Senator BARKLEY. You might bring it in under the Townsend plan and pension it. [Laughter.]

Mr. SLOAN. Yes; you might do that, Senator That is about as cockeyed as the Townsend plan.

At the time of the adoption of our code and since then, Mr. Watson and a few other members of the industry have opposed the provision of our code which puts a maximum of mill operation at 80 hours per week. This maximum came as a fruition of long effort in this industry.

Senator HASTINGS. What do you mean by two shifts?

Mr. SLOAN. That no mill shall run in excess of 80 hours a week. It eliminates the graveyard shift at midnight.

Some years ago an effort to secure the voluntary elimination of night work for women and minors was joined in by 80 percent of the industry, but owing to the inability of securing unanimity it proved impracticable to continue this measure. Eighty percent of the mills subscribed to that plan and then it broke down because 20 percent would not play the game. Some years ago we had a voluntary proposition that no day shift should run more than 55 hours and no night shift longer than 50 hours. Eighty percent again approved it and followed it, and it broke down again after a year because 20 percent would not follow it.

Senator WALSH. There is a decided advantage to the producer to be able to run two shifts and even a greater advantage if he runs three shifts.

Mr. SLOAN. Exactly.

Senator WALSH. But the larger percentage of the industry, 80 percent, are opposed to working women and children from 10 o'clock at night to 6 o'clock in the morning.

Mr. SLOAN. That is correct. North and South they are opposed to it.

Senator CONNALLY. But you said that prior to 1929 very few ran three shifts.

Mr. SLOAN. Prior to the war. It was largely a single shift just prior to the war.

Senator CONNALLY. Why should you not go back to that? We do not expect to have a war all the time, we hope.

Mr. SLOAN. Senator, I would like to ask you this question. You have raised a very interesting question. If we go back to that, how is it going to fit into the administration's plan to give more jobs? You have to do what is largely——

Senator CONNALLY (interposing). If you run a very highly organized new factory 24 hours a week, of course that is going to put somebody out of business, but if you ran single shifts, you could probably run all of these factories for one shift and employ a great many men.

Mr. SLOAN. If this industry had been operating a single shift, all of the mills would be running and probably doing well.

Senator CONNALLY. Exactly.

Mr. SLOAN. And the workers would be getting full work and full pay envelops.

Senator CONNALLY. And when you run more than one shift, you are going to put the less efficient and the more nearly obsolete plant out of business.

Mr. SLOAN. But here is the question. Here is the rub in the woodpile, if you will pardon me—you have a two-shift industry today. Under the plan of the Government, of the administration to s read employment, do you want to say that we are going to stop that second shift and throw those people out of work?

Senator CONNALLY. No. I just said you could put the same number of men to work. The trouble with your industry was that during the war it expanded and you got on this high plane, and you have been undertaking to maintain that same high plane ever since when the urge of the war and all of that are not present. Are you not going to have to get off of your high horse just the like the rest of us have had to get off of our high horse?

Mr. SLOAN. That is what we are trying to do. Mr. Watson wants us to get back to 24 hours.

Senator CONNALLY. I do not agree with him.

Senator BLACK. He favored a 6-hour day and a 30-hour week.

Mr. SLOAN. He said he believes in removing the two-shift limitation because he announced he wanted to run three or four shifts.

Senator BLACK. He said that in a manner he favored a 6-hour day and a 30-hour week.

Mr. SLOAN. This industry has very definite objections to Mr. Watson's proposal. In the first place, there is no economic necessity for all-night operation of cotton mills. Ours are not such a continuous operation as technical reasons make necessary in certain other industries. In some industries it is necessary to run all night. Other civilized countries of the world do not find it necessary to work textile employees all night, and we do not think the United States should lead the way in this direction.

In the second place what would be the result if our 2-shift limitation in the code was abolished and Mr. Watson's plan for all-night running was substituted? If Mr. Watson's mills and other mills started up on a 24-hour basis it would be inevitable that those competitors who are strong enough financially to increase their housing facilities or are so located in communities that such facilities are available would, under the pressure of competition, follow what to us seems a bad example. The result would be that there would be competitive pressure on every unit in the industry to go to 24-hour operation.

The CHAIRMAN. Mr. Sloan, the committee will have to go to the Senate. The committee recesses now until 2 o'clock this afternoon and will meet at that time in the District of Columbia Committee Room.

Mr. SLOAN. Shall I come back at 2 o'clock?

Senator WALSH. Unless you want to put your statement in the record.

Mr. SLOAN. I will put it in the record.

The CHAIRMAN. Put your statement in the record, and if there are certain points there that you want to press in particular, you may do so. Try to finish as quickly as possible, because we have 10 other witnesses to be heard.

(Whereupon at 12 noon recess was taken until 2 p. m. of the same day.)

(By direction of the chairman, the complete statement of Mr. Sloan follows.)

STATEMENT BY GEORGE A. SLOAN, CHAIRMAN OF CONSUMERS' GOODS INDUSTRIES COMMITTEE AND CHAIRMAN OF THE COTTON TEXTILE CODE AUTHORITY

THE CONSUMERS' GOODS INDUSTRIES COMMITTEE

This statement is made in behalf of the Consumers' Goods Industries Committee. That committee, selected by representatives of some 100 or more industries engaged in the production of so-called "consumers' products" as distinguished from durable or heavy goods, was created as a result of a general code authority conference, held under the auspices of the National Recovery Administration, at Washington, in March 1934. Industries represented actively in the committee or recognized generally as "consumers' goods industries" are listed in an exhibit which will be filed with the Senate committee clerk. These industries, it will be apparent from the exhibit, include the employers of a very substantial percentage of all the workers in the country's manufacturing industries.

Because its membership is composed largely of executives of manufacturing enterprises with wide practical business experience and of executive directors of code authorities, all vitally concerned in or actively engaged in code administration, the committee has had occasion to study closely the operation of codes and their effect on economic recovery and to assess those points on which there is opportunity or necessity for improvement.

As a result of their combined experience and following a series of meetings, the committee, on March 20, adopted a resolution which was submitted to this committee's chairman, the Honorable Pat Harrison, as follows:

(The same is already contained in the testimony of Mr. Sloan.)

Briefly this resolution urged extension of the National Industrial Recovery Act in substantially its present form for a further trial period of 2 years, thus reaffirming the position consistently taken by the Consumers' Goods Industries Committee and expressed formally in its report of November 1, 1934, to the Industrial Advisory Board of National Recovery Administration, a copy of which is likewise submitted herewith.

HAVE YOU FORGOTTEN THE WINTER OF 1932–33?

In the resolution the Consumers' Goods Industries Committee has declared its belief that "to abolish the codes now would check recovery, destroy confidence, and probably create another downward spiral of bottomless deflation and financial chaos."

It is an American characteristic to forget. We have come so far in a comparatively few short months that it is difficult to remember those critical days of late 1932 and early 1933—banks closed or closing, idle plants and mills, a steadily contracting economic life and no one able to see the end.

That was the situation that called the National Industrial Recovery Act into being. The depression, with resulting destructive competition, was creating downward pressures that were irresistible. Employers in many industries who desired to maintain good wages and fair working conditions were unable individually to check this downward spiral. Hazards were created for society as a whole.

My own industry, the cotton-textile industry, was typical. Efficiency, or the lack of it, had little or no bearing. Overcapacity and the threat of overproduction in the face of shrinking demand, with resultant price cutting, forced reduction in wages, increased working hours to reduce costs, and impaired capital, wrought a complete break-down in confidence.

The question was, Should we "let nature take its course", to our certain national ruin, or should we attempt to formulate such constructive collective action as would check the downward spiral and make possible a more ordered and fuller use of the economic resources of the country which were lapsing progressively into disuse?

NATIONAL INDUSTRIAL RECOVERY ACT—THE ANSWER

The answer to this emergency, to the everlasting credit of the Congress which enacted it, was the National Industrial Recovery Act. That act became law on June 16, 1933. It is unthinkable that any reasonable person should expect a situation which had been years in the making could be met fully in the short time that has since elapsed. Codes were evolved at great effort and under the heavy pressure of the dire emergency. As to many, there has not been time to sufficiently gage their values or appraise their deficiencies. But experience has shown beyond doubt that to jettison codes now would throw many industries back toward the demoralization which occasioned this act.

Some accomplishments have been demonstrated beyond question. As the Consumers' Goods Industries Committee declared in its resolution, now before this committee, "the provisions of codes relating to hours and wages, the abolition of child labor, and other unfair conditions have been enormously beneficial to labor. In the present economic emergency it is essential that they should be continued to prevent the resumption of the downward course of wages and contraction of employment and purchasing power, at least until greater experience has indicated a permanent policy."

Expressed in its simplest terms, two major purposes of the National Industrial Recovery Act were, first, to effect reemployment by shortening the work week of those still employed and, second, to place a floor under human labor below which competition, however destructive, could not drive wages. Certainly in these respects it has justified the faith of its sponsors.

Again adverting to the cotton textile industry as typical, a comparison of precode and postcode operations are impressive. Even a cursory glance at the charts now before you will show that as of January 1, 1935:

1. More than 100,000 additional workers were on our pay rolls than in March 1933, and the employment level nearly equalled that of 1929;
2. Hourly wage rates were more than 70 percent higher than precode levels;
3. The weekly incomes—purchasing power—of cotton-mill workers, adjusted for changes in living costs, was appreciably higher than in 1929.

Furthermore, the work week had been reduced from 48, 55, and even 60 hours to an industry-wide level of 40 hours.

These notable benefits for labor, attributable to National Industrial Recovery Act, were accomplished, it should be emphasized, in the face of the facts that the cost of raw material had been increased nearly 100 percent, that the labor cost of processing a bale of cotton had increased 80 percent under the code and that one employee on the average processed only 13 bales of cotton in the first year under the code as against 18 bales in the year preceding the code.

How is all this possible? Because National Industrial Recovery Act embodied a principle which the Consumers' Goods Industries Committee believes must be an integral part of any such economic legislation—"To put a bottom under wages alone, however, is not enough. You cannot stabilize hours and wages unless you stabilize the source from which these wages flow. During the emergency which still continues, it is necessary to check competitive practices which are destructive of the stability of industrial units and which, prior to the codes, were making it almost impossible for numerous concerns, particularly the smaller ones, to survive.

"The flexible provisions of the National Industrial Recovery Aministration make possible policies and provisions, which need to be made available during emergencies with minimum delay, for preventing or mitigating the effects of undue and harmful disruption of prices and for adjusting the use of productive facilities in overcapaciated industries to what the market is able to absorb.

"If the code provisions which have to a measurable extent succeeded in stabilizing business were now swept away, in our judgment, there would be a return to that failing of confidence, contracting of credit, depleting of capital, and falling off in wages, all of which are now being held in check."

The need of a measure to deal with overcapacity is illustrated by conditions in the cotton-textile industry. In the mills of the industry there are in place approximately 30,000,000 spindles. A demand for cotton goods equivalent to that of 1929 could be readily satisfied by the operation of 15,600,000 spindles if run 24 hours a day.

This overcapacity, even if we allow for the fact that many small mills are so located that there are no housing facilities available to accommodate employees for continuous operation, is enormous. It resulted largely from war conditions which, to meet abnormal demands, led to a great development of new facilities, and, in numerous instances, to a change from one-shift to two-shift and, to some extent, to three-shift operation.

The devastating results of the overcapacity thus developed are closely interwoven with the causes and effects of the great depression through which we have been passing and the national emergency which it has produced. Efforts by provisions in codes of fair competition to check these devastating results are similarly interwoven with the national effort now being made for economic recovery.

A marked overcapacity in an industry is destructive of fair competition in that industry. Where the productive capacity is reasonably in balance with demand there exist conditions for normal and fair competition. Buyers are competing actively among themselves to obtain their requirements; sellers are com-

peting actively among themselves to dispose of their products. It is essential to the protective functioning of the competitive system that there be both this active competition among buyers and active competition among sellers. The system breaks down when the reasonable balance of this duality of active competition is lost or destroyed. Such balance is destroyed when there is an overhanging overcapacity in an industry. In that situation, there is an acute pressure on each unit to seek as large a share as possible of the inadequate demand. The overhead based on capacity runs on. There is not enough business to keep all busy and the pressure to reduce overhead by volume drives the seller into panic selling, whereas the buyer, knowing the overcapacity and ever-present threat of overproduction, holds off in the knowledge that his demands can be more than amply satisfied and on his own terms, whenever he gets ready to buy.

The inevitable result of this situation is the scramble of sellers for orders in order to secure volume and a cutting of prices for that purpose without regard to costs. The result reflects inevitably on the wage earner. There is a steady pressure on the employees to accept lower wages in order to make it possible for the plant to secure orders and to keep the plant operating. There is a tendency to eat up the working capital of the concern in continuing to do work below cost in the desperate efforts of the concern at least to keep operating. When in this situation, concerns do go under but the factor and machines are not destroyed—they merely afford a temptation for others to buy them in for a low figure and to increase the unfair and destructive competition by their being operated at fixed charges far less than those properly attributable to the capital involved.

No individual concern, no matter how clearly it saw the devastating effects of what all were doing, could make any impression on the situation. The pressure of overcapacity on each unit to get as large a part of the inadequate demand as it could, in order to keep going at all, drove each along a course which it was obvious was collectively disastrous. Concerted action by all to check these destructive forces was the only way in which the situation could be met in this national emergency. This was a fundamental reason and justification for the National Industrial Recovery Act.

Maximum hour and minimum wage provisions obviously meant greatly increased costs as has been demonstrated by charts already submitted. The industry could not carry this burden if the effects of overcapacity were to continue, if credit was to continue to shrink, and if working capital was to continue to be used up. Indeed, it was essential for credit to be restored to secure additional working capital to carry the additional costs.

But without the provision for machine-hour limitation the industry could not have undertaken these other steps and the heavy burden of increased costs which they involve. Without this provision employment could not have been maintained throughout as many communities. Without this provision our workers would have experienced more irregular and intermittent employment.

It is this provision of the code which was attacked before this committee on a week ago yesterday by my friend Russell E. Watson, of Johnson & Johnson.

Our code fosters monopoly, according to Mr. Watson, and in the next breath it is an utter failure, because it has not eliminated one-third of the spindles in the industry.

What tests shall be applied to determine a mill's fitness for inclusion within the charmed circle which Mr. Watson would prescribe? Have we reached that point in our economic development and thought where we are prepared to eliminate ruthlessly cotton mills and the communities dependent upon them merely because the machinery is so many years old?

Let me give you a little history as to this matter:

At the time of the adoption of our code, and since then, Mr. Watson and a few other members of the industry have opposed the provision of our code which puts a maximum of mill operation at 80 hours per week. This maximum came as a fruition of long effort in this industry. Some years ago an effort to secure the voluntary elimination of night work for women and minors was joined in by 80 percent of the industry but owing to the inability of securing unanimity it proved impracticable to continue this measure. With 80 hours of operation the capacity of the industry is in excess of any effective demand for its products which has existed or is likely to arise in the immediate future. Mr. Watson has urged that this limitation be done away with and that mills be permitted to return to running 24 hours, including all-night schedules, and has urged that his mills, by running 24 hours a day, could make some saving in cost. The industry generally has definite objections to Mr. Watson's proposal. In the first place there is no economic necessity for all-night operation of cotton textile mills. Ours

are not such continuous operations as technical reasons make necessary in certain other industries. Other civilized countries of the world do not find it necessary to work textile employees all night and we do not think the United States should lead the way in this direction. In the second place, what would be the result if our two-shift limitation in the code was abolished and Mr. Watson's plan for all-night running was substituted? If Mr. Watson's mills and other mills started up on a 24-hour basis it would be inevitable that those competitors who are strong enough financially to increase their housing facilities or are so located in communities that such facilities are available would, under the pressure of competition, follow what to us seems a bad example. The result would be that there would be competitive pressure on every unit in the industry to go to 24-hour operation. This in effect would very nearly double the present capacity of the mills which is already in excess of effective demand. This would further accentuate the ruinous effects on the market of overcapacity—effects which even under two-shift operation are apparent at the moment in several important branches of the industry. This would not bother Mr. Watson because he produces his cotton cloth not for sale as such but as material for further manufacture in the surgical dressing field which his company largely dominates. It would, however, be disastrous for a majority of the industry which is now in difficulties. We do not believe this is any time to force mills out of business with the resulting disaster to the communities dependent on them.

The whole structure of the Cotton Textile Code was built to protect and provide for the welfare of the future industry which consists, to an extent not realized generally, of small companies. It is a fact that of the 1,100-odd mills in this industry, 680 are mills whose average employment approximates 200 persons. In this same connection 588 of the 1,100 mills in the industry are located in communities of less than 5,000 population and actually more than one-half of the workers in our industry are employed in towns of 10,000 or less population. There are no large units in this industry as they are known in steel, oil, or automobile.

In many of these communities labor supply and housing facilities essential to 3 or 4 shift operation either do not exist or are inadequate. Nor have many of these mills the financial resources or the credit for investment in such facilities. A few concerns such as the Johnson & Johnson mills, which have ample housing facilities, and great financial resources, would have at their mercy these smaller concerns. Fitness to survive may be determined largely by prevailing competitive conditions. Many mills entirely fit to survive under decent competitive conditions can be made unfit and "marginal" if this single provision of our code is eliminated.

Reasonable limitation of capacity, during this emergency, provided in the code, as has been demonstrated, spreads available business among all mills just as available work is spread among workers by operation of the maximum-hour provision. For a more detailed discussion of this subject I submit to the committee copies of a memorandum to the National Industrial Recovery Board in a hearing on January 10, 1935.

CODE PROVISIONS TO PREVENT PRICE DEMORALIZATION

In the cotton textile industry we have been able to strike directly at the cause of the break-downs in the sound functioning of competition rather than at its effects through the 80-hour provision in our code which narrows the gap between potential capacity and available demand. Our code contains none of the measures adopted under the National Industrial Recovery Administration to deal directly with price demoralization.

But the fact that these measures may not be suitable for our industry does not mean that they are not essential in other industries where different conditions exist. As our committee has stated the flexibility of the National Industrial Recovery Act makes possible policies and provisions for preventing or mitigating the effects of undue and harmful disruption of prices.

None of these measures, open-price filing provisions, selling-below-cost provisions, mark-up provisions, and provisions against the use of particular methods of price competition, such as varying discounts and rebates, constitute price fixing. They are merely designed to put some reasonable floor under prices or to diminish their demoralization and to insure getting from the competitive system a fair price—one not unduly high and so oppressive to the seller. All of them have certain things in common.

1. They were all prompted by and are molded by certain characteristics and defects in the working of the competitive system, which were emphasized by what has taken place during the depression.

2. None of them was directed toward substituting governmental operation for individual competitive operation.

3. On the other hand, all of them set certain boundaries which individual competitive action cannot transgress—where the result of all units going beyond those boundaries would be against the interest of each and against the public interest.

4. In all these measures we are dealing with a new technique. Each is susceptible of mistaken use; each, in fact, may have been used in cases where there was no occasion for its use, where it could not be used successfully because of particular conditions, and in situations where it has been misused.

The situation is still so serious that the question immediately arises whether any of these weapons for mitigating destructive competition can at this time be laid aside without danger of losing ground gained. The real problem is where can they usefully be employed, and how can the effectiveness of their use be improved?

For a more detailed discussion of the philosophy underlying such code provisions, you are referred to the memorandum on this subject submitted in behalf of the Consumers' Goods Industries Committee at the National Industrial Recovery Board hearing on January 10, 1935.

COMPLIANCE PROVISIONS

On the whole, we believe that the principles and policies of the present act are sound. The difficulties that have arisen have been in the administration of some of its provisions and we are confident that once the uncertainty surrounding its continuation is removed, it can be made to function more effectively. In this connection our committee has made certain recommendations which are now before this committee.

IMPORTS

That our difficulties are attributable not to the act itself but to the administration of some of its provisions is evidenced by the experience some of our consumer goods industries have had with section 3 (e). This section expressed in clear terms the desire of the Congress that prompt steps should be taken to protect our industries, which had assumed the burden of increased costs under codes, from the unfair competition of foreign low-cost products entering our domestic markets. Yet to date the administration of this section has afforded little relief and a number of our consumer industries, including the cotton textile industry, are facing demoralized market conditions owing to the large increase in imports from Japan and the constant threat of further flooding of some of our markets.

The recommendations of the Consumers' Goods Industries Committee on this subject are embodied in the following resolution which has been transmitted to the National Industrial Recovery Board with a request for a conference looking toward the development of a summary procedure for giving prompt relief under section 3 (e):

Whereas the codes adopted under the National Industrial Recovery Act have greatly increased industrial costs in our domestic consumers' goods industries over levels existing prior to the act;

Whereas, as a consequence, in a number of consumers' goods industries domestic manufacturers have been placed at a most serious disadvantage with respect to importations of competitive foreign articles produced under wage scales far below the standards established in the United States, which in the public interest should be preserved;

Whereas the act recognizes that unless drastic and prompt steps are taken such a situation would defeat the objectives of the act by diminishing domestic production and dislocating the domestic price scale essential to carrying out the wage and labor provisions of the codes, and to restoring a sound condition in industries which adopted codes;

Whereas the present administration of section 3 (e) of the act has proved ineffective to afford protection to the codes, which the act was designed to provide;

Whereas, under that machinery, it is necessary for an industry to present and prove the facts which afford a foundation for the action of the President, once before the National Recovery Administration, and again before the Tariff Commission;

Whereas the detailed information required under the forms in use requires such time in preparation and the sources for accurate details are so lacking that the summary disposal of problems of this nature, which the effective administration of the act requires, is impossible; Now, therefore, be it

Resolved, That a summary procedure be devised and put into effect by which, upon the presentation of broad facts showing the nature of this foreign competition and its threat to domestic industries operating under codes, they can be immediately reviewed by summary proceedings and a quota set for such importations which will confine them to not more than a moderate advance over the average importations for the years preceding; and be it further

Resolved, That in the event, under the present section 3 (e), no satisfactory procedure can be developed to obtain such prompt relief, the Congress of the United States be urged to enact legislation which will provide, with respect to any industry in which the importation of any low-cost competitive article from any foreign country is endangering the maintenance of the code for such industry, for limiting, during the period of the emergency, the importation of such article from such country to a volume not greater than the average volume of such importation of such article from such country during the specified precode period; and be it further

Resolved, That the chairman of this committee be, and he is hereby, directed to transmit a copy of the foregoing preambles and resolutions to the National Industrial Recovery Board.

In the event that no such satisfactory procedure can be developed, our committee believes that there should be included in the new act a provision limiting the volume of low-cost foreign articles that can be imported to not more than average for a specified period prior to the code.

In the administration of the National Industrial Recovery Act no rigid general rules affecting code provisions should be prescribed. All rules should be flexible, varying according to the circumstances in particular industries, and should not be imposed without the consent of the industry affected.

If there is one thing that National Recovery Administration experience has made clear, it is that conditions vary so widely as between different industries that no general rules can be laid down as to employment, hours, and wages which would not have grave and possible disastrous consequences to some industries, however fair it might be with respect to others.

Many industries could not possibly increase wages without serious danger of forcing many units into bankruptcy. As Mr. Clay Williams pointed out at the recent National Industrial Recovery Board price hearing, the Research and Planning Division of the National Recovery Administration has found that the Industries of the country suffered the enormous loss of $9,000,000,000 in working capital in the year 1932 alone—and the depression has now continued over 5 years.

Many industries would be completely dislocated by hourly schedules which are entirely appropriate for others.

In some industries the increased prices necessarily resulting from any substantial increase in wages would create consumers' resistance, decrease demand, and thus defeat the very object in view.

Our committee from the time of its formation has given careful study to this problem, and there is attached a list of nine suggestive tests, by no means all-inclusive but indicative of the intricacies involved in the establishment or modification of code provisions. These were formulated by the committee and submitted to the National Recovery Administration over a year ago.

Our committee feels, therefore, that any method of changing wages and hours which does not take into consideration the needs and characteristics of the individual industry would in the end produce more harm than good.

Whether codes should ever be modified by Executive order without the consent of the industry concerned has been the subject of much discussion. The President and the Recovery Board have wisely hesitated to use such power.

In matters of such enormous importance as rates of wages and hours of labor, we record our profound conviction that Executive orders of that character will be regarded generally throughout industry as arbitrary, that they will seriously impair the growing confidence of industry, and that they constitute an unwise method of procedure.

Such procedure is directly contrary to the idea of self-regulation by industry and the initiation by industry of proposals for Government approval. It destroys the partnership relation between industry and Government, which was the underlying theory of the act—the basis on which it was passed by Congress and on which it has received the support of industry and of the public. As the President said in his address of March 5, 1934:

"The very conception of National Recovery Administration follows the democratic procedure of our Government itself. The theory of self-regulation follows the American method rather than any of the experiments being tried in other nations. * * * I have never believed that we should violently impose flat, arbitrary, and abrupt changes on the economic structure."

Regulation by Executive order is not self-regulation; it is not democratic procedure; it is autocratic procedure.

Any legislation prescribing a 30-hour week or any other rigid limitations as to hours or wages is uneconomic, impracticable, and dangerous.

The National Industrial Recovery Act, because of the flexibility of its provisions, is infinitely to be preferred to any rigid legislation such as the 30-hour week proposal. Enactment of such legislation would—

Dislocate industry and destroy confidence.

Aggravate and continue the depression.

Create cost burdens impossible to bear.

Increase prices, curtail production, and decrease employment.

Nullify the policy of restoring the farmer's purchasing power to parity.

Further curtail our export trade and increase imports.

Seriously retard the normal method of recovery, namely, the revival of the durable-goods and construction industries.

Force bankruptcies, foment strikes and labor troubles, and strike a death blow at many small enterprises.

Stimulate the displacement of labor by machinery.

Injure employers, but would injure employees more.

Set back recovery for an indefinite period of years and would prevent—and not aid—the solution of the employment problem.

The consumers' goods industries have already reemployed a much larger proportion of employees on the 1929 basis than have other branches of industry. Some individual industries—the cotton textile industry, the paper industry, the meat-packing industry, and the chemical industry, for example (U. S. Bureau of Labor Statistics)—are already actually employing as many or more employees than they were in 1929. It would be impossible and wholly unfair to load upon the consumers' goods industries the major task of absorbing the great amount of unemployment still existing in other industries.

The capital goods industries cannot be permanently revived—even with the help of the Public Works program—unless the consumers' goods industries have a sufficient margin to enable them to undertake repairs, replacements, or other capital expenditures. We are customers for durable goods, but we can only buy from the industries that produce them, when the margins between our costs and the prices at which we sell permit expenditures of that character.

Consumers' goods industries have no inexhaustible funds on which to draw.

There is no mystery whatever in the simple proposition that if consumers' goods industries are to do the job they ultimately must do in buying more largely from the capital goods industries, that job must be financed by reasonable spreads between costs of labor and materials, and the prices at which we sell. In proposals to increase labor costs in codes, and simultaneously to take away trade practice and other stabilizing provisions of codes, that simple proposition appears sometimes to be in danger of being entirely overlooked.

The entire inadequacy of uniform fixed hours and fixed wages throughout an industry to prevent ruinous and destructive competition and to secure the correction of resulting demoralized conditions in an industry is not a theory; it has been demonstrated. For example: In England the complete unionization of an industry produces minimum wages and maximum hours, but it does not prevent the type of competition which is ruinous to an over capacitated industry. This has been demonstrated over a long period of years in the coal industry and in the textile industry. In both of these industries, in spite of these fixed limitations of wages and hours, it is essential, both from the standpoint of industry and labor, to take drastic measures which will limit and direct the competitive process. There is no more reason to expect in this country, that the hour and wage provisions of codes can furnish a substitute for provisions directed against price demoralization.

In conclusion, I return to the resolution of the Consumers' Goods Industries Committee that you cannot stabilize wages without first stabilizing the source from which those wages must flow.

A code or a law which fails to recognize that fundamental by specific and definite provision will be nothing more than another Volstead Act and as certainly doomed to failure with grave consequences to the entire national economic structure.

Approval	Spindles
Acadia Mills, Lawrence, Mass	60, 228
American Spinning Co., Greenville, S. C	54, 000
American Thread Co., New York	402, 132
Amoskeag Manufacturing Co., New York	642, 936
Anchor Duck Mills, Rome, Ga	29, 172
Wm. Anderson Textile Manufacturing Co., New York	
Androscoggin Mills, Lewiston, Maine	68, 428
Appalachian Mills Co., Knoxville, Tenn	36, 408
The Apponaug Co., Apponaug, R. I	
Ashland Textile Co., Inc., New York	
Avondale Mills, Birmingham, Ala	278, 752
Baltic Mills, Baltic, Conn	85, 920
Bama Cotton Mills, Enterprise, Ala	6, 324
Joseph Bancroft & Sons Co., Wilmington, Del	37, 664
L. Banks Holt Manufacturing Co., Graham, N. C	20, 096
Barnard Manufacturing Co., Fall River, Mass	58, 768
Bates Manufacturing Co., Lewiston, Maine	99, 248
Bay State Thread Works, Springfield, Mass	
Beaumont Manufacturing Co., Spartanburg, S. C	52, 240
Bemis Bros. Bag Co., Boston, Mass	94, 496
Edwin E. Berliner & Co., New York	
Jacob S. Bernheimer & Bro., New York	
Bibb Manufacturing Co., Macon, Ga	262, 144
Edward Bloom Co., New York	
Boott Mills, Boston, Mass	85, 848
Border City Manufacturing Co., Fall River, Mass	40, 764
Borden Mills, Inc., Kingsport, Tenn	88, 648
Bourne Mills, Fall River, Mass	84, 268
Brazos Valley Cotton Mills, West, Tex	9, 796
Brookford Mills Co., Hickory, N. C	18, 368
Brooklyn Textile Dyeing Co., New York	
Brookside Mills, Knoxville, Tenn	80, 652
Callaway Mills, LaGrange, Ga	134, 492
Carnac Cottons Inc., New York	
Carolina Cotton & Woolen, Leaksville, N. C	133, 588
Carolina Mills, Inc., Maiden, N. C	12, 912
Carolina Spinning Co., Taylorsville, N. C	5, 544
Cayuga Linen & Cotton Mills, Lexington, N. C	1, 728
Chadwick Hoskins Co., Charlotte, N. C. (for Gossett Mills & Martinsville Cotton Mill)	210, 696
Charlton Mills, Fall River, Mass	62, 528
Cherokee Spinning Co., Knoxville, Tenn	20, 160
Chiquola Manufacturing Co., Honeapath, S. C	52, 560
Churchill Manufacturing Co., Lowell, Mass	
Cliffside Mills, Cliffside, N. C	66, 132
Cleveland Mill & Power Co., Lawndale, N. C	6, 272
Climax Spinning Co., Belmont, N. C	21, 760
Cohn-Hall-Marx Co., New York	
Columbia Manufacturing Co., Ramseur, N. C	10, 864
Columbus Manufacturing Co., Columbus, Ga. (Eagle, Phenix and Bradley)	167, 320
Conestogo Cotton Mills, Lancaster, Pa	27, 620
Consolidated Textile Corporation, New York	169, 722
Covington Mills, Covington, Ga	29, 376
Crompton Co., West Warwick, R. I	
Crown Manufacturing Co., Pawtucket, R. I	60, 532
Cumberland Valley Silk Mills, Inc., Chambersburg, Pa	
Dacotah Cotton Mills, Lexington, N. C	22, 752
Dallas Manufacturing Co., Huntsville, Ala	
Dana Warp Mills, Westbrook, Me	54, 056
Darlington Fabrics Corporation, New York	
Darlington Manufacturing Co., Darlington, S. C	51, 520
Davis & Catterall, New York	
Deering Milliken & Co., New York, (for Abbeville Cotton Mills, Dallas Manufacturing Co., Gainesville Cotton Mills, Hartsville Cotton Mills, Judson Mills, Lockwood Co.)	310, 784

APPROVAL—Continued

	Spindles
Dependable Textile Mill, New York	
Derry Damask Mills, Gaffney, S. C	
Derwent Mills Corporation, Pawtucket, R. I	
Dilling Mills Co., Kings Mountain, N. C	14, 112
Double Shoals Mill Co., Shelby, N. C	3, 200
Drayton Mills, Spartanburg, S. C	44, 800
Durfee Mills, Fall River, Mass	73, 968
Durham Cotton Manufacturing Co., Durham, N. C	23, 936
Durham Hosiery Mills, Durham, N. C	68, 432
Dutchess Bleachery, Inc., New York	
Eagle Cotton Mills Co., Inc., Madison	13, 888
Eastern Manufacturing Co., Selma, N. C	18, 720
Edenton Cotton Mills, Edenton, N. C	22, 384
Edwards Manufacturing Co., Augusta, Maine	70, 576
Efird Manufacturing Co., Albemarle, N. C	51, 128
Eno Cotton Mills, Hillsboro, N. C	27, 232
Ericksen Textile Co., Momence, Ill	
Erwin Cotton Mills Co., Durham, N. C	260, 932
Exposition Cotton Mills, Atlanta, Ga	69, 064
Feis & Livingston Co., New York	
Fitchburg Duck Mills, Fitchburg, Mass	
Fitchburg Weaving Co., Fitchburg, Mass	
Fitchburg Yarn Co., Fitchburg, Mass	61, 544
Forrest, Inc., Gloucester City, N. J	
Foster Spinning Co., Fall River, Mass	13, 312
Franklin Mills, Greer, S. C	11, 006
Franklin Process Co., Providence, R. I	11, 408
Gaffney Manufacturing Co., Spartanburg, S. C. (with Sparton Mills)	
Galey & Lord, New York	

FAVORABLE

James S. Gary & Son, Inc., Baltimore, Md	12, 942
Gate City Cotton Mills, Atlanta, Ga	14, 976
Gem Textile Manufacturing Co., Philadelphia, Pa	
Gem Yarn Mills, Cornelius, N. C	10, 768
Geneva Cotton Mills, Geneva, Ala	7, 968
Glencoe Cotton Mills, Columbia, S. C	6, 048
Goldin & Son, New York	
Gosnold Mills Corporation, New Bedford, Mass	72, 556
Gracia Mills, Inc., Pawtucket, R. I	
Granite Cordage Co., Hickory, N. C	
Grantville Mills, Grantville, Ga	15, 000
Great Falls Bleachery & Dye Works, Somersworth, N. H	
Greenville Cotton Mills, Greenville, N. C	10, 560
Greenville Finishing Co., Greenville, R. I	
Grinnell Manufacturing Corporation, New Bedford, Mass	116, 516
Hall & Cary Weaving & Belting Co., Lockport, N. Y	
Hanes Dye & Finishing Co., Winston-Salem, N. C	
Harriet Cotton Mills, Henderson, N. C	57, 782
L. E. Harrower & Son, Amsterdam, N. Y	8, 800
Hathaway Manufacturing Co., New Bedford, Mass	70, 336
Louis S. Henderson, Philadelphia, Pa	43, 392
Hickory Spinning Co., Hickory, N. C	12, 384
Highland Cordage Co., Hickory, N. C	4, 992
Highland Park Manufacturing Co., Rockhill, S. C	61, 328
Hill Manufacturing Co., Lewiston, Maine	88, 416
Hohokus Manufacturing Co., Hohokus, N. J	
Wm. E. Hooper & Sons Co., Baltimore, Md	21, 408
Houston Cotton Mills Co., Houston, Tex	5, 776
Hudson Cotton Goods Co., Greenville, S. C	
Indiana Cotton Mills, Indianapolis, Ind	17, 008
Interlaken Mills, West Warwick, R. I	36, 896
International Braid Co., Providence, R. I	16, 584
Iselin-Jefferson (mills not otherwise listed)	377, 952

FAVORABLE—continued

	Spindles
Issaqueena Mill, Central, S. C	25, 680
Jennings Cotton Mills, Inc., Lumberton, N. C	19, 516
Joanna Cotton Mills, Goldsville, S. C	89, 928
Arthur R. Johnson, New York	
Kendall Mills, Newberry, S. C	180, 152
Kilburn Mill, New Bedford, Mass	121, 280
King Cotton Mills Corporation, Richmond, Va	10, 128
Laurens Cotton Mills, Laurens, S. C	48, 944
Leaksville Woolen Mills, Inc., Charlotte, N. C	11, 964
Ledbetter Manufacturing Co., Rockingham, N. C	8, 048
W. S. Libbey Co., Lewiston, Maine	6, 048
Linen Thread Co., Inc., New York	30, 204
Lisbon Spinning Co., Boston, Mass	32, 716
H. E. Locke & Co., Boston, Mass	
Louisville Textiles, Inc., Louisville, Ky	21, 160
Locke Cotton Mills Co., Concord, N. C	36, 264
D. Mackintosh & Sons Co., Holyoke, Mass	11, 928
Mahler Textiles Inc., New York	
Mainzer Minton Corporation, New York	
Majestic Manufacturing Co., Belmont, N. C	12, 768
Mansfield Mills, Inc., Lumberton, N. C	38, 740
Manville Jenckes Corporation, Manville, R. I	326, 396
Marvlo Mills, New York	
McCord Co., Louisville, Ky	816
W. E. McKay & Co., New York	
Mexia Textile Mills, Mexia, Tex	4, 968
John C. Meyer Thread Co., Lowell, Mass	
Millville Manufacturing Co., Philadelphia, Pa	38, 112
Victor Monaghan Co., Greenville, S. C	224, 960
Monarch Mills, Union, S. C	167, 210
Montgomery Co., Windsor Locks, Conn	15, 472
Montop Textile Co., Central Falls, R. I	
Monument Mills, Housatonic, Mass	37, 440
Moraff Craig Co., Inc	
Nashawena Mills, New Bedford, Mass	149, 760
Nashua Manufacturing Co., Nashua, N. H	296, 412
Naumkeag Manufacturing Co	163, 312
Neild Manufacturing Co., New Bedford, Mass	62, 636
Newberry Cotton Mills, Newberry, S. C	44, 456
Newbraunfels Textile Mills, Newbraunfels, Tex	12, 672
Oconee Textiles, Inc., Westminster, S. C	13, 000
J. M. Odell Manufacturing Co., Pittsboro, N. C	14, 378
Old Colony Manufacturing Co., Taunton, Mass	9, 168
Oneida Bleachery, Inc., New York Mills, N. Y	
Onondaga Rug Mills, Inc	
Osage Manufacturing Co., Bessemer City, N. C	16, 272
Otis Co., New York	122, 542
Oxford Cotton Mills, Oxford, N. C	6, 120
Pacific Mills, Boston, Mass	400, 140
Pacolet Manufacturing Co., Pacolet Mills, S. C	143, 772
Pee Dee Manufacturing Co., Rockingham, N. C	15, 120
Peerless Spinning Co., Lowell, N. C	18, 752
Pelzer Manufacturing Co., Boston, Mass	135, 716
Pepperton Cotton Mills, Jackson, Ga	12, 528
Pierce Manufacturing Corporation, New Bedford, Mass	51, 440
Pittsfield Mills, Inc., Pittsfield, N. H	24, 904
Max Pollace & Co., Inc., New York	
Pomona Manufacturing Co., Greensboro, N. C	24, 416
Postex Cotton Mills, Post, Tex	11, 520
Potter Fine Spinners, Inc., Pawtucket, R. I	
Primrose Tapestry Co., Rome, Ga	
Prince Lauten Corporation, New York	
Priscilla Braid Co., Central Falls, R. I	
Prospect Weaving Co., Phillipsdale, R. I	
Randolph Mills, Inc., Franklinville, N. C	12, 688

FAVORABLE—continued

	Spindles
Riverside & Dan River Cotton Mills, Danville, Va	468, 608
Rockfish Mills, Hope Mills, N. C	35, 136
Rossendale Ruboil Co., Newark, N. J	
Rowan Cotton Mills, Salisbury, N. C	24, 936
Royal Cotton Mill, Wake Forest, N. C	16, 000
Royal River Mills, Inc., Yarmouth, Maine	3, 280
John B. Ruckstuhl, Inc., New York	
Sagamore Manufacturing Co., Fall River, Mass	147, 664
Salisbury Cotton Mills, Salisbury, N. C	133, 344
Samoset Cotton Mills, Boston, Mass. (Taladega, Ala.)	14, 544
Samson Cordage Works, Boston, Mass	8, 064
Santee Mills, Orangeburg, S. C	30, 800
Seamans & Cobb Co., Hopkinton, Mass	
Shelby Cotton Mills, Shelby, N. C	20, 832
Sherman Manufacturing Co., Sherman, Tex	7, 956
Shuford Mill Co., Hickory, N. C	5, 140
Soule Mill, New Bedford, Mass	92, 416
Southern Mills, Inc., Atlanta, Ga	
Southern Silk Mills, Greensboro, N. C	
Spartan Mills, Spartanburg, S. C. (also Gaffney Mfg. Co.)	165, 844
Spray Cotton Mills, Spray, N. C	25, 968
Standard-Coosa-Thatcher, Chattanooga, Tenn	120, 272
Standard Knitting Mills, Inc., Knoxville, Tenn	23, 508
John J. Strassel & Son, New York	
J. Sullivan & Sons Manufacturing Co., Philadelphia, Pa	
Suncook Manufacturing Co	57, 280
Texas Textile Mills, Dallas, Tex	41, 168
Textile Fabrics Association, New York	
Thames Dyeing & Bleaching Co., Niantic, Conn	
James Thompson & Co., Inc., New York	
Todd Carpet Manufacturing Co., Carlisle, Pa	
Travora Manufacturing Co., Graham, N. C	12, 836
Tupelo Cotton Mills, Tupelo, Miss	16, 000
M. P. Tuttle Co., Inc., New York	
Uncas Finishing Co., Norwich, Conn	
Undine Twine Mills, Moodus, Conn	4, 104
Union Manufacturing Co., Union Point, Ga	4, 980
Union Webbing Co., Philadelphia, Pa	
United States Finishing Co., Providence, R. I	
Van-Moore Mills Co., Franklinton, N. C	
Virginia Manufacturing Co., Greenville, S. C	5, 248
Ward-Davidson Co., Philadelphia, Pa	
W. Warren Thread Works, Westfield, Mass	
Waterhead Mills, Inc., Lowell, Mass	
Wauregan Quinebag Mills, Inc., Danielson, Conn	108, 820
Waverly Mills, Inc., Laurinburg, N. C	65, 000
Wellington Sears Co., New York (mills not otherwise recorded)	364, 576
Walter C. Welsh & Bro., New York	
Wennonah Cotton Mills Co., Lexington, N. C	15, 660
West Boylston Manufacturing Co., Alabama	40, 824
Whitney Manufacturing Co., Whitney, S. C	36, 572
Whittier Mills Co., Chattahoochee, Ga	15, 260
Woodside Cotton Mills Co., Greenville, S. C	153, 872
Worcester Bleach & Dye Works Co., Worcester, Mass	
David S. Yankauer, Inc., New York	
York Manufacturing Co., Saco, Maine	86, 480
	11, 833, 810

CODE AUTHORITIES CONSUMERS' GOODS INDUSTRIES

Mr. A. E. Swanson, Academic Costume Industry, E. R. Moore Co., Chicago, Ill.

Mr. Henry Kohler, Adhesive and Ink Industry, Arabol Manufacturing Co., 110 East Forty-second Street, New York, N. Y.

Mr. John W. Brennan, executive secretary Advertising Specialty Manufacturing Industry, 917 Fifteenth Street NW., Washington, D. C.

Mr. R. E. Demmon, Agricultural Insecticide and Fungicide, Stauffer Chemical Co., 420 Lexington Avenue, New York.

Mr. Joseph I. Wallace, secretary Animal Soft Hair Industry, room 1005, 18 East Forty-first Street, New York, N. Y.

Mr. McCarthy Hanger, Artificial Limb Manufacturing Industry, J. E. Hanger Co., Philadelphia, Pa.

Mr. E. B. Weiss, secretary Art Needlework Industry, 128 West Thirty-first Street, New York, N. Y.

Mr. G. H. Hamacher, secretary Athletic Goods Manufacturing Industry, room 1710, Republic Building, 209 South State Street, Chicago, Ill.

Mr. Clarence F. Bayer, Assembled Watch Industry, Pretzfelder & Mills Co., 1 Maiden Lane, New York, N. Y.

Mr. Henry Stude, executive secretary Baking Industry, 1135 Fullerton Avenue, Chicago, Ill.

Mr. O. R. Burkhart, chairman Batting and Padding Industry, room 1018, Ambassador Building, St. Louis, Mo.

Mr. Harry S. Vorhis, secretary Bias Tape Industry, 2516 Empire State Building, New York, N. Y.

Mr. Robert S. Lemon, Bituminous Coal Industry, 302 National Bank Building, Pittsburgh, Pa.

Mr. James G. Ferguson, Book Publishing Industry, Doubleday, Doran Co., Garden City, Long Island, N. Y.

Mr. W. Parker Jones, secretary Bottled Soft Drink Industry, 726 Bond Building, Fourteenth Street and New York Avenue, NW., Washington, D. C.

Mr. H. F. Ledlie, Broom Manufacturing Industry, American Brush & Broom Co., Amsterdam, N. Y.

Mr. George J. Lincoln, Jr., secretary Bulk Drinking Straw, Wrapped Drinking Straw, Wrapped Toothpick and Wrapped Manicure Stick Industry, Lincoln-Liberty Building, Philadelphia, Pa.

Mr. Lester B. Platt, secretary Candle Manufacturing Industry and the Beeswax and Bleachers Refiners Industry, 19 West Forty-fourth Street, New York, N. Y.

Mr. W. H. Lumpkin, secretary Candlewick Bedspread Industry, Dalton, Ga.

Mr. George Williamson, chairman Candy Manufacturing Industry, 11 West Washington Street, Chicago, Ill.

Mr. A. I. Ellsworth, secretary Canned Salmon Industry, 1440 Exchange Building, Seattle, Wash.

Mr. Frank E. Gorrell, secretary Canning Industry, 810 Eighteenth Street, NW., Washington, D. C.

Mr. Edward R. Dewey, secretary Canvas Stitched Belt Manufacturing Industry, 609 Investment Building, Washington, D. C.

Mr. Isaac Ross, secretary Cap and Cloth Hat Industry, 1107 Broadway, New York, N. Y.

Mr. G. M. Pittee, chairman Carbon Dioxide Industry, 75 East Forty-fifth Street, New York, N. Y

Mr. King Hoagland, secretary Carpet and Rug Manufacturing Industry, 405 Lexington Avenue, New York, N. Y.

Mr. H. W. Huber, China Clay Producing Industry, 460 West Thirty-fourth Street, New York, N. Y.

Mr. J. G. Wells, secretary Chinaware and Porcelain Manufacturing Industry, 104 East Fourth Street, East Liverpool, Ohio.

Mr. Samuel L. Kuhn, secretary Cigar Manufacturing Industry, 125 Park Avenue, New York, N. Y.

Mr. Smith F. Ferguson, Clock Manufacturing Industry, Western Clock Co., 107 Lafayette Street, New York, N. Y.

Mr. Chalmers M. Hamill, secretary Cocoa and Chocolate Manufacturing Industry, 535 Fifth Avenue, New York, N. Y.

Mr. R. M. Strutz, chairman Corn Cob Pipe Industry, Phoenix American Pipe Works, Boonville, Mo.

Mr. F. S. Jefferies, secretary Cotton Cloth Gloves Manufacturing Industry, 176 West Adams Street, Chicago, Ill.

Curled Hair Manufacturing Industry, 55 West Forty-second Street, New York, N. Y.

Mr. S. M. Williams, manager Daily Newspaper Publishing Business Industry, 230 West Forty-first Street, New York, N. Y.

Mr. Charles Wesley Dunn, secretary Dog Food Industry, 608 Fifth Avenue, New York, N. Y.

Mr. A. F. Brown, secretary Dry Color Industry, 55 West Forty-second Street, New York, N. Y.

Mr. Lloyd S. Cochran, secretary Dry Goods Cotton Batting Industry, P. O. box 502, Lockport, N. Y.

Mr. B. E. Babbitt, secretary Dowel Pin Manufacturing Industry, 921 Leland Avenue, South Bend, Ind.

Mr. F. F. Taylor, chairman Fishery Industry, Atlantic Coast Fisheries, 111 John Street, New York, N. Y.

Mr. W. F. Martin, Flavoring Products Industry, J. Hungerford-Smith Co., Rochester, N. Y.

Mr. A. E. Murphy, general agent Folding Paper Box Industry, 19 West Forty-fourth Street, New York, N. Y.

Mr. J. S. Barshay, secretary Food Dish and Pulp and Paper Plate Industry, 2 Lafayette Street, New York, N. Y.

Mr. John F. Mallon, secretary Fur Dressing and Fur Dyeing Industry, 128 West Thirty-first Street, New York, N. Y.

Mr. J. Hodgson, executive director Fur Manufacturing Industry, 363 Seventh Avenue, New York, N. Y.

Mr. Henry Horn, Galvanized Ware Manufacturing Industry, Standard Manufacturing Co., Brooklyn, N. Y.

Mr. R. S. Crawford, secretary Garter, Suspender, & Belt Manufacturing Co., 551 Fifth Avenue, New York, N. Y.

Mr. P. J. O'Connell, secretary Handkerchief Industry, 95 Madison Avenue, New York, N. Y.

Mr. Herbert Tenzer, secretary Ice Cream Cone Industry, 2 Lafayette Street, New York, N. Y.

Mr. J. E. Brand, chairman Imported Date Packing Industry, 600 Miami Street, Urbana, Ohio.

Mr. DeWitt C. Reed, secretary Imported Green Olive Industry, 105 Hudson Street, New York, N. Y.

Miss Ruth Boyce, secretary Industrial Alcohol Industry, 420 Lexington Avenue, New York, N. Y.

Mr. Max Zuckerman, executive director Infant's and Childrens' Wear Industry, 10 West Thirty-third Street, New York, N. Y.

Dr. Robert C. White, secretary Insecticide and Disinfectant Manufacturing Industry, Falls of the Schuylkill, Philadelphia, Pa.

Mr. Maurice Mossesson, executive secretary Ladies' Handbag Industry, 347 Fifth Avenue, New York, N. Y.

Mr. Karl Gerstl, secretary Leather and Wool Knit Glove Industry, 508 Know Building, Gloversville, N. Y.

Mr. H. Lewis Brown, general counsel, Licorice Industry, 200 Fifth Avenue, New York, N. Y.

Mr. Chas. P. Garvin, secretary, Loose Leaf and Blank Book Industry, 740 Investment Building, Washington, D. C.

Mr. David Drechsler, secretary, Men's Clothing Industry, 51 Madison Avenue, New York, N. Y.

Mr. Herbert B. Livesey, secretary, Merchant and Custom Tailoring Industry, 511 Fifth Avenue, New York, N. Y.

Mr. R. M. McClure, secretary, Cotton Wrappings Industry, 111 West Washington Street, Chicago, Ill.

Mr. Jasper R. Lewis, secretary, Millinery Industry, 469 Fourth Avenue, New York, N. Y.

Mr. Wilwyn Herbert, secretary, Narrow Fabrics Industry, 87 Orange Street, New Haven, Conn.

Mr. J. A. Castillo, secretary, Needlework Industry in Puerto Rico, Mayaguez, Puerto Rico.

Mr. Granville P. Rogers, secretary, Drinking Cup and Round Nesting Food Container Industry, 420 Lexington Avenue, New York, N. Y.

Mr. Martin Kurten, Pasteurized-Blended and Process Cheese Industry, Conestoga Cream & Cheese Manufacturing Co., 171 Chambers Street, New York City.

Mr. J. Minor Ewing, secretary, Medicine Industry, 92 Varick Street, New York, N. Y.

Mr. H. S. Adler, secretary, Paperboard Industry, 608 South Dearborn Street, Chicago, Ill.

Mr. W. F. L. Tuttle, managing agent, Butter Industry, 114 East Thirty-second Street, New York, N. Y.

Mr. A. Homer Smith, Pharmaceutical and Biological Manufacturing Industry, Sharp & Dohme, Philadelphia, Pa.

Mr. Charles D. Kaufman, chairman, Photographic and Finishing Industry 425 South Wabash Avenue, Chicago, Ill.

Mr. J. T. Menzies, Pickle Packing Industry, Crosse & Blackwell Co., Baltimore, Md.

Mr. Ralph Bloomfield, secretary Powder Puff Industry, 1107 Broadway, New York, N. Y.

Mr. Daniel R. Forbes, managing agent Maraschino Cherry and Glace Fruit Industry, 839 Seventeenth Street NW., Washington, D. C.

Mr. Henry G. Burke, executive secretary Pretzel Industry, 1016 Munsey Building, Baltimore, Md.

Mr. Milton M. Adler, secretary Pyrotechnic Manufacturing Industry, 216 Mills Building, Washington, D. C.

Mr. W. J. Parker, secretary Ready-Made Furniture Slip-Cover Manufacturing Industry, 7 East Forty-fourth Street, New York, N. Y.

Mr. Marion Blaker, secretary Reclaimed Rubber Manufacturing Industry, 230 Park Avenue, New York, N. Y.

Mr. Horace S. Manges, secretary Robe and Allied Products Industry, 60 East Forty-second Street, New York, N. Y.

Mr. W. J. Parker, secretary Safety Razor and Blade Manufacturing Industry, 7 East Forty-fourth Street, New York, N. Y.

Mr. C. M. Kavanaugh, secretary Sample Card Industry, 522 Fifth Avenue, New York, N. Y.

Mr. George J. Lincoln, manager Sanitary Milk Bottle Closure Industry, 1208 Lincoln-Liberty Building, Philadelphia, Pa.

Mr. C. M. Kendrick, secretary Sanitary and Waterproof Specialties Manufacturing Industry, 551 Fifth Avenue, New York, N. Y.

Mr. Carl S. Whittier, executive secretary Shoe Pattern Manufacturing Industry, 606 Chamber of Commerce Building, Boston, Mass.

Mr. W. C. Arthur, chairman Slide Fastener Industry, Hookless Fasterner Co., Meadville, Pa.

Small Arms and Ammunition Manufacturing Industry, 103 Park Avenue, New York, N. Y.

Mr. George C. Thompson, secretary Solid Braided Cord Industry, 1405 Healey Building, Atlanta, Ga.

Mr. John Max Weyer, secretary Spice Grinding Industry, 370 Lexington Avenue, New York, N. Y.

Mr. S. L. Kuhn, Surgical Dressings Industry, S. D. Leidesdorf & Co., 125 Park Avenue, New York, N. Y.

Mr. L. K. Loomis, secretary Table Oil Cloth Industry, 420 Lexington Avenue, New York, N. Y.

Mr. Wayne S. Evans, secretary Umbrella Frame and Hardware Manufacturing Industry, F. W. Evans & Son, 4623 Paul Street, Frankford, Philadelphia, Pa.

Mr. Herman Mason, executive director Undergarment and Negligee Industry, 261 Fifth Avenue, New York, N. Y.

Mr. Harvey Willson, secretary Drapery Textile Industry, 185 Madison Avenue, New York, N. Y.

Mr. W. P. Fiskett, secretary Vegetable Ivory Button Manufacturing Industry, 40 Worth Street, New York, N. Y.

Mr. James A. Massel, secretary Women's Belt Industry, 50 East Forty-Second Street, New York, N. Y.

Mr. Arnold W. Engel, Women's Neckwear and Scarf Manufacturing Industry, Engel & Bauer Co., New York, N. Y.

Mr. Arthur Besse, chairman Wool Textile Industry, 386 Fourth Avenue, New York, N. Y.

Mr. Frank E. West, Jr., secretary Yeast Industry, 595 Madison Avenue, New York, N. Y.

American Glassware Industry, J. Mathews, Jr., secretary, 19 West Forty-fourth Street, New York, N. Y.

Artificial Flower & Feather Industry, Jasper Lewis, Secretary, 8 West Thirty-seventh Street, New York, N. Y.

Band Instrument Manufacturing Industry, Harry Meixell, secretary, 45 West Forty-fifth Street, New York, N. Y.

Bedding Manufacturing Industry, Stuart J. Mills, secretary, 608 South Dearborn Street, Chicago, Ill.

Beet Sugar Industry, Neil Kelly, Secretary, 1001 Tower Building, Washington, D. C.

Blouse and Skirt Manufacturing Industries, B. H. Lerner, chairman, 225 West Thirty-fourth Street, New York, N. Y.

Boot and Shoe Manufacturing Industry, Jay O. Ball, managing director, 2812 Chrysler Building, New York, N. Y.

Brewing Industry, Edward I. Pitzpatrick, administrative assistant, 422 Munsey Building, Washington, D. C.

Brush Manufacturing Industry, George A. Fernley, secretary, 505 Arch Street, Philadelphia, Pa.

Can Manufacturers Industry, A. A. Morse, secretary, 60 East Forty-second Street, New York, N. Y.

Canvas Goods Industry, Edward B. Dewey, secretary, 629 Investment Building, Washington, D. C.

Cap and Closure Industry, E. G. Ackerman, secretary, 19 West Forty-fourth Street, New York City.

Carbon Black Manufacturing Industry, C. E. Keyser, secretary, 500 Fifth Avenue, New York City.

Celluloid Button, Buckle and Novelty Manufacturing, Bernard Preston, secretary, 51 West Twenty-fourth Street, New York City.

Chemical Manufacturing Industry, Warren N. Watson, secretary, 608 Woodward Building, Washington, D. C.

Chewing Gum Manufacturing Industry, Ellsworth B. Buck, chairman, Pier 23, Hosebank, Staten Island, N. Y.

Cigar Container Industry, Hobert B. Hankins, secretary, 236 Chestnut Street, Philadelphia, Pa.

Cloth Reel Industry, H. S. Morse, secretary, care of Cloth Reel Manufacturers' Association, 10 East Fortieth Street, New York City.

Coat and Suit Industry, Nathan Wolf, secretary, 132 West Thirty-first Street New York City.

Coffee Industry, William F. Williamson, managing agent, 11 Water Street, New York City.

Collapsible Tube Industry, M. D. Church, secretary, National Press Building, Washington, D. C.

Cooking and Heating Appliance Manufacturing Industry, Mrs. Pauline Burd, secretary, room 702–G, Shoreham Hotel, Washington, D. C.

Cordage and Twine Industry, J. S. McDaniel, secretary, 60 East Forty-second Street, New York City.

Cork Industry, Arthur L. Faubel, executive secretary, 25 West Forty-third Street, New York City.

Corrugated and Solid Fibre Shipping Container Industry, C. F. Ferris, secretary, National Container Association, 205 West Wacker Drive, Chicago, Ill.

Corset and Brassiere Industry, F. D. Dodge, chairman, 232 Madison Avenue, New York City.

Cotton Converting Industry, W. P. Fikcett, secretary, Textile Fabrics Association, 40 Worth Street, New York City.

Cotton Garment Industry, A. F. Allison, secretary, 395 Broadway, New York City.

Cotton Textile Industry, George A. Sloan, chairman, 320 Broadway, New York City.

Covered Button Industry, M. D. Mosessohn, director, 570 Seventh Avenue, New York City.

Crown Manufacturing Industry, Louis B. Montfort, secretary, 218 Munsey Building, 1329 E Street NW., Washington, D. C.

Cylindrical Liquid Tight Paper Container Industry, George J. Lincoln, Jr., executive manager, 1320 Lincoln-Liberty Building, Philadelphia, Pa.

Dental Laboratory Industry, W. C. Babbitt, secretary, room 1111, 1010 Vermont Avenue, Washington, D. C.

Drapery and Upholstery Trimming Industry, W. J. Parker, secretary, 7 East Forty-fourth Street, New York City.

Dress Manufacturing Industry, Morris Kolchin, secretary, room 1368, 1440 Broadway, New York City.

Dry and Polishing Mop Manufacturing Industry, W. A. Babbitt, Jr., secretary, Box 517, South Bend, Ind.

Earthenware Manufacturing Industry, A. E. Hull, Jr., secretary, Zanesville, Ohio.

Electric Storage and Wet Primary Battery, Frank E. Connor, secretary, 7 East Forty-fourth Street, New York City.

Electrotyping and Stereotyping Industry, Neal Gross, secretary, 949 Leader Building, Cleveland, Ohio.

Envelope Industry, Roland B. Bliss, executive secretary, 19 West Forty-fourth Street, New York City.

Excelsior and Excelsior Products Industry, Richard M. McClure, secretary, 111 West Washington Street, Chicago, Ill.

Expanding and Specialty Paper Products.

Fertilizer Industry, Charles J. Brand, secretary, 616 Investment Building, Washington, D. C.

Fibre Can and Tube Industry, David B. Skillman, secretary, room 302, Easton Trust Building, Easton, Pa.

Fibre and Metal Work Clothing Button Manufacturing, O. P. Byrne, secretary, 53 Park Place, New York City.

Fishing Tackle Industry, E. P. Hoyle, executive officer, room 532, 160 North La Salle Street, Chicago, Ill.

Fluted Cup, Pan Liner, and Lace Industry, E. T. Wilson, secretary, 19 West Forty-fourth Street, New York City.

Fresh Oyster Industry, Eugene McCarthy, secretary, 610 Quinnipiac Avenue, New Haven, Conn.

Fresh Water Pearl Button Manufacturing Industry, W. P. Fickett, secretary, 40 Worth Street, New York City.

Funeral Supply Industry, John M. Byrne, secretary, 305 Gerke Building, 123 East Sixth Street, Cincinnati, Ohio.

Furniture and Floor Wax and Polish Industry, W. A. Babbitt, secretary, Box 517, South Bend, Ind.

Glass Container Industry, V. L. Hall, secretary, 19 West Forty-fourth Street, New York City.

Glazed and Fancy Paper Industry, George Butterfield, executive director, 280 Main Street, Fitchburg, Mass.

Graphic Arts Industries, E. W. Palmer, chairman, 631 Tower Building, Washington, D. C.

Gummed Label and Embossed Seal Industry, D. A. Crocker, secretary, 122 East Forty-second Street, New York City.

Gumming Industry, D. A. Crocker, executive secretary, 122 East Forty-second Street, New York City.

Hair Cloth Manufacturing Industry, Daniel Michie, secretary, care of A. Y. Michie & Co., Howard and Berks Streets, Philadelphia, Pa.

Hardwood Distillation Industry, M. H. Haertel, secretary, 820 Albee Building, Fifteenth and G Streets, Washington, D. C.

Hat Manufacturing Industry, Warren S. Smith, secretary-treasurer, 417 Fifth Avenue, New York City.

Horseshoe & Allied Products Manufacturing Industry, John J. Sweedler, in care of Felix H. Levy, 11 Broadway, New York City.

Hosiery Industry, Earl Constantine, chairman, 468 Fourth Avenue, New York City.

Ice Industry, Leslie C. Smith, executive secretary, 878 National Press Building, Washington, D. C.

Knitted Outerwear Industry, Sidney S. Korzenik, secretary, 1 Madison Avenue, New York City.

Lace Manufacturing Industry, Clement J. Driscoll, executive secretary, 1457 Broadway, New York City.

Leather Industry, J. L. Nelson, secretary, 100 Gold Street, New York City.

Light Sewing Industry.

Liquefied Gas Industry, Franklin R. Fetherston, secretary, 110 West Fortieth Street, New York City.

Lye Industry, H. R. Drachett, president, 5020 Spring Grove Avenue, Cincinnati, Ohio.

Macaroni Industry, M. J. Donna, secretary, room 1610, 520 North Michigan Avenue, Chicago, Ill.

Machined Waste Manufacturing Industry, R. D. Magill, secretary, 19 West Forty-fourth Street, New York City.

Mayonnaise Industry, W. F. L. Tuttle, executive vice president, 114 East Thirty-second Street, New York City.

Medium and Low Priced Jewelry Manufacturers, Edward O. Otis, Jr., secretary, 209 Providence Biltmore Hotel, Providence, R. I.

Men's Garter, Suspender, and Belt Manufacturers, R. S. Crawford, secretary, 551 Fifth Avenue, New York City.

Men's Neckwear Industry, Charles E. Stecher, secretary, 468 Fourth Avenue, New York City.

Millinery and Dress Trimming, Braid, and Textile Industry, George G. Neidich, secretary, 39 West Thirty-seventh Street, New York.

Mopstick Industry, W. A. and B. E. Babbitt, administrative agents, box 517, South Bend, Ind.

Newsprint Industry, R. S. Kellogg, secretary, 3903 Chanin Building, New York City.

Nottingham Lace Curtain Industry, W. J. Parker, commissioner 7 East Forty-fourth Street, New York City.

Novelty Curtian, Draperies, Bedspreads and Novelty Pillow Industry, W. J. Parker, secretary, 7 East Forty-fourth Street, New York City.

Optical Manufacturing Industry, Guy A. Henry, directing secretary, Times Building, New York City.

Oxy-Acetylene Industry, J. R. Gobey, 75 East Wacker Drive, Chicago, Ill.

Paper Bag Manufacturing Industry, E. F. Melia, secretary-treasurer, 369 Lexington Avenue, New York.

Paper Disc Milk Bottle Cap Industry, George J. Lincoln, secretary, 1208 Lincoln Liberty Building, Philadelphia, Pa.

Paper and Pulp Industry, Charles W. Boyce, secretary, 122 East Forty-second Street, New York City.

Paper Stationery and Tablet Manufacturing Industry, Howard W. Selby, secretary, suite 915, Vanderbilt Hotel, New York City.

Peanut Butter Industry, Clarence J. Cook, secretary, care of Cream Dove Manufacturing Co., Binghamton, N. Y.

Perfume, Cosmetic, and Other Toilet Preparations Industry, C. S. Welch, secretary and manager, 10 East Fortieth Street, New York City.

Petroleum Industry, Russell B. Brown, secretary, Investment Building, Washington, D. C.

Photographic Manufacturing Industry, M. B. Folsom, secretary, care of Eastman Kodak Co., 343 State Street, Rochester, N. Y.

Photographic Mount Industry, R. P. Stoddard, secretary, 2121 Guarantee Title Building, Cleveland, Ohio.

Picture Moulding and Picture Frame, H. E. Leichenger, secretary, 7 South Dearborn Street, Chicago, Ill.

Pleating, Stitching and Bonnaz and Hand Embroidery Industry, 1440 Broadway, New York.

Pottery Supplies and Backwall and Radiant Industries, H. S. Russell, executive secretary, P. O. Box 598, East Liverpool, Ohio.

Precious Jewelry Producing Industry, Edward Summick, secretary, 608 Fifth Avenue, New York.

Printing Ink Manufacturing Industry, David H. Sloane, secretary, 1440 Broadway, New York.

Punch Board Manufacturing Industry, F. W. James, secretary, 1417 West Jackson Boulevard, Chicago, Ill.

Raw Peanut Milling Industry, J. B. Latimer, secretary, Moultrie, Ga.

Rayon and Silk Dyeing and Printing, Robert Salembier, executive secretary, room 1829, Empire State Building, New York.

Rayon and Synthetic Yarn Producing Industry, C. H. LeRoy, secretary, 51 Madison Avenue, New York.

Rubber Manufacturing Industry, A. L. Viles, chairman, 250 West Fifty-seventh Street, New York.

Rubber Tire Manufacturing Industry, A. L. Viles, chairman, 250 West Fifty-seventh Street, New York.

Rug Chemical Processing Trade, E. C. Metcalf, 19 Rector Street, New York.

Salt Producing Industry, Frank Morse, secretary, 1740 Book Building, Detroit, Mich.

Sanitary Napkin and Cleansing Tissue Industry, Zebulon V. Woodard, room 731, 71 West Twenty-third Street, New York.

Set Up Paper Box Manufacturing Industry, Howard P. Beckett, commissioner, Liberty Trust Building, Philadelphia, Pa.

Shoe and Leather Finish, Polish, and Cement Manufacturers, John H. Devlin, executive secretary, 19 Milk Street, Boston, Mass.

Shoulder Pad Manufacturing Industry, I. H. Friedman, executive secretary, 18 East Forty first Street, New York.

Silk Textile Industry, Miss Irene L. Blunt, secretary, 468 Fourth Avenue, New York City.

Silverware Manufacturing Industry, Alexander Vincent, secretary, 20 West Forty-seventh Street, New York City.

Slit Fabric Manufacturing Industry, I. H. Friedman, secretary, 18 East Forty-first Street, New York.

Smoking Pipe, Arthur D. Berliss, secretary, 1185 Park Avenue, New York.

Stay Manufacturing Industry, Richard Feakes, secretary, 222 Third Street, Cambridge, Mass.
Steel Wool Industry, W. J. Parker, secretary, 7 East Forty-fourth Street, New York.
Tag Industry, F. H. Baxter, secretary, 122 East Forty-second Street, New York.
Talc and Soapstone Industry, J. B. Aiken, secretary, 41 Park Row, New York.
Textile Bag Industry, H. L. Condon, secretary, room 1400, 100 North LaSalle Street, Chicago, Ill.
Umbrella Industry, Philip O. Deitsch, managing director, 230 Park Avenue, New York.
Used Textile Bag Industry, Francis T. Blissert, secretary, 662 Water Street, New York.
Velvet Industry, Frank R. Wheeler, chairman, 110 West Thirty-ninth Street, New York.
Watch Case Manufacturing Industry, Alexander Vincent, secretary, 20 West Forty-seventh Street, New York.
Wax Paper Industry, G. C. Crockett, secretary, care Scovell & Wellington Co., 10 East Fortieth Street, New York.
Witch Hazel Industry, John F. Prinzing, executive secretary, 417 First National Bank Building, Bridgeport, Conn.
Wood Cased Lead Pencil Manufacturing Industry, Nelson B. Caskill, executive secretary, 726 Jackson Place NW., Washington, D. C.
Wood Heel Industry, Haverhill National Bank Building, Haverhill, Mass.
Wood Plug Industry, B. E. Babbitt, box 517, South Bend, Ind.

AFTER RECESS

(The hearing was resumed at 2 p. m., in the committee room of the Committee of the District of Columbia in the Capitol Building.)

The CHAIRMAN. The committee will be in order. All right, Mr. Sloan.

STATEMENT OF GEORGE A. SLOAN—Resumed

Mr. SLOAN. Senator, this morning I mentioned the loss in industry in 1932 as amounting to $9,000,000,000. I would like to make it clear, sir, that this was no a loss in market value of investment. It was an actual eating of working capital through operating at a loss. And that figure and report can be confirmed from the Research and Planning Division of N. R. A.

I was talking about the code, and I shall be very brief, sir; as a matter of fact, I think I can finish in 10 or 15 minutes. The whole structure of this code, Textile Code, was built to protect and provide for the welfare of the industry, which by and large is an industry of relatively small unit. There are 1,100-odd cotton mills in this country, in the South and in New England. Six hundred and eighty of those are mills whose average employment approximates 200 people. Five hundred and eighty-eight of the 1,100 mills are located in communities of less than 5,000 population, and actually more than one-half of the workers in the industry are employed in towns of 10,000 or less population. There are no large units in our industry as we refer to large units in the steel industry, or in the automobile industry, or in the oil industry, or some of the others.

In many of these communities the labor supply and the housing facilities essential to three-shift operation or four-shift operation simply do not exist, nor have many of these mills the financial resources to build the mill village to accommodate a third shift, not to mention the fourth shift.

A few concerns, such as the Johnson & Johnson mills, represented here by Mr. Watson, have ample housing facilities, have ample financial resources, and if they could go to the 3- or 4-shift operation they would have at their mercy the smaller concerns that could not do it. Fitness to survive may be determined largely by prevailing competitive conditions. Many mills entirely fit to survive under decent competitive conditions can be made unfit and can be made so-called "marginal mills" if this one single provision in the code is stricken out.

Therefore, Senator, we feel in our industry, and this is the feeling of the Consumers Goods Industries Committee——

Senator GERRY (interposing). What provision is that? Will you state that right here?

Mr. SLOAN. I was speaking of the provision in the code which limits machine hours to two shifts. We are speaking of an industry that was largely a single shift industry before the war.

And we feel if the act is not so drawn as to definitely permit machine-hour limitation to two shifts limitation, such as now exists in this code, we will have a return to all-night operation, and that in turn will mean the wiping out of many, many communities that cannot go to all-night operation, both in the South and in the North. Therefore, when you come to draw this bill for the future N. R. A. bill, if that is going to be done by this committee, Senator, we hope you will see that you are going to have the fate of this industry in your hands. We hope and pray that you will give us the continued opportunity—and 85 percent of the mills want that opportunity—to spread business and spread the available employment.

Senator KING. You think that you are entitled to speak for the South more than Mr. Edgerton?

Mr. SLOAN. For the cotton textile industry.

Senator KING. I am speaking of the cotton mills.

Mr. SLOAN. I think so, Senator.

The CHAIRMAN. Mr. Edgerton represented that he spoke for all the industries in the South.

Mr. SLOAN. All industries; yes, all industries.

The CHAIRMAN. All right.

Senator KING. But particularly for the cotton industry?

Mr. SLOAN. No, sir. He is a wool manufacturer.

Senator KING. Textile manufacturers, I should have said.

Mr. SLOAN. He is a wool textile manufacturer. It is under a different code entirely.

In the cotton textile industry we have been able to strike directly at the cause of breakdowns in the sound functioning of the competitive system rather than the effects of that breakdown, and we have done it through this two-shift limitation. It narrows the gap between potential capacity, that we discussed this morning, and the available demand.

The general provisions of the cotton code contain none of the measures adopted under the N. R. A. under certain other codes to deal directly with this problem of price demoralization. But the fact that these measures may not be suitable for our industry—and I do not think they are, and we have not requested them—does not mean that they are not essential in certain other industries. And our Consumers Goods Committee has stated that the flexibility of the

N. I. R. A. makes possible policies and provisions for preventing or mitigating the effects of undue and harmful disruption of prices.

Now, Senator, I know that you have been impressed with certain examples here and there where industries have done things that have been regarded as unfair and unreasonable. That may be true enough, but our committee wishes to get over the thought to you, sir—let us do not make it impossible to correct these abuses in industry at large just because a few industries may have gone wrong. Besides, we have the N. R. A. and we have the Federal Trade Commission to deal with situations like that.

None of these measures that we have in the codes, the codes generally now, open-price-filing provisions, selling-below-cost provisions, mark-up provisions, and provisions against the use of particular methods of price competition, such as varying discounts and varying rebates, constitute price fixing as that is understood by the average layman. They are designed to put some reasonable floor under prices or to diminish their demoralization and to insure getting from the competitive system a fair price one not unduly high and so oppressive to the buyer, and one not unduly low and so oppressive to the seller.

We feel in our committee that the situation in this country in the industry is still so serious that the question immediately arises whether any of these weapons for mitigating destructive competition can be laid aside without losing the ground that has been gained under the N. R. A. The real problem is where can they be usefully be employed and how can the effectiveness of their use be improved.

For a more detailed discussion on this particular subject I would like to leave in the record, sir, a statement made by this committee before the N. R. A. at a public hearing, which treats with the adjustment of available capacity of the industry to an available demand, and another one which also deals with these price demoralization provisions.

The CHAIRMAN. Very well.

Mr. SLOAN. I would like to have both of them in the record.

(The documents referred to will be found at the conclusion of Mr. Sloan's statement.)

Senator KING. Mr. Sloan, you are speaking about the benefits. I have a statement here to the effect that the Bureau of Labor Statistics has submitted a report showing that in the North the purchasing power of the average worker was 15 percent less in August 1934 than in August 1933, and in the South it was at least 25 percent less, so that the N. R. A. has not increased, it has not been beneficial to the average worker?

Mr. SLOAN. In this industry, sir?

Senator KING. Generally speaking, the Labor Statistics report speaks for all of them.

Mr. SLOAN. That I think I can answer, Senator, to your satisfaction. In August—you speak of August 1934—1934 there was a dearth of business in the cotton textile industry, and the mills were running about half time. The average cotton mills were running somewhere between 50 and 60 percent of their normal schedules. That is why your weekly wages at that time were off. Will you take that chart, Senator, I left with you this morning, and you can see what has happened as to the wages any month since the code went into effect. Those are also Government figures.

Senator KING. And the Bureau also found, did it not, contrary to statements of Mr. Johnson, and some of the protagonists of the code, that there has been a narrowing between the spread of the maximum and minimum wages in the industry, and the narrowing has been facilitated by limitations in the codes and interpretations used therein by the code authority.

Mr. SLOAN. I have a very brief statement of exactly what they found in that report, sir. They found in that report, the Bureau of Labor——

Senator KING (interposing). What report are you referring to now?

Mr. SLOAN. The Bureau of Labor report: "There has been an overwhelming compliance with the wage provisions of the code." That is in that report, sir. They found employment during the first year under the code was in excess of 1929. They found that the minimum wage had not become the maximum wage. They found that as required by the code, differentials in occupations above the minimum have evidently been maintained; that higher proportionate increases as contemplated by the code have been made in lower-paid occupations below the minimum; that the tendency has been for hourly wages to so continue to advance from August 1933 to August 1934, both in the North and in the South. And this is a Bureau of Labor chart, which bears that out that I gave you this morning.

They found in August 1934 the workers in the northern cotton textile mills were receiving average hourly wage rates that prevailed in 1926 to 1928, and the workers in southern mills were receiving hourly wage rates substantially higher than at any time during the decade from 1922 to 1932. They found that between July 1933 and July 1934 average hourly earnings were 64½ percent. In making this statement the Bureau disregarded the fact that wage increases in the industry were almost universal in the 2 or 3 months immediately preceding July 1933. When hourly earnings in March 1933 are compared with those set up under the code, the increase amounted to 69 percent and today it stands at 77 percent above March 1933.

Senator WALSH. Of course, the total was very much less during that period. What is the total earnings in the month? The total for the year is exceedingly less than the amount received between 1922 and 1930.

Mr. SLOAN. No; I would not say that.

Senator WALSH. Have they not been running on short time?

Mr. SLOAN. During periods of short operation that is true, certainly.

Senator WALSH. Have any of your mills been running more than 4 days a week, or many of them?

Senator KING. Is not the weekly wage determinative rather than the hourly?

Mr. SLOAN. The weekly wage is determinative rather than the hourly, Senator.

Senator WALSH. I noticed you advertise the hours.

Mr. SLOAN. The weekly wages adjusted to living costs are an important thing. If you will look at the third chart given you this morning you will see your weekly earnings are at about the peak under this code, and at the peak since 1929 the weekly earnings adjusted to living cost——

Senator KING (interposing). What are you speaking of, the textile industry?

Mr. SLOAN. The cotton textile industry.

Senator KING. The cotton textile industry?

Mr. SLOAN. Yes, sir.

Senator KING. You mean to say, then, the weekly earnings in the cotton-textile industry are as great in 1934 as they were in 1926 or 1927 or 1928 or 1929? Do you mean to say that?

Senator WALSH. No; he did not say that.

Mr. SLOAN. Yes, in 1934, I say on the average, sir, the weekly earnings adjusted to living costs were approximately the same as in 1929.

Senator KING. What were the annual wages?

Mr. SLOAN. I have not those figures, sir, but I think this chart will show you they are approximately the same.

Senator WALSH. Have not the living costs come down since that time?

Mr. SLOAN. No; the living costs have gone up.

Senator WALSH. Are not the living costs in 1934 less than they were in 1928 and 1929?

Mr. SLOAN. 1928 and 1929?

Senator WALSH. Considerably less, and therefore the wages are less, based upon the adjustment of living costs?

Mr. SLOAN. No.

Senator WALSH. I mean the total receipts. I agree with you about the hours.

Mr. SLOAN. The total amount received for 40 hours of work to begin with is not less in any case than was paid for 55 or 60 hours prior to the code. If it happens for 40 hours of work they get less, it is a violation of the code, and action is immediately taken in those cases. There have been some violations.

The CHAIRMAN. Is there anything else, Mr. Sloan?

Mr. SLOAN. Yes, sir, Senator. I will proceed rapidly.

The CHAIRMAN. I wish you would close as soon as you can, because we have got about 10 other witnesses that we brought here from everywhere. Of course, as we are not going to have a session tomorrow, we do not want to keep them over here until Monday.

Mr. SLOAN. Senator, in line with your request, I would like to leave with you a suggestion of procedure under the National Recovery Administration for getting this import problem taken care of under section 3 (e) of the act, which this committee has recommended.

The CHAIRMAN. Very well.

Mr. SLOAN. If you will let me have that, I will file that with the committee.

(The document referred to is as follows:)

CONSUMERS' GOODS INDUSTRIES COMMITTEE

RECOMMENDED PROCEDURE FOR HANDLING COMPLAINTS UNDER SECTION 3 (e) OF THE NATIONAL INDUSTRIAL RECOVERY ACT

The import section of National Recovery Administration shall accept and refer to the United States Tariff Commission for immediate investigation complaints filed under section 3 (e) of the National Industrial Recovery Act which meet the following requirements of the statute:

1. Complaint organization, association, or group must have complied with title I.

2. Complaint must show that an article or articles are being imported into the United States either—

(*a*) In substantial quantities, or

(*b*) In increasing ratio to domestic production of any competitive article or articles.

3. Complaint must show that such article or articles are being imported into the United States on such terms or under such conditions as either—

(*a*) To render ineffective a code or agreement under title I, or

(*b*) Seriously to endanger the maintenance of any such code or agreement.

Whenever any responsible complainant makes a complaint, whatsoever its form, which sets forth a clear-cut prima facie case in accordance with the foregoing statutory requirements and supported by affidavits of representative members of the affected industry or other experts or by other factual evidence, the import section of National Recovery Administration shall, without requiring the filing of the schedule of supporting information prescribed by Office Order No. 37, summarily refer such complaint to the United States Tariff Commission.

Upon receipt of such complaint, the United States Tariff Commission shall immediately give notice of a public hearing to be held with a minimum of delay, at which opportunity shall be given to present objections to the relief sought by the complainants.

If any objections are filed, complainants shall be given an opportunity for rebuttal, and thereafter a prompt decision shall be made on the basis of the entire record.

If no objections are filed, summary relief shall be accorded the complainants on the basis of the complaint.

The consumers' goods industry of this country have already reemployed a much larger proportion of employees on the 1929 basis than have other branches of industry. The demand has held up relatively better in consumers' goods than it has in heavy goods. That is obvious.

Senator WALSH. Are you speaking now of the period up to the beginning of this year?

Mr. SLOAN. No.

Senator WALSH. Speaking up to date?

Mr. SLOAN. Under the codes up to date.

Senator WALSH. Has there been a great drop in the last 2 or 3 months?

Mr. SLOAN. In the last 30 to 60 days there has been a drop generally in industry, but in our industry, the cotton textile industry, the paper industry, the meat-packing industry, and the chemical industry, for example, according to the Bureau of Labor Statistics, they are employing on an average over the code period actually as many or more employees than there were in 1929. We feel that it would be impossible and wholly unfair to load upon the consumers' goods industries the major task of absorbing the great amount of employment still existing in other industries in this country.

The capital goods industries cannot be permanently revived —even with the help of the Public Works program—unless the consumers' goods industries have a sufficient margin to enable them to undertake repairs, replacements, or other capital expenditures. We are customers for durable goods, but we can only buy from the industries that produce them, when the margins between our costs and the prices at which we sell permit expenditures of that character.

There is no mystery whatever in the simple propositon that if consumers' goods industries are to do the job they ultimately must do in buying more largely from the capital goods industries, that job must be financed by reasonable "spreads" between costs of labor and materials, and the prices at which we sell. In proposals to increase labor costs in codes, and simultaneously to take away trade practice

and other stabilizing provisions of codes, that simple proposition appears, sometimes, to be in danger of being entirely overlooked:

The entire inadequacy of uniform fixed hours and fixed wages throughout an industry to prevent ruinous and destructive competition and to secure the correction of resulting demoralized conditions in an industry is not a theory, and it has been demonstrated.

In England the complete unionization of an industry produces minimum wages and maximum hours, but it does not prevent the type of competition which is ruinous to an overcapacitated industry. This has been demonstrated over a long period of years in the coal industry and in the textile industry of England. In both of those industries over there, in spite of these fixed limitations of wages and hours, it is essential, both from the standpoint of industry and labor, to take drastic measures which will limit and direct the competitive process. There is no more reason to expect in this country that the hour and wage provisions of codes can furnish a substitute for provisions directed against price demoralization.

Now, in conclusion, Senator, I return to the resolution of the Consumers' Goods Industries Committee, that you cannot stabilize wages without first stabilizing the source from which these wages must come.

A code or a law which fails to recognized that fundamental by specific and definite provision will be nothing more than another Volstead Act, and as certainly doomed to failure with grave consequences to the entire national economic structure.

I would like to submit to the committee a document which was prepared for our Consumers' Goods Committee this week by Dun & Bradstreet, which will be of great help, I think, to your research associates of this committee.

The CHAIRMAN. Very well.

Mr. SLOAN. It shows the extent to which insolvencies have decreased since this N. R. A. was adopted.

(The document referred to will be found at the conclusion of Mr. Sloan's statement.)

Mr. SLOAN. I think that is all, sir, unless the committee has any questions.

Senator GERRY. Mr. Chairman, I would like to ask the witness one question.

The CHAIRMAN. Yes, sir.

Senator GERRY. If your processing tax was paid when the goods were sold, would that aid the industry materially?

Senator WALSH. Paid by the purchasing public?

Mr. SLOAN. I do not think so, Senator. I do not think it would, sir. We hope that some way can be found for continuing the aid to the farmers, but other than through this enormous sales tax on the products of this industry.

The CHAIRMAN. Is that all you have, Mr. Sloan?

Mr. SLOAN. I would like to file this statement with the committee, It shows the effect of this processing tax, the New York Times newspaper of this morning.

(The article referred to will be found at the conclusion of Mr. Sloan's statement.)

Senator KING. Mr. Chairman, I would like to read in the record here from a letter from the president of the Acheson, Harden Co., Mr. Frank A. Harden, who writes: [Reading.]

MY DEAR SENATOR. I am seriously considering resigning as a member of the code authority for the handkerchief industry.

And he states in a letter, a copy of which he sent me: [Continues reading.]

Therefore, I again restate that the National Recovery Administration has resulted in doing us very much more harm than good. The few benefits which we have derived from the fair-trade practices are infinitesimal compared to the losses we have been forced to incur under National Recovery Administration.

Among the fair-trade practices which have been of some benefit to the industry, the only two that have amounted to anything is the standardization of terms for the industry and the uniform f. o. b. point for original shipment, but these two points have never been a source of serious trouble or worry to us. We have always shipped our goods f. o. b. mill and have always been able to stick pretty well to our own standard terms. Therefore, I say the benefits which we have derived from these two points are infinitesimal compared to the hardships we have been forced to suffer under the National Recovery Administration generally.

You know, as well as I do, that the pay-roll records and time records of a great many of these small chiseling manufacturers, and probably some of the larger ones, are worth nothing. They are forging these records, both as regarding the number of hours their employees work and the wages they are being paid, so that when their books are being inspected by our confidential agency, their figures mean less than nothing and the girls are afraid to complain for fear of losing their jobs.

There is no way that I can see that we can force these chiselers to keep their records correctly and pay their employees the minimum wages, unless the code authority itself finds itself in a position to put its own representative in each and every plant to see that these records are properly kept and the labor and hourly provisions of the code are properly lived up to. This, of course, as you know, would be impractical and impossible.

Up to date, speaking for myself and for the concern I represent, and for a great many of the other handkerchief manufacturers I have talked to, I feel that our industry would be greatly benefited if the National Recovery Administration would be entirely abolished, as I believe it will be. I liken it to a man sick with a cancer. He may live 6 months, 1 year, or 2 years, but he is a doomed man, and I feel that the National Recovery Administration is doomed to ultimate failure. It cannot be worked out in the economic scheme of things to a successful conclusion, as far as the handkerchief industry is concerned. It is not a practical proposition. It is a theory, pure and simple.

I, therefore, can see no prospects for any future optimism in viewing our industry, as long as the National Recovery Act is on the statute books. My feeling is that the sooner the whole thing is abolished, in its entirety, the quicker this country will show signs of returning to some sort of normal prosperity. This will have to be done if confidence is to be restored.

Feeling as I do about the National Recovery Administration, I feel that it would be hypocritical on my part to remain a member of our code authority.

Mr. SLOAN. Senator, I do not know to what extent that gentleman represents the views of his industry, but if his view represents the views of his industry I say they do not need a code authority.

I have sat through many meetings of industrial groups during the last 2 or 3 months, and that viewpoint I say in all sincerity represents a minority viewpoint in those industries I am familiar with.

Senator King, the other day when Mr. Watson testified you read a letter that you had received from the Quinn Garment Co. from Ogden, Utah. I would like to make the point that that refers to a code other than the cotton-textile code.

Senator KING. I did not say it was a part of the cotton-textile code.

(The following is in connection with matters referred to in Mr. Sloan's testimony.)

COMMENT ON POLICY AS TO CODE PROVISIONS FOR THE ADJUSTMENT OF AVAILABLE CAPACITY OF AN INDUSTRY TO AVAILABLE DEMAND

By provisions as to (*a*) maximum hours of operation of equipment; (*b*) maximum output of an industry and/or of individual units; (*c*) control of an increase in the capacity of an industry.

1. For the formulation of sound policy as to such provisions it is necessary to examine first the conditions which have given rise to the proposal and in some instances the use of such provisions. These conditions are broadly two; first, certain facts as to the relation of available capacity to available demand in many industries; second, the effect on the functioning of the competitive system of such relation of capacity to demand.

(*a*) Excess of available capacity over available demand.

(1) *Temporary.*—In numerous industries the available production capacity, while not out of line with available demand in the past or what it may be expected to be again some years from now, is far in excess of any available demand.

(2) *Chronic.*—In some industries there is an available capacity far, and probably permanently, in excess of available present or future demand. This may arise from a shifting of consumption to other products or an expansion for a temporary demand, or, simply through pressure of competition, that an industry without material increase in its physical facilities has doubled or tripled its capacity by going from a customary single-shift operation to double shift, then to three shift, but with a demand which permits only part-time actual operation because the available consumption has not increased over what could be supplied by one-shift or two-shift full-time operation.

(*b*) Effect on the functioning of the competitive system of a marked excess or deficiency of available capacity in relation to available demand.

(1) Broadly speaking, such marked excess of capacity deranges the sound operation of the competitive system in the same kind of way as a marked deficiency in available capacity to supply available demand.

(2) This is so because of the necessary duality of the healthy competitive process. Active competition among buyers in securing the needed supply of each, on the best terms he can get; active competition among sellers in disposing of the supply of each.

(3) Marked undercapacity with its threat of resultant scarcity creates panic competition among buyers, eliminates activity of competition among sellers.

(4) Marked overcapacity with its threat of overplus on the market equally eliminates activity of competition among buyers and creates panic competition among sellers to dispose of their product and secure the largest possible share of the inadequate demand.

(5) Overcapacity and undercapacity alike tend to destroy the possibility of a fair competitive price—in the one case it tends to go as unreasonably low as a monopoly among buyers could force it; in the other case it tends to go as unreasonably high as a monopoly among sellers could force it. We tend to experience one way or the other the worst possible effects of monopolistic prices.

(*c*) There are certain characteristic public consequences from this break-down in the sound functioning of the competitive processes due to marked overcapacity.

(1) Pressure of overhead to keep moving and to run full constantly drives each unit to make any price and use any device to secure for itself a disproportionate share of the wholly inadequate demand.

(2) If some adopt this policy, all as a practical matter follow suit, and prices for the great bulk of the products of an industry tend to go to cost and below.

(3) There are apt to result periods in which all run full followed by shut-downs, with resulting irregularity of employment.

(4) Instability in the market checks buying, and experience with such situations is apt to show diminishing rather than increasing consumption.

(5) Wages are forced down or tend to be held down to the minima of codes.

(6) Profits disappear; working capital is impaired; credit shrinks.

(7) Lack of confidence and lack of funds stand in the way of making needed replacements and improvements in equipment which are essential to the healthy functioning of other industries.

2. Efficacy of methods of dealing with problems of overcapacity that do not involve code action.

(*a*) Voluntary individual control of use of capacity in production:

In some industries in which the concerns are few in number and large in size, and particularly with high-priced unit of product, voluntary adjustment of the use of capacity to available demand by each concern holding down the use of its capacity for production to a fair proportion of that inadequate demand prevents

the destruction of the competitive balance that would otherwise flow from overcapacity. In some industries this result can only be accomplished by the collective action of a gentlemen's agreement and there is the question of legality. It would seem preferable to have such sound economic action taken in accordance with code provision rather than bootlegged.

In industries with a large number of units and standardized products such individual action is impracticable. If others under pressure of overhead are trying to get enough of the inadequate demand to run full, the unbalanced competitive situation compels each to do it. The effects of all this were very clearly summarized by the President in his radio talk prior to the enactment of National Industrial Recovery Act.

(b) "Letting nature take its course" by the route of bankruptcy and receivership.

(1) If this would reduce capacity it is undesirable in the industries temporarily overcapacitated because of the falling off in consumption due to the depression. That capacity will be needed again.

(2) As a matter of fact this process does not diminish overcapacity. The plants purchased for little or nothing come back into operation with new management. Experience here and in England over a long period of time with chronically depressed industries, such as coal and textiles, shows that overcapacity and the resulting admitted serious evils are not self-curative by leaving them alone.

(3) Purchase and destruction of surplus capacity by voluntary action on part of the industry.

(a) This obviously does not meet the problem of temporarily overcapacitated industries.

(b) Such action could not be expected to amount to anything unless undertaken collectively by the industry. And if so undertaken, except under the provisions of the Recovery Act, might be regarded as violative of the antitrust laws.

(c) Any such method, if it could be used at all, could be undertaken only as part of a general plan which would deal temporarily in other ways with the destructive effects of overcapacity and put the industry in a position of being financially able to finance such method.

3. Methods of dealing with overcapacity under the Recovery Act. Unless we are prepared to say that no action should be taken to attempt to deal with the admitted evils flowing from overcapacity, temporary or chronic, it is important to explore and to try out various possible types of code provisions that may successfully deal with these evils. Several types of such provisions have been suggested and used.

(a) Provisions that deal with its effects rather than with overcapacity itself.

Provisions in codes setting a minimum price, forbidding sales below cost, forbidding the use of various methods of cutting price without appearing to do so, open price filing provisions—all are intended to prevent or mitigate that drop in price from a normal fair competitive price to cost or below that tends to be forced by marked overcapacity, the resulting breakdown of the duality of active competition, and the consequent "buyers' market."

Difficulties in enforcing compliance and other difficulties with the framing and use of such provisions, which make them certainly unavailable for many industries, are not discussed here.

(b) Provisions for dealing directly with overcapacity.

(1) Adjustment of maximum available capacity to available demand by "machine-hour" limitations.

(2) Adjustment of maximum available capacity to available demand by provisions as to maximum output.

(3) Prevention of further overcapacity by provisions controlling its increase.

4. "Machine-hour limitations."

(a) These provisions set the maximum available capacity for each unit and therefore for the industry as a whole by setting the maximum number of hours key machines or processes may be operated.

(b) Such provisions are set so as to narrow, but not close completely, the gap between the capacity of the equipment, if used continuously day and night throughout the year, and the available demand as gaged by past and present conditions.

(c) The objection of such a provision is to restore the normal equality in competitive relationship of buyer to seller which would exist if a former reasonable balance between facilities and demand had not been lost through (1) the falling off of available demand, or (2) the increase of capacity, or (3) both.

(*d*) The effect of such a provision, properly framed and administered, is that goods are brought and sold on the basis of a competitive price arrived at by free play of bargaining of buyer and seller on the market as in any healthy industry where the facilities are not grossly out of line with the available demand for its product.

In such a situation, where the gap between capacity and demand has been narrowed but not closed, not only can no producer be sure of any particular sale or price for his product but because of that gap he cannot be assured that he will dispose of all or indeed any part of his product. On the other hand, while there is still, because of this gap, an advantage to the buyer the psychological effect on the market of an overwhelming excess available capacity is removed, a reasonable activity of competition among buyers to secure their supply restored, and panic competition among sellers moderated to a normal activity in getting orders for their product.

(*e*) The operations of buyers and sellers under such provisions are not inconsistent with the competitive system unless it can be said that the competitive system is not operative when available facilities for production and available demand are in reasonable balance. This clearly is not the case; the reverse is more nearly the fact. In the case of undercapacity and scarcity there is plenty of activity in competition but it is entirely on the side of the buyers; in the case of overcapacity the activity is entirely on the side of the sellers. It is only where there is a reasonable balance that there is activity, less intense, but on both sides, and a fair competitive price can be expected to result. Any other conclusion would mean that the competitive system operates only where there is a "sellers' market" with its unduly high price or a "buyers' market" with its unduly low price.

(*f*) Such provisions do not destroy incentive for efficiency or improvement or prevent the elimination of the unfit.

(1) Under such a provision the financial results in each unit are directly affected, as in any healthily competitive industry, by (*a*) efficiency in management, (*b*) economically operating equipment and (*c*) quality in product.

(2) Efficient units have the incentive and are under the pressure to become more efficient. Further if the industry is obtaining a fair competitive price the reasonably efficient units are in a financial position to make improvements.

(3) Inefficient units have the incentive and are under the same pressure. Under such provisions they are not assured of a living any more than they are in any healthy industry with no wide gap between capacity and available demand.

(4) Annihilation is not the only way or often the best way to eliminate the inefficient unit.

(*a*) There is no "original sin" or "predestination" or congenital deformity about the inefficient units. Perhaps the best, if not in fact the only way to eliminate them, is for them to become efficient.

(*b*) If the inefficiency is in management, management can be changed. An owner wants some return. With the industry generally in good condition, alibis are out.

(*c*) If this inefficiency is in equipment, that equipment can be replaced. If the industry generally is in good condition, so that the efficient can earn a living, the ability of the owner to get credit to make the improvements or the incentive of others with capital to take over the plant is immediately increased.

(*d*) If a provision for adjustment of capacity could direct all of the inadequate available demand into the hands of the best managed, best equipped plants, there might be some reduction in average cost. This could only be done through a pooling of resources and business wholly impracticable. Further, it would mean a wrecking of existing managements and a relocation of labor and a destruction of existing communities that would be intolerable at this time. If the same redistribution of plant operation were to result from taking no steps to deal with overcapacity the same intolerable consequences would follow. As a matter of fact if the matter were left to the disorderly processes of the bankruptcy route, experience in a number of industries indicates that the same old plants would probably turn up with their share and perhaps more than their share of the business rather than any economically useful redistribution of business with reduced average costs being effected.

(*g*) It is essential to the proper use of such provisions that they should not operate to create a scarcity or diminish the output of the industry as a whole.

(1) The use of a limitation on machine hours may be harmful or desirable, depending on its terms. If used to create a scarcity and resulting "sellers' market" it is destructive to the proper operation of the competitive system; if used to restore a reasonable balance of capacity and demand and so relieve from

a "buyers' market", it is protective and restorative of fair competitive market prices.

(2) To avoid danager of the first result the code should provide a margin between the adjusted capacity and prospective demand so that the output, if the available adjusted capacity were used, would be somewhat in excess of what the market will absorb.

(3) Such provisions do not decrease industry production. For any protracted period, it is economically impracticable for producers to continue to produce more than can be consumed. Overproduction for short periods must inevitably be followed by periods of shutdown. The limitation of machine hours serves to spread the production more evenly over the period and prevents these intermittent shutdowns. In fact, with the resultant better balance between supply and demand, buyers stock merchandise with more confidence, and as a consequence consumption tends to increase.

(*h*) It is essential to the proper use of such provisions that there should be flexibility in administration of such provisions.

(1) Immediate temporary increase of such available capacity should be provided for if demand is unexpectedly increasing.

(2) Immediate temporary decrease in available capacity should be provided for where the gap between available capacity and current demand is so widening that the old demoralization due to overcapacity is threatening to reappear. It is the experience of the market that if such demoralization gets under way it is cumulative through the retarding of normal buying which it immediately occasions. Prompt action by checking demoralization and unnatural falling off of buying will tend to prevent the extreme fluctuations in employment that would otherwise occur and which are characteristic of overcapacitated industries.

(3) Provision should be possible for dealing with special situations in particular branches of an industry (*a*) in which no temporary adjustment is needed or could be made without undue hardship or (*b*) in which alone such adjustment is called for.

(4) For long-run use the administration of such provisions will have to be developed so as to afford flexibility to prevent the permanent freezing of a particular amount of business in particular concerns and to afford opportunity for natural growth and change.

(*i*) Such provisions from their very nature and the necessity of finding a suitable key machine are likely to prove acceptable or adaptable to relatively few industries. Such industries may be important ones such as textiles.

(*j*) Such provisions should not be used without careful special study of conditions in an industry and of their workings when adopted.

(1) To this end there should be specialists in the National Recovery Administration devoting themselves to this type of code provision. They should be consulted as to any new provisions of this type proposed. They should keep in closest touch with the actual operation of industries in which they are used, the actual administration of these provisions, and with the conditions which appear to call for temporary adjustments.

(2) It should be recognized that adjustments of available capacity to prevent the destructive effects of overcapacity requires the development of a new and difficult technique. Experience, only, can show how far it is possible to develop such a technique and how widely it can be used in solving the vitally important problems of overcapacity—temporary or chronic.

(3) The National Recovery Administration through its power of revocation of codes should always keep in a position to terminate the operation of such provisions when they have served their purpose or are not useful in their operation.

5. Direct control of output.

(*a*) It is the object of provisions for maximum permissible output in an industry to avoid the destructive effects of marked excess of available capacity over available demand.

(*b*) Such provisions should not be such as to diminish output below available demand except temporarily where in a particular industry heavy stocks have accumulated which must be gradually liquidated before normal competitive conditions can be restored.

(*c*) As in machine hour limitation such provisions would ordinarily narrow rather than close the gap between available capacity and available demand; they should never be so formulated as to produce scarcity prices.

(*d*) Under such conditions in some industries such provisions may be used to make fair competitive prices possible again. In effect the market situation becomes that of a healthy competitive industry in which the productive facilities

are not far in excess of available demand and there is consequent competitive activity both among the buyers and among the sellers in securing their supply and disposing of their product.

(e) Such provisions almost necesarily are based on the setting of a maximum output for each concern in the industry. The difficulty of arriving fairly at such respective figures would usually make such provisions unacceptable to an industry and impracticable except in periods of the severest emergency.

(f) Such provisions, where they can be used, require elements of flexibility similar to those with respect to machine hour limitation and for similar reasons.

(g) The practicability of the use of such provisions to deal with the effects of overcapacity in any industry requires special study. They would ordinarily be applicable to a different type of industry from those in which machine limitations might be used. The question of their use and the supervision of their operation should have the attention of the same type of specialists on such provisions in National Recovery Act, keeping in the same way in closest touch with the actual workings of the industry in question.

(h) Such direct output control provisions are not likely to prove available for use in many industries but may be highly useful in some important industries such as petroleum.

(i) For long-run use a technique for providing for growth and change in the situation of various concerns needs to be developed.

(j) Unless such output provisions should provide for a less output than the market would absorb at a fair competitive price—which they should never be permitted to do—they do not diminish national production or employment. In exceptional cases they may involve some shift from the supply of some uses or markets for which the industry was not economically suited and which it had temporarily acquired only by below-cost prices.

6. Provision for elimination of capacity definitely surplus.

This problem does not arise where overcapacity results from a temporary drop in consumption due to the general depression.

Nor does it arise where it may be expected that new demand will grow up to the existing overexpanded facilities.

It does arise in an industry where it can be said that there is a permanent overcapacity. Under such circumstances it may be possible to develop a technique under the National Recovery Act or its successor act for an industry removing in an orderly way, in conjunction with temporary capacity controls, the excess and less efficient equipment. In England plans for such industry action have been in effect in the coal industry and are under consideration in textiles. Purely voluntary methods seem impracticable. The difficulties under our governmental limitations are obvious.

7. Control of new capacity.

Such provisions may be auxiliary to machine-hour limitations and output-control provisions or they may be part of a general planning by an industry to insure its orderly development or both.

(a) They have for their objectives:

(1) Prevention of economic waste of duplication of facilities which will result in only partial use of any and drawing into and holding in an industry more labor than it can support.

(2) Destructive effect of increase of capacity to a point where it gets completely out of balance with available demand.

(b) Such provision should be so drawn and administered as not to prevent replacements of old equipment with new and improved equipment, the introduction of improved processes, the transfer of plants or their equipment to new ownership or management.

(c) Such provisions are essential to intelligent, economic planning for an overcapacitated industry, but final control should be in the Administration, with recommendations from code authorities.

8. Effect of capacity, adjustment, and control provisions on initiative and efficiency.

(a) Such provisions, used to narrow the gap between capacity and available demand, do not remove the incentive for initiative and efficiency. The market is a healthily competitive one. There is every incentive to secure the best customers on the best terms and to produce the best product in the cheapest and most efficient way as there is in any healthy industry in which the productive facilities are in reasonable balance with available demand. Such provisions do not as a practical matter, for the reasons given above, secure the perpetuation of the unfit.

(b) There is wide opportunity for improvements in existing capacity and acquisition of less efficient plants and improving them. Further, the healthier

condition of the industry gives an incentive and assists in the financial ability to make such improvements. On the other hand, with uncontrolled overcapacity, the condition of the industry is ordinarily such that there is apt to be neither the incentive nor financial ability for making improvements, much less creating new capacity. This has been the experience in the textile industry.

9. Certain important byproducts of capacity adjustment and control provisions.

If there is any one clear lesson of our experience with the industrial systems during the last 125 years it is that, without certain controls, it operates with complete ruthlessness on both the human factor in the economic machinery and on existing instruments of production by forcing sudden adjustments, with individual hardships and wastage, and by tending to force every competitive unit in an industry to adopt any unfortunate and destructive practice that may be adopted by some units.

In normal times and with capacity in reasonable balance with demand these tendencies are mitigated. But the present depression with its underconsumption, and consequent general overcapacity, has greatly accentuated them. Provisions for capacity adjustment tend to reduce the violent dislocations which would otherwise take place.

For example, the cotton textile industry was originally a one-shift industry. As a result of the war, and under the pressure of ruinous competition, there was a tendency to go to two shifts, thereby aggravating overcapacity and irregularity of employment. With the depression, under the same competitive pressure to get the most out of the investment in a machine, there was a tendency to go to continuous operation.

Textile manufacture involves operations to which women are well adapted and for which they are extensively employed. It is not a continuous process nor is there any general economic need in the country which requires such saving in overhead as might be involved in the midnight shift. There is no justification for subordinating the human factor to the machine, for demanding the distortion of normal life of hundreds of thousands of men and women that would be involved in the general use of such a shift. And yet this same competitive process, if left uncontrolled, would tend to force all to do what some were doing.

The net result would have been to further increase unneeded and unused capacity and accentuate further the alternation of hectic running, part time, and complete shutdowns. If as a result, a large number of units in the industry proved unable, before or after bankruptcy, to provide the needed housing facilities for the midnight shift and were actually put out of business, there would have been the dislocation in the life of the communities dependent on those units and the wastage of plant and equipment. This would not mean getting rid of the unfit. There is nothing intrinsically more efficient in the management and equipment of a plant so located as to have facilities to house a midnight shift than one not so located. By the control exercise, by the machine-hour provision, this subordination of the human factor to the machine has been avoided. There are many such byproducts from provisions for adjustment of capacity which avoid the stupidities, hardships, and economic dislocations that would otherwise result from marked overcapacity in times of depression.

SUMMARY

1. The destructive effects of over capacity on the sound workings of competition in an industry demand careful consideration of the practicability of the use of proposed measures for narrowing the gap between available capacity and available demand and for preventing an economic further increase of facilities.

2. Provisions for machine limitation or determining maximum output, while still leaving a gap between available capacity and available demand, can in some industries be used to restore healthy competitive conditions and a fair competitive price and to end the injurious pressure toward sales at or below cost and consequent contraction of credit and obstruction to improvements and progress in an industry.

3. It should be the policy of the National Recovery Administration to use such measures in those relatively few but highly important situations in which they may appear to be practicable and necessary.

4. It should also be its policy to scrutinize with extreme care the suitability of conditions in a given industry for the use of such measures to prevent any such measures from being used to create scarcity or to diminish the output of the industry as a whole, which can be sold at a fair competitive price, and observe carefully the workings of any such measures under any code in which they are adopted so as to be informed whether or not they can usefully be continued.

5. It should be the policy of the National Recovery Administration to submit any proposals for the adoption of such measures and the administration and observation of such measures to the special study of specialists of the National Recovery Administration in this type of code provision. Such specialists should keep in closest touch with the actual operations of any industry in whose code such provisions are embodied or sought to be embodied.

6. Where provisions for the control of the addition of new capacity to an over-capacitated industry are used, such provisions should be so formulated and administered as to encourage and not to prevent the replacement and improvement of existing facilities.

7. It should be recognized that such measures for adjustment of available capacity to available demand require the development of a new and difficult technique and that the extent of the use of such measures will be dependent upon experience with such technique.

8. Owing to the importance of the development of such a technique, in aid of the sound functioning of the competitive system, in recovering from this depression and in helping to avoid or mitigate the results of future depressions, every effort should be made to work out such a technique by study and experience.

GEORGE A. SLOAN,
Chairman Cotton Textile Code Authority.
GOLDTHWAITE H. DORR,
President The Cotton Textile Institute, Inc.

MEMORANDUM SUBMITTED IN BEHALF OF CONSUMERS' GOODS INDUSTRIES COMMITTEE AT NATIONAL RECOVERY ADMINISTRATION HEARING ON CODE PROVISIONS TO PREVENT PRICE DEMORALIZATION

This hearing called by the National Industrial Recovery Board, to discuss the measures adopted under the National Industrial Recovery Act to deal with price demoralization, raises a vitally important question for the country.

I shall not here discuss those measures in detail or their workings in particular industries. What I want to do here is to consider the broad principles of these measures and the way they tie in to the whole philosophy and fabric of our effort to stem the tide of the depression. It is very easy to take too near-sighted a view and to be lost in the detail of how some particular minimum price provision works, the difficulty of ascertaining cost in one industry, how uniform discounts work in another, the effect of price filing in still another, and failure of compliance in another. In our major offensive against this depression, in advancing over untrodden ground, we are bound to have our setbacks and our casualties. It is necessary to look at the whole battlefront in perspective. It may be helpful, therefore, if we go back to the beginning and relate briefly this phase of National Recovery Administration activities to the reason why National Industrial Recovery Act was enacted at all and to some of the fundamentals of the operation of our competitive system.

Broadly speaking these measures, under discussion at this hearing, which have been adopted in codes under the National Recovery Act, constitute one of the major groups of measures taken by the Nation to check the operation of a process which was conceived to be destructive of the social and economic welfare of the Nation.

What was this process? What were these measures? Broadly speaking, the process was one of a dislocation of price structure, a decline of agricultural prices, a decline in prices of most commodities, a decline in the price of labor, annihilation of return on investment, impairment of working capital, cessation of replacement and improvements and of the creation of new facilities, a withering of credit, and a progressive contraction of the current output of the economic machine. In 1933 this process had been under way for over 3 years. It was still progressing. Falling wages and falling prices were not resulting in increased consumption and restoration of credit and enterprise, but the reverse. Unemployment was increasing and also the needs for relief with the exhaustion of savings.

I sometimes wonder whether the memory of some of us carries back as far as February 1933. The Nation then made a choice between what is sometimes described as "letting nature take its course" and attempting to devise concerted measures to check the progress of the downward spiral, measures directed to securing a gradual return to a more ordered and fuller use of the economic resources of the country which were, for the time being, falling progressively into disuse.

Broadly speaking, it was a choice between laissez faire and an attempt to apply collective intelligence and action to an individual and collective disaster. I have used the phrase "letting nature take its course" as descriptive of the laissez faire course of action, or rather inaction. It is an attractive phrase. It sounds like a sensible course to pursue. But the devil should not be allowed to have all the good tunes and we do not believe that the laissez faire advocates are entitled to this phrase. We believe that intelligent concerted action is a part of "nature", and that "nature is taking its course", and its best course, when a measure of collective intelligence and activity is used to guide individual activities. For example, we believe it is "letting nature take its course" in the true sense when in time of plague collective action is taken for quarantine, for hospitalization and for inoculation, rather than letting each individual man, woman, and child face the bacilli on his own and concoct his own remedy. We are unwilling to call concerted measures for the health of the economic organization "regimentation" any more than we would be willing to call public health measures "regimentation."

What were the economic measures taken to arrest the downward spiral? We shall not attempt to enumerate all of them but merely certain of a related major group. They were:

1. An attempt to check the downward course of agricultural prices and restore something like their previous price relationship to commodities and services by checking the destructive effect on prices of the accumulation of surpluses that did not move and of an available capacity for the time being in excess of available demand.

2. An attempt to check the further fall in the price of labor by putting a bottom to wages through maximum-hour and minimum-wage rate provisions.

3. An attempt to deal with a disastrous price situation in many industries and trades, occasioned by particular conditions or by the general downward spiral. In such industries the wiping out of any margin between cost and selling price, and the creation in many instances of a minus margin, was eliminating return on investment, often actually impairing working capital, putting a steady downward pressure on wages, destroying the ability and confidence to make replacement and improvements, destroying credit and contracting operations.

The specific devices used to effect these objectives can be broadly stated. In the case of agricultural prices the Agricultural Adjustment Administration has sought to effect the reduction of surpluses that would not move and the overhanging threat of overcapacity and price demoralization by measures for the adjustment of available capacity to available consumption and by minimum price agreements. In a further effort to restore parity, it has, in some instances, paid "benefits" or subsidies as additions to price.

The National Recovery Administration has used "maximum man-hour" and "minimum wage" provisions to put a floor under the competitive price of labor; measures for the adjustment of available capacity to available demand to prevent the destructive effects of accumulated surpluses and their potential production. Finally, to put some reasonable floor to prices or to diminish their demoralization, it has used that whole range of provisions affecting price which are under discussion at this hearing, including minimum price provisions, mark-up provisions, open price filing provisions against the use of particular methods of price competition, such as varying discounts and rebates, which were being used as the instruments of a price cutting that was destroying any margin above operating cost and often creating a minus margin.

These are the weapons which the Nation chose to use in our fight against different aspects of the disaster which was contracting and narrowing the whole range of our economic life, one from which we could not escape through individual action.

All of these measures have certain things in common:

1. They were all prompted by and are molded by certain characteristics and defects in the working of the competitive system, which were emphasized by what has taken place during the depression.

2. None of them was directed toward substituting Governmental operation for individual competitive operation.

3. On the other hand all of them set certain boundaries which individual competitive action cannot transgress, where the result of all units going beyond those boundaries would be against the interest of each and against the public interest.

4. In all these measures we are dealing with a new technique. Each is susceptible of mistaken use; each, in fact, may have been used in cases where there was no occasion for its use, where it could not be used successfully because of particular conditions, and in situations where it has been misused.

5. The situation on all of these fronts is still so serious that the question immediately arises whether any of these weapons can at this time be laid aside without danger of losing ground gained. The real problem is where can they usefully be employed, and how can the effectiveness of their use be improved?

The recovery measures, whether taken with respect to agricultural prices, the price of labor or the price of commodities, find their immediate occasion in certain fundamental characteristics of the competitive system.

It is, of course, obvious that there is no economic virtue in any particular general price level. There may be a high degree of utilization of productive powers and services at a relatively low level. It is in the shift from level to level in the dislocation between different parts of the price structure which takes place in such shifts, in the redistribution of ownership which takes place in such shifts, and in their psychological effects that the difficulties arise. There is a certain characteristic of the competitive system that accentuates such difficulties. If left uncontrolled or unmitigated, it becomes, not a cause, perhaps, but at any rate a mechanism of disaster. This characteristic must always be borne in mind in dealing with the particular problem of measures to prevent price demoralization, which is being dealt with at this hearing, as well as in connection with the kindred problems of price demoralization with respect to labor and agricultural products.

What is this characteristic of the competitive system and why is it important? There is nothing so ingrained in the American people as a whole as their instinct for and their belief in competition. It runs through our social life in our games and pastimes; it runs through our economic life.

But what is it that the public wants and expects from this competitive system which it believes in and is determined to preserve? In the first place, it furnishes a spur to and reward for efficiency and so tends to improvement of product, lowering of cost and ultimately of price. Second, when functioning soundly it tends to produce a competitive price in an industry, fair to buyer and seller alike, yielding a substantial profit to the very efficient, some profit to the efficient, and little return, or a loss, to the inefficient, with a price and cost basis which makes possible reasonable wages.

On the other hand, what the public does not want from competition is a price so high that it produces a return to the seller all out of relation to his cost, nor does it want from competition a price so low that it yields no fair return for the labor or for the use of the capital employed. With such a price the buyer is getting something for nothing. Further, as a result of such a price, credit is impaired, progress is checked, markets are depressed, and there is an undue downward pressure on wages.

In normal times, in many industries, by and large, the public gets what it wants from competition—a fair competitive price. Sometimes, however, it gets what is not in the public interest, namely, an oppressively high price or an oppressively low one. This is due to a perfectly obvious characteristic of the competitive system, but one we are apt to lose sight of.

That characteristic is this. The normal competitive process is of a dual character: (1) Competition among buyers in securing their supply; (2) competition among sellers in disposing of their product. We are too apt to think of competition as something which takes place among the sellers only, although at an auction or in times of scarcity we realize very acutely the contrary. The law recognizes this duality of the competitive process. A combination among the buyers may be just as much an offense against the antitrust laws as a combination among the sellers.

The sound functioning of the competitive system depends at any given time upon the reasonable balance of activity on both sides of the competitive process; activity in competition among buyers in securing their supply; activity in competition among sellers in disposing of their products.

When this balance exists we get what the public interest demands of the competitive system; namely, a fair competitive price. When this balance is destroyed and the activity of competition is practically all on the side of the buyers or all on the side of the sellers the sound working of the competivive process breaks down. We then get from competition what is against the public interest; namely, an unduly high price, oppressive on the buyer, or an unduly low price, oppressive on the seller.

In times of scarcity the competitive activity becomes panic buying. It is all on the side of the buyers. The sellers lie back in the confident realization that they can dispose of their product whenever they get ready on a rising market and let the anxious buyers bid the price up. We had this situation immediately after the war in certain localities in one of the most highly competitive businesses there is; namely,

real estate renting. The shortage, with unbalanced competition left to itself, was skyrocketing prices to utterly unreasonable and oppressive levels. No individual could do anything about it. In such localities as the District of Columbia and New York, Government stepped in and fixed a maximum price in this competitive industry until the normal balance of competitive activity was restored.

On the other hand, in times of underconsumption, or where capacity for some other reason gets chronically out of balance with available demand, the competitive activity—panic selling—is all on the side of the sellers. The buyer, knowing that he can fill his requirements at any time on a falling market, holds back while the sellers are driven by one-sided competitive pressure to cut their prices without regard to production costs. In both such situations a normal competitive price becomes impossible.

In normal times in many industries such disturbances in the normal workings of competition are not serious and are speedily self-corrective. Shifts of labor and shifts of capital, although neither is nearly as fluid as the English economists of 60 years ago presupposed, do in a clumsy way work readjustments. But even in normal times there are broad areas in industry in which this process of self-correction is so interminably slow and the hardships occasioned so great that, as in the coal mining and textile industries in England, collective efforts toward orderly readjustment have been regarded as necessary. Measures such as we are discussing here today are turned to, the world over, in one form or another to mitigate price demoralization resulting from competition persistently out of balance.

The contraction of business activity during the first years of the depression and the resulting shrinking consumption threw competition completely out of balance by the resulting excess in capacity over available demand, and in the case of certain products by actual overhanging surpluses.

Such a situation threw the mechanics of the competitive system, as it were, into reverse. The pressure of self-interest by each unit ordinarily tends to the sound working of the system and the general good. But once available capacity and overhanging surpluses get out of line with current available demand, then the result is just the opposite. Each unit, whether of farm or factory, is under a driving force to obtain as large as possible a share of the inadequate current demand in order to dispose of its surpluses or to reduce the overhead of its operation. A mill seeks to keep running full, both in its interest and in the interest of the labor it employs. In order to keep running it seeks to get as large a share as possible of the inadequate demand by cutting its price to get volume. As each unit is under similar pressure this results in a wholly futile, but nevertheless inevitable, struggle in which prices drop down to cost or below, wages are forced down, working capital is impaired, credit withers, there are no funds and confidence for undertaking improvements or new enterprises.

In such downward spiral both borrower and lender are deterred by the question as to whether a dollar put into such operations under such circumstances can be gotten back while falling prices continue.

Further, falling prices produced by such conditions instead of by normal lowering of costs through improved efficiency, as a matter of observation, do not have that effect in increasing demand which at first though might be expected. Many buyers hesitate to buy because they fear that if they stock up with a supply the market will go still lower and thus handicap them in their competition in selling the supply which they acquire. Further, actual consumer buying is checked adversely through falling wages, the suspension of dividends and interest payments, and by reason of general atmosphere of fear which prevails.

Too frequently the postponed purchases are permanently postponed. Whereas if the distributor had sufficient confidence in the stability of a particular market to stock merchandise he would necessarily be obliged to employ more people to move these stocks, to engage in more extensive credit arrangements to finance such business and more aggressive sales efforts, including increased advertising and other promotional activities.

Talk about "economy of plenty"—there is no surer way to curtail business, to curtail employment in productive and in distributive channels, than to encourage a system that drives buyers out of a primary market and keeps them out. And the one thing that keeps them out more than anything else is the fear that no matter how low a price they pay today some competitor will be able to buy for less tomorrow. Price cutting, and particularly the sale of goods below cost of production, are breeders of hand-to-mouth buying and present a constant menace to stabilized employment and increase of production.

The competitive system operates the same way with regard to the price of labor. Given anything like the degree of unemployment which the depression produced there is a destruction of balance in the competition among those seeking to dispose of their services and those seeking to obtain them. There is the resultant tendency to force down wages to subsistence levels or below, which custom, good intentions of employers and organization among employees can only somewhat mitigate, and then only in some particular branches of industry and with a resultant dislocation of the price structure.

In these situations, therefore, which produce breakdowns in the sound functioning of the competitive system, we have, instead of a fair competitive price, prices which have all the objectionable characteristics of an unduly high price compelled by monopoly among sellers or an unduly low price forced by a monopoly among buyers.

We hear a great deal about the evils of monopolistic prices, but in 1918–19 in many localities in this country, if the unbalanced competitive system had been allowed to take its course and Government had not stepped in to fix maximum prices on rentals, no monopoly in the owning of real estate could have forced prices more unreasonably high than they were rising of their own accord, due to the one-sided functioning of the competitive system. And so with the reverse, when in situations such as have occurred during the depression where in agricultural products, and many other commodities, an overhanging supply or the available capacity gets completely out of balance with available demand, prices are forced down and held down by this same lack of balance in competitive activity without regard to the cost of production. Monopoly among buyers could not force them lower. A "monopoly" might have had intelligence enough not to force them so low, because of the destructive effect on the country of impairment of working capital, destruction of credit, checking of replacements and improvements, and destruction of confidence.

It is vital to this whole discussion that we realize that efforts to check the effects of one-sided competition whether by putting a ceiling or a floor on prices, such as took place in 1919 with regard to rents in many localities and such as has now taken place with regard to many agricultural products, the price of labor and the price of coal are not efforts to secure monopolistic prices. Just the reverse, they are efforts to prevent or mitigate oppressively high or oppressively low prices, produced by one-sided competition, which have the oppressive characteristics of the worst monopolistic prices.

The efforts of the Agricultural Adjustment Administration, the efforts of the National Recovery Administration, have been efforts to restore the sound functioning of the competitive system or to deal with and mitigate its breakdowns. The Agricultural Adjustment Administration has sought to deal with the dislocation of the price of agricultural products occasioned by overhanging surpluses and capacity, for the time being, beyond available demand. The National Recovery Administration has sought by minimum wage and maximum hour provisions, to deal with the disastrous pressure on wages from unemployment and falling commodity prices in many areas of industry. It has sought to deal with the break-down of the balance in competition and consequent destruction of fair competitive prices, impairment of working capital, withering of credit, check on replacements and improvements by providing for adjustments of available capacity to available demand and by measures to prevent the use of price practices and methods which are destructive of any margin about cost and often produce a price with a minus margin.

In all these directions the objective of the recovery program has been to check the automatic warping of price levels by the destructive character of one-sided competition inevitable in such periods of underconsumption and consequent temporary overcapacity. It is the philosophy of all these measures that recovery is not an abstraction. Recovery instead is a matter of restoring the sound, healthy, economic functioning of efficent individual units—farms, mines, mills, and stores, and their wage earners. In the capitalistic competitive economy which is the choice of this country it is only through healthy individual units, a large and small, that there can be such a thing as general economic health. At a time such as this the problem is to restore to the efficient individual units that kind of economic soundness which each would have in the normal functioning of competition but which they were to such a general extent losing through its destructive workings, unchecked, when out of balance. Some margin over operating cost, some profit for investment is important, because in our economy it is is an essential cog to the actual effective operation of our economic machine with respect to credit, with respect to funds available for improvement, with respect to funds available for and confidence to undertake new enterprises.

PARTICULAR MEASURES ADOPTED BY THE NATIONAL RECOVERY ADMINISTRATION TO PREVENT DESTRUCTIVE PRICE CUTTING

We have pointed out above those general characteristics of the working of the competitive system in the time of depression, and in some industries at all times, which have called for action along a broad front to check the destructive effects of price demoralization and to give an opportunity for the restoration of economic health to efficient individual units. It would be inappropriate at this hearing to discuss the measures taken by the Agriculture Adjustment Administration to meet this problem in farm prices or by the National Recovery Administration in putting a floor to the competitive price of labor by minimum wages and maximum-hour provisions. We shall deal here solely with the measures adopted by the National Recovery Administration in its codes for preventing price demoralization in sale of commodities or service with its destructive efforts on industrial and trade units.

First, let us state the conclusion which has been reached by the Consumers' Goods Industries Committee with respect to this matter, then discuss generally certain individual types of measures and certain objections to these measures and suggested alternatives to them.

After a very careful study of provisions in consumer industries relating to price, at a meeting of the Consumers' Goods Industries Committee on November 1, 1934, the following resolution was unanimously adopted:

"Policies and provisions, which are intended to provide instrumentalities for preventing or checking undue and harmful disruption of prices, should not only be retained but should be made available during emergencies with minimum delay. If industry is to be held to higher costs of production by virtue of hours and wages provisions, then industry must be upheld against destructive competition by policies and by provisions of the character mentioned and by their quick application."

To come now to specific measures:

(1) *Minimum price.*—This is a direct measure resorted to in some codes to put a floor under prices in conditions where the destruction of the ordinary balance of activity in competition among buyers and competition among sellers has destroyed the possibility of a fair competitive price. It is a barrier erected against a type of price; has all the characteristics of an unduly low price that might be forced by monopoly among buyers. It is a barrier against the impairment of working capital, the destruction of credit, the prevention of the making of replacements and improvements which are essential to the sound functioning of the particular industry and other industries which supply it. It is a direct measure to hold in check the same kind of aberration of the competitive system as a maximum price in times of scarcity.

It is sometimes said that such a minimum price eliminates competition in an industry. But such a price does not destroy incentive for individual initiative to reduce costs and improve quality and general efficiency, which are byproducts of the competitive system, nor does it eliminate the effect of competition on price, itself. If prices higher than the minimum prevail, it certainly does not have this effect. If the minimum price is the prevailing price, why is it that higher prices are not charged? Solely, of course, because of the price competition among the units involved. All that it does is to set a limit below which price competition shall not force down prices. That limit should approximate the point at which price competition changes from being beneficial in its results and becomes destructive of the public interest by being destructive of the economic soundness of the efficient individual units in the industry. It does not deprive the public of the benefits of a fair competitive price. What is prevented is imposing through the dislocation of competition an unfair and uneconomic price far below a fair competitive price. It cannot properly be called "price fixing."

The difficulties with this direct method of dealing with destructive price cutting are not because of any inconsistency with the objectives of competition or on any other ground of principle. Objection must rest on two practical difficulties, (1) in the determination of a proper minimum and (2) in enforcement and compliance. Both of these difficulties also exist in the setting of a minimum wage. In neither case should this shield be discarded from the armory of weapons available for use, where no better is available, in our defense against the destructive operation of the competitive system in the present emergency.

(2) *Open price filing.*—Here again is a defensive weapon against those forces which tend in times such as these to force prices far below a fair competitive level. Its effect is largely psychological. It prevents misrepresentation by buyers as to prices alleged to be offered by others. It lessens discrimination among buyers.

It lessens the pressure in the struggle for volume in the presence of inadequate demand to cut prices below a fair competitive level without the other fellow's knowing it and so getting a disproportionate share of the inadequate demand. This is not price fixing. It is the endeavor to mitigate the destructive effects of secret price cutting and discrimination by bringing the whole competitive process into the open. This method, too, has its difficulties of compliance and its difficulties of application except in the case of highly standardized articles or services. But, again, it should not be discarded from the armory of the National Recovery Administration.

(3) *Rebates, special discounts, etc.*—There are a whole range of devices which are used in the pressure for individual volume in the face of inadequate demand to drive prices below a fair competitive level. They have several vices. They produce a disorderly price structure. They tend to work unfairness at a subsequent stage of the competitive process by giving a special advantage to particular buyers against their competitive sellers in that stage. In times such as these they become the means for destroying fair competitive price levels. They are the type of practice like all other price demoralization practices which, if one uses, all must use. In such times the advantage from their use becomes illusory, but the pressure on each unit is such that each pursues a course which, when all pursue it, necessarily makes it futile as to the expected individual benefit.

(4) *Sales below cost provisions.*—Like minimum price provisions, these provisions are used as shields against the forcing down of prices below fair competitive levels through the derangement of competition at such times as these. Their defensive use at such times is unexceptionable in principle. The difficulties in determination of costs, the difficulties in securing compliance, and the injustices which follow from noncompliance by certain units are patent. But, in industries which can use them effectively they are useful weapons. They cannot be called price fixing.

OBJECTIONS TO USE OF THESE MEASURES AGAINST DESTRUCTIVE PRICE CUTTING

(1) *Alleged prevention of elimination of the unneeded or the unfit.*—In times such as these where there is pronounced underconsumption all along the line, it is wholly unsafe to say that because of the shrunken demand units or facilities are unneeded, ought to be forced into bankruptcy and scrapped. As a practical matter, however, the bankruptcy route does not destroy the facilities, it merely puts them in a position where they can be better used in destructive competition. Further, from the standpoint of the public psychology and the restoration of credit and confidence, what we need is not more bankruptcy but less.

As for the so-called "unfit", there are few if any units in industry which can be regarded as permanently damned. Management can change. Facilities can be improved. The unfit can become the fit. They are far more likely to do so if the general health of an industry is such as to promise a return from improved facilities, and if bad management is deprived of the alibi of "general conditions."

Where there are submarginal units or excessive capacity, an orderly way for their retirement without undue hardship to communities or workers should be the objective.

(2) *Alleged destruction of initiative and efficiency.*—It is impossible to see wherein initiative and efficiency are paralyzed by arresting the type of competition, over which the individual unit has no control, which is forcing it to produce without a return on the investment or below cost. The fact that a concern can make a living is not destructive of effort on the part of management to reduce its costs and improve its product and efficiency and so increase its profit. The fact that it is making a living gives it, on the other hand, the financial ability and confidence to make replacements, keep its plant up to date, and make progress.

(3) *Alleged mulcting of the public by monopoly prices.*—We hear much loose assertion from some quarters that these provisions in codes are "gouging the public." It is to be hoped that these provisions have been of aid in restoring some return to industry. It needed it to take care of increased labor costs. It needed it to restore depleted working capital and to increase it. It needed it to make it possible to begin again the repairs, replacements, and improvements held back by the depression and necessary to put the durable goods industries to work. It needed it to pay interest and some dividends to the efficient and thereby restore the free functioning of credit.

It is an idle and pernicious assertion to claim that more than this, if as much, has been done. Much of such profit as has been made has been mere inventory appreciation to recoup a part of enormous inventory losses. The income-tax returns for 1933 and 1934 will tell the story. Industry-wide examination of

returns might well be made. We believe that this is the surest way to end this irresponsible and unreasonable attack.

These steps are restoring a measure of economic health. It was the previous prices which yielded no fair return, which were pressing down wages and destroying credit and confidence, that had the oppressive effects of "monopoly."

The epithet "price fixing" is often used as in itself an argument and as in itself outweighing the result of an intelligent examination of the facts, of the economic conditions which have led to the measures taken by the N. R. A. and of a consideration of the real effect of those measures in strengthening and protecting the workings of the competitive system by correcting the results of its abnormal workings. Problems of price demoralization are not peculiar to this country. The world over it is recognized that a reasonable price is not a monopoly price; that measures to secure it by setting limits to destructive competitive action are not attacks upon competition, but are measures to promote its sound working. It is time we ceased in these matters, to be intellectual slaves of phrases; ceased to shudder at their very use; ceased to permit them to be used as substitutes for intelligent analysis and thought.

(4) *Alleged holding down of production and recovery of other industries by increased prices.*—One of the vague, general lines of attack on the efforts of the National Recovery Administration to restore a reasonable price structure for wages and for commodities has been that it is holding back recovery by increased prices; that the way to secure increased production is through lower prices.

As has been said above, we do not conceive that there is any virtue in any particular price level, so far as extent of production goes. On the other hand, we are unable to see any virtue, from the standpoint of recovery, in falling wages and falling prices and the annihilation of any margin between costs and selling price. We had 3½ years of that process, from the fall of 1929 to the spring of 1933. During that time consumption steadily diminished, credit shrunk, our economic life contracted. It may be that we did not go far enough and that several more years of the same process might have begun to produce a different result. But we are not at all inclined to turn from our present course to try that experiment. We have not, it is true, emerged from the depression but, as we see it, there has been a marked change coincident with our program for placing a bottom to wages and a bottom to prices and an effort to restore to some extent dislocation of the price structure. We do not believe that there would be anything gained, but instead great danger run, if we now, with the competitive system still out of balance, were to encourage and permit the return to the destructive cycle of price-cutting, annihilation of profit, and downward pressure on wages.

In industries, in general, the margin of profit is at best such a small element in price that its presence or absence does not materially affect volume of consumption. If there were to be a lowering in price which would be of a character which might theoretically stimulate consumption, it would have to be by wholesale cutting in labor costs into which, in the main, prices are ultimately resolved. That very wage cut, as was found during the downward spiral of the depression, through its effect on ability to buy would neutralize any such effect from a cut in prices.

This is not to say that we do not recognize that in certain areas of industry, costs, and consequently prices, may be reason of static wage conditions, custom, or other causes, not have responded to the general downward course of prices and thus have gotten out of line with the general price structure. It may be that the lag in the construction and certain other branches of the durable-goods industries are, to some extent, due to such causes and to such dislocations in the price structure. It may be that adjustments in costs and price structure in such branches of industry would be possible in their own interest and in the interest of all. On the other hand, the very reasons which have caused such branches of industry to get out of line, make it extremely difficult, if not impossible, to effect these adjustments except through a slow process or by the return rise of other price levels.

Such exceptional circumstances, however, do not furnish any sound arguments for taking the foundations from under industry generally and subjecting it again to the deflationary measures of annihilation of return on investment and lowering of wages.

No one, of course, for a minute will dispute that the one way in which the general standard of living of the country can increase is through increased consumption and then through a production which increases as rapidly as effective consumptive demand eats into existing surpluses. It does not increase consumption to have surplus stocks of commodities piled up. If it did, they could not be piled up without an increase of working capital. That increase of working capital cannot

come except from the operation of credit to be extended to increase production unless it can see a prospective demand and something more than a dollar back from a dollar spent.

Apart from some helpful adjustments in bringing prices, now out of line, back into line in some branches of industry and in agricultural products, it is believed that increased consumption and consequent increased production must come from the return to normal economic health of efficient individual units in the various branches of agriculture and industry. Such economic health requires something more than a subsistence wage for labor; it requires also a plus margin instead of a minus margin between operating costs and selling prices. This is the course which recovery is now taking. It has been aided by the price stabilization measures of the National Recovery Administration. It would be now retarded if, because of their difficulties and defects, we should throw them into the discard.

(5) *Alleged destruction of competition by provisions limiting the use of methods of competition.*—It is sometimes urged that the competitive system is destroyed if methods which one competitor might otherwise adopt as against another are limited or forbidden. That conclusion is not justified by experience. We have constantly placed limits of one kind or another upon the use of particular methods. The older and cruder forms of dealing with a competitor by sabotaging his machinery, circulating misrepresentations about his product, bribing his employees, were limited by law without the destruction of the competitive system. The use of railroad rebates, a highly effective weapon in competition, was forbidden and finally eliminated without any apparent impairment of the essential functioning of competition. Custom, in ordinary times, causes the use of the same discounts, the same terms of sale, the same types of service without competition being destroyed. In a healthy industry, with reasonable balance between its facilities and demand, competition proceeds without sales below cost. A competitive price satisfactory to buyer and seller is obtained without price cutting that drives down to or below cost. If, in abnormal times, or where an industry has fallen into abnormal conditions, we forbid diversity of discounts, terms of sale, special privileges, rebates and more direct means of price cutting and the naming of prices down to or below cost, competition does not cease. It still goes on within these limits. It still exists. It yields its benefit as it does in normal times in a healthy industry where none of these competitive devices are, in fact, resorted to.

It is a complete misconception to identify "competition" with one-sided, destructive competition and the evils it brings in its train. It is a complete misconception to regard barriers against such competition as inconsistent with or destructive of the competitive system.

(6) *Alleged oppression of small enterprises.*—Again it is loosely asserted that provisions against price demoralization are oppressive to small concerns. By and large the reverse is true. It is not the industries with a small number of large units that require these provisions. Such industries may be able to take care of themselves. It is the industries with a large number of medium- and small-sized units that need such protective provisions in this emergency. No longer as in pre-code days is the small enterprise exposed to the unrestrained "survival of the fittest" activities of its larger well-financed competitors.

ALTERNATIVES FOR MEASURES ADOPTED BY THE NATIONAL RECOVERY ADMINISTRATION TO PREVENT PRICE DEMORALIZATION

(1) *Trade practice provisions.*—There may be some trade practice provisions which are not directed against demoralization of price in one form or another, as for example: Piracy of design; misrepresentation of a competitor's goods, and some others. But the great mass of trade-practice provisions and those which are vitally important in a time like this, are those which are intended to check price demoralization and protect a fair competitive price. If the National Industrial Recovery Act were to confine its efforts in dealing with the destructive effects of the break-down of the competitive system, to codes dealing with such side issues as these which are, in any event, already forbidden by existing law, the National Recovery Administration might just as well turn us back to 1932 and go home.

(2) *Maximum hours and minimum wage provisions.*—The question is sometimes asked whether maximum-hour and minimum-wage provisions in codes do not themselves prevent destructive price competition, and to further ask whether this does not make unnecessary the provisions in codes directed against price demoralization or toward bringing the productive use of facilities into reasonable balance with available demand.

The answer to both questions must be unequivocally "no." These measures are useful in preventing destructive competition in wages produced by a supply of labor far above what the available demand will absorb. They are useful in putting the units of an industry on a fair competitive level insofar as this element of cost is concerned, in the same way that the abolition of railroad rebates was useful. But they are not of a character to prevent destructive price cutting in the sale of commodities produced, any more than a fixed price of material or other elements of cost prevent it. There is the whole range between a fair competitive price and operating expense through which one-sided competition may and does force down the price. In fact, there is a wider range, because there is still a possibility of impairment of fixed capital by disregarding depreciation, and of working capital by cutting into it for operating expenses. Destructive competition at the expense of the employee is lessened, but it is left in full swing as against the employer himself and the economic soundness of his enterprise.

There are further considerations. Failure to check cutthroat competition tends to hold wages down to minima and tends to exert a downward pressure on those minima. Further, if codes are merely to protect the employee from the destructive effects of competition, aggravated by the depression, and do nothing toward mitigating these effects so far as the employer is concerned, the problem of the ability and willingness to pay even the code minima is immediately enormously increased. The report of the Mineral Section of the National Resources Board recognizes the practical aspects of this situation; and it has been recognized by the representatives of labor in the recent hearing as to the coal industry.

The labor provisions of the codes must not become Volstead acts. An industry that feels that codes are instruments dealing even-handedly with the problems of the employer and employee occasioned by the depression has both an ability and a desire to cooperate in compliance. But if the partnership of industry with Government which was invoked by the President were terminated (as we believe it will not be), then the spirit of cooperation, which is one of the best fruits of the National Recovery Administration experiment, could not survive.

It must be remembered that these codes have been worked out as a whole, with balanced consideration given to the interests of all concerned. Industry went into them on the invitation of the Government. Any code can, of course, be revoked as a whole at any time; but industry believes that it is utterly foreign to the spirit in which this part of the recovery program was initiated, as well as contrary to the act itself, that particular provisions should be stricken out from them without its consent and other provisions attempted to be left in force.

But whatever the merits of the questions of technical rights in this matter might ultimately prove to be, it would be a tremendous loss if there were anything to impair that spirit of partnership which was invoked by the President at the outset in this act and which has characterized his participation in the administration of it.

The entire inadequacy of uniform fixed hours and fixed wages throughout an industry to prevent ruinous and destructive competition and to secure the correction of resulting demoralized conditions in an industry is not a theory; it has been demonstrated. For example: In England the complete unionization of an industry produces minimum wages and maximum hours, but it does not prevent the type of competition which is ruinous to an overcapacitated industry. This has been demonstrated over a long period of years in the coal industry and in the textile industry. In both of these industries, in spite of these fixed limitations of wages and hours, it is essential, both from the standpoint of industry and labor to take drastic measures which will limit and direct the competitive process. There is no more reason to expect, in this country, that the hour and wage provisions of codes can furnish a substitute for provisions directed against price demoralization.

3. *Measures for adjustment of capacity to available demand.*—In some industries and in some codes, it is possible to strike directly at the cause of breakdowns in the sound functioning of competition, rather than its effects. This has been done by provisions in some codes which narrow the gap between the available capacity and available demand. The advantage of such provisions is that they tend to protect a fair competitive price by preserving normal and fair competitive conditions. An industry, in normal times, in which the facilities are in reasonable balance with current demand, furnishes a typical field for the successful functioning of a competitive system. Price varies somewhat, but by and large, there is neither that scarcity which occasions an unduly high price through the creation of a sellers' market nor an overhanging surplus, or threat of such surplus through overcapacity, which creates a buyers' market and an oppressively low price. In

an industry where it is practicable, by provisions as to operation of machinery or otherwise, so to narrow the gap between the existing productive facilities and the current available demand that these normal conditions of competition will be restored and prevail, the problem is met. There will be a degree of price stabilization, an avoidance of violent fluctuations in employment which will return that industry to normal and relieve it from the disastrous pressure of overcapacity, temporary or chronic, to which the depression or conditions peculiar to the industry have subjected it.

Any such provisions, of course should be elastic so that the available capacity of the industry, as a whole, will be responsive to the available demand and production be readily increased as soon as consumption makes room for it by eating into available stocks.

The Consumers' Goods Industries Committee has recognized the value of such measures in the following resolution:

"Overcapacitated industries, upon proper showing of facts, should be permitted and encouraged to adjust the use of productive facilities to consumption. Such policy will benefit both management and labor without imposing any burden on the public."

Such measures are valuable, where they can be used, because of their simplicity, the absence of any serious problems of compliance, their preserving the essential characteristics of a healthily functioning competitive system. But they are not generally available. They are essential and useful in industries such as oil, textiles and forest products, but they cannot be availed of in innumerable other industries.

4. *Voluntary action.*—It is sometimes said that all that is needed in times such as we have gone through, is for the individual unit to follow a sound policy of adjusting his price to his costs and his production to available demand. This answer would be complete and all-sufficient if each unit could and would observe this practice. Each unit would then sell only on a basis which would insure it a fair profit. It would produce only what it could sell and would never grant rebates and would never sell goods under any but customary terms and discounts or use other price-cutting devices.

But such a condition is as impossible as it is desirable. It is true that in certain industries with a few large units, particularly where the unit sold is high priced, these conditions of individual voluntary action can prevail. Each unit may feel sufficient assurance that other units will be equally intelligent, that no unit will seek more than a reasonably proportionate share of the inadequate demand, and will only sell at a profit. The same is true of concerns producing highly specialized articles. Those branches of the industry and such concerns can deal with the problems of the depression without codes and remain in a sound economic condition throughout it, but they are rare. In the typical competitive industries, with a vast number of units, the situation is necessarily different. There the pressure of overcapacity drives each unit to resort to methods which, when all resort to them, are mutually destructive and destructive of the public interest. A very small percentage of the industry can, but its practices, determine the price for the whole industry. In such times, any bad or unsound practice followed by one, inevitable becomes immediately standard to the industry as a whole. The same reasons prevent mere voluntary agreements from meeting the situation in such times as these. Such voluntary action, as the President pointed out in his first radio speech on the National Recovery Act, breaks down through the action of a small minority who seek to take advantage of the intelligent conduct of the majority.

To meet the problem we had to meet in 1933 and the problem which is still with us, it was essential that industry should have the power of the Government back of it in attempting to check the downward spiral of the depression and to work slowly upward toward recovery.

CONCLUSION

In this hearing the National Industrial Recovery Board is at the crossroads. The questions before it are these: Shall the Government continue in the effort to cooperate with industry in finding means to continue to check the progress of the depression and to find an orderly means of emergency from it? Shall it say that the answer is a return to laissez faire or shall it continue to seek to find orderly ways to deal with the dislocation of the competitive process in vast areas of our industries by the underconsumption which has grown up during the depression? Shall it abandon the idea that the way out of the depression is to endeavor to restore economic health to the individual business units and their wage earners? Shall it yield to the discouragement occasioned by difficulties in administration,

by the insufficient education of business men in the use of the methods which they are trying out, and the insufficiently high standard of compliance of certain of them with provisions limiting the boundaries of competitive practices for the general good? Or shall it set itself with determination toward devising better techniques for applying its sound principles, toward aiding in the education of business to higher standards of observance, and go through with this experiment in the application of collective and intelligent action to the breakdowns of our competitive system? It is not enough that the measures taken are defective in their working and sometimes work injuriously. A challenge is presented to all of us who are sincerely interested in recovery to make existing measures work or to produce something that will work better. It is a challenge which requires an affirmative answer, not a negative one.

Submission of the foregoing memorandum was authorized at a meeting of the Consumers' Goods Industries Committee, held in New York, N. Y., on January 7, 1935.

Respectfully submitted.

GEORGE A. SLOAN,
Chairman, Consumers' Goods Industries Committee.

SHUTS TEXTILE MILLS IN PROTEST OVER TAX

B. B. GOSSETT CLOSES TWO PLANTS OF HIS CHAIN IN NORTH CAROLINA AND ASSAILS WALLACE

CHARLOTTE, N. C., April 11.—In a statement criticizing Government interference in business and denouncing the processing tax, B. B. Gossett, textile manufacturer, said today that two mills of the Chadwick-Hoskins chain, affecting nearly 700 workers, would be closed at once. Three other mills of the chain, he added would continue under a watchful waiting program in hope the present chaotic situation would show signs of improvment.

Mr. Gossett assailed Secretary Wallace for his insistence upon continuing the cotton-processing tax. The tax, the manufacturer said, was one of the three basic factors contributing to the "destruction of the cotton manufacturing industry." He estimated that it equaled nearly one-half of the industry's wage bill.

The wide importation of Japanese goods and the loss of the textile export trade also were elements threatening to wreck the American industry, said Mr. Gossett.

"Notices have been posted advising the employees of our mills 1 and 4 that these plants will be closed down indefinitely at the end of this week," said the manufacturer.

"Mills 2, 3, and 5 will continue operations for the present, but unless conditions speedily improve, it will also be necessary to close down these three plants."

The statement informed employees that the company would grant certain concessions during the period of their idleness and would assist them in every possible way to prevent destitution, working in collaboration to this end with the local relief administrators. No rentals would be charged the employees for their homes, the statement said, adding that other arrangements would be provided in lieu of their wages while the period of idleness continues.

DUN & BRADSTREET, INC.,
New York City, April 10, 1935.

COMPARISON OF THE INSOLVENCY RECORDS OF CONSUMER GOODS INDUSTRIES AND ALL OTHER INDUSTRIES

The insolvency records of the 43 principal consumer goods industries are tabulated on the two attached sheets. The first sheet shows the statistics of the full year, 1934. The second sheet shows the statistics of the first 3 months of 1935.

The comparison of these statistics with the total statistics of concerns in business and insolvencies shows three significant facts:

A. The statistical sample is good. The total number of concerns operating under these 43 codes, according to National Recovery Administration figures, is 1,478,950. This is 74.93 percent of the total number of rated concerns in business in July 1934 as reported in the Dun & Bradstreet Reference Book of that month.

B. The number of insolvencies is low. Although the number of concerns in the principal consumer goods groups is nearly 75 percent of the total number of rated concerns, the number of insolvencies among them, 6,040, is only 49.6 percent of the total number of 1934 insolvencies, 12,185.

C. The insolvency rate is low. The insolvency rate for concerns in the principal consumer goods industries in 1934 was 0.409. The rate for all concerns for that year was 0.617. This rate is derived by dividing the annual total of insolvencies in relation to all concerns for the 10-year period 1925 to 1934 is:

	Rate		Rate
1925	1.00	1930	1.20
1926	1.00	1931	1.33
1927	1.09	1932	1.53
1928	1.08	1933	1.03
1929	1.03	1934	.62

The figures for the first 3 months of 1935 for the consumer goods industries show insolvency totals and rates proportionate to those of the full year 1934.

Points A, B, and C are shown graphically on the attached chart.

T. W. CUNLIFFE, *Secretary.*

(The chart referred to was placed on file with the clerk of the committee.)

The insolvency record of the principal consumer-goods industries

1. THE YEAR 1934

Code no.	Code	Number concerns operating	Number insolvencies	Percent insolvencies
1	Cotton Textile Industry	1,281	5	0.39
5	Coat and Suit Industry	2,150	62	2.88
7	Corset and Brassiere Industry	213	1	.47
10	Petroleum Industry	55,143	131	.24
14	Rayon and Synthetic Yarn Industry	29	2	6.90
15	Men's Clothing Manufacturing	3,691	26	.70
16	Hoisery Industry	730	4	.55
24	Bituminous Coal	4,976	6	.12
33	Retail Lumber Industry	21,150	468	.32
36	Glass Container Industry	65	2	3.08
43	Ice Industry	4,110	12	.29
44	Boot and Shoe Manufacturing	1,341	40	2.98
48	Silk Textile Industry	1,491	10	.67
51	Umbrella Industry	93	1	1.08
53	Handkerchief Industry	88	1	1.14
60	Retail Trade	900,000	3,328	.37
64	Dress Manufacturing	2,080	59	2.84
65	Advertising Specialty Manufacturing Industry	300	6	2.00
83	Soap and Glycerine	248	1	.40
86	Toy and Playthings	431	14	3.25
87	Leather and Woolen Knit Goods	227	2	.88
90	Funeral Supply	650	2	.31
120	Paper and Pulp Industry	854	5	.59
125	Upholstery and Drapery Textile Industry	165	1	.61
126	China and Porcelain	40	1	2.50
130	Precious Jewelry Products	2,630	3	.12
135	Cigar Container	92	1	1.09
142	Retail Jewelry Trade	19,998	110	.55
149	Machined Waste Industry	40	1	2.50
151	Millinery Industry	1,134	73	6.44
156	Rubber Manufacturing Industry	385	6	1.56
163	Wholesale Automotive Trade	5,465	28	.51
164	Knitted Outerwear	757	17	2.25
172	Rayon and Silk Dyeing and Printing Industry	134	8	5.97
175	Medium and Low Priced Jewelry	1,100	15	1.36
176	Paper Distribution Trade	1,000	10	1.00
177	Silverware Industry	163	2	1.23
182	Retail Food and Grocery Trade	389,862	1,465	.38
184	Shoe and Leather	89	1	1.12
190	Paper Stationery and Tablet Manufacturing	60	3	5.00
193	Folding Paper Box	370	1	.27
196	Wholesale Food and Grocery Trade	9,085	109	1.36
201	Wholesale and Distributing Trade	45,040	337	.75
	Total	1,478,950	6,040	.409

The insolvency record of the principal consumer-goods industries—Continued

II. THE FIRST 3 MONTHS, 1935

Code no.	Code	Number concerns operating	Number insolvencies	Percent insolvencies
1	Cotton Textile Industry Code	1,281		
5	Coat and Suit Industry	2,150	16	0.74
7	Corset and Brassiere Industry	213	1	.47
10	Petroleum Industry	55,143	25	.05
14	Rayon and Synthetic Yarn Products Industry	29		
15	Men's Clothing Manufacturing	3,691	6	.16
16	Hosiery Industry	730	2	.27
24	Bituminous Coal Industry	4,976		
33	Retail Lumber, etc	21,150	8	.04
36	Glass Container Industry	65		
43	Ice Industry	4,110	2	.05
44	Boot and Shoe Manufacturing Industry	1,341	6	.45
48	Silk Textile Industry	1,491	2	.13
51	Umbrella Industry	93		
53	Handkerchief Industry	88	1	1.14
60	Retail Trade	900,000	1,005	.11
64	Dress Manufacturing	2,080	20	.96
65	Advertising Specialties Manufacturing Industry	300		
83	Soap and Glycerine Manufacturing	248	1	.40
	Toy and Playthings Industry	431	3	.70
87	Leather and Woolen Knit Goods Industries	227	1	.44
90	Funeral Supply Industry	650	1	.15
120	Paper and Pulp Industry	854		
125	Upholstery and Drapery Textile Industry	165		
126	China and Porcelain Manufacturing Industry	40		
130	Precious Jewelry Products Industry	2,030		
135	Cigar Container Industry	92		
142	Retail Jewelry Trade Industry	19,998	35	.18
149	Machined Waste Manufacturing Industry	40		
151	Millinery Industry	1,134	9	.79
156	Rubber Manufacturing Industry	385	4	1.04
163	Wholesale Automotive Industry	5,465	6	.11
164	Knitted Outerwear Industry	757	3	1.40
172	Rayon and Silk Dyeing and Printing Industry	134	1	.75
175	Medium- and Low-Priced Jewelry Industry	1,100	2	.18
176	Paper Distribution Trade	1,000	5	.50
177	Silverware Trade Industry	163		
182	Retail Food and Grocery Trade	389,862	423	.11
184	Shoe and Leather, etc	89		
190	Paper, Stationery and Tablet Manufacturing	60		
193	Folding Paper Box	370	1	.27
196	Wholesale Food and Grocery Trade	9,085	44	.48
201	Wholesale or Distribution Trade	45,040	75	.17
	Total	1,478,950	1,708	.116

The CHAIRMAN. Mr. Adolph Schoenbrun. Mr. Schoenbrun, you represent the Dulcey Frocks?

STATEMENT OF ADOLPH SCHOENBRUN, REPRESENTING DULCEY FROKS AND BRADLEY FROCKS, INC., PITTSBURGH, PA.

(The witness, having been duly sworn by the chairman, testified as follows:)

Mr. SCHOENBRUN. That is correct.

The CHAIRMAN. I do not know what the Dulcey Frocks are, but we can find out. How much time do you want, Mr. Schoenbrun?

Mr. SCHOENBRUN. Very short and snappy.

The CHAIRMAN. All right. You may proceed.

Mr. SCHOENBRUN. Did Mr. Sloan leave?

The CHAIRMAN. Yes.

Mr. SCHOENBRUN. With your permission, I would like to ask him one question.

The CHAIRMAN. He has gone; so you proceed.

Mr. SCHOENBRUN. He did make a remark this morning that the paper manufacturers were almost unanimous in wanting to extend the N. R. A. It is no wonder. We are paying 50 percent more for paper boxes than we did before N. R. A.

Senator KING. You think it is a good deal of a monopoly?

Mr. SCHOENBRUN. That is what the salesman told me who sells it to me.

The CHAIRMAN. The salesman representing the boxes told you it was a monopoly?

Mr. SCHOENBRUN. That is what he told me.

The CHAIRMAN. Who was he?

Mr. SCHOENBRUN. Well, the poor fellow died.

The CHAIRMAN. Oh, he is dead?

Mr. SCHOENBRUN. Yes; he is dead.

The CHAIRMAN. All right. [Laughter.]

Mr. SCHOENBRUN. For reasons hereinafter cited, we Dulcey Frocks and Bradley Frocks, Inc., of Pittsburgh, Pa., wish to go on record as standing opposed to the extension of the N. R. A.

The N. R. A. in its present form, if permitted to continue—and we understand it is the President's wish that it should—will eventually tend to wipe out whatever still remains of the independent retailer.

This is neither an opinion nor a prediction. It is a statement based on facts and the experience we have had with the N. R. A. in the past year and a half. I further venture the charge that not 10 percent of small and independent merchants the country over are presently complying with the law. If they would, they would be out of business now as a great percentage already are.

The CHAIRMAN. Who do you represent?

Mr. SCHOENBRUN. I am president of these two corporations. We are just a small retail outfit. We sell dresses.

The CHAIRMAN. You sell dresses. How many employees?

Mr. SCHOENBRUN. We have 3 in one store and approximately 6 in the other.

The CHAIRMAN. All right; you may proceed.

Mr. SCHOENBRUN. Our chief difficulty with the Retail Code, under which we come, has not been that of wages, but that clause relating to hours of employment.

I would like to explain a little bit what I mean by that. In one store we have got approximately four sales people. With those 4 sales people we have 1 bookkeeper, 1 seamstress, and 1 stock girl. Now, our seamstress under the code cannot come in until 11 o'clock in the morning. If a customer should come in our store at 9 o'clock, at the time the store opens, we have to tell her, "We are very sorry, no one can accommodate you, no one can cut off the hem of your dress." If a customer comes in at 10 o'clock we have to say——

The CHAIRMAN (interposing). And you cannot afford to hire any additional employees?

Mr. SCHOENBRUN. Exactly; and we could not get anybody to come in for 2 hours, because it would not pay car fare. The other day we had an experience with the bookkeeper, a new girl. The other one was taken away by the administration from me, who was a very good girl, but this girl was supposed to have gotten the checks out, and we have a certain time by which we must send our checks out, and if we don't we lose our discounts. This girl leaves at noon, does not say a

word, and leaves all the checks there, about $5,000 worth of checks, with 8 percent discount involved, and does not say a word. I called her up at her home and I said, "Miss Van Dyke, why did you leave without finishing your checks?" She said, "You don't want me to violate the law, do you?" She said, "You have signed with the code."

I finally had to work all day Sunday, get an experienced girl and get those checks out in order to be able to get my discounts. Those are the conditions we have been working under. We had another experience. These things have happened to me, and have happened to other merchants the country over.

This is an experience that happened to me. A girl comes in at 9:30 in the morning, and under the code she has got to leave about 4:30. This girl was waiting on a customer at the time she was supposed to leave. She goes upstairs, without our knowledge, takes her hat and coat, and leaves, and leaves the customer standing in the booth in her slip, and she says, "It is my time to leave; I am sorry."

The CHAIRMAN. In her slip?

Mr. SCHOENBRUN. Well, in her undergarment, whatever it is. Those are the things that we have experienced under the N. R. A.

In the final analysis, we wish to make the following charges against N. R. A.

It has not succeeded in eliminating cutthroat competition, for at least in our line, merchandise is being sold cheaper than ever before.

That at the present time, we cannot get the actual difference in the cost of merchandise due to the N. R. A. Our costs have increased approximately 15 percent and the so-called "decent competition" is selling at the pre-N. R. A. prices where the chain profits mark-up is only 20 percent.

We further contend that the 10-percent over cost protection clause as guaranteed by N. R. A. is a farce. That the N. R. A. has at a crucial period, when cooperation was paramount, discouraged ambition, throttled initiative, and taught the employee to watch the clock instead of the business, thereby damaging business and unintentionally creating a barrier between employer and employee, which did not exist before.

That the N. R. A. has practiced a very unfair procedure, by permitting and encouraging violations to be reported at any time the complainant finds it convenient and suitable for himself, thereby putting the employer in constant jeopardy.

That the uniform discount clause of the retail code is nothing but a farce and smokescreen. It is a much-known fact that the chain stores and larger users are getting their difference in liberal price cuts. This clause was meant to benefit the retailer, but like all legislation of this type, has worked to his disadavntage. That the N. R. A. which was supposed to help the independent merchant has to the contrary added immeasurably to his load, and it is our contention and objective that he be relieved of this added distress, and be given a chance to breathe freely. We always knew how to run our business, and believe if given the opportunity can do so again.

The CHAIRMAN. Mr. Nystrom. Mr. Nystrom, how much time do you want?

STATEMENT OF PAUL H. NYSTROM, REPRESENTING THE LIMITED PRICE VARIETY STORES ASSOCIATION, NEW YORK, N. Y.

(The witness, having been first duly sworn by the chairman, testified as follows:)

Mr. NYSTROM. I can finish in 15 minutes.

The CHAIRMAN. Proceed, Mr. Nystrom, and finish just as quickly as you can. We do not want to keep this crowd of gentlemen here over until Monday.

You represent the Limited Price Variety Stores Association?

Mr. NYSTROM. That is right.

The CHAIRMAN. Where do you live?

Mr. NYSTROM. In New York.

Senator KING. You were connected with N. R. A. for some time, were you not?

Mr. NYSTROM. Not officially with the N. R. A. I acted as unofficial adviser to some of the deputy administrators in the early stages of the N. R. A., and beginning about October have been connected with the National Retail Code Authority.

Senator KING. You were a professor of marketing in Columbia University, a teacher there?

Mr. NYSTROM. Yes, sir.

Senator KING. You are president now of Limited Price Variety Stores Association?

Mr. NYSTROM. That is right.

Senator KING. And vice chairman of the National Retail Code Authority?

Mr. NYSTROM. Yes, sir. But I wish to add that in my appearance I am here in the capacity of a representative of the Limited Price Variety Stores Association, not attempting to represent the view of the entire number of associations in the National Retail Code Authority. There are several associations, and they may have differences in views.

The CHAIRMAN. All right. Proceed, Mr. Nystrom.

Senator KING. One other question. I have here a pamphlet, entitled, "Dangerous Trends under the N. R. A.", by yourself, which I have read with some care, and marked some of the pages here, some of the paragraphs, and are the views which you therein set forth the ones which you adhere to, and which you desire to present to this committee?

Mr. NYSTROM. Yes; I would like to file that formally with the committee today and save your time by not repeating what is in that report.

The CHAIRMAN. Very well.

Senator KING. I would like that made a part of the record.

The CHAIRMAN. Very well.

(The pamphlet referred to above will be found at the conclusion of Mr. Nystrom's statement.)

Mr. NYSTROM. I should like to speak specifically to two or three matters that are in the new bill which is now up for consideration by this committee. I want to say that the new bill is in most respects satisfactory; that is to say, if there is to be a continuance of the N. R. A. at all, with a few changes, this is probably as good a bill as can be drawn. If this does not seem to be an enthusiastic statement for the

continuance of the N. R. A., I wish you to remember that I appear in the capacity of a representative of retailing, or rather, of a certain branch of retailing.

The CHAIRMAN. I wish you would tell us where you think it can be improved upon.

Mr. NYSTROM. That is what I will do.

The CHAIRMAN. All right.

Mr. NYSTROM. I merely wish to say this, that the retail trade probably has contributed as much or more to the N. R. A. in reemployment, increase in wages, and that sort of thing, and probably got less out of it than a great many other important industries. And the retailers of the country, in my trade in particular, I think I can truthfully say is desirous in assisting in anything that will aid in business recovery. And that is the object back of our policy regarding the N. R. A. during the past 2 years, and will be if this bill is reenacted again.

Senator KING. Before you proceed to your analyses, I would like to ask you, is it not a fact that the new bill grants power not found in the present law?

Mr. NYSTROM. Yes.

Senator KING. And among other things grants provisions to incorporate into the codes devices for controlling prices after certain specified matters of fact have been found to exist in relation to any industry?

Mr. NYSTROM. Yes, sir.

Senator KING. Does it not go further and incorporate in codes the right for controlling production?

Mr. NYSTROM. Yes, sir; it does.

Senator KING. And price fixing?

Mr. NYSTROM. Yes, sir.

Senator KING. And permits price fixing?

Mr. NYSTROM. Yes, sir.

Senator KING. Does it not incorporate in the code provisions giving to the code authorities and to the Government control over all industries, whether they are interstate or intrastate, where it is alleged that they may be affected, possibly may be affected, with the public interest?

Mr. NYSTROM. Yes.

Senator KING. Thus increasing materially the power of the codes and the Federal Government to regulate private industry, whether it is interstate or intrastate?

Mr. NYSTROM. That is my understanding.

Senator KING. Does not the bill to which you have referred extend regulation by codes over services and methods of operation, as well as over industry?

Mr. NYSTROM. I am not familiar with the service phases. I have followed it for the retail trade.

Senator KING. I think you will find that in section 3 (a) and 5 (c). Does it not confer authority to delegate any power under the act to any governmental agency which may be designated? Look at section 2, paragraph (b).

Mr. NYSTROM. Yes, sir.

Senator KING. Unless you are familiar with it.

Mr. NYSTROM. Yes, sir, I have it here.

Senator KING. Does it not accomplish that result?

Mr. NYSTROM. Yes, sir.

Senator KING. Does it not give exemption from the antitrust laws as contrasted with the present act, which declares that codes shall not permit monopolism or monopolistic practices?

Mr. NYSTROM. Yes, sir.

Senator KING. It practically, then, wipes out, using common parlance, the antitrust laws?

Mr. NYSTROM. That is the dangerous trend.

Senator KING. And does it not restrict the powers of the Federal Trade Commission to the exercise thereof in a manner consistent with the provisions of the proposed legislation, including codes approved thereunder?

Mr. NYSTROM. Yes.

Senator KING. And, to that extent, emasculating, if it does not destroy, the authority and power of the Federal Trade Commission?

Mr. NYSTROM. Yes, sir.

Senator KING. How, then, can you approve a measure of that kind?

Mr. NYSTROM. It is a question of immediacy, what to do, and it is our understanding that there are many in this country, including our statesmen, who feel that something of this sort must be done. And while we may feel that certain phases of this bill are unsatisfactory for a period, a brief period of time, the experiments may be tried, but modifications should be entered, if possible, to head off the difficulties that certainly will come.

Senator KING. I have to go in and vote. Proceed.

Mr. NYSTROM. May I continue?

Senator KING. You may proceed.

Mr. NYSTROM. The chief difficulty with the N. R. A. under its present law, a difficulty that has not been entirely eliminated in the new bill, is its tendency to permit restriction of competition and monopolistic practices. These tendencies have generally arisen under what are known as the "fair trade practice provisions" of the codes. These tendencies have taken many forms. They range from direct efforts to fix prices to rather harmless-looking devices for the regulation of conditions of trade.

I have before me an illustration which may be of interest to you gentlemen. It is a quotation from the first annual report of the code authority of one of the leading industries of this country, producing consumer goods. This report is dated January 1935. In this report there appears the following statement; I quote:

> A study of discounts in the industry prior to that time (meaning by that Mar. 26, 1934, the date when the code went into effect) showed the average to be 9½ percent. The standard code discount of 7 percent has, therefore, saved the manufacturers 2½ percent, or in excess of $2,500,000.

That statement is evidently intended as a report of progress. And let us see what it implies. If the standardization of discounts referred to was accomplished without change in the price of goods offered for sale, or without change in the qualities of those goods, then the effect was clearly to increase prices by a vertical amount of 2½ percent. This may not be price-fixing, but certainly looks like a monopolistic practice. In my opinion, the action of this code authority in combining the members of an entire industry for the purpose of collecting $2,500,000 more in 1 year than they could have obtained under free competition constitutes a conspiracy in restraint of trade.

It is not my purpose to call attention to any particular code. There are now over 300 industries in which provisions for the standardization of discounts have been set up in their codes.

Senator KING. Which one are you referring to now? I was called out to vote.

Mr. NYSTROM. This particular industry happens to be the millinery industry, but I have no desire to mention the millinery industry, except insofar as this report came to may attention the other day. This is the kind of a thing which it seems to me your committee might very carefully consider and make sure it cannot be carried too far.

My object in appearing before you is to urge respectfully that you will carefully consider the advisability of strengthening section 5 of S. 2445 before you make a law out of it so that the force of the antitrust laws of this country may not be weakened by the ingenious code provisions for which approval may be obtained from the N. R. A.

The present section states that—

the provisions incorporated in any code

I am quoting—

or agreement specifically approved, prescribed, or entered into and in effect in accordance with this title, and any action complying with such code of agreement taken while it is in effect or even 60 days thereafter, shall be lawful if and only if such code or agreement conforms in all respects to the limitations and provisions of this title.

This is not quite clear to me, but it looks to me very much as if any provision that might ovtherwise be contrary to the antitrust laws, if approved by the N. R. A., is to be lawful. But I would strongly urge in the public interest that no such exceptions be granted. It seems to me this wording opens the doors to abuse and trouble.

There is one other provision in the bill which needs further definition and clarification and that is the term "interstate commerce." Again I am speaking of this——

The CHAIRMAN (interposing). Before you get away from the other proposition——

Mr. NYSTROM (interposing). Yes, sir.

The CHAIRMAN (continuing). You think there ought to be some modification of section 5?

Mr. NYSTROM. Yes.

The CHAIRMAN. What if we should write in that the antitrust law is not modified or repealed or changed except, and state specifically that these people would have a right to meet for the purpose of forming a code of fair competition, and fixing hours of labor, fixing wages, and so forth, and make specifically the exceptions, but to express that in no way are they to effect the present antitrust law. Do you think that would be all right?

Mr. NYSTROM. I think it would be a step in the direction, but without more specific statement as to what might be included in these exceptions that you name I should be afraid of them if they are left in general terms.

Senator KING. Would not this be better, to say that nothing herein shall be construed as interfering with the antitrust laws?

Mr. NYSTROM. That, Mr. Chairman, is a point of view I wish to present.

Senator KING. Or the destruction of the authority and powers of the Federal Trade Commission?

Mr. NYSTROM. That precisely is the point of view I want to present.

The CHAIRMAN. Some people believe, or some lawyers perhaps contend, perhaps without any force, that if gentlemen meet merely for the purpose of forming a code of fair competition and exchanging their views in order to arrive at a code that might be violating the Sherman Antitrust Law. Do you believe they should be permitted to meet for the purpose of forming a code of fair competition?

Mr. NYSTROM. Yes, I do.

The CHAIRMAN. Without being subject to the provisions of the Sherman Antitrust Law?

Mr. NYSTROM. I think that is quite as it should be.

The CHAIRMAN. Do you not think there is any doubt on that proposition that should be removed by specific legislation?

Mr. NYSTROM. As I see it, I think it would be a very helpful step in the right direction, and my suggestion would be you will find in the experience of the Federal Trade Commission in their so-called "fair-trade practice conferences", a list of things which might very properly go into these codes. They are things generally stopping all forms of dishonesty. They do not restrict competition in any way, and they make competition cleaner and put it on a higher plane, but they do not stop competition. If the exceptions you have in mind were expressed purposes such as those in the Federal Trade Commission in its experience of many years, which it is thought further might be carried out under the antitrust laws, then I think that would be very well taken.

The CHAIRMAN. Then too, you think it might be helpful that if these codes are formed, and these gentlemen meet to form these codes of fair competition, if it was done under Government supervision that might be helpful?

Mr. NYSTROM. Mr. Chairman, I would not be willing to agree as a citizen or as a representative of the particular trade with which I am connected to any arrangement for the formulation of codes in which fair-trade practice provisions enter without representation of the public, and the Government is the official representative of the public.

The CHAIRMAN. Very well. Proceed.

Mr. NYSTROM. If I may continue, there is another provision in the bill which needs further definition and clarification, and that is the term "interstate commerce." And now I am speaking of the retail trade again.

A reading of section 10, paragraph D, subsection 3, which purports to define interstate commerce, leaves a real doubt as to the nature of this term. Is retailing, for example, interstate commerce, or is it not? Are retailers whose customers are all within any given State engaged in interstate commerce? Are retailers located at or near the boundary lines of States and who have customers on both sides of the line engaged in interstate commerce? Is a retail store whose customers are entirely within one State, but whose owners reside in some other State, engaged in interstate commerce?

It is of exceedingly great importance to the retail trade of this country to have a congressional definition of interstate commerce. If such a definition is drawn so as to eliminate certain classes of retailers from the provisions of the N. R. A. and subject others to its rules then it will result in great injustice. Either all retail estab-

lishments should be classified as engaged in interstate commerce, or all retail establishments should be omitted from regulation under this bill.

In conclusion, one more point, in the interests of sound business recovery, there should be as much flexibility as possible in the regulations of trade, particularly as applied to retailing. We need varying hours of work, varying minimum wages, and varying fair-trade practice provisions to meet the requirements of various parts of the country and varying conditions of trade. Rigidity complicates rather than simplifies business. It makes business management unnecessarily difficult and, in the long run, harms both employees and the public. There should be ample opportunity for exceptions wherever and whenever there is need for them. In this manner the N. R. A. may become an instrument of social advantage rather than merely, as it is at present, a much debated possibility.

The CHAIRMAN. Mr. Nystrom, the committee is very much obliged to you, and if you have got any other suggestions as to any changes we will be very glad to receive them.

(Following is Mr. Nystrom's statement as submitted for the record.)

DANGEROUS TRENDS UNDER THE NATIONAL RECOVERY ADMINISTRATION

(By Paul Nystrom, professor of marketing, Columbia University; president Limited Price Variety Stores Association; vice chairman National Retail Code Authority)

I. THE ORIGINAL PURPOSES OF THE NATIONAL RECOVERY ADMINISTRATION

The National Industrial Recovery Act approved June 16, 1933, was intended to serve a highly beneficent purpose. Its objects were to promote a business recovery and to establish a sounder foundation for the business of the future. It set out to secure widespread reemployment and increased purchasing power by reducing hours of work and setting minimum wages. Though not required by the act itself, the elimination of child labor has also been achieved as a part of its program. Former efforts to control hours of work and wages by law had nearly always taken the form of specific requirements. In this instance, business was asked to accept self-imposed regulations of hours and wages of labor as a part of so-called "codes of fair competition." In return for accepting the labor provisions business was to be permitted to organize and to make rules for itself subject to the supervision of the National Recovery Administration for the elimination of unfair trade practices.

BENEFICIAL RESULTS OF THE NATIONAL RECOVERY ADMINISTRATION

The results of the efforts of the National Recovery Administration have not been all that was hoped for, but at that, have not been inconsiderable. In the 18 months of its existence decided progress has been made toward reemployment. It is reported that more than 4,000,000 additional workers have been added to industry. Total pay rolls have increased measurably. Better working conditions have been adopted.

There have likewise been considerable gains to employers and to business generally. Many unfair trade practices have been eliminated, or corrected in part. In many respects present standards of competition are probably higher than at any previous time in this country.

There are potentialities in the National Recovery Administration for a great deal more benefit both to labor and to business provided its purposes and energies are not diverted and perverted to wrong objects. There is grave danger that the National Recovery Administration may be diverted from its original purposes and make the cloak for unwholesome movements. It is the purpose of this statement to call attention to these dangerous trends in the hope that the National Recovery Administration may be rid of them and in the hope that it may go forward to the real service for which it was conceived and intended. It is to some of these dangers that this statement is directed.

II. SINISTER BEGINNINGS UNDER THE NATIONAL RECOVERY ADMINISTRATION

The National Recovery Administration has now been in existence long enough to permit taking stock of its effects. Along with the results that are good there are also some that are bad. Unless these evil and unsound developments are corrected they may wreck the entire good effects of the National Recovery Act.

No fault is to be found here concerning the purposes of the National Recovery Act, its general methods of procedure, or the labor provisions. These are all, it is believed, consonant with sound public policy.

The difficulties of the National Recovery Act to which public attention should be directed are the result of a misapprehension, or misuse, of opportunities presented to the business groups for setting up fair-trade practice provisions.

Under the guise of fair trade practice rules, numerous provisions have been written into the codes whose purposes are clearly not merely to eliminate unfair practices, but really to eliminate competition. In numerous instances there have been efforts to establish market regulation and control, such as would never have been permitted under the antitrust laws of this country. Here is where the National Recovery Administration made its first mistake. It permitted the camel of monopolistic practices to poke its head inside of the tent. It remains to be seen, even with the most vigorous efforts, if it can be driven out again. So long as these provisions remain in the codes they constitute a menace, not only to the freedom of business, but to our entire economic system.

The provisions likely to be most harmful have for their object the regulation, the control, or the actual fixing of prices. Some of these provisions attempt directly to set prices, while others aim only indirectly at price control. Still other provisions, more modestly, are merely intended to hamper and restrict the freedom of competitors.

There are hundreds of these provisions. All are intended to benefit or protect their authors at the expense of the public. Many are in greater or less degree approaches towards monopoly. All of them are attempts to secure in some degree the substantial effects of monopoly.

III. THE RISE OF PRICE FIXING UNDER THE N. R. A.

Price-fixing formed no part of the original purpose of the National Industrial Recovery Act. The act provides for codes of fair competition, but at no point even remotely suggests the possibility of price-fixing. Indeed, the act expressly forbids monopoly as well as everything that may eliminate or oppress small enterprises, or operate to discriminate against them. If there had been any belief that the act harbored the possiblities of monopoly practice, it is improbable that Congress would have passed it. Even after the act was passed and before any of the codes were presented, it may be doubted if anyone in the administration, or even in the business world, had any idea that price-fixing would become one of its major issues.

During the first few months of operation under the National Industrial Recovery Act during the summer of 1933, while the first few codes were being written, there was little, if any, attempt to include price fixing. But with more experience the business groups coming later became bolder in asking for price-fixing provisions. After the first 3 months of National Recovery Administration existence more and more codes came through with price-fixing devices. Before the end of the year this movement had reached such proportions as to arouse powerful opposition.

By the latter part of the summer the officers of the National Recovery Administration began to show signs of fear that the movement was going much too fast and too far. At the opening of 1934 the National Recovery Administration began seriously to tighten up against groups that had not already obtained code approvals. At the public hearings held on March 5th to 7th, the question of price fixing was given a prominent place on the program and so came into general public notice. Representatives of many retail trade associations, purchasing agents and consumer organizations appeared against them. A little later the whole movement for price fixing was rapped by the Darrow Code Review Board.

Later, in the spring of 1934, General Johnson, Administrator of the National Recovery Administration, announced that price fixing under the codes would have to stop. As a result the National Recovery Administration was immediately flooded by protests from manufacturers' organizations and industrial code authorities responsible for codes containing price-fixing provisions. Faced by

this storm, General Johnson on June 8, 1934, changed his statement. He explained that his opposition to price fixing was intended solely for future codes and that his order did not apply to codes already approved. This restatement made the original announcement meaningless for by this time nearly 90 percent of all industries that were to come under codes already had their codes approved.

Throughout the summer of 1934 the price-fixing conflict raged within the National Recovery Administration. It became more and more clear that in permitting price maintenance the National Recovery Administration had opened a veritable Pandora's box. After General Johnson's resignation as Administrator, the management of the National Recovery Administration was turned over to the National Industrial Recovery Board. One of the first, as well as most difficult, problems facing this Board was what to do about price fixing. In an early public statement made by Mr. S. Clay Williams, the Board's chairman, he predicted that the National Recovery Administration would have to prohibit price fixing and argued that the wage and hour provisions, if enforced, would have the effect of sustaining prices. He very properly added that in any case it would be futile to try to put "artificial floors" under prices and that actual costs of production on which prices under many codes were supposed to be based were almost impossible to determine.

A few days later a report from Washington indicated that the President would propose to Congress "the abolition of attempts at price fixing and production control beyond those already in effect and the continuation of code provisions designed to prevent unfair price cutting." That these statements involved complete contradictions was apparently not observed and certainly not explained.

On December 17, 1934, the National Recovery Administration issued its notice of a public hearing to be held beginning January 9, 1935, on price control and price fixing. The notice continued, "Mr. Williams said that the Board has received an accumulation of evidence and opinion on the subject of price control indicating that code provisions for mandatory costing systems designed to set minimum prices and permanent schedules of prices have not operated in the best interests of the industrial structure. Most of the information before the Board tends to show that such provisions have not accomplished the desired purpose and have proved neither workable nor enforceable."

The public hearings on price fixing were held as scheduled on January 9 to 12. Much testimony was presented and many briefs were filed on both sides of the subject. In the nature of things many more appearances were made in favor of price fixing than against it. It was expected that the Board would render a decision as soon as possible after this hearing on the future of price fixing under the National Recovery Administration. Up to the date of this writing no conclusions have been issued by the Board upon this difficult problem. In the meantime, the problem has become more acute and uncertain than ever.

From the foregoing it will be seen that almost from the beginning of operation under the National Recovery Administration the Administration found itself in conflict with business groups over price fixing. It must be stated to the credit of General Johnson and of many of his deputies that they not only vigorously opposed, but they successfully thwarted hundreds of price-fixing proposals offered and urged upon them. Probably no record will ever appear describing the intensity of this contest and the struggles made by National Recovery Administration representatives against price-fixing efforts in the public interest.

However, not all of the deputy administrators were equally assiduous in their bargaining for the public welfare. There were, of course, wide differences in the pressure brought to bear upon them. Some business groups were undoubtedly able to show much better reasons for their proposals than others. In any case, in spite of rising doubt and opposition, many price-fixing provisions got by. Certain deputies approved many more of such provisions than others.

In justice to General Johnson, it must be said that he had to leave much of this bargaining over price fixing to his deputies. No one could have put in more intensive effort during more hours per day than did the General. But his time was largely devoted to the major expressed purposes of the National Recovery Administration and to the effort to get the conservative leaders of the more important industries of the country to agree to come under codes. It would have been impossible for any human being to study and foresee the hidden as well as the obvious effects of the hundreds of proposals that came up to him for approval. Some of the deputies, after they had aided the industries that came under their supervision in formulating their codes, including their price-fixing provisions, resigned, went back to private employment and left the problems of administration of these troublesome provisions to green successors. Many of the difficul-

ties of business with the N. R. A. have been due to the frequent changes in personnel among its officers.

IV. PRESENT STATUS OF PRICE FIXING PROVISIONS IN N. R. A. CODES

On January 1, 1935, out of a total of 677 codes and supplements then in effect, there were 51 direct prohibitions against "destructive price cutting."

There were 96 codes that permitted the establishment of minimum prices for periods of emergency.

In 12 other codes the power was conferred upon their respective code authorities to establish minimum prices.

There were, in all, 352 codes containing general provisions prohibiting selling below costs.

Price fixing is aimed at indirectly, though no less effectively, in 137 other codes which provide for open price posting, many with waiting periods before new prices may go into effect.

Great numbers of codes require the use of uniform accounting systems as an aid to the determination of costs below which none may sell.

NOTE.—The foregoing facts were taken from Prices and Price Provisions in Codes, prepared by the Research and Planning Division, National Recovery Administration, for the hearing on price provisions of codes of fair competition, January 9, 1935.

V. GENERAL NONCOMPLIANCE WITH PRICE-FIXING PROVISIONS

A wave of unrest and turmoil followed the adoption of the price-fixing provisions in the codes. Each industry that adopted price fixing went through about the same experience. Customers, when they learned of these new provisions, fumed and fought. Business declined. Orders fell off. After a few months of trial, after the zeal of the code makers had cooled off somewhat, business again settled down and continued to be transacted much as before.

Price-fixing regulations were now either secretly or openly violated. That is the situation in most industries today. The price-fixing provisions are in the codes, but they are not operative. As a business executive in one industry expressed it, "We have a fine code, but it doesn't work." Indeed, many business men during the past few months have begun to question whether these price-fixing provisions are as useful as they had at first supposed they would be. Opposition to price fixing is beginning to take on the nature of a national movement, a movement that cannot be disregarded or denied.

Bootlegging has become the rule. The American public knows something about the evils of bootlegging. Not long ago there was an eighteenth amendment. Under it there developed an enormous illicit traffic coupled with flagrant disrespect for the law. Many millions of dollars were expended in an effort to secure enforcement. The whole situation became a national scandal for which our citizens became thoroughly ashamed and disgusted.

We are not faced with the possible development of another and similar scandal. The eighteenth amendment affected a single industry. We now have the equivalent of the eighteenth amendment not only in one industry, but in several hundreds of industries. Bootlegging and its attendant evils is rising in them all.

It must be clear to every unbiased mind that the difficulties of enforcing restrictive and regulative provisions of this type, provisions that do not carry popular approval and which are not in the public interest, are very great. In order to make such measures work Government supervision and regulation will be needed to an extent never before known in private business in this country. The Government employed an army of enforcement officers in its unsuccessful attempt to enforce the eighteenth amendment. In order to enforce these hundreds of price-fixing provisions there must be still larger armies of Government supervisors, inspectors, detectives, and prosecutors.

Where will all this end? Our Nation is now deeply concerned with its unbalanced budget and its rising tax rates. Is it wise for the Government to take on a program of enforcement which promises so much trouble and expense to the people?

VI. ECONOMIC EFFECTS OF PRICE FIXING

Disregarding, for the time being, the important questions of constitutionality of the price fixing provisions, the difficulties of their enforcement, and the burden of expense involved in such enforcement, let us assume that they are to stand and that they are to be enforced as their authors wish them to be enforced. What will their effects be?

(1) *Higher prices.*—The first, the most immediate, and one of the most important effects of these price-fixing provisions will be to raise prices. That, indeed, is the expressed purpose of these provisions. Such has already been the effect in practically every instance. Indeed, even while the codes were under preparation, prices generally arose in anticipation of the approval of these provisions. Purchasers of goods controlled by codes have had and will have to pay more for them. Where customers are distributors, it may be possible for them to pass these increased prices on to their customers. Ultimately, however, the effects of all price fixing will be to increase the costs of goods to consumers. It is upon the consumer that the real burden of all price fixing falls.

(2) *Net profits to private industry to be assured by Government.*—Those who favor price fixing and market regulation urge that these provisions are necessary to cover the costs of production. Costs of production, however, vary from concern to concern. Any provision prohibiting sales below average costs, or below the costs of a majority of the members of any industry, are certain to insure a net profit for those concerns with low operating expense. If prices are set to cover the costs of all members of the industry, as seems to be the objective in several cases, then net profits are assured for every concern above the marginal producer of the industry. Under these proposals we have, therefore, the strange suggestion that the Government should approve, support and enforce prices that will guarantee a net profit to private producers at the expense of the public.

(3) *Monopoly profits the goal.*—Price fixing does not, of course, always result in setting the highest price possible at which goods can be sold. That, indeed, is never the desire of even the most selfish business interest. The coldest and, at the same time, the most effective economic approach to price making aims not at the highest price, but rather at a price which will sell some necessary amount of goods and secure therefrom the highest net profit. This, it should be noted, is the very essence of monopoly.

(4) *Price fixing is first step toward monopoly.*—It may be conceded at once that the first efforts at price fixing set down in the codes do not necessarily result in the highest net profits. That is true, but the right, once accorded to any industry, to establish a price, any price, is a first long step toward setting prices that will yield such profits. If it be made possible to fix prices at any point then it will likewise be possible to fix prices at other points. If prices, let us say, are to be fixed so as to cover costs of production, then the ingenuity of the accountant will be called in to provide a definition of costs which will yield monopoly profits. Price fixing under the codes is, therefore, a well established step, a dangerous step, toward monopoly, a step that should be corrected while there yet is time.

It is customary to think of a monopoly as a single concern or a small group of concerns, stifling competition and enforcing profitable advantages for itself. Under the National Industrial Recovery Act we have the beginnings of a new kind of monopoly, a monopoly of an industry in which, theoretically, all members of the industry participate. No single concern, or small group of concerns, engaged in private business would today hope to secure public approval for its price-fixing provisions. These efforts would be promptly classified as activities contrary to the antitrust laws. But the efforts of an entire industry, or such parts of an industry as are organized are now asking approval for just such provisions as would be deemed anti-social if attempted by individuals. From the standpoint of society, an industrial monopoly is as destructive and as antisocial as a monopoly controlled by a single individual, or a small group of powerful concerns. The effect, so far as the consuming public is concerned, is the same.

(5) *Special dangers of industrial monopoly.*—Getting rid of an industrial monopoly, once established, is going to be a vastly more difficult matter than stopping a single concern, or a small group of concerns, from carrying on monopoly practices. In the prosecution of a single concern trying to operate a monopoly, the public always has the powerful and deeply interested help of other concerns within the industry who are being hurt by the monopolist. In the case of industrial monopolies, such as we now face under the National Recovery Administration, the public will get neither sympathy nor help from within the industry for the members of the industry will all be partners in the monopoly. In these new forms the American public now faces the most serious monopoly menace that it has ever had to contend with.

(6) *The destruction of smaller, weaker, and newer concerns.*—Once industrial monopoly is established, it is clear that those immediately in charge will seek to better their own positions. This may, and undoubtedly will, in most cases be done at the cost of other and lesser members of the industry. There is never enough business for all. If some are to get ahead then others must lose. The

effect will be that such business volume as there is under conditions of fixed, or regulated prices, will naturally go to the larger, better established and better known concerns. Smaller concerns, weaker organizations, and those least well known, having no special concessions to offer, no special reasons why buyers should trade with them, will have to pass out. There will be less and less incentive to start new concerns. Even those concerns with low production costs and high operating efficiency will not be able to get ahead as they should because of their special abilities. It will not be possible for them to share their lower costs with their customers. There will be no driving incentive to find better and more economical processes of production. It will be more profitable to seek profits through the help of the Government than through the difficult method of excelling in production.

Under absolutely equal conditions of prices among all producers of an industry, customers will naturally give their orders to the concerns that are well established, well capitalized and best known. Preferences will be given to well-established brands, where brands exist. Producers of unbranded, or little known brands of goods, unless permitted to make differentials will have nothing to offer and must give way to their more powerful and better situated rivals.

(7) *Reduced production and reduced employment.*—Under price-fixing and market regulation such as proposed in the codes, prices will, as we have seen, be higher. This, in turn, will almost certainly mean a reduction in volume of merchandise sold. Such sales as are made may be more profitable for those enjoying the benefits of the price-fixing provisions, but there will be fewer goods consumed and, therefore, fewer goods produced. Reduced production means less employment and so on in a downward economic spiral. Thus, the net effect of price fixing is not only to force consumers to pay higher prices for the goods and to squeeze the smaller and weaker concerns out of existence, but also to reduce employment and public purchasing power, all of which are absolutely contrary to the fundamental purposes of the National Recovery Act.

(8) *Necessity for public supervision and control.*—To prevent the evil effects of price fixing, if there is to be price fixing, there must be public supervision and control. The interests of the public must be conserved. In permitting price fixing the Government will, on the one hand, be creating trouble for the public which it must, on the other hand, correct. If the Government assists the industries in the administration of price fixing it is certain to meet with the opposition of the buying public. When consumers learn that the prices they are required to pay are the result of artificial regulation, rather than of the economic forces of supply and demand, they will try to buy for less by whatever methods present themselves. They will range themselves in opposition to the Government itself as well as toward the industries which are attempting to gouge them. The prospect is truly not a pleasant one.

(9) *If Government supervision fails?*—If these price-fixing provisions are permitted to continue, then Government supervision and control are inevitable. If Government supervision and control should fail, and we are not sure that it can succeed, there remains but one alternative and that is that the State itself must take over the fixing of all prices, if not, indeed, the entire operation and ownership of industry. These alternatives are not theoretical. They lie directly before the American people now.

There are business men today who abhor the idea of Government regulation and ownership of what is now private business. They are sincere in their beliefs that our present economic system offers more advantages than either socialism or communism. In their support of price fixing under their respective codes, these men are doing more to destroy the present economic system and bring on revolution than all the "red networks" in the country.

It is time that business men should face the logic of their proposals. Do they believe for a moment that the public will permit price fixing without Government supervision and control? Are they ready to give up their opportunities for business freedom and initiative and accept Government supervision and control of their businesses? Will they support the Government in its efforts to provide proper supervision and control? If not, and if such supervision and control should fail, are they ready for the next step? These are simple questions that the proponents of price fixing should be required to answer.

It is inconceivable that this administration, or the American public, will permit any industry, or industries, to fasten a system so full of difficulties upon the country. Sound business principles for the future, as well as sound methods of business recovery, require the prompt elimination of all vestiges of price fixing in the codes under the National Recovery Administration.

VII. OTHER PROPOSALS AND EFFORTS TO RESTRICT COMPETITION

In addition to the efforts at price fixing described in the foregoing sections, a large majority of all codes written and approved contain provisions ostensibly intended to correct the evils of competition, but which, in reality, restrict and curb legitimate competition. Indeed, many of these provisions, while they do not in themselves fix prices are, nevertheless, effective aids to price fixing.

Among such provisions are the following:

(1) *Changes in customary discounts and terms.*—These changes seem innocent enough in themselves. Present practices in the conditions of sale are in many instances without logic or reason. As a matter of fact discounts and terms are for the most part carried on according to custom and tradition. It is not improbable that some changes should be made.

There certainly could be no objection if experimental changes were to be made by individual concerns, either buyers or sellers, if, in their opinion, such changes might prove beneficial to their businesses. Proposals for such changes become unreasonable and objectionable only when introduced by entire groups or industries and when forced upon their customers without opportunity for negotiation and agreement. What may be inoffensive and harmless on the part of an individual becomes a conspiracy when adopted by an industry.

Most of the code provisions for the standardization of terms and discounts are undoubtedly intended to simplify the selling process. It so happens, however, that most of these provisions were written into the codes without adequate consideration and, of course, without the agreement of the customers of these industries. Furthermore, these provisions seem invariably to have resulted in advantages to the makers of the codes at the expense of their customers. In nearly every case, such changes operated to increase the net prices of goods affected. There were apparently no instances in which prices were readjusted as a result of the changes in discounts or terms.

Terms and discounts have always and very properly been matters of negotiation in which buyers have had an interest as important as that of sellers. Individual sellers have always set their discounts and terms just as they have set their prices, but individual buyers have been equally free to accept or refuse. Under the codes, entire industries have agreed to fixed conditions of sale. Under these rules all customers are to be forced to take what these industries have dictated.

If, as indicated above, the interest of the buyer in discounts and terms is as great as the interest of the seller, then code provisions upon these points made without conference or negotiation with buyers are certain to be objectionable. The procedure would be objectionable even if the results were tolerable.

Perhaps the authors of these provisions may be led to see the fallacy of their position by considering what their reactions might be if similar agreements were made among their customers regarding the conditions of purchase. Surely it is as fair for buyers to agree to fixed or standard conditions of purchase as it is for sellers to agree upon conditions of sale. If such provisions are to continue in sellers' codes then it is not unlikely that their customers will eventually seek to draw up similar agreements for the establishment of conditions of purchase, but written up in the interests of the buyers rather than of the sellers. Such a move will be as logical as what has already been undertaken in a great many industrial codes. Obviously these provisions will do nothing for recovery. Their imposition upon customers has merely increased the difficulties and irritations of trade.

As a matter of fact, aside from the principle involved, the problem of change in discounts and terms is a minor one. If the changes were arrived at by conference and negotiation between sellers and buyers there would probably be no objections. Aside from the fact that the changes in conditions of sale authorized by the codes have generally been used as a means of raising prices and as aids to price fixing, they have, to some extent, increased the difficulties of operation in retail establishments.

Retail accounting and computation of mark-ups and retail prices all follow certain general formulae based on traditional terms and discounts. Changes involve a disruption of the customary practice. Such practices formed over a period of many years cannot readily be broken up immediately without considerable loss of time, energy, and money. A few changes at a time might not have been intolerable, but hundreds of changes coming almost simultaneously has resulted in something of a crisis. Forcing these problems upon retailers at this time in the middle of a business depression, when most of them are fighting for their very existence, is much like a physician ordering operations on a patient already suffering from pneumonia. Retailers have a right to be restive under this procedure.

The customary terms and discounts should probably, in some instances, be changed. It would be helpful, however, if these changes could be made gradually. Moreover, if intended to cover entire industries they should be made only as the result of negotiation and joint decision. The interest of buyers in conditions of sale are just as important as the interest of sellers. None of these changes, however, have the slightest relationship to the National Recovery Administration's plans for business recovery. Such changes could best be made during a period of prosperity. As it is, they have increased rather than diminished the difficulties of the distribution of goods. All of these provisions should be stayed until business conditions have improved and until joint agreements of buyers as well as of sellers can be reached.

(2). *Elimination of, or changes in, quantity discounts.*—One of the weirdest twists among the many developments in the codes under the National Recovery Administration are the attempts in many instances to eliminate, reduce, or change quantity discounts. It is an elementary fact to every student of marketing that differences in quantities sold affect not only the costs of marketing, but also the costs of production as well. Quantity not only conditions expenses of operation, but has always been and should be an important factor in price making. These code rules against quantity discounts are apparently attempts to repeal the laws of supply and demand.

There have, no doubt, been abuses in the application of quantity discounts. They have, no doubt, in some instances been used as a means of unfair discrimination among customers. This, however, represents an abuse rather than a proper use of the economic principle underlying such discounts. If all methods of business that have occasionally, or even frequently, been abused are now to be abolished, there will be very little room for action of any kind.

The use of quantity discounts, when actually based on savings, economies or differences in costs, is amply justified. If such discounts are properly computed, openly used, and made available to all without discrimination there can be no legitimate ground for complaint. Their use serves as a corrective for the evils of hand-to-mouth buying. They tend to encourage the development of the most economical channels of trade. They encourage increased sales, more intensive promotion and consequently, increased use as well as production of all goods affected. Any attempt to prohibit quantity discounts is an anomalous, illogical, and unreasonable restriction upon trade. Such attempts are not only harmful to progress in industry and trade, but also contributory to higher costs of living.

(3) *Elimination of advertising and other allowances.*—Many codes have set up provisions eliminating allowances for advertising, dealer helps or other special promotion purposes. These prohibitions have already proved so burdensome and so obviously unsound that a special order, issued by the National Recovery Administration in January, again permits their use, subject to certain proper restrictions. In view of the issuance of this order, it may seem out of place to bring up the matter here. The object in mentioning these provisions, now overruled, is to point the tendency among code makers to push for control of prices and marketing conditions far beyond the reasonable and proper needs both of industry and society. These, as well as many other provisions, are unwarranted, unnecessary and often mischievous intrusions in the freedom of trade.

There are still other restrictions upon business practice that seriously infringe upon the rights of an individual business. For example, there are prohibitions against the distribution of free samples. There is the requirement that the purchaser must pay the costs of transportation, including, in some instances, the trucking charges from the factory to the railway or water terminal. There are prohibitions against consignment selling as if this were a criminal matter. All of such provisions tend to restrict the flow of merchandise through its easiest, most normal, and most economical channels. They all tend to hamper producers as well as distributors, and, at the same time to add to the costs of distribution. If these troublesome and needless rules were eliminated from the codes, much of the irritation with and antagonism toward these codes would disappear. The distribution of merchandise would be facilitated and the business roads cleared for recovery.

(4) *Wholesalers' price differentials.*—There is still another type of code provision likely to give considerable trouble both to industry and to trade as well as to the consuming public unless promptly dropped. This is the attempt to classify customers arbitrarily and to set up discriminatory price or discount differentials for each class. Thus some of the wholesale trades have, through their codes, attempted to secure National Recovery Administration approval of provisions requiring all manufacturers who sell through wholesalers to allow better prices, or better discounts, to wholesalers than to their other customers, or be subjected to boycott by the entire wholesale trade.

These proposals have been seriously urged by wholesalers without regard to differences in quantities purchased, differences in credit, or in other services rendered. A wholesaler, simply because he is a wholesaler, according to this proposal, must be given a better price than any other class of customers, regardless of quantities purchased or other conditions.

The effort to secure outright price preferences for a certain branch of trade is an example of a growing trend in many quarters of American life to try to secure Government aid, or protection, for special interests at the expense of other interests and of the public. There are no facts to indicate that the public interest would be served in the slightest degree by wholesale differentials. There is nothing to indicate that the wholesale trade is in any need of such differentials.

The actual situation is that there is very active competition in the distribution of goods between the producer-wholesaler-retailer channel and the direct from producer-to-retailer channel. The volume of consumer goods finding its way through each of these channels is very great. According to all available figures the number of wholesalers is increasing rather than diminishing. The proportion of the total volume of merchandise sales finding its way to retailers through wholesalers is being well maintained.

Both the consuming public on the one hand, and producers on the other, have gained enormously because of the active competition between these two major channels of trade. To permit the wholesalers to fix a special differential for themselves in this competition would mean giving their method of distribution a decided advantage over the direct-from-producer-to-retailer channel of trade.

The differential will put a serious, if not a fatal, handicap on direct distribution. Obviously, the wholesalers who are proposing these differentials are seeking a special privilege under public protection, and they are not even offering anything to the public in return for what they ask.

To permit such a policy, with the support and enforcement of the Government, will open the door wide to a new form of special privilege and a new form of interference with competition which is not only dangerous, but wholly unjustified. It will add new burdens to producers and consumers as well as to distributors who buy direct from producers. As a result, if this provision is permitted to stand, far-reaching effects may be expected in our entire industrial life. Indeed, there is likely to be a development of a dual industrial system. One of these systems will be made up of producers who sell exclusively to wholesalers, and the other of producers, producing the same kinds of goods, selling directly to retailers. If this occurs there will be useless duplication both of productions and distribution all along the line. Moreover, the adoption of this policy will drive many producers and distributors now operating independently into vertical organizations to avoid the price differentials.

The foregoing list is not complete. It is merely illustrative of the many arbitrary provisions introduced under the codes, not only to control prices and markets but also to control details of negotiations between producers and distributors. These provisions are almost invariably intended to secure some special market advantage for their authors. They are generally disadvantageous to competitors as well as burdensome to consumers. They have nothing to do with the fundamental purposes of the National Recovery Administration. They do not contribute to business recovery. They have little or no relation, as we shall see in the next section, to fair-trade practice. They do not belong in codes of fair competition.

VII. THE FAILURE TO DISTINGUISH BETWEEN TRUE FAIR-TRADE-PRACTICE PROVISIONS AND REGULATIONS INTENDED TO STIFLE COMPETITION

Practically all efforts to hamper, restrict, and to stop competition under the codes have appeared under the fair-trade-practice provisions. A lack of clear vision concerning the real functions of fair-trade-practice provisions is probably responsible for letting these objectionable features into the codes. It may, it is hoped, not be too late to draw a clear distinction between what constitutes legitimate fair-trade practice and what does not. Certainly this distinction is necessary to sound planning for the future.

The purpose of a fair-trade-practice rule is to eliminate dishonest, tricky, and underhanded methods of trade and to permit a fairer and freer field of competition. In the development of fair-trade-practice conferences under the Federal Trade Commission this view was generally and fairly well observed. Accordingly, certain practices were condemned and prohibited, such as untruthful advertising; false statements concerning competitors; espionage; commercial bribery; attempts to induce breach of existing contracts; imitation of competitors' trade

marks, trade names, designs, containers, or products; inaccurate grading and false reports on tests; intimidation and coercion; misleading guaranties; and so on.

All regulations of this type are useful and necessary aids to fair competition. It should be clearly noted that all of such regulations tend to promote competition. All are desirable, not only from the standpoint of business but also from the standpoint of public policy. These provisions tend to eliminate the thief, the cheat, and the crook. They held the honest individual or concern to compete on an even basis with those who might otherwise obtain business by trick or deceit. These provisions raise the plane upon which competition may be carried on, but they do not lessen competition. They encourage each concern to use its best endeavor by fair and honest means to secure increased business. They encourage legitimate reductions in prices, improvements in quality, and better service. Under these rules any concern, efficiently operated, offering what consumers want, has a chance to survive and to succeed. Under such regulations competition is made truly serviceable to society.

Price fixing, the regulation of discounts and terms, the prohibition of consignment selling, and setting up of arbitrary classifications of customers with price discriminations based on politics, rather than economics, are not fair trade, practice provisions. They do not facilitate competition. Their purpose is to restrict or eliminate competition. A legitimate fair trade practice rule, as we have seen, clears the way for more effective competition. These provisions check, prevent, or stop competition. They have no place whatever in the National Recovery Administration codes.

Those who favor price fixing sometimes urge that under price regulation competition may still be carried on with utmost freedom in quality and service. This argument fails to take into account what is certain to follow the adoption of price fixing and other market restrictions. The logical and only purpose of price fixing is the elimination of competition, at least any competition below the point set by the prices. If competition continues in quality and service, then the value of price fixing for the regulation of trade is lost. If competition continues in quality and service, one may be sure that those who now want price fixing will very soon demand standardization of quality and service as well, so as to make their price-fixing provisions apply effectively.

The failure to distinguish between the proper sphere of fair-trade-practice provisions and the efforts to restrict and throttle competition have led the National Recovery Administration into very serious difficulties. As already indicated, the Federal Trade Commission avoided most of these difficulties in their trade-practice conferences, but even the Federal Trade Commission, at times, came too near the proper line in some cases. For example, the Federal Trade Commission in some of its conferences sought to establish a rule against selling goods below cost to undersell competitors. If the Federal Trade Commission had adhered strictly and logically to the simple concept of fair-trade practices outlined above, it would never have helped to frame a rule such as this.

The prohibition of selling goods below cost to undersell competitors, unless carefully guarded by qualifications, may mean the beginning of price fixing. If properly qualified, the provision may be considered a legitimate fair-trade practice. For example, if goods are being sold below cost for the purpose of leading customers to believe that these and other goods in the seller's line are available at similarly low prices—in other words, if the goods sold below cost are being used to trick customers—then the practice is clearly unfair and should be prohibited. The offense, however, is not in selling below cost but in the dishonest purpose for which such sales are made. The true function of a fair trade practice provision is to prevent dishonesty and not to stop competition. Sales below cost may at times and under some conditions be entirely legitimate. So long as such sales are honest, free from trickery, and not in any way harmful to public interest they should not be restricted.

This confusion of the meaning and proper use of fair-trade-practice rules, unless cleared up soon, is going to prove very costly to this country. The National Recovery Administration needs to make up its mind as to what constitutes fair-trade practice and what does not; and then hew to the line.

IX. CONCLUSIONS AND RECOMMENDATIONS

In conclusion, the National Recovery Administration was created as an emergency measure to aid business recovery. Its original purposes were thoroughly constructive. It has already accomplished a great deal of good. But the emergency which it was created to meet has not yet passed. Many helpful

beginnings have been made under the National Recovery Administration which have not yet reached a point at which they may continue without help. It would be a great mistake to drop these efforts on June 15, 1935, the date when the present act expires.

The National Recovery Administration should be continued for at least another year. Its good work should go on. It should, however, be kept strictly to its purposes and not be permitted to become an omnibus for every type of experiment, reform, and effort on the part of special groups hoping to extract special privileges at the expense of other industries and trades and the general public. The major difficulties now before us are the results of efforts through the codes to fix prices, restrict the freedom of arranging conditions of sale, and to control the markets.

The following is a summary of the facts and arguments presented in the foregoing sections relative to these dangers:

1. In all discussions regarding price fixing, let it never be forgotten that, in all of its forms, its tendency is monopolistic. This is the real issue. It is easy to get lost in the details of discussion concerning the relative merits and demerits of market regulating devices, open price posting, costing systems, and so on. These are but details. The important question is, What is their purpose? If they are intended, either directly or indirectly, as aids to price fixing, then they constitute first steps toward monopoly. Let it be repeated that if prices can be fixed at any point, then it will be possible to fix them at other points. Price fixing marks the end of competition and the beginning of monopoly.

2. The constitutionality of price-fixing provisions is still a matter of very real doubt. There is, as yet, no clear understanding that these provisions will stand the tests of the courts.

3. If the price-fixing provisions are held to be constitutional it is still highly improbable that they will work. So far, the performance under the price-fixing provisions has been almost farcical. Bootlegging is rampant. There is at the present time very little serious intent to enforce price fixing in any codes. Efforts to put these provisions into effect are certain to be followed by floods of violations.

4. In order to make the price-fixing provisions effective, it will be necessary for industries to secure the help of the Government. From our knowledge gained from the experience with the eighteenth amendment, it is clear that it will require a very extensive effort in the form of supervision, detection and prosecution of violators. The costs to the public will run into many hundreds of millions of dollars. The results are certain to be expensive and likely to be inconclusive and unsatisfactory. The American public will not only have to pay directly in higher prices for merchandise, but also indirectly in the form of taxes to support and enforce the price-fixing provisions.

5. If the price-fixing provisions are really to be made to work, then we shall also face beginnings of Government suprevision and regulation of private business to an extent hitherto unknown. Such public regulation will be absolutely essential to prevent these provisions from going to extremes. Is our governmental experience with supervision and rate making in the public utilities and elsewhere sufficiently satisfactory to encourage us to go into the supervision and regulation of scores or hundreds of other industries?

6. If and when such public regulation of price fixing, as has been described above, proves unsatisfactory then what is to come next? Does anyone think that the problem is so simple as to believe that all that is necessary is to give the word and then take up business practice where it left off before these price-fixing provisions were proposed? Once having begun, is it not much more likely that the process of State absorption of the functions of business will be continued? This is a pertinent question and one that deserves the attention of every citizen.

7. All changes, restrictions, and prohibitions as applied to terms, discounts, advertising allowances, consignments, quantity discounts, and other matters are almost invariably in conflict with the customs long established in business. The conditions of sale have always been matters essentially and normally the subjects of negotiations and agreements between buyers and sellers. The provisions pertaining to the conditions of sale have been introduced into hundreds of codes, with complete disregard for the interests and attitudes of customs and of the public. All of them have, with almost no exception, had the effect of increasing net prices. Many of them are effective aids to future price fixing.

Such provisions have no place under the heading of fair-trade practice rules. Their purpose is to restrict and prevent rather than to facilitate competition.

The CHAIRMAN. Mr. Jackson.

TESTIMONY OF J. O. JACKSON, MANAGER OF THE PITTSBURGH-DES MOINES STEEL CO., PITTSBURGH, PA.

(Having first been duly sworn by the Chairman, the witness testified as follows:)

The CHAIRMAN. Mr. Jackson, you represent the Pittsburgh-Des Moines Steel Co.?

Mr. JACKSON. Yes, sir.

The CHAIRMAN. How much time do you want, Mr. Jackson?

Mr. JACKSON. Just a very few minutes unless you want to ask some questions.

The CHAIRMAN. We will not ask you any questions, so you may proceed. All right, Mr. Jackson.

Mr. JACKSON. We fabricate and erect steel water towers, tanks, buildings, and bridges having plants at Pittsburgh, Pa., and Des Moines, Iowa. The speaker is in charge of the purchasing of materials for this business. Since the advent of the Steel Code we have not been able to secure any competition whatever as to price from the various steel mills from whom we purchase our raw materials. The prices quoted by these mills since the code have been identical even to the penny on large lots of steel materials. Prior to the code we were always able to make advantageous purchases of steel material at certain times from mills which were in particular need of tonnage at prices considerably below what was then considered the current price. Thus, our cost of steel has been increased, because we no longer secure these lower prices resulting from competition between the mills.

Senator KING. Are others in the same situation as your company?

Mr. JACKSON. Yes, sir. I speak for our company, because our organization is dominated by the steel mills from whom we purchase our materials. They are also in the same fabricating business that we independent fabricators find ourselves in. Therefore, we are unable to come before you as a body, but the situation of all independent fabricators is identical, and I have statements that have been filed before the Federal Trade Commission that would prove that, if you care to have them.

Senator KING. How many fabricators do you represent?

Mr. JACKSON. I represent only the company I am employed by.

Senator KING. How do you know the attitude of the other fabricators?

Mr. JACKSON. Because we are members of the Steel Plate Code, and, as I say, the statement has been filed before the Federal Trade Commission by these independent contractors of their——

Senator KING (interposing). Proceed. How many filed statements before the Federal Trade Commission, if you know?

Mr. JACKSON. Well, the Central Fabricators' Association.

Senator KING. How many members are there of that?

Mr. JACKSON. There are 37 members.

Senator KING. And what is their protest?

Mr. JACKSON. Their protest is that there is unfair competition between the mill fabricators and the independent fabricators.

Senator KING. Monopolistic?

Mr. JACKSON. They claim—it probably is not monopolistic under the present interpretation of the antitrust laws, but nevertheless they think it is unfair.

Senator KING. Unfair competition. Are there any others who filed petitions before the Federal Trade Commission?

Mr. JACKSON. There have been a number of individual companies, including our own company, that have filed statements.

Senator KING. Proceed with your statement.

Mr. JACKSON. Since the advent of the code the prices of steel which we purchase have been increased approximately 30 percent. This increase is in addition to the one mentioned above. From both causes our increase in cost of raw materials has been in excess of 50 percent of what it was before the code.

As a result of the N. I. R. A. our labor rates have been increased from 10 to 25 percent.

The selling prices of our products have thus been increased because of the N. I. R. A. a very considerable amount and this large increase in the price at which we must sell our products in order that we shall not lose money has acted to reduce the volume of business we have been able to secure because purchasers of structural steel cannot justify the present high prices and still see any opportunity for an adequate return from their prospective investments. On the other hand if our labor and material costs were now on the same competitive basis that they were before the N. I. R. A. our selling price would be considerably lower and there would be more probability of an adequate return to the investor from the structures which we are prepared to manufacture. Therefore, we must conclude that the N. I. R. A. has acted to restrict our volume of business and has even defeated its main purpose; that is, the increasing of employment because while our employees receive a higher rate of pay than they did prior to the code, yet they now work on a part-time schedule which actually results in smaller total earnings for a large part of our employees.

The CHAIRMAN. May I ask you, Mr. Jackson, did you favor the Structural Steel and Iron Code which was signed, but which was held back and stayed?

Mr. JACKSON. We did not favor it.

The CHAIRMAN. You did not favor that?

Mr. JACKSON. That was one that was to be imposed upon us by the code authority, by the N. R. A.

The CHAIRMAN. I see.

Mr. JACKSON. We did not because it would take the erection of structural steel out of our hands, and that is one of the principal parts of our business, is erecting such things as steel buildings.

We believe that the country as a whole would be better off if the natural forces of supply and demand were regulating the prices of raw materials and of labor, for then there would be no obstacles in the way of an increasing volume of business which in turn would decrease the supply of labor and the supply of raw materials which would bring the natural forces into action in a manner that would increase the prices of such labor and materials but only after a demand had been built up which would justify such increases in prices.

We are convinced that a very important contributory factor to the continued sluggish rate of operations in the capital-goods industries is the method which has been adopted by the iron and steel industry of selling iron and steel products. The economic and the legal status of this method have recently been discussed at some length in the reports of the Federal Trade Commission and the National Recovery Administration. Both of these Government departments agree that

the price the public is paying for steel has been considerably increased as a result of the present basing-point system and the excessive cross haul which is involved because of the freight absorption permitted by the Iron and Steel Code to enable every producer of steel to compete in every portion of the country. We are convinced that if the rolling mills would sell their product f. o. b. their mills with a reasonable limitation on the amount of freight which they will be permitted to absorb to meet legitimate competition that the price of steel to the public will be reduced from $4 to $5 a ton and that the steel mills will realize as large an average price for their products as they now do. We believe that under present conditions the mills are actually selling steel f. o. b. their mills as the delivered price is only used as a basis to establish the mill price which is the price actually invoiced and upon which basis the purchaser actually makes settlement even under the Steel Code. If the mills sold their products f. o. b., their mills, practically all of the oppressive and unfair practices which are now proving a great handicap to the steel-fabricating industry would be removed.

I would like to file in the record the statement of the effect of the Steel Code on our business. It is rather lengthy, and I won't read it.

The CHAIRMAN. Very well. Put that in the record.

(The statement referred to is as follows:)

A STATEMENT OF THE EFFECT OF THE STEEL CODE ON A STRUCTURAL AND PLATE FABRICATOR

MARCH 21, 1935.

The Steel Code requires that steel plates, shapes, and bars for so-called "identified jobs" (which term is defined to include all steel structures which are fixed in their locations, and ships and barges) be sold to the fabricators not f. o. b. neither the rolling mill of the steel company nor even f. o. b. the plants of the fabricators but "delivered" to the places where the structures are to be erected. The actual delivery of the steel to the ultimate destination is not effected nor controlled by the rolling mill but is clearly the responsiblity of the fabricator.

This plan is a severe oppression to the fabricating industry because, whereas before the advent of the Steel Code and this plan a small fabricator could secure a reasonable share of business near his plant with only the competition of a small number of other properly located fabricators, now under this plan all fabricators may compete for all jobs. It is now necessary for the smallest fabricator to compete nationally and thus greatly increase his selling, traveling, and erection expenses if he is to secure a reasonable share of the going business. Prices at which jobs may be secured have been lowered due to the increased number of bidders on each job, some of which consider sales outside of their natural territory of the nature of "dumping." The large mill-owned fabricating interests who have sales offices distributed over the country thus have a large and unfair advantage over the small fabricators who were never organized to compete nationally but who have been forced to do so by the provisions of the Steel Code.

The steel mills, in operating this delivered-to-job destination price plan, force the small fabricators to divulge the names of their prospective customers and the locations and descriptions of the structures they hope to sell to them to the steel mills which information may be used in assisting the mills own fabricating units to sell the jobs themselves. If the small fabricator refuses to divulge such information the steel mills refuse to quote prices or sell steel for such jobs.

Small fabricating plants have been built at various locations selected for certain advantages to enable them to compete in particular territories. For example the marginal fabricating plants, those along the Atlantic seaboard, the Gulf coast, the Pacific coast, and the Canadian border, never expected to compete for jobs in the interior. They did expect to secure a reasonable share of the nearby or local jobs. As a result of the uniform delivered-to-job destination prices such marginal plants are enjoying prosperity and are expanding but at the expense of the great number of interior plants whose production at reasonable price levels has practically vanished and whose assets are wasting away. It is surely unfair for the steel-mill industry to adopt a price-fixing plan which so seriously upsets

normal competition in another industry and causes enormous losses in invested capital and large reductions in the employment of labor normally attached to such plants.

The price of steel has been materially increased since the advent of the Steel Code. The small fabricator must pay the increased price for his steel which provides profits to the mills and which enables their mill-owned fabricating units to further depress prices, causing larger losses to the small fabricators resulting from their own purchases of steel from the mills. Thus the mill fabricators in effect force their small competitors to pay for the ammunition with which they themselves are being exterminated.

The delivered-to-job price plan increases the price paid for steel by the public by the average amount of the excess freight absorbed by the mills in sales to any fabricators for jobs out of the steel mills' natural territory and for sales to fabricators out of the mills' natural territory for jobs either in or outside of the mills' natural territory. This average is estimated at from $2 to $5 per ton on all steel sold to the fabricating industry and represents a part of the public contribution to provide a basis for uniform price fixing.

Regulations no. 9 originally made effective October 10, 1934, but amended February 14, 1935, not only further extend the unfair practices previously described but they encroach much further upon the constitutional and equitable rights of the members of another industry in such a bold, unprecedented, and amazing manner as was never conceived before to be possible under our American form of government. These regulations require that the members of the steel industry shall not sell any cut-to-length steel to any purchaser until such member of the industry has first made an investigation and determined what the purchaser of the steel is going to use it for, and if the proposed use of the steel happens to come under the terms of a definition which the steel industry themselves have written of the so-called "identified jobs" the steel mills by means of these regulations take all of the transportation advantages away from the fabricators and appropriate such advantages to their own account increasing their price accordingly. To accomplish this result, the steel mills require that the fabricators pay to the steel mills not only the amount due the mills for the value of the steel but also an amount equal to the total freight charges which the railroad will also later collect from the fabricator covering the transportation of the steel from the mill to the plant of the fabricator and from the plant of the fabricator to the final destination of the job. After the fabricator has manufactured and shipped such steel he is then required to make certain affidavits which are complicated and lengthy and to make certain assignments of any present or future rights, which he always had before the code, to the steel mills and after all of these things have been done and properly approved by the rolling mills a part of the excess charges made by the mills are returned to the fabricator according to a large number of very complicated rules.

Structural-steel fabricating plants, by virtue of contracts between them and the railroads serving them, have for many years been entitled to fabrication in transit arrangements which give them the benefit of through rates from the origin of the steel to the job destination. Variously located fabricators have different average transit advantages according to the locations of their sources of steel, their plants, and the destinations of their jobs which act to reduce their transportation costs and enable them to sell steel to the public at a lower price. In order to accomplish the purposes of the pricing system of the Steel Code, the steel mills now by means of this regulation either take over or destroy the fabrication in transit-freight adjustments due the fabricator and thus very materially increase his transportation costs making it necessary for him to increase his selling price for his products as a result. Thus the price of steel to customers located in the territories served by fabricating plants having such advantages has actually been increased by this regulation no. 9 without any gain to the steel mill industry except to remove another obstacle from the perfect functioning of the code-pricing system.

This regulation no. 9 while destroying the fabrication in transit advantage of independent fabricators does not have this result with the mill-owned fabricators because it would be absurd to assume that the mill-owned fabricators would not take advantage of whatever through fabrication in transit rates are legally available. This again results in an additional unfair advantage of the mill-owned fabricators over the independent fabricators and represents still further contributions from the public in an increased price paid for fabricated steel and a further contribution from the wasting assets of the independent fabricators.

PITTSBURGH-DES MOINES STEEL CO.,
By J. O. JACKSON, *Manager*.

Mr. JACKSON. And in conclusion we are of the sincere belief that under the present conditions of artificial price control, wage control, and suspension of the antitrust laws that this country is headed for industrial chaos and as time goes on it will be increasingly difficult to correct the harm that has been done by the National Industrial Recovery Act. We, therefore, recommend that the National Industrial Recovery Act be allowed to expire and that it be not extended beyond June 16, 1935. If it is the judgment of your body that the effect of discontinuing the National Industrial Recovery Act entirely would be disastrous to the country, an alternative might be to continue the present codes, but only insofar as wages and perhaps unfair trade practices are concerned, but to eliminate from all codes any price fixing or price regulating, or any other commercial features which affect in any way the price competition between members of the industry. We believe that even continuing the labor provisions for another year will be a hindrance to recovery but that it may be less disastrous than the complete cancelation of all codes.

If the code of the iron and steel industry is continued in any form we recommend that the pricing and selling provisions of such code be eliminated because of the particularly oppressive and unfair restrictions such pricing systems and selling methods have imposed upon our fabricating industry as has been brought out in the attached statement.

I thank you very much.

The CHAIRMAN. The next is John E. Dowsing, of Scarsdale, N. Y.

TESTIMONY OF JOHN E. DOWSING, REPRESENTING THE UNITED STATES POTTERS' ASSOCIATION, SCARSDALE, N. Y.

(Having been first duly sworn by the chairman, the witness testified as follows:)

The CHAIRMAN. You represent the United States Potters' Association?

Mr. DOWSING. I represent the United States Potters' Association.

The CHAIRMAN. How much time do you wish, Mr. Dowsing?

Mr. DOWSING. Why, not less than 15 minutes, because I am going to read a paper, Mr. Chairman, and I want to touch some of the high spots of the statement.

The CHAIRMAN. All right, leave the statement with the reporter and proceed.

Mr. DOWSING. The United States Potters' Association is composed of about 90 percent of the manufacturers of pottery in the United States.

Senator KING. Pottery, was it?

Mr. DOWSING. Pottery, yes. When I speak of pottery, Senator, I refer specifically to tableware, table utensils, kitchen utensils; not sanitary or any other form of pottery.

Senator KING. Where is your place of business?

Mr. DOWSING. In every State, some 12 different States. This is an association representing all the different manufacturers in the United States.

Senator KING. All right. You are the manufacturers?

Mr. DOWSING. Yes; the association. The United States Potters Association which covers and represents 90 percent of the manufacturers of the United States——

Senator KING (interposing). Was it this association that came before the Finance Committee or subcommittee of the Finance Committee, consisting of Senator Edge, one other Senator and myself, and asked for almost prohibitive tariff rates?

Mr. DOWSING. I do not know, Senator.

Senator KING. Proceed.

Mr. DOWSING. How long ago was that?

Senator KING. When the last tariff act was passed.

Mr. DOWSING. I do not know. I was not with the association at that time. That was prior to 1930 or 1929?

Senator KING. No; 1932, I think.

Senator LONERGAN. 1930.

Senator KING. Yes, 1930.

Mr. DOWSING. 1930, yes.

Senator KING. I thought it was 3 years ago.

The CHAIRMAN. All right. You may proceed.

Mr. DOWSING. Under normal conditions there are some 20,000 employed in the industry. The labor represents 60 percent of pottery production, so that practically every dollar's worth of pottery means 60 percent paid to labor. Now this does not take into consideration the thousands of workers in allied industries located in Tennessee, Kentucky, North and South Carolina, Georgia, and Florida, furnishing the clay, flint, feldspar, and other raw materials necessary for the production of pottery. These allied industries are dependent upon the pottery industry for existence. Anything that slows down the pottery industry affects the thousands of workers of these allied industries. There are also the railroad employees handling thousands of tons of ware, truckmen, manufacturers of boxes, crate, and cartons; purveyors of straw and packing materials, and the decalcomanias, paints, and so forth.

I give this thumbnail sketch of the industry that you may appreciate its economic importance. This industry is unique in that it has no byproducts as many other industries have, so that when there is a let-down in one of the products being manufactured it can concentrate on another product and keep the labor occupied and the plants going. There are no export markets for American tableware, for the simple reason the American manufacturer of tableware cannot export their ware to foreign countries and compete in those markets with the product of the cheap labor. The wages of the American potter is some 1,000 percent higher than that paid in Japan and from 200 to 400 percent higher than in other countries.

Senator KING. May I ask you a question? Was it your organization that was proceeded against and adjudged to be a monopoly in restraint of trade?

Mr. DOWSING. No, sir, I never heard of any such thing being done, certainly not since I have been with them, since 1930.

Senator KING. Proceed.

Mr. DOWSING. Not the pottery industry. For years this industry has struggled to obtain relief from the steadily increasing importations of competitive ware from Japan, in the majority of instances below the cost of production here of the similar ware. In 1933 there

was imported from Japan 7,139,507 dozens, and 8,624,958 dozens in 1934. That Japan has been permitted to develop the United States, until this is by far her largest market, is shown by the following tabulation of Japan's exports of pottery gotten out by the Department of Commerce. Now, the Department of Commerce, not to go through it, but to just give you the high spots, reports that the export of pottery from Japan compared to our competitive ware, to the United States in 1931 was 6,634,000 in yens, and up to and including the 11 months steadily increased each year, and the 11 months of 1934 it reached the 13,000,000 yens.

The United States is by far the biggest customer Japan has.

The tabulation referred to is as follows:

[In yens]

	1931	1932	1933	1934 [1]
United States	6,634,000	6,441,000	10,180,000	13,000,000
Dutch India	1,711,000	2,414,000	3,728,000	2,887,000
British India	1,391,000	3,463,000	3,965,000	2,728,000
Canada	1,139,000	1,317,000	1,399,000	1,341,000
Australia	665,000	1,768,000	2,707,000	2,129,000
Great Britain	696,000	825,000	1,296,000	1,051,000

[1] 11 months.

The five principal customers of Japan are Dutch India, British India, Canada, Australia, and Great Britain. Now, in 11 months last year, up to November, there is 13,000,000 yen exported in this country, against 1,051,000 yen to Great Britain, against 2,129,000 exported to Australia, as against 2,887,000 exported to Dutch India, and 2,728,000 to British India.

The CHAIRMAN. That is a matter that has to go before the Tariff Commission.

Mr. DOWSING. The reason why I am setting this forth, Mr. Chairman, is that we are advocating and want to urge upon this committee an amendment to section 3 (e) of the N. R. A., and section 11 of the proposed Senate 2445 bill, in which it is stated, or there the language used is that when substantial quantities of a competitive ware enter the country we may do thus and so. There is no one up to date who knows what substantial quantities mean. We have had a bill pending, an action pending before the Tariff Commission, one that has been there over 2 years. The one under the N. R. A. was filed about 13 or 14 months ago. It reached the Tariff Commission last May, and has not been acted upon yet.

Now, we want to urge——

Senator KING. You have urged here in your letter that we limit imports to 10 percent of the domestic product.

Mr. DOWSING. Of the domestic products, and in no instance shall the imports be less than the cost of production of similar goods made in America.

The CHAIRMAN. I may say to you that I do not think this committee and this bill is going to deal with that phase of the proposition. That is a question that has to originate in the House, and this is a Senate bill. But the question has to come up later on. But your recourse on the question of imports is before the Tariff Commission. They have to decide what substantial quantities are coming in.

Mr. DOWSING. Would it not be within the province of this committee to state where they are using the words "substantial quantities" to define just what you mean by substantial quantities in relation to a domestic product, or in relation to an imported product, what is a substantial quantity?

The CHAIRMAN. Everybody differs on that matter entirely.

Mr. DOWSING. Sir?

The CHAIRMAN. We all differ about that. When we come down to the tariff I might think 5 percent was not a substantial quantity, and with pottery coming in you might think that one-millionth of 1 percent was a substantial quantity.

Mr. DOWSING. We have repeatedly said and suggested that the 10-percent rate be used as a limitation.

The CHAIRMAN. Yes.

Mr. DOWSING. Ten percent is in excess of any foreign country of the world which brings in products, outside of Japan.

The CHAIRMAN. We will be very glad to give your views consideration when the proper matter comes before us, but that matter has to come before the House.

Mr. DOWSING. Well, I will just submit this statement.

The CHAIRMAN. Yes. Thank you. Very well.

(The balance of the statement is as follows:)

The quantity of Japanese ware so far overshadows all other countries competing in this market that there is no comparison. The figures for the year 1934 are:

	Dozen pieces
Japan	8, 624, 958
United Kingdom	786, 328
Germany	376, 585
Czechoslovakia	123, 783
France	31, 775

The theory of the National Industrial Recovery Act, as well as S. 2445 re-enacting and amending title 1 of the National Industrial Recovery Act, is that it would effect a mass increase of wages, relieve unemployment, increase purchasing power and put idle plants into operation. Congress evidently appreciated that industry in being forced to increase the costs of production would labor under a still greater handicap in meeting foreign competition, and provided in section 3 (e) of the National Industrial Recovery Act compensation to the American industries by giving them relief when foreign competitive goods were imported in such "substantial quantities" as to effect the maintenance of the code, and this is reenacted as section 11 of S. 2445.

As importations from Japan of competitive pottery was from six to seven times as much as all the rest of the world and equalled about 40 percent of the domestic production, it would have seemed that this would have been regarded as "substantial quantities." Those words have proved meaningless so far as this industry is concerned. This industry has been unable to get relief through the proper channels and prescribed form of procedure. We, therefore, respectfully urge upon this committee that the words "substantial quantities" be made mandatory in defining them to mean that importation of competitive goods shall not be permitted in excess of 10 percent of the domestic production of the similar and competitive articles, and in no instance where the landed cost is below the American cost of production.

It is respectfully submitted that there should be a definite expression in plain and unambiguous language assuring all industry what protection will be given against unreasonable, cheap, and ruinous competition, as follows:

"That S. 2445, section 11, is hereby amended by adding at the end of the section the following:

"'The term "substantial quantities" as used in this section shall be interpreted to mean such quantity or quantities of importations from any foreign country which is in excess of 10 percent of the quantity of the domestic production of any article or articles with which the imported article or articles compete;

"'The 10 percent of domestic quantity shall be based on the average annual production determined over a 5-year period from 1930 to 1934;

"'All importations from any country in quantity greater than 10 percent of the average domestic production of similar or competitive goods is prohibited: *Provided*, If such importations from any country are entered in the United States at total landed costs which are less than the cost of production and delivery of similar or competitive American-made goods to the principal market or markets of the United States, the Secretary of the Treasury is authorized and directed to prohibit the entry thereof.'"

Senator KING. I suppose you do not know the volume of trade with Japan, that is, the amount of our exports to Japan in dollars and cents in the aggregate?

Mr. DOWSING. I know we have a very large export trade to Japan. I know we are having and have sold a great quantity of cotton. I understand that will not continue indefinitely as soon as Japan can get her cotton from——

Senator KING. The fact is we are shipping to Japan more than we are buying from Japan, is not that true?

Mr. DOWSING. I think that is true.

Senator KING. And we are shipping to Canada nearly double the amount we are buying from Canada?

Mr. DOWSING. I think that is true.

Senator KING. And we are shipping to Great Britain more than double the amount we are importing from Great Britain?

Mr. DOWSING. Yes, sir.

Senator KING. Do you want, then, to apply the same rule? I am just inquiring as to your views about that.

Mr. DOWSING. I think this, Senator——

Senator KING. Would you favor that?

Mr. DOWSING. If that is the rule to be applied I would.

Senator KING. All right. That is all.

Mr. DOWSING. But let me say this in answer to that statement: That Neville Chamberlain made the statement in England when they revised their tariff that they did not want to have any import in England that they could make and were making increase, and that was the only way by which they could give employment to their unemployed, and Mr. Bennett in Canada made the same statement. We do not and will not permit anything to come into this country we can make or are making.

Senator KING. Nevertheless they do and are buying from us.

The CHAIRMAN. Mr. Peterson.

STATEMENT OF RIVERS PETERSON, REPRESENTING THE NATIONAL RETAIL HARDWARE ASSOCIATION OF INDIANAPOLIS, IND.

(The witness, having been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. Mr. Rivers Peterson, of Indianapolis, Ind., who represents the National Retail Hardware Association?

Mr. PETERSON. Yes, sir.

The CHAIRMAN. All right, Mr. Peterson, have you got a brief there to file?

Mr. PETERSON. I do not have a complete brief, Senator. I have some notes which I am going to follow as closely and as quickly as I can.

The CHAIRMAN. All right.

Mr. PETERSON. The average hardware retailer deals in such a wide variety of merchandise and services that it is physically and practically impossible for members of the trade to comply with the burdensome and contradictory provisions of the multiple codes to which they are subject.

You are asked to give consideration to the fact that the hardware business is essentially small. The Department of Census figures show that their average is $15,000 a year sales and the number of employees is five per establishment, on the average.

Senator KING. How many organizations do you represent?

Mr. PETERSON. I represent the National Hardware Association.

Senator KING. Which is several thousand?

Mr. PETERSON. Twenty-five thousand hardware dealers in the United States.

Senator KING. Twenty-five thousand?

Mr. PETERSON. Yes, sir; in a business of such small size it is impossible to departmentize the records of the business, or to segregate the activities of employees. One set of records is all that can be kept and employees must be able to do almost anything that comes to hand.

Senator KING. One other question. Pardon me. You said the multiple codes. Are you under more than one code?

Mr. PETERSON. I will give it to you in just a moment.

Following is a list of codes to which hardware dealers are subject:

1. The Retail Code.
2. The Builders' Supplies Code.
3. The Retail Lumber and Building Material Code.
4. The Canvas Goods Code.
5. The Petroleum Code.
6. The Oil Burner Code.
7. The Upward Acting Door Code.
8. The Chick Hatchery Code.
9. The Retail Farm Equipment Code.
10. The Retail Food and Grocery Code.
11. The Retail Solid Fuel Code.
12. The Liquefied Gas Code.
13. The Retail Monument Code.
14. The Roofing and Sheet Metal Code.
15. The Electrical Contractors' Code.
16. The Plumbing Contracting Code.
17. The Steam Fitting and Air Conditioning Code.
18. The Funeral Service Code.
19. The Retail Tire and Battery Code.

Senator KING. Why did you not put the funeral last? [Laughter.]

Mr. PETERSON. Every hardware dealer, gentlemen, is not subject to all these codes but there are few who are not subject to more than half of them. This is particularly true in smaller communities where there is not sufficient business to justify engaging exclusively in many of the functions covered by the codes mentioned.

Thus, the hardware retailer is in a much more difficult position than, for example, a dealer in shoes and kindred items, or a clothier, whose activities all fall under a single code.

It is impossible for many small hardware stores to even comply with the requirement to post conspicuously the card containing the wage and hour provisions of the various codes to which they are subject. Spare wall space is not available.

Neither the wage and hour nor the trade practice provisions in these multiple codes are by any means uniform. Some apply only to towns of more than 2,500 population, others to every town in the United States, and to the smallest business establishment in such towns.

A clear example of the problem involved may be seen in a letter from C. E. Lawrence, Knoxville, Pa., a village of about 600 inhabitants. The letter is entered as exhibit 1. The letter states [reading:]

Keep a man in the store and one all around man who does plumbing, tinning, heating, and general repair work; also works in the store when needed. Have never kept records of the plumbing or other work separate. I have also received a like letter from the Electric Code. I also do some electrical house wiring but do not keep an electrician steady.

(The exhibit referred to, exhibit no. 1, was thereupon submitted, and is on file with the committee.)

This dealer is required to pay "all around man" $1.20 an hour when he does plumbing work, 75 cents an hour when he does sheet metal work, still another rate if he should do electrical repairing and work him a limited number of hours, while neither the wages nor hours of this employee are controlled insofar as his work which is under the jurisdiction of the retail code is concerned.

This dealer is required by the Plumbing Code to keep his plumbing records in accordance with an approved accounting system which will enable him to establish his overhead as a plumbing establishment. He must keep entirely different records for his sheet metal business, and a different set for his electrical work. Nearly every code contains a similar provision.

Strict observance with code laws would require the average hardware retailer to keep 10 sets of books.

In towns of more than 2,500 population, hardware retailers may work their employees 48 hours, if their stores are open 63 hours or more. Under the Builders' Supplies and Building Materials Codes, the limit is 40 hours; likewise under most of the construction codes. Under the Upward Acting Door Code, the limit is 36 hours; under the Retail Coal Code, from 36 to 42 hours; under the Oil Burner Code, from 32 to 40 hours. And one or more employees may engage intermittently in activities governed by these various codes.

No one inside or outside N. R. A. has yet been able to say how a small business establishment subject to these various conflicting rules can comply with them. Yet each industry is insistent that its code provisions be observed. And every dealer who accepts business involving the use of Government funds is required to certify that he is observing, and will observe, all the provisions of all the codes to which he is subject.

Each of these codes contains some kind of provision against selling below cost. Some require the maintenance of a special costing system which is obviously impossible for a small establishment.

The hardware retailer is permitted to sell a hammer at a price not less than 10 percent above his own net delivered cost. If he sells a chick fountain, which is under the Retail Farm Equipment Code, he must get at least invoice delivered cost, plus overhead expenses.

If he sells cement, he must post prices with one authority. If he sells roofing, he must follow a different plan and post prices with another authority. If he bids on a plumbing job, he must file a

duplicate with the plumbers'-bid depository. If he bids on a furnace job, he must file with the sheet metal-bid-depository. If he sells upward acting doors, he must file prices elsewhere.

The confusions and impossibilities of compliance multiply with the numerous trade-practice provisions contained in each code and with the innumerable interpretations, administrative orders, and amendments applying to them.

The only comparison I can find with such procedure is in the eleventh chapter of Genesis:

> Go to, let us go down, and there confound their language, that they may not understand one another's speech. So the Lord scattered them abroad from thence upon the face of all the earth; and they left off to build the city. [Laughter.]

The legal right of N. R. A. to control the retail business through codes is so doubtful that the administration has been unwilling to test the issue in the courts. The proposed extension act uses only vague language to insinuate the right to control retail trade. Under such circumstances control of retail trade should be specifically denied in the new bill.

On June 30, 1934, a Federal court issued an injunction restraining the Chicago local retail code authority, and thereby, the National Recovery Administration, from enforcing the provisions of the General Retail Code against the Irma Hat Co., a chain of stores in Chicago.

The constitutionality of the N. I. R. A. as applied to retail business was clearly raised. Had the N. R. A. desired to bring the matter to a decisive issue, no one will question but that the case could have been decided by the Supreme Court by this time.

Instead, nearly 6 months were allowed to elapse before the case was argued before the circuit court of appeals, on January 11, 1935, and although 3 months have passed since that time, no decision has been rendered.

For about 2 months, a Richmond, Va., druggist has been openly and flagrantly violating the price-fixing provision in the Retail Drug Code, and N. R. A. will not bring the offender into court, nor has it stopped him by other means. A similar situation exists in New Jersey.

Yet thousands of druggists are asking for continuation of their code under the delusion that the price-fixing provision is legal and will be enforced.

We submit as exhibit 2 an advertisement of Kaplan Glass Block, Inc., Bemidji, Minn., with reference to a charge of selling below cost in violation of the price provision in the Retail Food and Grocery Code. I quote from the advertisement:

> We say frankly that we are guilty of the heinous offenses charged against us and, furthermore, must confess that we are not ashamed of having done so.

(The exhibit referred to, exhibit no. 2, was thereupon submitted, and is on file with the committee.)

And some retail grocers are asking continuance of their code, on the grounds that it will stop the use of loss leaders.

Based on experience, one may guess what N. R. A. will do. Last fall, A. L. Steinke, a hardware dealer in Pipestone, Minn., filed charges against the Gamble Store chain unit in that city, charging that this store had sold loaded shells at less than its delivered cost, plus 10 percent, in violation of the General Retail Code.

Investigation by the Minnesota Compliance Office confirmed the charge, but the case was dismissed on the grounds that the plaintiff had violated the code also. The reasoning seemed to be that if one man shoots another he can be punished, but if two men shoot each other the law has been satisfied.

Senator KING. Just one moment. You have referred to an advertisement which you have tendered, and it appears that part of the advertisement is a letter from Anna Dickie Olesen, State N. R. A. compliance director, by E. M. Zusilend, executive assistant, addressed to the Kaplan's Glass Block, Bemidji, Minn., and the charge is, you offered for sale a 10-pound sack of flour for 50 cents; and you had as another similar advertisement in the same paper, as well as in the Bemidji Advertiser, offering a hundred pound sack of flour for $4.80. It is the contention of the complainant that the price is below the code minimum at that point on said date, and the complaint is made hereby the compliance director.

Mr. PETERSON. Yes, sir; and the respondent states they are guilty, and they are glad of it, or were not ashamed of it.

Senator KING. They were not engaged in interstate commerce by simply selling their 10 pounds of flour.

Mr. PETERSON. But the assumption of N. R. A.—and that is the point to which we object—is that you have the right to control interstate commerce. But N. R. A. will not bring it to an issue.

Further evidence that the N. R. A. does not intend to bring retail violators into the courts is shown by a letter from the National Recovery Administration, which I enter as exhibit 3, from Mr. William L. Pencke, regional litigation attorney, in Dallas, Tex., from which I quote, and this is the opinion also of the United States attorney in Oklahoma City, who, moreover, is unwilling to subject the Government to another certain defeat, because the case would come in the jurisdiction of Judge Vaught, who has made adverse decisions in similar cases.

(The exhibit referred to, exhibit no. 3, was thereupon submitted and is on file with the committee.)

The Retail Code is not a voluntary document, and general compliance can only be secured through boycott, coercion, and intimidation—if at all.

The existing General Retail Code was submitted by the trades affected largely because of fear of the licensing provisions of the N. I. R. A. and because the provisions of the President's Reemployment Agreement were more burdensome than those that could be wangled through code making.

The extension act, while making frequent mention of "voluntary codes", proposes hour restrictions in imposed codes that will be sufficiently burdensome to force the submittal of so-called "voluntary codes."

It is my belief that the fear of the Black 30-hour bill, the Connery bill, and the Wagner labor-disputes bill is the most powerful force today which motivates trade and industry to approve the extension of N. R. A.

Legislation secured through such coercion can never be more popular with the masses of business men than the eighteenth amendment was with the public generally.

The National Retail Hardware Association openly opposes extension of the act in the retail field. But there is indisputable evidence that its views are shared by thousands of retailers in other fields. Some such evidence is submitted herewith.

Exhibit 4, submitted herewith, is a report made by the National Retail Code Authority, Inc., of the activities, or lack of them, on the part of local code authorities. Local administration of this code is vested in these authorities. Without them, the code cannot function under the present set-up.

This report shows that only 782 local code authorities have organized, indicating a definite lack of interest on the part of all classes of merchants subject to the code in a large number of towns. Some which have organized have been coerced into doing so.

Of the 782 authorities that did organize, only 112 have adjusted more than 20 labor and trade practice complaints, combined, so far as this report shows.

The principal activity, so far as is shown, of 348 of these bodies for self-government has been the collection of assessments. However laudable and necessary such an activity may be, it does not justify their existence.

The necessity of using the boycott to collect assessments is further proof of lack of interest on the part of retailers in continuation of the code.

(The exhibit referred to, exhibit no. 4, is on file with clerk of the committee.)

The assessment for the General Retail Code is most reasonable, being fixed at the rate of $1 per employee. Nevertheless, the collection of more than a hundred thousand dollars is being attempted from unwilling members of trade by means of the letter, which is entered as exhibit (5), and from which I quote:

> The provisions of your code create a legal obligation on each member of the trade to bear a fair share of the costs of code administration. The privileges of using National Recovery Administration insignia and of participating in business wholly or in part financed by Federal funds are contingent on full compliance with your code.

(The exhibit referred to, exhibit no. 5, was thereupon submitted, and is on file with the committee.)

This cleverly worded paragraph does not state that the National Industrial Recovery Act gave the right to tax merchants. It cannot, for Congress has not delegated the right to tax. It refers to a provision of the code and threatens loss of the "blue eagle" and the right to sell merchandise where Government money is used, unless the victim involuntarily forks over the money.

The National Retail Code Authority, of which I am chairman, has six girls employed getting out these boycott letters. It is estimated that they prepare them at the rate of 1,500 a day and that it will take more than a month to cover the lists of merchants who have not paid their assessments.

In like manner, other thousands upon thousands of these letters, I am informed, are being prepared by other retail code authorities. This comes far from indicating wholehearted acceptance of retail code rule, despite the fact that it is claimed that the objectors to it are a miserable 10 percent of chiselers.

Senator KING. Let me ask you a question. You have stated at the outset of your testimony the number of codes to which the retail hardware dealer would be subjected?

Mr. PETERSON. Yes, sir.

Senator KING. From the beginning down to the funeral, do they have to pay an assessment in each?

Mr. PETERSON. We are gradually getting that cleared up, Senator. We have had a tremendous amount of trouble, and I think the failure of the administration to clear that quickly and decisively has caused a lot of feeling toward National Recovery Administration.

Senator KING. I was wondering, for instance, if the door code and each of those codes and the representatives of them would send letters to the retailers.

Mr. PETERSON. They have done so, and they still do it, even though the Government has said they have no right to do it.

Senator KING. So a man might receive 8 or 10 or 15 or 20 letters?

Mr. PETERSON. I will come to that, just a little of it, a short time later.

Senator KING. All right.

Mr. PETERSON. It is the "blue eagle" and the consequences of his removal that does the work. His claws snatch funds from the hands of unwilling retailers. The only constructive use to which he could be put would be to perch him upon a bust of General Johnson and teach him to say to this Congress, "Nevermore."

Some code representatives don't wait for the Government to act. They take the law into their own hands. I submit as exhibit 6, a letter from the Steelhorn Hardware Co., Fort Wayne, Ind., showing he was given the option of either paying an assessment of 1 percent on sales or being "turned in" to the Home Owners' Loan Corporation in that city to prevent his getting more business from that source.

(The document referred to, exhibit no. 6, was thereupon submitted and is on file with the committee.)

I submit exhibit 7, a letter from Boszor & Kelham, hardware retailers in Avilla, Ind., a town of less than 600 people, who state they were visited by a code authority representative and a man represented to be a Federal man and were told to either pay $5 and sign a compliance certificate or lock up their plumbing tools.

(The exhibit referred to, exhibit no. 7, was thereupon submitted and is on file with the committee.)

I submit as exhibit 8, a letter from the Woodland Plumbing & Hardware Co., Woodland, Calif., who state they were denied the right to accept a contract which had been awarded to them because the firm refused to sign a compliance certificate which the Plumbing Code Authority demanded. This code authority had no right to make such a demand and later admitted so.

(The exhibit referred to, exhibit no. 8, was thereupon submitted and is on file with the committee.)

Senator KING. Were they charged with having violated any law?

Mr. PETERSON. No; but the plumbing man went around and said, "You have got to sign your certificate agreeing to comply with the plumbing code. If you do not you cannot take this contract, which has been awarded to you."

An Indianapolis printing plant that I am familiar with, which has been struggling for existence, is assessed a thousand dollars a year. Part of the money goes to pay a salary of $18,500 to a code officer in New York City, and $5,000 for a divisional code officer in Chicago, so I am informed.

An investigation of code authorities might conceivably reveal why some people are so anxious to have codes continued which seriously interfere with customer service.

I want to second everything that the previous gentleman said on that.

The President has asserted and reasserted and has caused the statement to be written in every code of fair competition that it shall not impose undue hardships upon small enterprises.

The limitation of hours upon employees in the Retail Code and the more drastic limitations in other codes to which the hardware store is subject imposes a hardship which must be apparent to any thinking person.

The National Retail Hardware Association estimates that two-thirds of all the hardware stores in the United States are staffed by five people or less, including proprietors. Estimates of the National Recovery Administration are that about 84 percent of all retail stores have five employees or less.

These small establishments must operate longer hours than large downtown stores.

The CHAIRMAN. If they are in cities of 2,500 population and less they have been released, have they not, from it?

Mr. PETERSON. No, sir; and I will come to that in just a minute, Senator.

The CHAIRMAN. All right.

Mr. PETERSON. A 50-hour store week has been common in the department store field for years. But the small establishment has found it necessary to operate much longer hours. Indeed, in the cities, the best opportunity of the small merchant to get business is before his big competitor opens and after he closes. In rural communities, and the hardware business caters primarily to the needs of the farmer, store hours must be adjusted to community needs and buying habits.

These small stores cannot stagger help or use part time help as their large competitors can. Every store requires a skeleton force at all times to function at all and in the majority of hardware establishments that skeleton force is ample to take care of peak periods.

Limitation of working hours for employees to 48 hours, with the store operating 63 or more, means the employment of additional help. It must be trained help in the hardware store, capable of selling everything from can openers to stoves.

Surely you appreciate the burden which is placed upon the owner of a business doing about $25,000 and employing two or three men, when he must employ one or more additional.

It can mean only a continuation of the losses which he has suffered for the past several years. Figures for identical stores which are submitted as exhibit 9 give a graphic picture of the situation.

(Exhibit 9 was placed on file with the clerk of the committee.)

These are better than average stores. Otherwise they would not have been able to supply the figures required. But you will note that the establishments employing five people or less, including

owners, continued to lose money in 1934 despite the marked improvement in business.

Neither from the standpoint of business necessity, nor from that of customer service can he afford to curtail store hours. Practically he cannot work his people 48 hours and remain open longer.

The small retailer is today in a bitter struggle for his continued existence. The mass buyers, the chains, the mail-order houses have not suffered from the price provisions in the code to the extent he has. They still can, and do, sell thousands of items at approximately the price the retailers has to pay.

The fact that between fifty and one hundred thousand retailers petitioned the President and the National Recovery Administration to make the differential clause in wholesalers' codes effective in order to tend to equalize the price advantages of the mass buyers, shows how critical the situation is.

It is probable that this will never be done. But the Congress can do one thing and by doing so will earn the undying gratitude of the mass of the small fellows for whom I speak. It can see that the promise of the President is fulfilled and that these codes shall no longer be permitted to burden the little fellows.

5. Code provisions force the hardware retailer to act as policemen for other industries, restrict his ability to buy merchandise, and hamper other ordinary operations of his business.

Under the Builders' Supplies Code, he is not permitted to buy products which do not comply with all the standards established, or labor requirements incorporated in the separate approved codes of industries and trades related to builders' supplies. Neither is he permitted to buy from a producer or vendor who does not represent that he is in full compliance with all the codes to which such producer or vendor may be subject. Neither can he sell to a contractor or consumer who has failed to comply with the code for his respective trade.

Under the Sheet Metal Code, the hardware dealer is prohibited from submitting a competitive bid to any owner or other person corresponding to an awarding authority unless such person agrees to comply with the regulations in the Construction Code governing an awarding authority.

As if the direct confusion of codes were not unbearable enough upon the hardware man, these codes reach out into the field of the manufacturer, wholesaler, and consumer, and require the hardware retailer to police their actions.

6. Each code contains a provision giving the code authority the right to demand business figures pertaining to the trade or industry which the particular code governs. It is a physical impossibility for hardware retailers to comply.

Such figures can only be secured where a business is departmentized. It is a physical impossibility for a small establishment, doing less than $25,000 annually, to keep department records. Nevertheless, hardware retailers receive constant demands to produce figures which do not exist in their books.

Some of these demands are made in connection with assessment racketeering. I submit as exhibit 10 a demand made upon H. L. Bockelman & Son, Palatine, Ill., a town of 2,110 population, by the Retail Canvas Goods Code Authority for figures on this dealer's gross sales of canvas goods. Attached to the letter was a card demanding that the dealer pay a minimum assessment of $20.

(Exhibit 10 was placed on file with the clerk of the committee.)

Even books and records are demanded, without due process of law. Because J. J. Ryan Hardware Co., Montrose, Pa., failed to pay a Plumbing Code assessment, they were ordered to appear before the zone compliance committee at Dunmore, Pa., and to bring all invoices, books, and other records pertaining to the payment of the assessment. Since this assessment is based on volume of sales, it would have involved submitting all ledger records.

7. Administration of the National Recovery Act to date offers no hope that hardware retailers will be relieved from these undue hardships

The President of the United States—and now I am coming, Senator, to the point that you raised—by an Executive Order, No. 6354, issued October 23, 1933, and amended by Executive Order No. 6710, issued May 15, 1934, definitely relieved small retail establishments in towns of less than 2,500 population from these unbearable code provisions.

But by administrative order no. X-72, issued August 6, 1934, the administration prevented the application of the President's order to those engaged in the sale of builders' supplies, building materials, farm equipment, plumbing, sheet metal, electrical work, canvas goods, oil burners, funeral service, and other activities, and I am merely mentioning those that affect the hardware case. There were many others.

The hardware retailer found himself relieved from the provisions of his primary code but subject to a maze of other provisions more burdensome than those from which he was relieved.

I submit as exhibit 11 a letter from the Wheeler Hardware Co., Bethesda, Ohio, a town of about 1,500 population. We were informed that this firm was in violation of the Plumbing Code. Our association wrote him that the law required that he pay the code rate of $48 for a 40-hour work week.

(Exhibit 11 was placed on file with the clerk of the committee.)

I do not know whether you gentlemen realize it or not, but out in that drought-stricken area, if a farmer calls on a hardware man or a plumber, to run some pipe to feed his cattle, to water his cattle, it would be necessary for that dealer, if he complies with the code, to make that farmer pay at least $1.50 for that work, when it used to be done for 50 cents.

His letter shows that there is no water system in the town, that there is very little gas work, that the man he is expected to pay $1.20 an hour does all kinds of work that may come to hand.

The CHAIRMAN. What was the plumber's wages before the code went into operation?

Mr. PETERSON. They have varied greatly, Senator, and probably should vary very greatly now. In the very small communities it has been one rate and should be.

The CHAIRMAN. Has there been a large increase in the plumber's wages?

Mr. PETERSON. The reports we have from hardware dealers, asking what they were paying for plumbers, vary from 50 cents to $1 an hour that they paid before the code was put into effect. In many stores, this so-called "handy man," who did everything, was never on any hourly rate. They probably paid him $15 or $20 a week, and

he did whatever came to hand. Now, the theory is if he works 2 hours putting in a sink in some farmer's home, or some other person's home, they are going to pay him at the rate of $1.20 an hour for those 2 hours. He may be working on a regular weekly basis, but it has got to be adjusted on that basis. If he goes to do sheet-metal work he has got to be paid at the rate that applies for the Sheet Metal Code.

This is an Ohio dealer, and many of them are following the same course, and he has decided to forego the opportunity to do any plumbing business that amounts to 10 percent of his volume, because he knows the consumers in his community will not pay $1.35 an hour for such work and realizes that the attempt to make such a charge will injure his other business.

Such situations are not unknown to the N. R. A. administration. I have pointed them out in numerous instances and have begged that these little dealers be relieved. But even though the deputy administrator, Mr. Hock, admits the wage rates in the Plumbing Code have caused wide dissatisfaction—not confined to hardware dealers by any means—and though he questions the soundness of the indiscriminate imposition of such a high wage rate, the Administration has done exactly nothing about it.

Perhaps these small dealers were too unimportant to be considered. Large interests have been. The plumbing people filed a complaint last fall against the United Gas Improvement Corporation of Philadelphia for connecting gas ranges and other appliances sold by this utility and not using master plumbers or paying Plumbing Code wages.

The complaint was quietly quashed and Administrative Officer W. Averill Harriman issued a letter advising that an order be issued clearing up such situations and making it clear that the code of one industry should not be permitted to overturn long-time practices in another industry.

But no such order was issued. Indeed it was difficult to find anything about the disposition of the U. G. I. complaint. The plumbing people claimed that it hadn't been definitely settled.

And I had some difficulty getting hold of Mr. Harriman's letter as to the viewpoint. It had never been announced publicly.

Senator KING. It was never written and sent out publicly?

Mr. PETERSON. No; it was an interoffice communication, and there was no reason why it should be published, and we happened to stumble onto it in trying to take these little fellows out from under this burden.

Nevertheless, the utility was not molested further but the Service Hardware Co., Dunkirk, N. Y., was notified in February of this year that complaint had been filed against it for violation of the Plumbing Code, and it was suggested that the accused appear before a compliance committee of the plumbers at 2 p. m. in Salamanca, N. Y., on February 20. I enter the correspondence as exhibit 12. The accused was guilty of connecting gas ranges and other appliances which he sold. The compliance committee claimed he was doing work "allocated to the plumbing contracting division."

(Exhibit no. 12 was placed on file with the clerk of the committee.)

Frequently N. R. A. employees express sympathy for the problems of these small dealers. Sometimes they don't go that far. The sales volume of the Yahn-Jones Hardware Co., Elwood, Pa., dropped from

$80,000 in 1929 to about $24,000 in 1934. The business is operated by three owners, drawing from $15 to $20 a week. This spring they asked that they, the owners, be permitted an exemption from the hour limitations of the Retail Code in the hope that by this mercy they might be able to keep their business afloat.

The petition was approved by the National Retail Code Authority, Inc., and submitted to N. R. A. on March 6. Only one was exempted previous to that, being an executive. You will be interested in this. Finally, on April 4, nearly a month later, the assistant deputy signed his approval and sent the order to the N. R. A. Review Board. What has happened since, I don't know.

When I objected to the unreasonable delay the assistant deputy informed me that he didn't consider the matter of very much importance, stating that these dealers weren't any worse off than a lot of others, and if N. R. A. was going to start exempting them for things like this, it might as well let all of them go.

Price-filing provisions in manufacturers' codes result in price fixing and oppress and repress retail hardware men.

In January 1934 I asked Mr. Mellow of the Liberty Foundry Co., St. Louis, Mo., to explain why there was such marked uniformity in the furnace prices that had been filed under the provisions of the Warm Air Furnace Code.

He explained that several of the large manufacturers filed their prices and these were sent to other members of the industry. These members, he said, knew they couldn't get more for their products than the big manufacturers and also felt they couldn't make any money if they sold for less so they just filed the same prices.

I submit as exhibit 13 a letter dated January 16, 1934, from the secretary of the Code Authority for the Ladder Manufacturing Industry who has been asked for copies of the prices of ladder manufacturers filed under the provisions of that code. He sent the price list of his own firm and stated:

> This agrees in every detail with practically every price list and discount sheet on file in my office.

Now, I submit as exhibit 14 a letter from the same person to whom a similar request was made after the National Retail Hardware Association had complained of the discrimination against hardware retailers under this code pricing. It seems significant that this letter states, "These discounts are not uniform throughout the ladder industry."

Nevertheless, the condition complained of was not changed as is shown by exhibit 15 which is the discount sheet of the Goshen Churn & Ladder Co. and establishes a differential in favor of department stores against regular retailers.

(Exhibits 13, 14, and 15, are on file with the clerk of the committee.)

The question of quantity purchased did not enter into the consideration. Stores classed as department stores were given better prices than hardware stores and this differential was generally maintained throughout the ladder industry. Appeals to N. R. A. were unavailing.

Under a ruling adopted by the Steel Code Authority on January 1, 1934, a very large number of hardware retailers were deprived of buying privileges they had long enjoyed and were placed in a position where they could not meet their competition.

The Raymer Hardware Co., St. Paul, Minn., which had bought nails on a jobbing basis, in car lots, for more than 50 years, was denied the privilege. The Gavin Hardware Co., Leominster, Mass., lost a privilege it had enjoyed for more than 30 years.

Senator KING. Why?

Mr. PETERSON. Because they made a rule as to what constituted a jobber, and who is therefore entitled to buy at the jobbing prices. When they made that rule first they said that a concern with 70 percent of sales of wire products to retailers, departments of the Government, or contractors, in other words, could qualify as a jobber. That definition did not suit the jobbers, and it was later changed, to require those qualifying on a jobbing basis for prices to sell 90 percent of their wire products to other retailers or Government institutions, leaving out the contractor. But the jobber was able to maintain that buying position, is and has been for years competing with the large retailers, such as the Raymer Hardware Co. for contract business, and was thereby able to undersell them.

Senator KING. This was in the interest of the big people, the big jobber?

Mr. PETERSON. Yes, sir.

Senator KING. A man whose output was say 90 percent or more?

Mr. PETERSON. They could not check it. They could not have proven it to save their lives, but he could——

Senator KING (interposing). But that was the prognostication?

Mr. PETERSON. Yes, sir; and today any good size hardware dealer who gives this partial admission can get the price at which he states he sells that day.

Senator KING. A man who lived in a town of 25,000 or 30,000 residents, where he has 65 or 70 percent of his hardware business, his entire trade, could not buy from the steel company?

Mr. PETERSON. He could if 90 percent of his sales of wire products were to retailers, other retailers, or to departments of the Government, or institutions.

The CHAIRMAN. Are you now through, Mr. Peterson?

Mr. PETERSON. I am through in just a moment, sir.

Under the price provisions of the Steel Code, even the price at which the wholesaler sells the retailer, is controlled and is uniform. The wholesaler is denied the privilege of making special prices to his customers to enable them to meet particular competition.

But mail-order houses do not appear to have been similarly treated. At one time some mail-order retail stores were selling nails at 50 cents a keg lower than the retailers were required by the Steel Code to pay wholesalers for them.

The National Retail Hardware Association brought the matter to the attention of the N. R. A. in January 1934, in a brief which it supported with a large file of letters from dealers describing the hardships imposed upon them by the Steel Code prices and discrimination. Nothing but correspondence has resulted.

One more point and I am through.

Not only have retailers been denied former buying privileges under code rules, thus being forced to charge consumers higher prices, but in some instances the source of supply has been withdrawn.

I submit as exhibit 16 a letter dated April 1, 1935, from P. C. Abbott & Co., Richmond, Va., to the Crisman Hardware Co., Chat-

tanooga, Tenn., advising that under a code ruling the firm can no longer ship range boilers to any except those engaged in the wholesale plumbing business who sell to plumbers only. And by that, which they say is a code ruling, this firm which has been dependeding upon that source for a great many years is denied the privilege of continuing.

(Exhibit 16 was placed on file with the clerk of the committee.)

The CHAIRMAN. All right, Mr. Peterson.

Senator KING. What effect does that have on the small business man?

Mr. PETERSON. It has a very material effect upon this dealer who had this privilege taken away from him, sir.

I would like to add, Senator, to my testimony and enter an article, The Man the Code Makers Forgot.

The CHAIRMAN. All right. Let it go in.

(The article referred to is as follows:)

THE MEN THE CODE MAKERS FORGOT

(By Rivers Peterson)

The march upon Washington began with the signing of the National Industrial Recovery Act; the march of business groups captained, it may be assumed, by the leaders of their particular trades or industries for the purpose of cooperating with the administration and formulating codes of fair competition.

They went through the formalities of open hearings. Their footsteps echoed hollowly through the long, bare corridors of the Department of Commerce buildings as they later went from office to office for conferences. They wrangled and wangled.

They ran the gantlet of a Labor Advisory Board eager to add an advantage here and there. They listened with ill-concealed impatience to the often befogged theories of so-called "representatives of the consumer", representatives who seemed imbued with the idea that in some way which they couldn't exactly explain the consumer was about to get it in the neck and that must be prevented even if business went bankrupt in the preventive process.

On, and intermittently up, after interminable, heart-breaking delays, went the codes. Past the cold calculations of Research and Planning, past the quizzical scrutiny of legal talent that knew far more about law than about business, past this barrier and that safeguard, and eventually to the President of these United States accompanied by a letter which said in part:

"The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them."

And with that assurance our President signed the codes and made them laws of the land.

Nothing is further from my thoughts than to question the sincerity of any who participated in this hitherto unthought of method of lawmaking. Undoubtedly there are not many cases where any individual code, of itself, oppresses small enterprises or tends to climinate them, and particularly is that true as regards those primarily engaged in the industry for which that individual code was formulated.

But the code makers forgot. Leaders of industries and of trades, the lawyers, the labor advisors, the various boards, even the Administrator himself forgot.

Forgot that few if any business concerns ever confine themselves to a single line of endeavor. Forgot that generally the smaller business and, subject to certain limitations, the smaller the community in which such business is located, the more wide-spread its merchandising activities must be in order to obtain a volume of sales large enough to permit the owner of the establishment to eke out of his business a net income that will equal the weekly pay of an employee.

Authentic figures covering the operation of hardware stores in 1933 show that in the villages of less than 1,000 population the average owner had a net income of $13.80 per week and paid his help an average of $14.60 per week, while in cities of more than 50,000 population the average owner earned $18.75 per week, net, and paid his help an average of $18 per week.

These calculations are based upon an annual volume of $15,000, it being shown by the United States Census of the Retail Business that this was the average volume for implement and hardware stores.

The code makers forgot that there are 107,483 general stores in the country with average sales of $14,500 a store, with an average of less than one full-time employee per store. Forgot that the merchandising activities of any one such store may vary from operating the gasoline pump in front to conducting a grief-stricken customer to a display of coffins in a darkened room on the second floor.

Forgot there are 32,802 hardware and implement stores in the United States, with average sales of $15,000 per store, and an average of 1.3 employees per establishment.

(Figures from United States Summary of Retail Census for 1933)

Forgot that these stores, in addition to conducting a retail establishment (Code No. 60), do plumbing work (Code No. 244, Supplement No. 9); do sheet-metal work (Code No. 244, Supplement No. 8); do heating, piping, and air conditioning (Code No. 244, Supplement No. 16); do electrical work (Code No. 244, Supplement No. 6); sell and install oil burners (Code No. 25); sell bottled gas (Code No. 104); sell cement and kindred products (Code No. 37); sell prepared roofing, wall board, etc. (Code No. 33); sell farm implements (Code No. 197); sell oils and gasoline (another code); sell baby chicks (AAA Code); sell canvas goods (Code No. 333); sell coal (Code No. 280); sell tires and batteries (Code No. 410); do undertaking (Code No. 384); and so on and on, according to the needs and opportunities of the community and the abilities of the owner of the establishment.

Perhaps no one store engages in all these activities and is therefore subject to all the codes but, particularly in the small towns, it will be found that a dealer is subject to most of them.

These are the men the codemakers forgot when they were writing laws that perhaps the Macys, the Wanamakers, the syndicates, or other huge retail enterprises with their highly departmentalized merchandising systems might (and I doubt it even there) be able to successfully abide by.

Following is a letter from one of these "forgotten men" who turns in his anxiety and bewilderment to his association for advice, guidance, and perhaps consolation:

"I am in receipt of a letter from zone code compliance committee calling for an assessment under the divisional code authority for the plumbing contracting division of the construction industry, calling for an assessment of one-fourth of 1 percent of our 1933 gross business with an initial down payment of $5.

"Also, for me to fill out a buff-colored card, which I have never received, and saying there are no exceptions, everyone is on the same basis, and if remittance is not received in reasonable time everyone so doing will be turned in as violators.

"As I understand your announcement some time ago in a pamphlet sent out to members, I am not under the code, being a small country store in a borough of between 6 or 7 hundred inhabitants, and not being near a large trading center, being surrounded with a farming country, 35 miles from Corning, 32 miles to Hornell, 50 miles from Elmira, N. Y., doing a small retail country business.

"Keep a man in store, and one all-around man who does plumbing, tinning, heating, and general repair work, and also works in store when needed.

"Have never kept records of the plumbing or any other work separated.

"I have also received a like letter from the Electrical Code. I also do some electrical house wiring but do not keep an electrician steady, only occasionally as we get a job.

"To this I reported 2 or 3 times that I was not under the code and was not subject to any assessment. This notice has come to me several times, which I have ignored. All this business is in small margin of profit, running behind for past few years, and don't feel that I should be assessed to this.

"Will you kindly advise me in detail what I should do. Am I under the code? Of course if I am I want to live up to the law. We have enough burdens to carry on without this, if we are not strictly subject to it.

"Any help you may be able to give is surely appreciated.

"Yours very truly,

"S. E. L."

"THE CODE IS NOT DESIGNED TO AND WILL NOT ELIMINATE OR OPPRESS SMALL ENTERPRISES AND WILL NOT OPERATE TO DISCRIMINATE AGAINST THEM"

(From letters of Administrator transmitting codes to President for approval)

This is but one of the men the codemakers forgot. How his kind number in the hundreds of thousands may be visualized when you check the United States Summary of the Retail Census for 1933 and find that there are 1,526,119 retail establishments giving an average full-time employment to 2,703,325 people. Deduct from these figures the 15,590 department, variety store, and mail-order establishments with their 461,100 full-time employees and you have left 1,510,539 retail establishments employing 2,242,225 people—an average of less than 2 employees per establishment.

Our President remembered some of these men and their problems when he signed the Retail Code and issued an order exempting small independently owned establishments in towns of less than 2,500 population.

He probably had no conception that the problem, because of the multiplicity of codes, would be equally acute with the small merchant in larger cities.

But even in the small communities the intentions of the President were thwarted. For along came other groups of codemakers, the implement people, the builders' supplies people, the construction supplementary codemakers, the building materials people, and others, and convinced the Administration that there should be no exceptions in their codes on account of the size of an establishment or its location.

Thus, we have the paradoxical situation of thousands upon thousands of retailers being exempt from the provisions of the codes governing the businesses in which they are primarily engaged but nevertheless subject to a maze of provisions in other codes which are more confusing and more burdensome than those lifted from them by a stroke of the pen of the Chief Executive.

The codemakers forgot—

That, exclusive of department, variety and mail-order stores, there are more than 1,510,000 retail establishments in the country, employing some 2,242,000 people—an average of less than two employees per establishment;

That, generally, the smaller a business and the smaller the community in which it is located, the more wide-spread its merchandising activities must be in order to obtain a volume of sales large enough for its owner to eke out a net income that will equal the weekly pay of an employee; and

That the activities of a small business in a small town are so many and varied as to make it subject to so many different codes that the small dealer, struggling to serve his community and make a living for himself, cannot possibly know all the provisions with which he is presumed to comply.

But to return to correspondent S. E. L. with his one full-time employee and his "all-around man" in that village of 608 people. What advice and information may his association give him?

It may write him, and other forgotten men, that the officials of the National Recovery Administration have wisely exempted him from payment of these assessments with which he is being annoyed.

But then the association must open before his startled eyes a veritable Pandora's box of code regulations. It must tell him that when that "all-around man" works at plumbing he must be paid at the rate of $1.20 an hour and that the dealer must charge his customers an amount in excess of that which will at least cover his overhead.

It must tell him that this requires paying this employee at the rate of $48 for a 40-hour work week though it knows the owner of the business works for longer and receives for himself less than half this amount per week.

He must be told that if a demand is made upon him to file with a "bid depository" his bids on all work over a certain minimum, probably $50, he must do so.

He must be told that the law requires him to segregate his plumbing business in his accounting so as "to make possible the determination of the cost of doing business as a member of this division."

And that his accounting system shall include "a costing system which conforms to the principles of, and is at least as detailed and complete as the standard and uniform method of costing to be formulated under the supervision of and approved by the Divisional Code Authority and the Administrator with such variations therefrom as may be required by the individual conditions affecting any member of the Division, or group of contractors, and as may be approved by the Divisional Code Authority and the Administrator and made supplemental to the simplified course of accounting or method of costing" (Construction Supplement No. 9, art. VI, sec. 2).

He should be told of page after page of other provisions by which he must abide. It is the law. If complaint is lodged against him, the Compliance Division of the National Recovery Administration has no choice except to enforce the law.

And that is but a single code.

Any day this "forgotten man" may find himself subject to an "area wage agreement" providing the rates of pay for that self-same "all-around man" when he solders a hole in Mrs. Farmer's dishpan, or another rate if he strings an electric wire for Mr. Farmer's pump.

He must file his prices on the builders' supplies he sells. He must observe the modal mark-up of the Building Material Code on his roofing and wall board.

Under whatever code his seeking for a few dollars of business may have led him he must learn and observe the trade-practice provisions. Else he may be "invited" to come to Washington and defend himself before the Compliance Board. Others of his kind have.

Though doubting that there is sufficient spare wall space in this little store to permit it, this dealer must be told that he faces the possibility of a $500 fine if he fails to post the wage and hour provisions of all the codes to which he may be subject.

All this, and more, the association should tell this man and the thousands of others like him. Yet it knows he can't remember all these requirements and knows he can't afford to hire a code guardian to keep him from running afoul of the law.

And these things the association will tell him—and more. It will tell him that somebody forgot him and his kind when the codes were written. And it will tell him that some day somebody will remember him again.

Then, in all probability, these men the codemakers forgot will be told:

"Codes were never intended for such as you. Forget all about them and turn your now distracted attention to the task of serving your community and trying the while to make a decent living for yourself.

"The code is not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them."

Senator KING. I want to ask you a question there. You have been in the code authority for how long?

Mr. PETERSON. I served in various code capacities ever since the formulation of the retail code.

I served as a Government trade advisor during the formulation of it. I was put on the code after it was completed, and have served there since. I served as its chairman since its incorporation, and I am now serving as a member of the Industrial Advisory Board, and I was recently interviewed to come into N. R. A. to work, because they said they wanted somebody there who knew the problems of the small dealers. I enter that because I do not want any testimony to appear that I am simply showing antagonism toward the N. R. A.

The CHAIRMAN. Nobody would judge that from the testimony.

Mr. PETERSON. We have tried to transfer the idea, and use it, but we know now it is impossible.

Senator KING. Mr. Chairman, these exhibits, I think we better leave them to the experts and let them select those that ought to go in the record.

The CHAIRMAN. That is what we will do.

The CHAIRMAN. The next witness is Mr. Norris. I understand that you just want to make a brief statement, Mr. Norris.

Mr. NORRIS. Yes, sir.

TESTIMONY OF R. O. NORRIS, JR., REPRESENTING THE TIDEWATER CANNERS' ASSOCIATION OF VIRGINIA AND THE OYSTER PACKERS' ASSOCIATION OF VIRGINIA

(The witness was duly sworn by the chairman.)

Mr. NORRIS. Mr. Chairman and gentlemen, I am here to represent two associations, the Tidewater Canners' Association of Virginia and

the Oyster Packers' Association of Virginia. They are both typically representative organizations of small industry.

I want to read a paper here that will only take me a few moments, which will show the position that the National Industrial Recovery Act, as it is written, places the industry in, and will continue to place them in unless some arrangement is made in the new legislation that is to be adopted.

The CHAIRMAN. That may be adopted.

Mr. NORRIS. Yes; or that may be adopted. I thank you for the correction.

The Tidewater Canners' Association of Virginia represents a section of Virginia which has about 75 small tomato canneries in it which can normally around 1,000,000 cases of tomatoes.

These canneries are located principally in 7 counties, 5 of these counties lying between the Potomac and Rappahannock Rivers and the other 2 between the Rappahannock and York Rivers. This territory is in its entirety a rural section. There is not a town in the 7 counties with a population of as many as 1,000 people and our nearest cities are Richmond and Fredericksburg, both of which are approximately 65 miles from the geographical center of this section.

This section feels that it and other rural sections are unduly discriminated against in the code in two respects; first, as stated in the "Letter of Transmittal", under general, as follows:

> A disturbing factor quite beyond the control of the industry is the container situation. Two large can companies dominate the supply of tin containers used by this industry.

Senator KING. Are those two canning companies connected with the large steel-plate industry?

Mr. NORRIS. I have so understood.

Senator KING. It is the American Can Co.?

Mr. NORRIS. Yes; the American Can Co.; that is correct [continues reading:]

> In the majority of cost records which the Administration has had the privilege to examine, the price for the container that the canner must pay has represented more than the combined cost of raw material and labor. In some cases the cost of the container has amounted to 60 percent of the cost of producing the finished products. Particularly objectionable is the system of discounts employed by the can companies. These companies, by the use of quantity discounts and other terms of sale, create a substantial differential as between the small and larger canner for the principal outlay in their canning costs.

We find it utterly impossible to compete with the large canners of other sections and pay the code wage in our territory which minimum wage for seasonal products is 25 cents per hour for males and 20 cents per hour for females, which wage is the same in our rural section as it would be in any city of the South. This wage for our strictly rural section in the South is only 23 percent less for males and 27 percent less for females than the wage of the largest metropolitan area of the North. We claim there is not equality in this wage rate. In our code it has been justly recognized that there is a difference in the cost of living in the South compared with the North. Our claim is that there is a great difference in the cost of living between a strictly rural section and a city and there has been no recognition of this fact in our code.

We claim that 75 cents for any class of labor living in a strictly rural section, as ours is, is worth as much as a dollar for the same labor

if they were living in a city of say 100,000 population. The large majority of our laborers own their own homes and own some land along with them. The ones who do not own their homes can rent a home very cheaply, as a small home can be rented as cheaply as three to five dollars per month. Many farms can be rented for $100 per year with dwelling and as much as 100 acres in the farm. The taxes in a rural section are low compared to the city and the majority of laborers will have enough land to furnish their own wood for heating and cooking purposes or it is bought locally very cheaply. They will have gardens for their vegetables and generally raise corn enough themselves, or buy it locally very cheaply, with which they raise their fowls and hogs. The corn is also ground locally for bread.

We contend that labor in the rural district can live on not more than 75 percent of what it would require to live on in the industrial areas, and probably not more than 50 percent.

The large plants operate on a number of different products—most of them will operate on nonseasonal products—which means that the have a long season for their labor. Due mainly to this fact, the large plants draw a better class of labor which is entirely different from the small plant such as ours. This better class of labor has always been paid considerably more than our labor as it is more of a so-called "skilled labor" and has been in a position to demand a higher wage due to the better grade of work they produce.

I would like to submit to the committee statements showing the cost of production for one plant, and we are sure the Administration can obtain other statements from canners in this section showing their actual cost of production in the past.

We should be glad for this to be done, providing it will get true statements of the cost of production from other sections, in order that the cost of production can be intelligently compared with the various sections. If this is done, we are confident no other section of the country can make any claim that we are producing any cheaper than we actually are and thus breaking the market.

The CHAIRMAN. The statements you submit may be included in the record.

(Said statements are as follows:)

FEBRUARY 26, 1935.

Estimate of the probable cost of canning tomatoes in no. 2 cans for the season of 1935

Cost of cans per thousand cases	$501.88
Cases per thousand	55.00
Labor per thousand both hourly and peeling	150.00
Cost of tomatoes at 21 cents per ⅝-bushel basket	550.00
Cost of fuel	17.00
Depreciation of factory and machinery	31.00
Estimated brokerage, insurance, hauling, etc	150.00
Labels per thousand cases at $1.35 per thousand labels	32.40
Cost of labeling and boxing and sealing cans	15.00
Baskets used per thousand cases canned	30.00
Total cost per thousand cases	1,541.48
Average cost per dozen of tomatoes canned in no. 2 cans	.77

The above is only an estimate but we have made it as accurate as possible with what knowledge we have of conditions now and future prospects.

	Year 1933, cost per thousand	Year 1934, cost per thousand	Increased cost per thousand	Percent of increase per thousand
Containers:				
Cans, no. 2	$17.97	$20.67	$2.70	15
Plain corrugated cartons	38.00	55.00	20.00	44
Labels: Labels for no. 2 cans	1.00	1.35	.35	35
Baskets: ½-bushel baskets	50.00	67.50	17.50	35

The average increase in the above items amounts to approximately 33 percent. The above items are the main ones purchased from manufacturers but the other numerous items we purchase have shown an increase of approximately the same percentage all down the line.

Mr. NORRIS. The wage rate for the canning industry in the city, or metropolitan area, in our opinion is not too high; but we contend there is a great difference in the cost of living in a strictly rural section from the metropolitan area and a greater difference in the cost of operating a small plant in a rural section over a large plant in a metropolitan area. We are anxious to comply with the wage provisions of the code provided we get equality in this wage rate.

I might say the members of this association actually increased their wages 33⅓ percent after the N. R. A. was enacted and the code came into effect, but they did not comply with the minimum requirement of the code. That resulted that one of the cases has been taken as a test case, and the member has been haled before the compliance council, and the decision of that council was that the "blue eagle" should be taken away from him, and that he should refund to his labor some amount equal to about 35 or 40 percent of what he had paid for his wages during the entire preceding season.

The wage rate for the canning industry in the city or the metropolitan area is not too high, and it has been said by some of the Government officials it would be better to increase the wage rate of the metropolitan area than it would be to decrease the wage rate of a rural section like ours. We cannot agree with this, because a small plant in a rural section is in direct competition with the farmer for its labor supply, and the farmer cannot even afford to pay the rate to which we are asking our rate to be reduced. Therefore it is simply upsetting the whole economic structure of the rural section.

If the cost of production in all of the producing centers is increased, then the price of the product will have to be advanced to take care of the increased cost. There is not and there cannot be any regulation of the price of labor producing the raw materials on the market, and if the increase in the canner's cost is too great, it simply means his business will be taken by the producers of raw vegetables. It means that the people would then be deprived of a very necessary food.

We also feel that a differential should be allowed from the present wage rate of the industry to those who pack less than 100,000 cases operating in a strictly rural section or town of less than 1,000 in population, and at least 10 miles distant from a city of over 2,500 in population; that as to industries of this character that comply with the definition I have just read, should either be exempted from the provisions of the code under the new legislation that is going to be proposed or some differential should be allowed them.

I might add that there is no possibility, apparently, of procuring any remedy from either the code authority or the N. R. A. set-up.

Senator KING. Why?

Mr. NORRIS. Applications have been made to the code authority and to the N. R. A. set-up to give the members of this association relief, and to this day nothing has been done. None of the members of this association made any money last year, and they are now being directed to refund large amounts of money in comparison with the total amount they paid to their labor in the past season, to refund that in addition to their labor cost. It is impossible for them to do it, and they are going to close their businesses. They are not going to operate another season unless some remedy can be afforded them and apparently it cannot be afforded under the present set-up of the N. R. A., or of the code authority.

Senator KING. Is it advantageous to the farmers in that section to have canning establishments at their door to take care of their surplus vegetables?

Mr. NORRIS. Yes, sir; it is.

Senator KING. Supposing there were no canning establishments or factories at their door, by that I mean in the immediate neighborhood, what would become of a part, if not all, of the surplus commodities raised?

Mr. NORRIS. The surplus commodities would probably not be raised. If they were raised at all, buyers would come there from a distance and buy them at about one-third the price now being paid them.

Senator BYRD. Even that would be very difficult, as to the perishable commodities, such as tomatoes.

Mr. NORRIS. Of course, it would; yes. I would say about 8,000 people are given work for 4 months in this industry, but nearly all of those people are residents of a strictly rural section.

Senator BYRD. And there is nothing else for them to work on during that period.

Mr. NORRIS. No; there is nothing else for them to work on.

I appeared before the set-up of the N. R. A., and I cannnot say who it was, but one of the officials in that set-up suggested to me it would be entirely proper to close them up if the could not compete with the large industries in the cities; that is, that it would be entirely proper to close them up and let those people go on relief.

The CHAIRMAN. We thank you very much, Mr. Norris, for the very splendid statement you have made.

Senator BYRD. I want to state Mr. Norris has given a very accurate statement of the conditions existing there with which I am personally familiar.

Mr. NORRIS. I am handing to the committee the brief filed with the N. R. A., on which no action has been taken to this date, and also I am submitting two statements of operations of 2 years; and I would very much like to have these statements included in the record.

The CHAIRMAN. They may be so included.

(Said statements are as follows:)

Record of all sales made by Hague Packing Co. for the season 1934

Name of broker	Date of sales contract	Number of cases of no. 2 can	Price per dozen	Amount
			Cents	
A. W. Sisk & Son, Aberdeen, Md	Aug. 24, 1934	1,000—Del. Balto	72½	$1,450.00
Do	Sept. 8, 1934	do	72½	1,450.00
Do	Sept. 15, 1934	do	80	1,600.00
Do	Mar. 1, 1935	3,000—Del. Balto	83½	5,010.00
Do	Mar. 11, 1935	2,620—Del. Balto	82½	4,323.00
Total amount of gross sales				13,833.00
Less:				
Freight paid on all shipments listed above				258.60
1½ percent cash discounts allowed totaling				207.50
One-fourth of 1 percent allowed in lieu or normal leaks and swells				34.58
4 percent brokerage totaling				553.32
Total				1,054.00
Net proceed from sale of 8,620 cases no. 2 can (24 cans in case)				12,779.00
Net average proceeds per dozen, approximately			74.124	

From season of 1933 to 1934 approximately 3 percent increase in proceeds from sales.

From season of 1933 to 1934 approximately 33 percent increase in materials, etc., which we have to purchase. Thirty percent difference.

Following is a record of all sales made by Hague Packing Co. for the season 1933:

Name of broker	Date of sales contract	Number cases of no. 2 cans	Price per dozen	Amount
			Cents	
A. W. Sisk & Son, Aberdeen, Md	Aug. 18, 1933	1,000 f. o. b. factory	62½	1,250.00
C. F. Unruh Brokerage Co., Kinsale, Va	Aug. 29, 1933	1,000 f. o. b. factory	70	1,400.00
A. W. Sisk & Son, Aberdeen, Md	Aug. 31, 1933	1,000 delivered Balto	75	1,500.00
Do	Sept. 14, 1933	2,000 delivered Balto	80	3,200.00
Do	Jan. 5, 1934	3,905 delivered Balto	80	6,248.00
Total amount of gross sales				13,598.00
Less:				
Freight paid on last 3 lots shipped covered by contracts nos. 5043, 5292, 6204				198.86
1½-percent cash discounts allowed, totaling				203.97
¾ of 1 percent allowed in lieu of normal leaks and swells, totaling				34.00
4-percent brokerage allowed				543.92
Total				980.75
Net proceeds from sale of 8,905 cases tomatoes no. 2 cans (24 cans to the case)				12,617.25
Net average proceeds per dozen, approximately			70.843	

The CHAIRMAN. Mr. Wittenauer appears as a witness here and would like very much to be heard at this time so that he can take a train.

Please come forward, Mr. Wittenauer.

TESTIMONY OF BERNARD WITTENAUER, HUBBARD, OHIO

(The witness was duly sworn by the chairman.)

Mr. WITTENAUER. I have listened to everything here today but what I am going to talk about myself. I am going to speak in the interest of unorganized labor in one of the largest steel centers in the United States.

The CHAIRMAN. That is in Ohio.

Mr. WITTENAUER. Yes; Youngstown, Ohio, and I am speaking for the unorganized labor in that section.

As the workmen's representative of the merchant mill division of the Youngstown Sheet & Tube Co., Struthers, Ohio, I wish to submit herewith to your honorable body the following testimony in order that you may have before you the facts regarding conditions under 2 years of the N. R. A.

I will say at the outset that conditions imposed on unorganized labor under these codes are the most destructive that could be imposed upon my fellow workers in a lifetime. Leading up to the year 1929, many of my fellow workers had paid for a small home on an average wage of $30 to $40 per week. Today we are being penalized 10 percent for failure to pay our taxes due to the fact that the Federal Government has limited our hours of employment without having the power to raise our hourly rates to a decent living standard.

At the present earnings of these men in the steel mills, we are unable to have proper clothing, or medical and dental care for our children. Many of our children are being undernourished because we cannot buy proper food under these terrible conditions. The average earnings for men at a 47-cent rate—common labor—on the books of the company show less than $500 per year for the year 1934, or less than $10 per week for the year. While you limit the lowest-paid worker to 40 hours per week when these mills have work, you are powerless to guarantee him an hour's work when the mills are idle; on the other hand, you allow foremen to work 48 to 56 hours per week at the highest wage rate paid by the company. Why make such laws? I believe they are absolutely unfair to our men who ask nothing more than a decent living for their families.

The cost of living has doubled in this district since Mr. Roosevelt went into office in March 1933, and today pork and beef are three times the price of 2 years ago, compelling us to go without any meat under these high costs. We still must pay the 1929 price for light, gas, water, and transportation.

You have not set up a code for professional men such as doctors, lawyers, and so forth. They are permitted to charge these poor workers any price they desire to charge them. Is this justice? Again may I ask you where you derive your power to limit the earnings of these mill men who are receiving below a girl's wages in a store, and on the other hand you permit railroad men to work the equivalent to 38 days per month—engineers in the pool—right here in Youngstown are permitted to earn as high as $400 per month or an equivalent of 12 months' earnings for many of our laborers.

I believe your whole set-up is unfair and unlawful and may I suggest that you guarantee 40 hours per week to all men employed in this country and raise their yearly earnings to a standard of decency or get your hands off this Steel Code? Unless immediate steps are

taken to remedy this situation we will be forced to drive your Democratic Party out of Washington a year from this fall. Right is right, and might is no man's right and again I say to your committee, "Do something to relieve the present situation." You men who are our duly elected Senators and Representatives, I say do your duty for you are at the present time in the same position as was General Lee at Richmond in the summer of 1864.

We want action and not delay. We will fight against these economic conditions if it takes our entire life.

The CHAIRMAN. What is your organization?

Mr. WITTENAUER. I represent unorganized labor, mill men. I am elected to represent the men of what is known as a "company union."

The CHAIRMAN. You have never run for political office, have you?

Mr. WITTENAUER. Well, I don't run along those lines. My ideas are for a better economic situation.

The CHAIRMAN. We thank you very much for your statement.

Mr. Brand will be the next witness. Please come forward.

TESTIMONY OF CHARLES J. BRAND, WASHINGTON, D. C., REPRESENTING THE NATIONAL FERTILIZER ASSOCIATION

(The witness was duly sworn by the chairman.)

Mr. BRAND. Mr. Chairman and members of the committee, I am executive secretary of the National Fertilizer Association, and also executive director of the Code Authority for the Fertilizer Industry. In part, I have prepared a written statement but have not had time to complete it, and I would like permission to complete the statement for the record. I would also like to cover the points without particular reference to the statement.

The CHAIRMAN. You may be permitted to do that.

Mr. BRAND. First of all, the industry I represent has approximately 830 member firms. Its code was prepared in the early days of the National Recovery Act's enforcement, and was approved a year ago in October.

The history of the industry, of course, goes right along with the history of agriculture. Our only customer is the farmer, and when the income from farming drops, our income drops and the volume of our business drops. It dropped so much so that from a total volume of 8,200,000 tons in 1930, we dropped to 4,800,000 tons in 1933.

Fortunately, we feel under the code we have been gaining. We attribute that to not only the improvement brought about through code conditions, but also to improvements brought about by the Agricultural Adjustment Act administered by the Department of Agriculture.

Senator KING. Do you say the price of fertilizer has gone up?

Mr. BRAND. Yes; the price of fertilizer has gone up somewhat, Senator.

Senator KING. It has gone up over 40 percent, hasn't it?

Mr. BRAND. No; comparing the last precodal year with the codal year of 1934, it has gone up approximately 34 percent. That is, the wholesale price has gone up, the price of the manufacturer. The price to the farmer has gone up approximately 15 percent, due to the fact that under the new method of doing business on a consumer-delivered-to-the-farm basis instead of a dealer basis, with the result

that the price the manufacturer placed on the fertilizer carried through to the farmer, rather than a price to the farmer fixed by the dealer.

The Department of Agriculture recently carried out a survey which showed that the increased price to the farmer had been approximately 15 percent, whereas the increase to the manufacturer has been 34 percent, the reason being the elimination of intermediate profits due to the more circuitous handling through dealers.

I heard the testimony of Mr. Sloan this morning, and the question was raised as to the proper representation on code authorities, and I want to say, first, we are very much in favor of a continuation of the N. R. A. for a period of 2 more years, with such changes as the hearings develop as being necessary, but we think it has rendered our service and agriculture a real service, and we hope it will be continued for that reason.

In listening to the testimony this morning, I was convinced that the difficulties on many codes and many code authorities under many industries arose from the fact that they bit off more than they could chew.

They elaborated codes and obtained approval of them without realizing you had to have the codes administered, and the number of men capable of administering codes was not so great, because we had never had this type of self-government before in this country.

I think the difficulties have frequently been, not with the N. R. A., not with the act, but rather with the industry itself and with the fact that the codes they elaborated and obtained approval of were of such a complex character that they could not be administered.

Our code is administered by a code authority of 36 members, 34 being representative of the industry, 1 a representative of the Government, and 1, myself, not a participant in the industry, but supposed to be representative of all of the industry.

Senator KING. You have been their accountant for years.

Mr. BRAND. I am the executive officer of their association.

Those 34 industry members are split as follows: 15 of them represent the smaller companies in the industry; 8 of them represent the intermediate-sized companies in the industry; and 11 of them represent the large companies in the industry.

In other words, the small-sized and medium companies have 68 percent of the representation on the code authority.

Senator KING. How many manufacturers of fertilizer in its various forms are there in the United States?

Mr. BRAND. There are approximately 835 manufacturers.

Senator KING. How many of those might be denominated the principal manufacturers who produce, we will say, 50 or 60 percent of the entire product?

Mr. BRAND. A group of 20 companies represent about 30 percent of the votes, and do about 70 or 73 percent of the total business, so that the larger companies, despite their large volume, have only a moderate power to influence the industry as a whole.

I might also say for them that they have always exercised their power in a constructive manner, and have not in any sense oppressed the smaller enterprises.

The CHAIRMAN. Have you a price-fixing provision in your code?

Mr. BRAND. We have not. We have open price filing, and I want to put in something about that in my brief, because I do not desire to go into it in any great detail in this oral testimony.

We have likewise no power to control production, with the result, although we have an enormous capacity to mix fertilizer in this country, probably enough to mix two and one-half times present consumption, yet by reason of the cleaning up of the bad conditions in the industry, we are bringing in a great many new producers.

Senator KING. I want to ask this for information and not by way of criticism. For a number of years there were charges there was a fertilizer trust and some actions were instituted, and in the Senate and in the House efforts were made to have the Federal Government go into the manufacture of fertilizer in order to break the trust and to furnish the farmers cheaper fertilizer, because the farmers were claiming they were being charged extortionate rates.

Mr. BRAND. Yes, I know that claim has been made very frequently, and I say to you as one who has always worked pro bono publico to a certain extent, it has not been true, because in those days we had no more than 750 competitors in the industry, and their competition has been very active and it is absolutely impossible to bring about anything like a trust under the conditions as they existed.

I can say this, that such a justification as there is for such a belief arises from the fact that in our industry, like many other large industries, there is a group of large companies that do a major part of the business, and they are always, and I think wrongly, referred to as the trust of this or that industry.

In point of fact, the competition of the smaller manufacturers is always effective. There is not a single fertilizer material which is protected by the tariff. Consequently, all of those materials come in freely, and the prices of nitrogen and other fertilizer materials are international prices.

Anyone with a credit of $5,000 and a warehouse can get into the fertilizer business. For the reasons stated, there is no justification for such a belief as you refer to.

However, there is this much justification regarding the litigation. Some 10 years ago, just prior to my connection with the industry, the Department of Justice made an investigation of the industry and cited a large number of firms for having what they regarded as a code of fair-trade practices, and rather than litigate it, because it was at a time when agriculture was at the bottom and the fertilizer industry practically at the bottom, they accepted a cost assessed against them rather than litigate the case.

The situation as to the small producers is as follows: In the 9 months since the 1st of last July, 80 new producers have come into the industry, and only 10 have gone out, so that there has been a net gain of 70 producers in that period of 9 months.

I relate that in order that there may be no doubt in your minds that there is no opportunity for or effort to exclude anyone.

We have no right to control production. We have only the right to prepare for the industry a list of producers in each zone, which is the term officially applied to the units into which the country is divided for the purpose of administering the code.

Senator LA FOLLETTE. How do those fertilizer failures compare in the last year with those of the year prior to the enactment of the N. R. A.?

Mr. BRAND. They may be called negligible since the code became effective. In the 2 years between 1929 and 1931 there were practically no failures as such, but by 1933 the number had risen. Between 1931 and 1933 over 100 firms went out of business. Practically every one of the large firms in the industry had to reorganize because of the losses sustained. In fact, since the agricultural break-down in 1921 the fertilizer industry has had tough sledding. Under our code we have no right to control production. We have only the right to prepare for the industry a list of the producers in each zone in which there is machinery provided to administer the code. Since 1933 over 100 firms have been established or resuscitated.

The biennial census of manufacturers shows in part what has happened in the way of failures of fertilizer manufacturers. Very small companies are not included in the census figures, but are included under code administration, hence the total number of firms in the industry in the present time listed by the code authority at 800 is not directly comparable with census figures. However, the census for 1929 reported 638 companies; for 1931, 599; for 1933, 522. On a comparable basis there were probably about 550 firms in 1934, and perhaps as many as 600 in 1935. In other words, the code authority lists as producers approximately 800 firms at the present time whereas if the census were making an enumeration at this time, because of its nonlisting of small firms, its total would not be over 600.

Practically every one of the large firms in the industry had to reorganize because of the losses sustained.

In fact, since the agricultural break-down in 1921, the shrinkage in capital value and in inventories and in bad-debt losses has exceeded $200,000,000, and that is a great deal for an industry the size of ours, where the total investment is about $350,000,000. We do not have very accurate figures, because the new nitrogen plants have come in, and we do not have the correct figures on that.

Senator LA FOLLETTE. You mean companies in your industry?

Mr. BRAND. Yes. I might discuss the general problems but I thought it best to illustrate with this one industry with which I work so closely.

Senator KING. You can just confine yourself to that industry.

Mr. BRAND. It is a fact we have for a large part of the consuming territory of the United States, that is, approximately 21 States, a monthly report of tag sales, for each ton of fertilizer is tagged and a tax is paid thereon to the State, usually for the administration of the law, and for the support of agricultural work of the State. For instance, in South Carolina a large part of the support of Clemson College is derived from tax-tag sales.

Senator GORE. How much does it amount to?

Mr. BRAND. For the total volume of the industry?

Senator GORE. You may give that, but I would first ask how does the tag tax vary per unit?

Mr. BRAND. It varies from a flat charge of from 5 cents up to 50 cents. I do not recall any State that charges more than 50 cents per ton for tags. Tennessee and Kentucky charge that.

Senator KING. Do all States impose a tax for the manufacture of a fertilizer?

Mr. BRAND. No; there are about 21 of the 48 States that collect tonnage taxes. Forty-three up to recently have had fertilizer control laws, and Utah has passed the law in the last few months.

In further answer to the Senator's question, I may say that 27 States collect fertilizer-tonnage taxes. In 1929, the highest amount collected by any State was nearly $261,000 in Georgia; $260,000 in North Carolina; $202,000 in Alabama; $190,000 in South Carolina; and nearly $107,000 in Florida. Oklahoma is not a heavy fertilizer-using State, and the collections there were $3,150, at the rate of 35 cents per ton. The total collections, based on our best estimates which involves multiplying State consumption by the tonnage rate applying in each State, was $1,549,000.

In the year of low consumption, 1933, total collections for all tag-sales States are estimated at $910,000, of which North Carolina collected $178,000; South Carolina, $145,000; Georgia, $125,000; Florida, $88,000; and Alabama, $86,000.

Senator KING. How many concerns have been organized?

Mr. BRAND. There are about 800 total concerns in the country of which more than 100 have become producers since the code was approved.

Further, as to the effect of the code on the small companies, these tax tags furnish an opportunity to learn the names of the company by which the fertilizer is sold, and by that we are able to analyze accurately what the situation is in that respect.

Take the State of Alabama as an illustration, which is the most extreme, and taking the State of Mississippi, which is nearer to average; in Alabama, the gain in volume of the large companies is less than 7 percent between the pre-code year 1933, and the code year 1934; whereas the gain for the intermediate-sized companies is nearly 52 percent in volume of tonnage; and the gain for the small companies is slightly in excess of 112 percent, showing very clearly so far as our code is concerned, it does not in any sense oppress the small producer.

I have brought along just a few letters from various sizes of producers that disclose very clearly what the situation is.

Senator KING. The sales of the small producers are in their immediate neighborhoods?

Mr. BRAND. Yes; largely within the county in which they are located, and our code provides under its open price plan that you may file a schedule at any time you desire, and as often as you wish, just so you will file it for a specified territory, so that your competitor will know where you are competing with him.

Senator KING. Do you have filed prices?

Mr. BRAND. Yes.

Senator GORE. Can you compare 1934 and 1933 in point of output and value both?

Mr. BRAND. Yes, I can; at least measurably. In 1933, the total volume of business was approximately 4,800,000 tons, and in 1934 it was approximately 5,500,000 tons, the maximum of 1930 having been 8,200,000 tons, and you can of course see we are still very very far short.

Senator GORE. A gain of a million in 1934 as compared with 1933.

Mr. BRAND. Yes, and we attribute that partly to another part of the recovery program, the Agricultural Adjustment Act.

Senator KING. There was a greater agricultural production in 1934 than in 1933, was there not?

Mr. BRAND. Well, of course cotton is our greatest crop; 30 percent of all fertilizer is used on the cotton crop, and 50 percent of all fertilizer is used in the southern States. The cotton crop did not increase in amount because of the reduction program which was in effect, but it did increase very remarkably in price, in fact a $404,000,000 increase in the value of the cotton crop.

Senator KING. That was because of the Government pegging it.

Mr. BRAND. And it was because of the production contracts of which we made some 1,035,000 in order to try to bring about a balance.

Senator GORE. Do your figures show how much fertilizer was used by cotton farmers in 1934 as compared with 1933?

Mr. BRAND. I would estimate that cotton farmers used approximately 1,000,000 tons in 1934. In 1933 total consumption was about 4,800,000 tons of which 2,300,000 were used in the South.

Senator GORE. It was suggested when the crop was cut down the use of fertilizer would be increased.

Mr. BRAND. The figures belie that, because the figures on cotton between 1929 and 1930 was more than 2½ millions.

Senator GORE. I am talking about 1933 and 1934.

Mr. BRAND. There was a slight reduction there. The farmer did use a little better business practice, and probably where he had a chance, he used more fertilizer, but he did not get much chance because the program was not put into effect until the fertilizer selling season was practically through cotton planting time was passed.

I have the figures on that which I can insert in the record if it is desired that it should be done.

(Figures referred to are as follows:)

Total fertilizer consumption in the United States and fertilizer used on cotton

[Short tons]

Year	Total consumption	Amount used on cotton	Percent used on cotton
1929	7,974,712	2,426,698	30.4
1930	8,109,636	2,403,288	29.6
1931	6,306,083	1,457,383	23.1
1932	4,369,600	866,588	19.8
1933	4,823,940	1,214,284	25.2
1934	[1] 5,500,000	1,002,105	18.2
Total, 1929-34	37,083,971	9,370,346	25.3
6-year average, 1929-34	6,180,785	1,561,756	25.3

[1] Preliminary.

With respect to the small producer I would like to read a letter from a small producer, which happens to be addressed to Senator Barkley, the producer being located at Dawson, Ga. He produces less than 2,000 tons. This letter is dated March 22, 1935, and in this connection, I might state that I sent out a letter to the producers and asked them to express themselves as to whether the National Recovery Act should be continued, and this is one of the replies. The writer says:

We strongly favor the operations of the N. R. A. There has been much said about the little business not getting a break.

Most of our competitors are large operators and we can testify that in the fertilizer industry the little fellow is getting a better break than the larger operators.

Prior to the inauguration of the N. R. A., we paid common labor 4½ cents per hour.

I will say the average was considerable above that, and was around 14½ cents, now it is approximately 27 cents. Necessarily our labor costs have increased enormously, and we estimate that the cost over all is about $4,000,000 for additional labor costs arising out of the code. We do not begrudge that because of the fact the code has cleaned up the bad trade practices so as to enable us to earn the necessary amount to pay the additional labor without unduly burdening the farmer who is our only consumer.

The letter continues as follows:

We are now paying them 25 cents an hour. We find that we can pay 25 cents better than we could 4½ cents. We were losing money when we were paying 4½ cents, and we are making money in paying them 25 cents.

Yet in our particular line of industry the goods we are selling have advanced less than any other product we know of.

It is a fact that the price of the fertilizer to the farmer has appreciated only 15 percent, whereas all commodities that go to the farmer have increased on an average of 26 percent.

The letter continues:

We are for the N. R. A. The farmer is making money, labor is getting a better break, and we are making a small amount of profit instead of "losing our britches."

This letter is from Mr. Stevens, president of the Dawson Cotton Oil Co., of Dawson, Ga.

Senator CLARK. Did I understand you to say the Fertilizer Code is not a price-fixing code?

Mr. BRAND. Yes; that is what I stated.

Senator CLARK. I find the report furnished by the N. R. A. listing codes which set up a cost formula. s there any difference between a cost-formula system and a price-fixing system?

Mr. BRAND. Yes; there is a great difference.

Senator CLARK. There is not generally any difference. The only purpose of setting up a cost formula is to base the price on it.

Mr. BRAND. I am not here to criticize the codes of other people. As I stated before, many people asked for codes and got more than they could chew; they could not administer the codes they had in many instances.

We do not have price-fixing in any sense in our code.

Senator CLARK. What is the purpose of the cost formula?

Mr. BRAND. In order to prevent people from selling below cost, which would ruin the industry, which was going on with the exception of 3 years, between 1921 and 1933.

I say there is no price-fixing in the Fertilizer Code.

Senator CLARK. When you set up a cost formula and prohibit anybody selling below cost as determined by your system, that is in effect fixing a minimum price, is it not?

Mr. BRAND. It has not operated that way, for this reason: Our cost provision prevents an individual producer from selling below his cost, and therefore there is always the opportunity for all of the rest of the industry coming to the level of the most efficient and lowest cost producer.

Senator CLARK. You compel every producer to conform to a certain formula of cost ascertainment which you set up. Is that correct?

Mr. BRAND. We would like to do that and we have that formula.

Senator CLARK. That is the purpose of the code, is it not; it is provided in the code?

Mr. BRAND. No; the purpose of the code is to bring competition out in the open, and it involves the filing of these schedules which I want to show you, and show you how little price-fixing there is. These are the schedules for a single company since the approval of the code November 10, 1933. This particular company has in that period filed 12 different price schedules, either of its own motion or to meet the competition of another producer. What happens is, if someone is not satisfied with the prices or the trucking allowances or the discount for quantity on this and that in a particular price schedule, he puts in his own schedule to meet that situation.

The largest number of schedules filed in any single case is 24 in that period, filed by Charles H. Lilly Co., manufacturers in Seattle. They have filed in that period 24 schedules in meeting competition in the industry in their territory.

The only effect of this is to let the other fellow know what your prices are, and to cause you to live up to them until you put out another open-price schedule and give notice to your competitors you are going to follow the new schedule.

No pressure is brought upon a filer with respect to his filing. He sends that filing to me here in Washington, and it is checked over carefully, and he is required to relate the changes from the preceding schedule and required at the same time he sends me a copy to serve a copy upon all of his competitors.

Upon receipt by us of the schedule it is checked, then a notice is sent to him as to the date and hour of filing, and at the proper time thereafter he is permitted to sell on that schedule, and he may continue to sell his old schedule until his new filing becomes effective.

These are the filings since last August. A copy of notice of each goes to all producers under the code as to the filing of a new schedule, then they may know they should have received from a competitor a schedule of such and such a number on such and such a date, and if the filing has not been received, they get in touch with the competitor and say, "We have not received your schedule;" and the competitor is required to send it to him, and everybody is on notice as to what the prices are, and it does away with discrimination, secret rebates, and all sorts of things.

I say honestly and sincerely that it does not result in price-fixing, when we have as high as 24 filings by a single company since the N. R. A., which I think indicates that there is no price-fixing under the Fertilizer Code.

I am aware of some misapplication of codes in other industries which I greatly regret, because I view the code as an opportunity for self-government of industry that should be sincerely appreciated and cherished by American business for the sake of the future, and I am afraid if the code authorities fail to take advantage of the codes in that spirit, you gentlemen will not permit them to retain the privileges they have under them.

Further, as to the small producer, I would like to file and have incorporated in the record several other letters from small producers along the line of the one I have referred to.

Senator KING. They may be filed as a part of the record.
(The said letters are as follows:)

STANDARD FERTILIZER CO., INC.,
Williamston, N. C., June 18, 1934.

General HUGH S. JOHNSON,
Administrator National Industrial Recovery Administration,
Washington, D. C.

DEAR SIR: Our business being representative of many thousands of other businesses in this country, comparable both as to the size of the business and the town in which located, I feel it my duty upon the first birthday of N. R. A. to write you very frankly just what we think of our code.

In the fertilizer industry we are one of the "little fellows." We are located in a town of 3,000 population. In our town is located a peanut factory, two lumber mills, and a tobacco factory. Ours is the town's largest industry; and together with the other factories mentioned, along with the various merchants and other small enterprises that go with a town of this size, employs all the labor. During the 12 months prior to the time the Fertilizer Code became effective, we paid our common labor at the rate of 10 cents per hour. This same rate was paid by numerous fertilizer manufacturers throughout North Carolina and was forced upon us by destructive competition within the industry. Our common labor now gets a minimum of 25 cents per hour, and with living conditions as they are in our community they are now happy and contented, whereas before they were justly disgruntled and earned hardly enough to eke out an existence.

The farmers, who are the consumers of our product, are highly pleased with the workings of our code for the very simple reason that each and every one gets the same treatment and it has done away with the fear and distrust among them that their neighbor is paying a lower price for the same goods than he is paying. We have had not one complaint from the farmer regarding our code.

For several years prior to the adoption of our code we lost money and it was steadily growing worse. The most ruinous kind of price cutting, secret rebating, and numerous other unfair trade practices were prevalent in our industry. During the past year we have been able to show a small profit.

Mr. Darrow and his board report the various codes as working against the "little fellow." This is positively untrue insofar as the fertilizer industry is concerned. Our code has benefited everyone in our industry from the smallest to the largest.

Formerly our labor was mistreated and suffering, today the same labor gets fair treatment, is happy and contented. Our farmers were disgruntled and dissatisfied with the industry's unfair tactics. Today the same farmers feel that they are getting a square deal and they are satisfied. We ourselves wondered how much longer we would be able to continue to operate at a loss and knew that unless a change came, we were doomed. We were forced into reckless price cutting and unfair trade practices as were our competitors, all being afraid of losing our business to the other fellow unless we resorted to like methods.

A few words regarding price schedules under the Fertilizer Code. Nothing could be fairer than our code method, which serves notice on each and every competitor whenever we change our prices either up or down or in any way change any of our terms and gives him 10 days to meet such changes. There is absolutely nothing pertaining to price fixing and each manufacturer has the privilege of making his prices and terms whatever he sees fit. We strongly urge you not to change this feature of our code for without it we would be right back where we were in the matter of price cutting, unfair practices, rebates, and so forth. Truly we feel that we have entered into the millennium and I feel deeply grateful to our good President, your good self, and your able assistants for having brought about and administered this really "new deal."

Very sincerely yours,

STANDARD FERTILIZER CO., INC.,
C. G. CROCKETT, *President.*

DECATUR FERTILIZER CO.,
Decatur, Ala., December 29, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: Referring to your Release No. 9292, dated December 17, 1934, pertaining open hearings in regard to operations of major codes.

It is our desire to advise you that from the best information we are able to receive the Fertilizer Code has been very satisfactory indeed to all parties that it affects. We mean by this that we believe the manufacturers are well pleased and have had many expressions from the farmers who use the fertilizer that they consider it more fair. It minimizes grounds for deceptive selling and buying, a condition that no one is satisfied with.

In making our prices we are obliged to be governed by competition. Under the code the manufacturer advises us of his prices, and without the code the buyers advise us, reaching the same end. We do not consider price fixing an item to be considered under the code for there is no more opportunity now than before the code existed.

It is our desire to be fair to all operators and users of fertilizer and hope the code will be continued as it is.

Very truly yours,

DECATUR FERTILIZER CO.

CAPITAL FERTILIZER CO.,
Montgomery, Ala., December 31, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR MR. WILLIAMS: We have just learned from a recent press notice that the National Industrial Recovery Board will conduct a series of hearings on the operation of major code provisions, and that these hearings will probably determine whether the code will continue or be amended.

We are operating under a Fertilizer Code that has been in effect for a little over a year. The code which we operate under is very satisfactory to both the buyer and seller. Before the code came into effect there was quite a bit of discrimination caused by bad practices to the buyers of fertilizers. The code has made practically a uniform wage level throughout the fertilizer industry. The common laborer has been greatly benefited with shorter hours and high pay, due to the operation of the code.

The code has also greatly benefited the farmers as a whole. There is practically no discrimination among the farmers buying fertilizer under the code. The prices have been reasonable. Numbers of farmers have stated to us that they are particularly pleased with fertilizer business operated under the code.

The open-price provision of our code is one of the best things we have in it. This is particularly true for the farmers buying fertilizer. Under the open-price provisions any producer is allowed to make whatever price he sees fit. These prices are published, and the farmers are kept informed as to the various prices. The open-price provision has also eliminated secret rebates and a great many other objectionable features that have long been a common practice in the fertilizer industry. It has helped save the industry from almost complete demoralization.

It is our sincere hope that the Fertilizer Code with the open-price provision be continued in its present form without amendments.

Yours very truly,

CAPITAL FERTILIZER CO.
E. T. SPIDLE, *General Manager.*

PIEDMONT FERTILIZER CO.,
Opelika, Ala., January 3, 1935.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: Of course every fertilizer producer clearly understands that the Fertilizer Code does not in any sense provide for price fixing; on the other hand as we construe its meaning, it forbids price fixing in any manner whatsoever, but

it does grant us the same old privilege, that is, each fertilizer producer making his own prices for the consumer's consideration, or "open-price scheduling" as it is now termed. We believe that the consumer, or buyer, in our territory is familiar with the fact that the code does not provide, nor permit price fixing, this we have tried to teach from the beginning of the code operation. We also believe that the consumer-buyer in our territory, or in any other zone, is placed on a more equitable basis, and that he realizes and appreciates that fact, for the reason that the feeling that now exists between producer and consumer is very fine. We believe that the code operates justly and equitably to both producers and consumers of fertilizers, for it obviates price discriminations, and keeps competition on a fair and open basis.

We therefore respectfully and earnestly ask that your honorable board permit the producer to continue with the "open-price scheduling", we believe this to be an unselfish request, for, in our opinion, "open-price scheduling" is fair to all concerned parties.

Very truly yours and oblige,

PIEDMONT FERTILIZER CO.,
E. F. JACKSON, *President and Manager.*

SYLACAUGA, ALA., *January 3, 1935.*

Hon. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: We understand that the National Industrial Recovery Board will inaugurate hearings on the operation of the several codes, and the advisability of amending or continuing the open price provisions in some of them.

Our company is one of the smaller mixing units in the State. Our normal tonnage is from 1,500 to 2,500 tons. Prior to the inauguration of the code and particularly the open price provisions therein it was absolutely impossible for us to gage our purchases of materials, our supply of labor, and our selling price. Many bad practices had crept into the industry and every company from the largest one to the smallest one in the State, and I may say the Southeast because I am familiar with conditions throughout the Southeast, was at the mercy of the buyer in fully 9 years out of every 10. It had become a habit throughout the Southeast for the companies to guarantee their prices against decline, and against the price of each and every reputable competitor. The merchant, agent, and consumer had become accustomed to a reduction in the price, and I am of the opinion that the price was artifically built up and then reduced in the heavy buying season to accelerate the consumer's demand and the desire of the producer to make shipments.

We can assure you that the farmer, from the man who operates only 1 plow to the man who operates 200 plows, is satisfied with the open-price provisions of the Fertilizer Code in this section. The farmer likes to buy his fertilizer at any time between January and May 15 throughout this section and he hates to pay more than his neighbor pays. A fair price to him and to the industry and a stable price is as much his desire as it is the industry's desire, and these things are given the consumer as well as the industry in the open pricing of fertilizer by the industry.

There are hundreds of small fertilizer mixing units throughout the country that are battling for their existence, and we feel sure that almost without exception these smaller companies are heartily in favor of continuing the Fertilizer Industry Code as it now stands in regard to the open-price provisions as well as the provision it provides for labor, clerical help, etc.

We will thank you to file this letter with the committee as our expression of being in favor of continuing the open-price provisions in the Fertilizer Industry Code.

Thanking you and with much respect, we are

Yours very truly,

SYLACAUGA FERTILIZER CO.,
H. A. PARKER.

INTERNATIONAL AGRICULTURAL CORPORATION,
Tupelo, Miss., December 31, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: It is our information that beginning on January 9, 1935, there will be a series of hearings on the operation of code provisions, at which time you will consider the advisability of amendment or continuation.

In view of the discussions that will be had at this meeting, we desire to go on record as fully approving our present plan of operations under code authority, and wish to assure you that this statement is not being made merely because of the fact that operations under code authority have proven most desirable to our industry, but we are thoroughly convinced that the working of the code operates justly and equitably to farmers and consumers as well.

During the fall months it has been the writer's privilege to contact many farmers, both large and small, and fertilizer agents as well, throughout the sales' territory covered by this, our Tupelo, sales division, and we are glad to be able to report that whole-hearted approval has been expressed without exception during all of these recent contacts. Assuming then that the plan of operation has proven to be most satisfactory to all parties interested, we would express the hope that it will be the sense of your meeting, January 9, to permit the program to be continued as at present.

Yours very truly,

W. A. SPIGHT, *Division Sales Manager.*

THE AMERICAN AGRICULTURAL CHEMICAL CO.,
New York, N. Y., January 3, 1935.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEARY MR. WILLIAMS: I understand that commencing Wednesday, January 9, your board is starting a series of hearings on the operations of major code provisions, and the advisability of amendment or continuation.

As a member of the Code Authority of the Fertilizer Industry (Fertilizer Recovery Committee), I would like to convey to you my opinion of the operations of the Fertilizer Code. I believe that the operations of this code (one of several that my company is interested in), and particularly of the open-price schedule provisions of this code, have served both public and industry interest.

The price of fertilizers to the farmer has not risen during the operation of the code anything like the price of other items in the farmer's budget. This fact can and has been clearly proven. We may assume, therefore, that the open-price provision in the code has not operated to the disadvantage of the farmer.

Since the adoption of the code, consumers have had a uniform price, the agents a known profit, and the producers a fair return on invested capital. In this connection, I think it is generally conceded that when a producer (manufacturer) sets a consumer price, a much fairer price is set in relation to cost than when such a price is set by a middleman.

Open-price schedules have clearly made for a diminution in former competitive abuses, such as rebates, gratuities, etc., bringing about a much fairer relationship between consumer, agent, and producer.

I respectfully urge that the Fertilizer Code be permitted to stand substantially as written, at least through the life of the National Industrial Recovery Act.

Yours sincerely,

HORACE BOWKER,
Member, Fertilizer Recovery Committee.

JOHNSON COTTON CO.,
Dunn, N. C., December 29, 1934.

Mr. S. CLAY WILLIAMS,
Chairman National Industrial Recovery Board,
Washington, D. C.

DEAR SIR: We understand that the National Industrial Recovery Board will hold a series of hearings on the operation of major code provisions and advisability of amendment or continuation, beginning January 9, 1935. Since the pricing feature of these provisions is to be considered first, we respectfully submit

our request that the Code of Fair Competition for the Fertilizer Industry be continued in its present form, especially the pricing feature.

The operation of the pricing feature is mutually satisfactory to the farmer or consumer and the producer. It is fair from the farmer's viewpoint because, even though the small buyer is not entitled to the same discounts as the large, he is entitled to know what the difference is and how it is determined. By using open-price schedules as provided in the Code of Fair Competition for the Fertilizer Industry the basic price is set out and the applicable terms and conditions are clearly shown so that anyone can raedily understand it.

The system of making contracts and invoices, except cash, at the basis price and allowing discounts, according to the discount period in which paid, is a fair and equitable way of giving proper regard to the buyers for early payment and proper compensation to the producer for carrying the account after delivery.

It is fair and works satisfactorily from the producer's standpoint because it eliminates price cutting and giving secret rebates to certain customers to obtain their business by making it mandatory to set out, with ample notice, the exact price and terms for which they will sell their goods. Yet it gives any producer freedom to set his own price and terms so long as it is not below the cost of production. By the provisions that the price must not be below the cost of production, elimination of granting secret rebates and secret price cutting from the established price of fertilizer was accomplished. Therefore, the fertilizer industry was able, for the first time in several years, to operate at a small profit instead of at a large loss.

By taking into consideration the beneficial effects this pricing feature of the code has had on the recovery of the consumer and producer, hence national recovery, we feel sure that you will agree with us that it should be unchanged so that the good work may continue.

Yours very truly,

JOHNSON COTTON CO.,
By N. M. JOHNSON.

Mr. BRAND. I also have a statement in connection with the price-listing feature of our code which I would like to have made a part of the record.

Senator KING. It may be filed as a part of the record.

(Said statement is as follows:)

It is my purpose to state briefly the sound theory that underlies open-price listing when practiced honestly and intelligently in the interest of manufacturer, distributor, and consumer.

Circulation of false reports, secrecy, ignorance of the true facts as to prices, terms, and conditions of sale, suspicion, and distrust lie at the root of most of the destructive competitive practices that harass business.

Open pricing is a device whereby producer, distributor, and consumer may act intelligently in making business decisions, particularly as to all matters that involve price. Open pricing does not involve, directly or indirectly, agreement upon price, coercion to file or observe particular prices, or action in any way inequitable or adverse to the consumer.

In the fertilizer industry the open-pricing provisions of the code have profoundly and in the public interest decreased fraud and misrepresentation, price discrimination, destructive price cutting, and even what might be termed "bloodletting", which in the years 1931 and 1932 nearly involved industry self-destruction.

WHAT THE OPEN-PRICE PROVISIONS OF THE FERTILIZER CODE AUTHORIZE OR REQUIRE

Charged with the duty of protecting the common interests of all competitors as well as the public interest, the executive officer of the National Fertilizer Association is constituted the administering officer of the open-price-schedule provisions of the code. The code specifically controls the conduct only of those engaged in producing, including importing, fertilizers and fertilizer materials. Each such producer is required to file with the authority:

1. A statement showing the zones or areas in which he intends to do business;
2. A schedule by such zones of the prices in effect or to be charged for all fertilizers sold or offered for sale to dealers, agents, or consumers, together with the terms and conditions applicable thereto; and

3. Each producer, simultaneously with the filing of any schedule for any zone with the secretary of the National Fertilizer Association, is required to mail or deliver true copies thereof to other producers in such zone.

Each producer is absolutely free to name in his schedule any price and to state any terms or conditions of sale that he chooses. He may change his schedule and his prices as often as it suits his business needs, or as often as the filed schedules of a competitor evoke in him the competitive spirit to the extent that he wishes to meet competition.

A producer may not begin to make sales or offers for sale until his schedule has been filed and the effective date has arrived, which is 10 days from the hour of filing.

Whenever a producer changes his prices, terms, or conditions, he is required to prepar and file a new schedule and serve it precisely as he did the original.

If a changed schedule is filed to meet the competitive schedule of another producer, the schedules of both become effective at the same date and hour, provided the schedule filed to meet the competitor's schedule is received at least 48 hours in advance of the effective date and hour of the schedule first filed. This provision sometimes results in the prompt filing of 2 or 3 to 30 or 40 schedules to meet competition.

Physical handling of schedules.—Clear-cut, definite rules and regulations have been prepared and printed and distributed to over 1,200 persons, firms, and their branches engaged in the industry. No set or uniform forms of schedule is required, but a schedule must be explicit and definite in its contents. The filer may include any features in his schedule adapted to the needs of his particular business.

Upon receipt in the filing office, a schedule is stamped with the hour and minute of its filing. It is immediately checked to determine whether it complies with the code and the regulations. Thereupon a telegram is sent to the filer advising him of the effective date and hour of his schedule. Subsequently, and within 24 hours, a printed "List of filed price schedules" is mailed by first-class mail to every producer who may compete with the filer in a particular zone.

No schedule is denied filing because of faults inherent therein. The "List of filed price schedules", however, contains a description of any faults contained within the schedule that require correction. My office receives only a single copy of each schedule filed, and these are open to the public inspection of interested parties. The association does not distribute schedules to competitors.

Prices become known almost instantly in the fertilizer-using territories through the publicity given by agents, dealers, local manufacturers, county agricultural agents, and other instrumentalities.

Open pricing as an instrumentality of industry stabilization should operate in the general public interest. In our case this includes the interests not only of the manufacturer but also of the consuming farmer and of the intervening distributor. Too many people ascribe to the term "stabilization" the unfair implication of unreasonably high prices and fat profits. I do not use the term with any such connotation, nor are the open-pricing provisions of the Fertilizer Code permitted to operate injuriously to the public interest.

I have detected in many discussions of price-protection provisions of codes an innuendo or actual charge that they are used as an instrumentality or contrivance unduly, unreasonably, and unfairly to enhance prices. Stabilization of industry, effected by lawful and economic processes, contemplates doing those things which from the standpoint of public welfare should be done cooperatively rather than competitively. If the acts so done do produce stability—by which I mean equilibrium between supply and demand in the industry with exchanges of goods taking place under conditions of efficient operation at a reasonable margin above cost—the result is in the interest of both the fertilizer industry and American agriculture, which it is designed to serve. Such results so achieved will not be the result of undesirable, improper, or unlawful acts of any kind.

EFFECT OF CODE UPON THE INDUSTRY

At least 95 percent of the individual operators in the industry have expressed approval and satisfaction with the improved competitive conditions that have been achieved under open-price scheduling. An enormous amount of educational work has been done. A weekly organ is distributed to over 1,200 addresses, and ad interim other informative material is supplied. At the outset our code was sent to no less than 25,000 addresses, including all agricultural workers throughout the United States as well as members of the industry itself.

It is frequently stated that codes have operated to the injury and disadvantage of small producers. This allegation is wholly untrue insofar as the fertilizer industry is concerned. I give a single illustration: Based upon the tax tag sales of the State of Alabama, comparing the gain in tonnage between 1932–33 and 1933–34 seasons, large companies increased their volume of business approximately 7 percent; intermediate-sized companies, nearly 52 percent; and small-sized companies, over 112 percent. A similar situation is disclosed by the tax tag sales of a number of other States, leaving no doubt as to the facts.

EFFECT OF CODE ON THE FARMER

Demand for fertilizer depends upon the income of the farmer and particularly upon the income of cotton and tobacco farmers. In 1930 fertilizer sales totaled nearly 8,200,000 tons; in 1931 they had dropped to 6,300,000 tons; and in 1932, to 4,300,000 tons, in round figures.

The index number of mixed fertilizer prices fell from 110 in 1928 to 73 for 1933. In November 1934 the wholesale fertilizer price index stood at 82, a recovery of 9 points or 12 percent. The index number of farm-products prices fell from 149 in 1928 to 70 in 1933, and as of November 1934 it had again attained a level of 102, compared to the 5-year pre-war index.

Between September 15, 1933, and September 15, 1934, the index number of fertilizer prices rose 6 percent. In the same period the index number of all commodities bought by the farmer increased 9 percent, while the index number of prices received for farm products at the farm increased 28 percent.

It would seem a fair inference from this statement of fact that neither the Fertilizer Code nor its open-price provisions have adversely affected the farmer. That this is true is further indicated by the fact that scores of fertilizer producers have testified in person in open meetings that they have not received complaints of overcharges or excessive prices from farmers. I can say the same for the office of the code authority and the office of the National Fertilizer Association. The absence of complaints indicates that the removal of unfair price discriminations, the improvement of quality that has taken place with a slight betterment of prices, and a general improved business condition has operated to the interest of agriculture.

EFFECT OF CODE ON DISTRIBUTORS

There has been some slight complaint, very moderate in extent, on the part of distributors. This has been due largely to the fact that their profit margins have been decreased under the more efficient and fairer distribution of fertilizer that exists under codal as compared with precodal conditions. I think it is a safe generalization to say that 90 percent of the dealers and agents engaged in the distribution of fertilizer feel that the code has operated efficiently and fairly to all concerned.

EFFECT OF CODE ON EMPLOYEES

Without open pricing there is grave doubt that the industry could have met its increased wage requirements. According to our best estimates, the wage provisions of the code increased the pay rolls of the industry approximately $4,000,000. In March 1934 the number of employees showed an increase of 89 percent over the previous March, and the pay rolls showed a total increase of 108 percent over March 1933. In passing, I should say that the fertilizer industry is exceedingly seasonal; on the average, approximately 35 percent of the total distribution of the year takes place in the month of March, leaving only 65 percent for the other 11 months.

During April 1934 there was a decline of 30 percent in the average hours worked weekly by employees, while the average hourly earnings increased 81 percent over April 1933.

Number of employees in the fertilizer industry

[Based on the firms which report monthly to the Bureau of Labor Statistics]

	1933		1934	
	Number of firms	Employees	Number of firms	Employees
March	201	9,078	171	14,769
April	199	15,621	188	18,511
Average		12,389		16,635

At present no employee in the industry earns less than 25 cents an hour in the South, 35 cents an hour in the North and Northwest, and 40 cents an hour on the Pacific coast. Before the code was adopted unskilled labor in the South received 14 cents or even less an hour. Some improvement in reducing the peak labor load of the first 4 months of the fiscal year is becoming apparent, since for a 5-year period 84 percent of annual sales were made in the first 4 months of the year, and 80 percent were made during the corresponding months in 1934.

Earnings in the fertilizer industry

WEEKLY EARNINGS

	1933	1934
March	$9.86	$10.91
April	9.27	11.86
	19.13	22.77
Average, 2 months	9.57	11.39
Increase:		
Amount		1.82
Percent increase		19

AVERAGE HOURLY EARNINGS

	Cents	*Cents*
March	23.0	33.3
April	18.5	33.5
Total	41.5	66.8
Average, 2 months	20.75	33.40
Increase:		
Amount		12.65
Percent		61

AVERAGE HOURS WORKED PER WEEK

	Hours	*Hours*
March	42.2	33.0
April	43.6	35.0
Total	85.8	68.0
Average, 2 months	42.9	34.0
Decrease in hours:		
Amount		8.9
Percent		21

Source: Original data compiled by Bureau of Labor Statistics. Increases computed by the National Fertilizer Association Statistical Department.

NEED OF OPEN-PRICE SCHEDULING IN HIGHLY SEASONAL INDUSTRY

To say that 36 percent of the average total distribution of from 4 to 8 million tons of material is made in a single month inadequately describes the situation.

In certain crop areas, where special crops are grown, 90 percent of sales are sometimes made in a period of 4 to 6 weeks. This peak arises from the demand of the farmers for their requirements at the particular time of planting. Months of purchasing and preparation of materials and their storage and distribution to convenient points are necessary.

Price schedules are intricate documents in our industry; they are not single sheets, generally speaking, but are from a few to even 30 or 40 pages long, describing not only the prices of hundreds of different chemical analyses, but giving all of the terms and conditions of sale both for time and cash transactions, discounts, compensations, and other features.

Our code provides a waiting period of 10 days and permits any competing producer to file a schedule to take effect at the same time as the original, provided only that the schedule filed to meet it reaches my office 48 hours in advance of the end of the 10-day period; in other words, before the end of 8 days. In the case of companies engaged in national distribution, schedules must be mailed from the offices of preparation, in many cases the head office in a distant city, to a company's sales agents throughout the territory.

If a waiting period were not provided, a filing producer could start selling immediately upon issuance of a new schedule and thus preempt and monopolize a large part of the business available in any given territory. This would tend to stifle fair competition rather than to promote it.

Examination of our files and investigation within the industry will disclose that the 10-day waiting period has not been used to coerce or to force producers to raise their prices.

The time element involved in the serving of schedules upon competitors and the study of such schedules, necessarily complex in many cases, makes a waiting period almost imperative in the industry.

There are more than 800 fertilizer producers in the United States. Competition is keen at the present time and in the preceding period was too often destructive.

For the purpose of administering the code, the United States is divided into 12 zones and all open-price schedules are filed by zones or subzones and reflect the different economic conditions arising from the production of different crops in different sections of the country.

The fertilizer code was approved October 31, 1933, and became effective November 10, 1933. Since that date approximately 11,790 schedules have been filed. At the present moment 2,065 effective schedules are on file. The greatest number of schedules filed by one producer in a single zone in the period is 24. Many companies have filed as high as 12 to 16. A few have filed only two or three. The greatest number filed in a single day was 225.

There is constant adjustment of prices, terms, and conditions in all territories.

A further reflection of the utility of open pricing and the waiting period may be gleaned from the fact that in excess of 900 different chemical so-called "analyses" are prepared and sold to farmers in a single year. In fact in the zone that includes the State of Florida it is stated that by reason of the multiplicity of special mixtures over 1,500 different kinds of fertilizer are sold in a single year.

In summary, open price scheduling:

1. Gives desirable stablity to the market in the interest of both producer and consumer.

2. Protects if need be the smaller manufacturer by disclosing to him the true state of competition in his operating territory.

3. Removes discrimination as between farmers, so that any one producer must sell a given analysis at a given point at an open price arrived at by open competition, available and well known to all consumers.

In no sense does an efficiently and lawfully operated open-pricing plan constitute price fixing.

Senator GORE. I wish you would state the total output of volume of fertilizer beginning with 1929 and ending with 1934, and I would like you to put in the record in connection with the partial statement a few moments ago.

Mr. BRAND. I have it here, but if it is agreeable to you, I will insert it in the record. (See table above entitled "Total Fertilizer Consumption in the United States and Fertilizer Used on Cotton.")

Senator GORE. That will be satisfactory. Do you know what it was in 1932?

Mr. BRAND. It was approximately 4,300,000 tons in 1932.

I know you gentlemen will want to give special consideration to this quesion of open-price filing. Price schedules in our industry are not casual documents. They range from a single page to many pages, and here is one I should say must have 10 or 12 pages in it.

I am not going into that unduly, except to show it is helpful to have open-price fixing. We have in the industry at this time approximately 700 different fertilizer compounds, varying in their content of phosphoric acid and other materials, and that is one of the reasons open pricing is so important to us, and so useful to us as an industry.

Another reason is our industry is so highly seasonal; 80 percent of the product moved out in the months of January, February, March, and April, leaving only 20 percent to move out in the other 8 months, and sometimes in a short period of only 8 weeks the whole booking is completed.

Senator GORE. How much has the price of some particular standard brand of fertilizer advanced since 1932, giving the price in 1932 and the price in 1934?

Mr. BRAND. I am sorry I do not have quite what you want, but I can give something of the picture. I had prepared this statement partly, and have been absent so much I did not have time to complete it, but I can say that in 1919 a price was $55; in 1925, it was $22; in 1927, it was $19. We suffered a loss in the industry that year of about $22,000,000. In 1929, it was $22; in 1931, $19; in 1933, $14.

Senator GORE. Do you know what it was in 1932?

Mr. BRAND. I do not have that in this particular statement. This statement was prepared for another purpose, for a labor brief, and it was thought not best to put in too many details. However, it is a continuing curve of that same general basis.

(The following brief table was subsequently submitted to answer Senator Gore's question more adequately.)

Wholesale prices of typical grades of complete fertilizer

Year	3-8-3 (South), price per ton	5-8-7 (Northeast), price per ton	2-12-2 (Middle West), price per ton	Percent of 1919 price (average)
1919	$55.68	$94.25	$49.93	100
1925	22.80	41.34	28.10	46
1927	19.00	28.09	25.41	36
1929	22.40	34.15	26.19	41
1931	19.13	31.36	21.90	36
1933	14.77	24.29	19.10	29
1934	17.35	26.26	20.36	32

Senator GORE. I thought it dropped down into a sort of slot in 1932.

Mr. BRAND. It was probably the same as 1933, when it was down to $14, and in that year our over-all loss of the whole volume of business done was $1.52 a ton on a basis of approximately $4,[illegible]00,000.

That is an absolute average loss on the whole business obviously because the farmer did not have the means of purchasing.

Senator GORE. What was the price in 1934?

Mr. BRAND. That same fertilizer was about $16.60 in 1934.

Senator KING. I suppose the cost of fertilizer depends on the character of ingredients, some with more acid and others with more phosphate.

Mr. BRAND. Yes; and this particular analysis I referred to in Senator Gore's question was 3-8-3, which is most extensively used in the Southern cotton territory.

Of course, the costs rose more after the war, and especially on account of the cost of the ingredients that were imported.

Senator GORE. Do you know what the price on that grade of fertilizer you referred to is at the present time?

Mr. BRAND. I would say it was around $19, varying over the belt, because in some sections they do business still on a dealer basis, whereas most of the country has gone to the manufacturer-to-farmer basis.

Senator GORE. The proportion of the cost due to labor is rather small?

Mr. BRAND. Yes; labor is rather a small ingredient and the greatest ingredient is the material. However, we now have excellent potash produced in this country and about 60 percent of it is produced in this country; the remainder imported from abroad. Nitrogen is produced in this country, but some of it is still coming from Chile. We do not have any control over those prices, and we have to pay them whether we wish or not.

I would like to say there are about 2 million farmers that use fertilizer in the 6 million farmers in the country. If we used fertilizer at the rate England does, we would use 10 million tons; if we used it at the rate France does, we would use 25 million tons; or at the rate that Germany does, 63 million tons. So you see we have a great future consumption for the benefit of agriculture.

Senator GORE. And if we do not stop soil erosion we will have to use that much.

Mr. BRAND. Fertilizer is a great factor in stopping soil erosion. Soils that are not fertilized erode infinitely more than soils that are fertilized, both on account of the plant production and on account of the effect of collodial condition of the soils.

I have many things I could say, but I would rather, if you will permit me, in addition to putting the statement in the record upon price filing, which has already been entered, to file an additional statement which includes some tables showing how many price schedules have been filed, and things of that sort, and I would like to include that in the record.

Senator KING. There being no objection, that will be permitted. We thank you very much for your statement.

(Said statement is as follows:)

EQUITABLE PROPORTIONAL VOTING REPRESENTATION

Not only is the Code Authority of the Fertilizer Recovery Committee composed in a manner equitably and fairly to represent the whole industry in the United States, but the producers in the several zones have been provided with a plan of voting representation based upon principles accepted by and satisafactory to them.

In the code authority meetings each individual has one vote whether he represents a company doing 1,000 tons of business annually or 300,000 tons. In the 12 zones a different method prevails because it was felt by the industry that some weight should be given to the number of laborers employed by a firm, the amount of its investment, and the volume of its business. However, an arbitrary maximum of 12 votes is imposed upon each member irrespective of the volume of its business or the number of its employees or the amount of its investment.

The Fertilizer Recovery Committee directed me to take appropriate steps to devise for each zone, under the code of fair competition, fair and equitable voting representation for each company doing business in each zone.

After considerable study of the problem it was determined that the requirements of the Code could be met by basing the vote upon the following factors:

1. One vote for each parent company or firm by reason of the fact that it does business in the zone.
2. One vote for each factory and/or sales office in the zone, provided, however, that the maximum number of additional votes from the operation of this provision shall be three.
3. One vote for each acidulating plant in the zone.
4. One vote additional for each complete fertilizer plant in the zone.
5. In addition to the votes arising from the operation of the factors named above, votes based on tonnage sold during the previous year ended June 30, to be computed on a scale determined to meet the different volume of business in each zone.

No company shall under any circumstances have more than 12 votes.

In zone voting affiliated groups shall have only one vote by reason of the fact that they do business in a zone, irrespective of the number of subsidiaries. A subsidiary company is one in which at least 51 percent of the ownership resides in the parent company.

To facilitate supplying the needed facts the following additional information was given to each producer with the form that he was asked to fill out.

Under (a) and (b) of factor 2 of form A, following, you should list the location of all facilities, even though the number of votes under this factor is limited. In listing "complete fertilizer plants", factor no. 4, the location of the plant should be listed under 2 (a) and 3 as well as under 4.

In order to be entitled to a vote, a sales office should meet the following requirements:

1. It should be designated by the company as a sales office.
2. It should be the office of a sales manager, district sales manager, or other person filling the general functions of such person.
3. It should be an office where sales are made.
4. An office at which a salesman is located, even though he spends all or a part of his time making sales, would not be a sales office as defined herein.

In the space for tonnage sold to dealers and consumers, factor no. 5, it is important that information by States on bulk and bagged fertilizer be furnished. Exchanges and transfers should not be included in the figures.

Since the votes on a tonnage basis cannot be computed until the tonnage scale for the zone is determined at the zone meeting, the votes under factor 5 and the total votes will be computed by the Association's office.

The data asked for herein are required immediately for voting in zone meetings. Information of a confidential nature will be kept in strict confidence in accordance with the uniform practice of this office.

FORM A

THE NATIONAL FERTILIZER ASSOCIATION

616 Investment Building

Washington, D. C.

Date.....

Company name..... Address.....

Company representative..... Title.....

If 51 percent or more of the capital stock is owned by another company, insert the name and address of the parent company here:

Parent company..... Address.....

	Number of votes
1. Doing business in zone (1 vote).....	.....
2. (a) Dry-mixing plants, location:	
.....	
.....	
(b) Sales offices, location:	
.....	
.....	
Total votes, not more than 3.....	.....
3. Acidulating plants (1 vote each), location:	
.....	
.....	
.....	.....
4. Complete plants (1 vote each), location:	
.....	
.....	.....

5. Total tonnage sold to dealers and consumers during year July 1, 1932, to June 30, 1933, as itemized below:

Zone 8:	Bagged	Bulk	Total
Tennessee.....	.....	.....	.....
Alabama.....	.....	.....	.....
Mississippi.....	.....	.....	.....
Florida, west of the Apalachicola River.....	.....	.....	.....
Louisiana, east of the Mississippi River.....	.....	.....	.....
Total Zone 8 [1].....			.....
Total votes [1].....			.....

—3—

For the information of the Finance Committee, the names and addresses of the Fertilizer Recovery Committee, the code authority, are supplied herewith.

Officers: John J. Watson, chairman and member, International Agricultural Corporation, New York, N. Y., Maj. Ovid E. Roberts, Jr., National Recovery Administration member, Washington, D. C., Charles J. Brand, member, Secretary and executive director, Washington, D. C., Josephine M. Feeley, assistant secretary, Washington, D. C.

Zone 1: George V. Savitz, Boston, Mass.; and E. H. Jones, Waterbury, Conn.

Zone 2: Horace Bowker, New York, N. Y.; J. S. Coale, Philadelphia, Pa.; T. E. Milliman, Buffalo, N. Y.; E. H. Westlake, N. Y.

Zone 3: B. H. Brewster, Jr., Baltimore, Md.; C. F. Hockley, Baltimore, Md.; W. W. Price, Smyrna, Del.; W. E. Valliant, Baltimore, Md.; Charles J. Brand, Washington, D. C.

[1] To be computed by the association.

Zone 4: C. F. Burroughs, Norfolk, Va.; A. L. Ivey, Richmond, Va.; Oscar F. Smith, Norfolk, Va.; Thomas H. Wright, Wilmington, N. C.; W. T. Wright, Norfolk, Va.
Zone 5: J. R. Hanahan and A. F. Pringle, Charleston, S. C.; J. D. Prothro, Aiken, S. C.
Zone 6: H. B. Baylor and J. E. Sanford, Atlanta, Ga.; A. D. Strobhar, Savannah, Ga.
Zone 7: W. L. Waring, Jr., Tampa, Fla.; R. B. Trueman, Jacksonville, Fla.
Zone 8: E. A. Brandis, Troy, Ala.; J. W. Dean, Knoxville, Tenn. (vacancy).
Zone 9: P. H. Manire, Marshall, Tex.; C. D. Shallenberger, Shreveport, La.
Zone 10: J. A. Miller, Louisville, Ky.; L. W. Rowell, Chicago, Ill.; H. Albert Smith, Columbus, Ohio.
Zone 11: George R. Clapp, North Portland, Oreg.
Zone 12: Weller Noble, Berkeley, Calif.

Results of Open-Price Filing and Waiting Periods in the Fertilizer Industry

I. *Enforcement of the Code provisions.*—Code provisions can be enforced by a code authority without placing an undue burden on the National Recovery Administration.

Table I.—*Complaints in the fertilizer industry Nov. 10, 1934–Dec. 31, 1935*

Classification of complaints	Filed	Adjusted[1] or closed	Pending	Referred to National Recovery Administration
Deviating from price schedule	180	180	0	0
Selling below cost	8	4	4	0
Other trade practices	283	281	0	[2] 2
Total	471	465	4	[2] 2

[1] "Adjusted or closed" does not include mere warnings. It means, at least, signing a future compliance agreement.
[2] One complaint was referred to the National Recovery Administration as it required an official interpretation of a disputed provision; one complaint was referred to the National Recovery Administration as it arose from bids filed with the Federal Government.

These results were accomplished before an enforcement set-up had been approved. With 12 zone committees authorized (beginning Jan. 2, 1395) to hear complaints, more effective handling of complaints should be possible.

II. *Competition.*—Open-price filing with a waiting period has not eliminated competition either in prices or in quality. It has partially eliminated numerous undesirable and dishonest competitive practices.

A. *Total schedules filed, 1934 (table II–A, line A).*—Experience in this industry indicates that prices have not been fixed but are constantly changing. Each schedule filed indicates a change in price, in discounts, or in other conditions of sale which affect true price. The number of schedules filed indicates that no coercion and other alleged abuses have prevented numerous changes. Waiting periods are not necessary improperly to influence price.

B. *Schedules filed to meet competition, 1934 (table II–A, line B).*—Schedules filed to "meet competition" must actually meet competitive schedules. If they do more they are not so classified. The table below indicates only those schedules so classified. Observation indicates that filing of a new schedule for an area causes an influx of schedules from competitors, only a small part of which are marked to "meet competition." Therefore the following table indicates only a small part of the direct competition.

The fertilizer industry is extremely seasonal (see table VI) 68.4 percent of the total tonnage for 1934 having been sold in February, March, and April, and 33.5 percent in March. This factor must be considered in comparing the monthly totals of schedules filed.

TABLE II-A.—*Price schedules filed*[1] *in the fertilizer industry Jan. 1, 1934–Jan. 23, 1935*

[A, total schedules filed; B, schedules filed to meet competition]

	1934												January 23, 1935	Totals for period
	January	February	March	April	May	June	July	August	September	October	November	December		
Zone 1:														
A	135	160	38	33	3	4	1	8	35	14	11	95	35	572
B	83	93	5	7	0	0	0	0	29	7	6	70	9	309
Zone 2:														
A	155	185	103	26	6	95	44	51	22	35	9	65	109	905
B	33	110	41	6	0	61	12	14	7	24	0	47	43	398
Zone 3:														
A	190	254	158	45	3	176	76	79	68	89	10	78	114	1,340
B	97	162	72	9	0	116	15	15	30	67	0	49	46	678
Zone 4:														
A	106	175	73	61	15	127	124	53	156	28	101	95	30	1,144
B	24	87	12	24	2	73	66	0	91	3	45	28	2	457
Zone 5:														
A	73	89	26	8	17	57	40	26	53	34	35	50	35	543
B	5	27	2	2	1	12	26	11	27	11	11	21	4	141
Zone 6:														
A	114	162	65	11	11	71	39	8	30	39	43	51	55	699
B	6	46	11	3	2	23	5	1	13	4	14	5	14	147
Zone 7:														
A	28	34	15	19	11	34	26	26	31	18	21	13	11	287
B	1	7	1	1	0	0	10	0	7	4	4	5	1	40
Zone 8:														
A	86	133	104	21	8	60	65	35	87	42	58	60	53	812
B	25	43	46	3	1	23	33	11	55	11	43	31	22	347
Zone 9:														
A	50	47	8	1	1	6	14	13	17	15	4	26	35	237
B	22	28	0	0	0	0	12	2	6	8	0	11	12	101
Zone 10:														
A	6	61	163	59	5	22	216	42	23	9	5	18	171	800
B	0	37	110	8	0	0	161	10	1	0	0	1	110	438
Zone 11:														
A	33	19	12	8	5	0	4	7	11	12	2	3	3	119
B	2	3	1	0	0	0	2	1	3	2	0	3	0	17
Zone 12:														
A	34	64	65	18	6	7	10	41	76	61	36	52	10	480
B	1	31	8	0	0	1	0	19	26	7	3	6	2	104
Zone 2PR:														
A	8	2	0	0	2	3	0	5	9	10	10	1	1	51
B	0	1	0	0	0	0	0	2	2	4	7	C	0	16
Total for all zones:														
A	1,018	1,385	830	310	93	662	659	394	618	406	345	607	662	[1] 7,889
B	299	675	309	63	6	309	342	86	297	152	133	258	265	[1] 3,192

[1] Schedules covering special mixtures, manures, peat, humus, lime, and phosphates have been omitted.

C. *Prices of a producer frequently change.*—Open-price filing and waiting periods do not prevent price changes by the manufacturer. Many manufacturers file several schedules during the season. Some small manufacturers may use only one schedule, but many file several. As approximately 10,000 schedules have been filed since November 1, 1933, the effective date of the code, no detailed analysis has been attempted, but the following table gives selected examples.

TABLE II–B.—*Schedules filed by single producers in 1 area Jan. 1, 1934 to Mar. 31, 1934,*[1] *selected producers, selected areas*

	Zone 1, subzone A	Zone 2, subzone A	Zone 3, subzone H	Zone 6
Large producers:				
A	3	7	6	4
B	2	5	4	4
C	5	4	3	5
Medium producers:				
L	6	6	----------	----------
M	----------	4	8	----------
N	----------	5	5	----------
Small producers:				
T	3	----------	----------	----------
U	----------	5	----------	----------
V	----------	3	----------	----------
W	----------	----------	3	----------
X	----------	----------	3	----------
Y	----------	----------	----------	2
Z	----------	----------	----------	2

[1] 77.9 percent of the total sales of mixed fertilizer (see table VI) occur during the period used.

III. *Effect on prices.*—Open price filing and waiting periods do not enhance prices. Despite the increase in wages paid to labor, and other increased costs, and during a time of generally increasing prices, in the period that this system has been in effect (November 1933–December 1934) in the industry, the price of fertilizer has advanced less than that of other commodities bought by farmers, and less than that of all other commodities.

TABLE III–A.—*Comparative commodity prices September 1933–January 1934*

	Mixed fertilizer N. F. A. wholesale index (1926–28=100)	Price received for farm products, B. A. E. index (1910–14=100)	Price paid by farmers for commodities bought, B. A. E. index (1910–14=100)	All commodities at B. L. S. wholesale index (1926=100)
1933				
September	70.2	80	116	70.8
October	70.2	78	116	71.2
November	70.9	80	116	71.1
December	72.8	78	116	70.8
1934				
January	74.5	77	117	72.2
February	75.8	83	119	73.6
March	75.9	84	120	73.7
April	75.9	82	120	73.3
May	76.6	82	121	73.7
June	76.9	86	121	74.6
July	76.1	87	122	74.3
August	76.3	96	125	76.4
September	74.6	103	126	77.6
October	74.6	102	126	76.5
November	75.0	101	126	76.7
December	76.9	101	126	76.7
1935				
January	76.5	107	126	78.3
February	76.1	111	127	79.5
March	76.1	108	128	(1)

[1] Not available.

TABLE III-B.—*Comparative prices of commodities bought by farmers compiled by the Bureau of Agricultural Economics (1910–14=100)*

	1933		1934			
	Sept. 15	Dec. 15	Mar. 15	June 15	Sept. 15	Dec. 15
Fertilizer	99	102	104	104	105	105
Farm machinery	139	140	142	144	146	146
Equipment and supplies	106	108	108	110	109	110
Feed	90	86	91	97	122	132
Seed	111	111	119	115	162	162
All commodities used in production	114	114	119	121	129	131
All commodities used for family maintenance	117	117	121	122	123	122
All commodities bought	116	116	120	121	126	126

IV. *Small and medium volume producers benefited.*—Open price filing with a waiting period has improved the competitive position of the small and medium volume producers of fertilizer. The improved knowledge of competitive market conditions, the lack of surprise and the lack of opportunity for misrepresentation has enabled these classes of producers to increase their comparative sales volume.

TABLE IV.—*Percentage increase in volume of sales, 1934 over 1933 based on tax tag sales*

	Alabama	Georgia	Mississippi	Texas	Total percentage increase
Producers:					
Large	6.9	20.2	70.0	68.1	27.0
Medium	51.6	55.5	90.6	73.3	56.8
Small	155.5	49.4	58.6	106.8	64.0

V. *Waiting periods and prices.*—In industries with stable raw material and labor costs, and particularly in industries such as the fertilizer industry, where producers usually contract for a season's anticipated material requirements in advance, the benefits of reduced costs reach the consumer without additional delay.

This is particularly true in a seasonal business. In the fertilizer industry 77.9 percent of the total business is done in the first 4 months of the year. The next highest nonseasonal month, September 1934 accounted for only 4.5 percent. (See table VI). That raw-material prices are stable during the effective season is shown by the following table.

TABLE V.—*Fertilizer raw material prices, wholesale (prices as of middle of each month)*

	Fertilizer (raw materials [1] N.F.A. index (1926–28=100)	Superphosphate [2] (16 percent bulk, Baltimore per ton)	Ammonium sulphate [2] (domestic bulk, per cwt.)	Muriate of potash [3] (80–85 percent KCL, in bags per ton)	Cottonseed meal [2] [3] (41 percent Memphis per ton)
1933					
September	63.3	$7.00	$1.20	$33.25	$17.00
October	64.3	7.50	1.20	33.25	16.00
November	65.3	7.50	1.20	35.29	20.00
December	65.7	7.50	1.25	35.29	19.50

[1] Based on the prices of 17 raw materials, weighted for quantity used.
[2] 1 representative commodity from each of the 4 groups.
[3] Due to competitive demand, in feed price particularly subject to fluctuation this year only in higher priced, special crop fertilizer (tobacco, etc.).

TABLE V.—*Fertilizer raw material prices, wholesale (prices as of middle of each month)*—Continued

	Fertilizer (raw materials N.F.A. index (1926-28=100)	Superphosphate (16 percent bulk, Baltimore per ton)	Ammonium sulphate (domestic bulk, per cwt.)	Muriate of potash (80-85 percent KCL, in bags per ton)	Cottonseed meal (41 percent Memphis per ton)
1934					
January	67.0	$7.50	$1.25	$37.15	$21.75
February	67.5	7.50	1.25	37.15	24.00
March	67.7	7.50	1.25	37.15	24.50
April	67.1	7.50	1.25	37.15	23.00
May	64.7	7.50	1.18	28.71	21.75
June	65.9	8.00	1.25	28.71	23.50
July	66.3	8.00	1.25	28.07	25.00
August	65.8	8.00	1.20	20.68	36.00
September	64.9	8.00	1.20	20.68	34.00
October	65.2	8.00	1.20	22.00	33.00
November	65.5	8.00	1.20	22.00	37.00
December	65.8	8.00	1.20	22.00	38.50
1935					
January	65.7	8.00	1.20	22.00	36.50

VI. *Seasonal sales in fertilizer industry.*—The fertilizer industry is highly seasonal. Accurate records of months sales are available in 17 States.

Crop seasons, deterioration in farm storage, bulk and other factors are contributing causes.

The adoption of price schedule filings and waiting periods have not materially affected this.

Sales of mixed fertilizer

Tax tag sales in 13 States, based July 1 fiscal years 1926-30		Tax tag sales in 17 States, calendar year 1934	
Month	Percent	Tons	Percent
January	9.89	363,246	9.5
February	17.85	533,146	13.9
March	36.28	1,284,149	33.5
April	20.45	806,735	21.0
Total, 4 months	84.47	2,987,276	77.9
May	3.92	180,379	4.7
June	1.30	50,797	1.3
July	.43	28,382	.7
August	1.00	103,246	2.7
September	2.95	172,457	4.5
October	2.27	130,153	3.3
November	1.47	87,974	2.3
December	2.19	98,206	2.6
Total, 8 months	15.53	851,594	22.1
Grand total	100.00	3,838,870	100.0

Industries, including the fertilizer industry, are continually clamoring for less Government regulation and more self-government. The code authority of the fertilizer industry through its executive director and his staff is seeking to promote self-government in a constructive, public-spirited manner. Through intensive education by means of a weekly organ and scores of meetings the business and social benefits of fair competition and clean business practices have been taught.

The industry recognizes that the code has conferred certain limited rights of self-government to a degree previously unhoped for. The code authority is a large representative body; its administrative committee, though smaller, is likewise truly representative in that all members of the code authority, through a rotational plan, serve for a part of the year on the administrative committee.

The whole objective of the code authority's work is to bring about lawful and constructive practices. Without in any sense indulging in price fixing, the purpose is to prevent destructive price cutting in order that the industry may supply the farmer with commercial plant food of high quality at reasonable prices and at the same time pay its labor reasonable wages for working reasonable hours and still earn a moderate profit.

Senator LA FOLLETTE. Mr. Johnson is the next witness. Will you please come forward?

STATEMENT OF A. SIDNEY JOHNSTON, REPRESENTING THE PIONEER COOPERAGE CO., OF ST. LOUIS, MO.

(The witness, having been duly sworn by the chairman, testified as follows:)

Senator LA FOLLETTE. Will you please give your full name to the reporter, and state your connection?

Mr. JOHNSTON. My name is A. Sidney Johnston, and I am vice president of the Pioneer Cooperage Co. of St. Louis, Mo. I also am vice president of the Associated Cooperage Industries of America, which is a national association of the cooperage industry, which industry normally employes some 12,000 men in the production of staves and heading in the Southern States of the United States, and in the assembly of finished cooperage in various States throughout the country.

Our industry, fortunately, we think for it, is not itself at the present time under any N. R. A. code.

While I am not in the employ of the cooperage association, being primarily in the cooperage business, I have spent more than half of my time during the past year in working with the N. R. A. in an effort to evolve a code under which our industry might reasonably operate.

Senator KING. Is there a code now?

Mr. JOHNSTON. There is no code. Our members are operating to a certain extent under the P. R. A. and to a certain extent under voluntary agreement under which it is maintaining the average wage and hour schedules in the lumber and timber products industries of which it naturally is a part.

Senator KING. There has been a code for the timber-products industry.

Mr. JOHNSTON. Yes, there is.

The reason for our request to be heard is to call particular attention to provisions of N. R. A. codes for the (1) Distilled Spirits Industry (Code No. 3); (2) Distilled Spirits Rectifying Industry (Code No. 7); (3) Alcoholic Beverage Wholesale Industry (Code No. 6); (4) Alcholic Beverages Inporting Industry (Code No. 4); all of which codes discriminate against the cooperage industry, and grant a monopoly to the glass-bottle industry in the distribution and sale of distilled spirits.

Through time immemorial, up to the advent of prohibition, barrels and kegs were standard and natural containers, not only in the storing and aging of distilled spirits, but in the transportation, distribution, and sale of these commodities. The best estimates obtainable indicate that before prohibition, more than 70 percent of all distilled spirits were distributed in bulk.

Although the use of cooperage in the natural aging of moonshine liquor continued throughout the prohibition era, its use in the distribution and sale of such spirits was, for obvious reasons, discontinued, largely in favor of glass mason jars, jugs, and 5-gallon cans.

The production of staves and heading for cooperage necessary to the proper aging of liquor resulted incidentally, but as a matter of necessity, in the production of a large part of the staves and heading naturally used in smaller barrels and kegs manufactured for the distribution and sale of such spirits.

Thus, with the repeal of prohibition, the part of the cooperage industry which survived, expected, and felt it had a right to expect, the opportunity of at least competing fairly for business in a field naturally and peculiarly its own.

It developed, however, that under the guise of law enforcement and protection of the revenue, this opportunity was to be arbitrarily denied this industry as a matter of Government policy. This was accomplished in the following manner:

On November 26, 1933, the Code of Fair Competition for the Distilled Spirits Industry was signed by the President of the United States. Article VI, section 1, of this code reads:

> *Bottling.*—Members of the industry shall sell or dispose of distilled spirits in bottles only, except in case of sales to rectifiers or blenders, or to dispensaries or other agencies operated and maintained by any State or political subdivision thereof, or for export, or for shipments in bond. Nothing in this section shall restrict the sale or other disposition of warehouse receipts covering distilled spirits in bond provided such receipts require the bottling of distilled spirits prior to removal from the warehouse.

On December 9, 1933, the Code of Fair Competition for the Distiller Spirits Rectifying Industry was approved by the President of the United States. Article VII, section 1 of this code contains practically the same provisions.

The Codes of Fair Competition for the Alcoholic Beverage Wholesale and Importing Industries contain a similar provision.

Article II in each of these codes, which give definitions of terms, does not define the term "bottle."

However, on May 7, 1934, the Federal Alcohol Control Administration, over the signature of J. H. Choate, Jr., director, sent out temporary regulations no. 22, entitled "Definition of Bottle." This regulation reads as follows:

> As used in the Codes of Fair Competition for the Distilled Spirits Industry, the Distilled Spirits Rectifying Industry, and the Alcoholic Beverage Importing Industry, the word "bottle" hereafter means any container having a capacity not exceeding 1 gallon by liquid measure by United States standards.

By this definition, it was not confined to glass, but was limited to containers not in excess of 1 gallon in capacity.

Senator KING. Not in excess of what?

Mr. JOHNSTON. Not in excess of 1 gallon capacity.

Senator KING. That would limit it to glass, would it not?

Mr. JOHNSTON. It would practically limit it to glass.

Senator KING. Because you do not make containers limited to a gallon.

Mr. JOHNSTON. There are a few made of that size, but it is inconsequential.

Then on June 6, 1934, the Federal Alcohol Control Administration issued Bulletin No. 75, paragraph 2 of which reads as follows:

> The term "bottle" is defined as "any container for distilled spirits, irrespective of the materials from which made, and having a capacity not in excess of 1 gallon."

On June 18, 1934, the Seventy-third Congress approved Public Resolution No. 40 (H. J. Res. 370), authorizing the Secretary of the Treasury to prescribe regulations (1) to regulate the size, branding, marking, sale, resale, possession, use, or reuse of containers of a capacity of less than 5 wine gallons designed or intended for use for the sale at retail of distilled spirits.

Acting on this authority, the Secretary of the Treasury issued its Regulations No. 13, effective August 1, 1934, and under article 1, section (e), these regulations define "bottle" as follows:

> Liquor bottle shall mean any glass container for packaging distilled spirits for sale at retail, of a capacity of one-half pint or greater, conforming to these regulations and to the regulations prescribed by the Federal Alcohol Control Administration, the regulations in that regard heretofore promulgated by the Federal Alcohol Control Administration being hereby adopted as a part of these regulations.

Here the term bottle is defined positively as a glass container.

In August 1934 the Associated Cooperage Industries of America wrote the Treasury Department asking whether or not the sale of distilled spirits in 1-gallon wooden containers would be prohibited after November 1. The association received an answer dated August 29, 1934, signed by Mr. Arthur J. Mellott, Deputy Commissioner. Paragraph 3 of Mr. Mellott's letter is quoted herewith:

> In reply to your inquiry as to whether or not the sale of distilled spirits in 1-gallon wooden containers will be prohibited after November 1, your attention is invited to paragraph 1, article III, which provides that on and after November 1, distilled spirits may not be sold at retail in containers of one-half pint capacity or greater, other than liquor bottles, provided that upon application by a rectifier or wholesale liquor dealer the district supervisor in his discretion may issue an appropriate permit authorizing the rectifier or wholesale liquor dealer to procure and use containers other than liquor bottles for the packaging of liquors, cordials, and such other specialties as may be specified from time to time by the Commissioner.

Thus have these code provisions and regulations forced the wooden barrel and keg out of the picture, usurping a natural and legitimate market for the wooden barrel, not through fair competition, but through arbitrary regulations. But this apparently was not enough. Article III, section 3, of Regulations No. 13 reads as follows:

> No distiller, rectifier, importer, or wholesale liquor dealer shall use any liquor bottle except for packaging distilled spirits, or resell any liquor bottle except in connection with the sale of its contents, or divert any liquor bottle from his own use except upon application to and authorization by the Commissioner.

Senator LA FOLLETTE. Who is this regulation issued by?

Mr. JOHNSTON. It is issued by the Secretary of the Treasury in pursuance of the power granted by House Joint Resolution 370, Public Resolution No. 40, passed by Congress.

Senator LA FOLLETTE. It has nothing to do with the N. R. A., as I understand.

Mr. JOHNSTON. Not directly, but it is tied in with the control authorized of the distilling industry, and thereby against the cooperage industry.

Senator LA FOLLETTE. I understand, but your complaint, it seems to me, is directed against another branch of the administration.

Mr. JOHNSTON. Against the F. A. C. A. The reason I am going into this particularly is that the Seventy-third Congress did give the Secretary of the Treasury authority to regulate the size, title, markings, and so forth, for containers. The regulations that the F. A. C. A.

operates under definitely control and prohibit the use not only of packages between 1 and 5 gallons, but all packages over 5 gallons, the 2 being tied in together. It does not take much time to give you the complete picture there, if you will permit me to proceed.

The associated Cooperage Industries of America wrote the Commissioner requesting information regarding the reuse and resale of whisky bottles. On August 29, 1934, Mr. Arthur J. Mellott, Deputy Commissioner of the Treasury Department, replied as follows:

> In answer to your question as to whether or not hotel and tavern keepers are required under the law to break or destroy bottles which have been emptied, you are advised that the regulations provide that bottles may not be reused or sold, and possession of empty bottles by persons other than those who emptied same, is illegal except in the case where bottles are being gathered up for the purpose of destruction. Obviously, if the law prohibits the resale or reuse of the bottle, it should be destroyed.

In other words, if you drink a pint of whisky, you must immediately destroy the bottle or you are violating the law.

Senator KING. Is that the law now?

Mr. JOHNSTON. Yes; it is.

Thus for every bottle destroyed, of course, another glass bottle must be manufactured.

At the present time there seems to be some doubt in the Treasury Department regarding its right to issue these regulations under Resolution No. 40 of the Seventy-third Congress, as there has been introduced and is now pending before your Senate Finance Committee, Senate Joint Resolution No. 57, to amend Public Resolution No. 40 (H. J. Res. 370) in such manner as to specifically empower the Secretary of the Treasury not only to regulate the size, but also the design, type, and construction (including methods of closing and opening) of containers designed or intended for use for the sale of distilled spirits at retail.

Senator KING. I am in harmony with Senator La Follette. I do not understand what we have to do in dealing with this N. R. A. problem, with regulations made by Mr. Mellott or the Secretary of the Treasury unless they are of course tied in with and are based upon some conduct of the N. R. A.

You would not attempt, it seems to me, in this legislation, to deal with the Secretary of the Treasury.

Mr. JOHNSTON. After all, the primary thing of importance to us is the bottling provisions of these codes that the F. A. C. A. has enforced.

Senator KING. I think that would be germane to this inquiry.

Mr. JOHNSTON. I will leave out anything further in that connection, then, and proceed with my statement on the other question.

These bottling regulations in the codes and the Treasury Department rulings were issued under the guise of tax collection and for the announced purpose of eliminating the bootlegger. These regulations have not accomplished their purpose, and the following facts and figures from the Bureau of Internal Revenue are given as proof of that failure:

Tax paid withdrawals of domestic distilled spirits for 1934 were 62,469,695 gallons. During the years 1912 to 1916, tax-paid withdrawals averaged approximately 130,000,000 gallons per year. In other words, the legal liquor industry sold in 1934 less than one-half of the yearly average before prohibition, despite the fact that the country has gained 23,000,000 in population.

Director Choate of the Federal Alcohol Control Administration, speaking of bootlegging, has said:

> It seems probable * * * that the bootleggers are now turning out from their stills alone, not counting smuggling and alcohol-divertings, a quantity of spirits which cannot be much less and may be more than we drank before prohibition.

Senator KING. Let me see if I understand you. Do you contend that if the cooperage business had not been interfered with by these codes, or rather, if those who manufacture barrels were permitted to use barrels rather than glass, the situation would have been different?

Mr. JOHNSTON. Yes, sir; very much different.

Senator KING. Do you understand under the code you may not, even if you desire, use barrels?

Mr. JOHNSTON. You cannot use them for distribution and sale except for industrial uses, and to State control agencies.

Senator KING. If I should buy a barrel of whisky, could I have it in a barrel?

Mr. JOHNSTON. You cannot do it legally.

Senator KING. I can obtain a barrel of beer, but not of whisky; is that it?

Mr. JOHNSTON. That is right.

Senator KING. What is the reason they distinguish them? There may be a valid reason.

Mr. JOHNSTON. It is a policy based on a theory of law enforcement and tax collection, and those words are about all we have been able to get out of the F. A. C. A. as to the reason for prohibiting the use of the barrel.

My thought is I should not only show the fact of monopoly, but also show whether there is any justification for it, and also show the justification for permitting the use of bulk packages which would largely be cooperage.

Senator KING. The N. R. A. action is based largely on the views of Mr. Choate.

Mr. JOHNSTON. I do not think so.

Senator KING. Why should we blame Mr. Choate, if there is any blame, rather than the N. R. A.?

Mr. JOHNSTON. I understand these codes were developed by an interdepartmental committee, 1 from the Department of Agriculture, 1 from the Department of Justice, 1 from the Treasury Department, and 1 from the Bureau of Commerce, and Mr. J. M. Doran who at that time was the United States Commissioner of Alcohol.

Senator LA FOLLETTE. Your complaint may be very legitimate—I am not passing on that, because I am not sufficiently familiar with it—but it seems to me it is directed against a certain policy which has been adopted by the Government in an effort to enforce the collection of taxes and to suppress illicit liquor.

Mr. JOHNSTON. My opinion is it has no place in a code of fair competition, and is a bottling provision to create a monopoly, notwithstanding they set out in the Executive order and the letter of transmittal that it is not designed to promote monopolies.

Senator LA FOLLETTE. You just stated that was done as the result of an interdepartmental committee, and your complaint is against no litigation here, but is on some other subject?

Mr. JOHNSTON. No, it is not against any pending litigation, but it is to show how the Treasury Department by the result which has been introduced may possibly accomplish the same thing by legislation.

Senator KING. Just proceed as rapidly as you can with your statement, please.

Mr. JOHNSTON. Conservative estimates are that the bootlegger is doing from 50 to 70 percent of the liquor business. On the basis of illegal still seizures in 1934, it is estimated that the annual production capacity of the illegal industry was in excess of 270,000,000 gallons, which is greater than the original allotted capacity of legal distilleries, and more than four times the legal, tax-paid withdrawals. During 3 days in March 1935, 1,281 illicit stills were seized. An average of from 1,100 to 1,500 illicit stills were seized each month during 1934. It is common knowledge that for almost every still seized, two spring up to pay for the first one. One fallacy in the bottle regulations is in the fact that the bootlegger does not sell an appreciable quantity of his product in bottles. Government agents in the field will tell you that the bootlegger markets the bulk of his liquor in 5-gallon cans and gallon jugs. The cheating tavern owner simply fills his legal bar bottles from a 5-gallon can, or gallon jug, of moonshine and throws the container away, leaving no evidence. It is practically impossible to convict him unless he is caught in the act, and equally as impossible to police 140,000 retail outlets.

Thirteen years of prohibition should have taught us that the bootlegger cannot be regulated or legislated out of existence. The way to drive him out is to eliminate the profit incentive, to sell a good quality of legal spirits at low enough prices that it will no longer be worth while for the bootlegger to take the risk involved. Bulk sales will help produce that result, thus increasing Government revenue even without decreasing the present tax rate.

The bottle provisions have added from $1 to $3.50 per gallon to the present cost of spirits to the consumer. As a result, certain recognized brands now sell for 400 percent above the preprohibition price. Whisky, instead of being sold on a quality basis, is sold by high-power advertising, for which the consumer pays. Cheating, chiseling, and price-cutting are rampant. The small distiller cannot compete with large interests which spend millions of dollars to advertise and promote their products.

Senator KING. Supposing there were no code provisions which seemed to prevent the use of barrels as containers, do you think you would be permitted to use barrels, manufacture them, and sell them?

Mr. JOHNSTON. Yes, sir.

Senator KING. You think it is the code provisions that prevent it?

Mr. JOHNSTON. Yes; there is no question about it; 70 percent of the whisky distributed prior to prohibition was primarily distributed in bulk.

Senator KING. Suppose there were no inhibitory provisions of the code and only the promulgations of the Department, would not those promulgations of the Department prevent the use of barrels?

Mr. JOHNSTON. Only in the 5-gallon capacity.

Senator KING. You think Congress has gone further than the Secretary of the Treasury?

Mr. JOHNSTON. Yes; kegs and barrels used in the sale and distribution of distilled spirits prior to prohibition were almost entirely of

five gallons capacity and larger, and it came out of the house of the manufacturer into the cellar of the buyer in kegs and barrels.

Senator KING. You may proceed with your statement.

Mr. JOHNSTON. I am here trying only to present this picture from the standpoint of the cooperage industry, but the bottling provisions of these codes and Treasury Regulations specifically set up a complete monopoly against all other types of containers, in favor of glass bottles.

Liquor control. These provisions were an abuse of the powers Congress intended should be exercised under N. I. R. A. But even though the bottling provisions of these codes did not grant a monopoly to the glass bottle industry, destroying a natural and substantial field for the cooperage industry, we submit that such a provision constitutes Federal liquor control, which the Congress up to the present time has not seen fit to generally exercise.

These codes were written and approved in November and December 1933, shortly prior to the convening of the Seventy-third Congress.

Under article I of the Distilling Code, following the second "Whereas", it is stated:

> Congress has not had opportunity to legislate on liquor control following the repeal of the eighteenth amendment.

and the twenty-first amendment provides in part as follows:

> The transportation or importation into any State, Territory, or possession, of the United States, for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The foregoing recognizes the fact that the control of liquor was to be left to Congress until it had time to act, if it was at any time so inclined, or had power so to do, inferentially admitting that if Congress did not so act it was a State matter, and not a bureau right.

The third "Whereas" provides as follows:

> It is in the best interests of the public that all industries engaged in the production or distribution of alcoholic beverages shall limit their activities to their reasonable and immediate requirements until such time as Congress may consider appropriate legislation relating to such industries.

The Seventy-third Congress was in session for several months, and the only action taken on the subject of liquor control was the passage of local laws relating to the District of Columbia (H. R. 3342 and H. R. 6181). Neither law in any way obstructs the use of barrels, or kegs, or any other container, regardless of the materials from which made, for use in the distribution and sale of distilled spirits. To the contrary, in express wording, these laws place barrels and kegs on a parity with glass bottles, and that is all our industry asks for.

This observation is made, not only to show that sufficient time has elapsed since the adoption of the codes in December 1933 to meet the provision in article I of the code "until such time as Congress may consider appropriate legislation", but also to show that when Congress did act to exercise control, it did not see fit to prohibit barrels. And further, since Congress has not since acted to exercise control except in the District of Columbia, it must be presumed, under the ordinary rules of interpreting the legislative intent, that Congress does not now intend to exercise liquor control but intends to leave it to the States under the letter and spirit of article II of the repeal amendment.

The administrators of the codes, evidently recognizing the structural weakness of this control provision in the codes of fair competition, had House Joint Resolution 370 passed by the Seventy-third Con-

gress. A casual reading of the resolution would indicate that Congress was not interested in "controlling liquor" but merely interested in enabling the Treasury Department to collect revenue. Had the proponents of the resolution felt that the Federal Government should control liquor in the States, or felt that Congress would agree with them, it is reasonable to assume that control features would have been included in the resolution. However the resolution merely authorizes the Treasury Department—

to regulate the size, branding, marking, sale, resale, possession, use, or reuse, of containers (of a capacity of less than 5 wine gallons) designed or intended for use for the sale at retail of distilled spirits.

It will be observed that the right to regulate the size, and so forth, was limited to containers "of a capacity less than 5 wine gallons", and then only at "retail." Nothing was said in the resolution, nor was any power conferred, to regulate containers in excess of 5 gallons capacity, as that has been accomplished under the codes.

In clause (e), article I, of Regulations No. 13 "liquor bottle" is defined thus:

It shall mean a glass container for packaging distilled spirits for selling at retail, of a capacity of one-half pint or greater.

There is nothing in House Joint Resolution 370 authorizing the use of the word "greater" since that would include containers in excess of 5 gallons. So the effort was to limit the size of containers to less than 5-gallon capacity when no right was so authorized by the resolution; and further, to define and restrict the kind of material for containers in excess of 5 gallons, as well as containers under 5 wine gallons.

Article III, which actually attempts to restrict containers to bottles made of glass, likewise prohibits "the use for packaging distilled spirits for sale at retail, of containers of one-half pint capacity or greater, other than liquor bottles." There was no authority for using the word "greater" and the limitation should have been confined to containers less than 5 gallons, even though the meaning of House Joint Resolution 370 had been stretched so as to infer the right to define the material from which containers might be made.

I wanted particularly to emphasize these points I have gone over, but I would like to have the privilege of filing an additoinal brief covering the further objections we have to the N. R. A.

Senator KING. You may have that privilege, and we thank you for the statement you have given us.

Senator WALSH. Mr. Chairman, the New England Council, which consists of all the manufacturers of New England, have made an inquiry into the effects of the N. R. A. codes upon industry, and I have before me a report made by them, in which they state what 859 industries think of their N. R. A. codes. I should like to have this inserted in the record.

The CHAIRMAN. Very well.

(The report is as follows:)

NEW ENGLAND COUNCIL, BOSTON, MASS.—WHAT 859 NEW ENGLAND INDUSTRIALISTS THINK OF THEIR NATIONAL RECOVERY ADMINISTRATION CODES

The New England Council presents herewith the factual results of an inquiry which it has just completed, with the cooperation of more than a thousand New England business men, as to their experiences with the codes which have grown

out of the passage of the National Industrial Recovery Act on June 16, 1933. This is the third factual study made by the industrial committee of the council as to the effects of code operation on New England industry and business. The first was jointly conducted by the New England Council and the National Industrial Conference Board, in October 1933, and the second was conducted in March 1934.

Eight hundred and fifty-nine New England manufacturers, operating under 140 codes, responded to the inquiry conducted in June by the industrial committee of the New England Council, as to the values and defects of the National Recovery Administration, according to the individual manufacturer's experience with the code operation in his plant and in his industry. These manufacturers employ more than 250,000 workers, or 25 percent of the 1,098,514 workers employed in manufacturing in New England in 1929.

Mr. Winthrop L. Carter, president of the Nashua Gummed & Coated Paper Co., and chairman of the industrial committee of the New England Council, interpreted the results of the inquiry, as given in the table herewith, at the thirty-fifth quarterly meeting of the council at Wentworth-by-the-Sea, Newcastle, N. H., Saturday, June 30, 1934. Mr. Carter's major conclusions from these facts are:

First. That 80 percent of the New England manufacturers regard some form of business code permanently desirable or essential.

Second. That they are willing to cooperate in and to work for the necessary modifications to make them more fully effective.

Third. That administrative difficulties, also complaints and criticisms, are practically in direct proportion to the intricacies or complexities of the specific code; or in other words, the simpler the code, the more effective it is.

Fourth. Simplification of codes is greatly desired, not only as to their total number, but also as to the features of the individual code and thus as to its administration.

Detailed statement of Mr. Carter's interpretations follows:

"Turning to the table herewith, our industrial committee, through the council's headquarters staff, had sent out 4,449 inquiries up to June 16 and had received up to and including that date 1,069 replies, a return of 24 percent.

"Not only is this the greatest number of replies received in answer, but also the highest percentage of return to any council inquiry.

"These facts show that New England business men are more and more accepting the New England Council as the repository for, and spokesman of, New England business opinion, also that New England business men are keenly interested in the subject presented, else in these times when they are so harassed by requests for statistical and other reports, and inquiries of all kinds, they would not have taken the time to respond so generously.

"All of New England's major lines of manufacturing, as well as many of the lesser ones, are represented in the forty-odd classes of products covered by the 859 manufacturers' replies.

"The replies are also fully representative as to size of plants, roughly 20 percent being from large plants, 40 percent from medium-sized, and 40 percent from small plants. The average number employed per plant by the large ones is 1,212; by the medium ones, 349; and by the smaller ones, 58.

"Replies were received from each New England State, the number from each State being practically in the same proportion as the State's percentage of the total manufacturing establishments in New England of which Massachusetts has 56 percent, Connecticut 16 percent, Rhode Island 8.4 percent, Maine 8.1 percent, New Hampshire 5.7 percent, and Vermont 5 percent.

"Therefore, the survey is truly representative of New England industry, and the collective opinions, as expressed in the statistical returns, may thus be considered authoritative.

"THE SMALL INDUSTRIES" PROBLEM

"This inquiry by no means answers completely the difficult questions of large versus small industries. In interpreting the returns, the number not sufficiently interested to vote on specific questions is sometimes quite as important as the preference of those who do vote.

"The total statistics indicate that large, medium, and small concerns are all about equally satisfied and dissatisfied with compliance. In all cases about 60 percent of those voting are satisfied.

"In large and medium-sized concerns the preponderance of opinions is that codes are helpful with respect to eliminating unfair competitive practices and

reducing unemployment. Small concerns vote that the codes are of no effect in these matters. In all three groups, comparatively few find the codes hurtful.

"In all three groups the preponderance of opinion is that maximum hours are hurtful and that minimum rates of pay are helpful. This will be discussed more fully later. The vote for eliminating maximum hours and minimum rates is very light in all groups but somewhat heavier on hours than on wages. The majority of all three groups find wage differentials of no effect and the total vote is light. The vote to change or eliminate is lighter with no important difference between groups.

"On limitation of capacity, all groups vote that the codes are of no effect, with 'hurtful' receiving the smallest vote in all groups. 'Selling below cost' and 'price stabilization' receive the same vote.

"In all three groups the vote is in favor of eliminating limitation of capacity, and in all three groups only 35 to 40 percent take the trouble to vote on this question.

"On selling below cost the vote is equally light, but large and medium-sized manufacturers prefer to amend, while small concerns show a slight preference to eliminate. The figures are not decisive enough to be important.

"All three groups show little interest in amendment or elimination of price stabilization plans and the 20 to 25 percent who do vote show a preference toward elimination.

"All three groups are strongly in favor of permanent codes. Large and medium-sized concerns favor Government sanction and supervision, but small concerns object to this.

"In supplementary comment, some large concerns complain of chiseling by small concerns, and the small also complain of the large. Some small concerns complain that large concerns manipulate codes and take unfair advantage. Some comment indicates that a competitive advantage to long hours and low wages has been lost and is badly missed. An important question, on which the answers throw no light, is whether certain concerns have not relied unduly in the past on low wages and long hours to keep in business. Public opinion has certainly ruled this situation out of court.

"Referring again to the table, let us consider the results in three major sections: I. General survey. II. Corrections needed. III. Permanent desirability of codes.

PART I. GENERAL SURVEY

"The important questions in this group are the first two, (*a*) and (*b*), Question (*a*) seeks an opinion as to the success of codes in eliminating unfair competitive practices, or the restraint of the chiseler; (*b*) seeks an opinion of code effects on the great unemployment problem. These two questions thus seek a broad, overall opinion as to whether codes as now operating are beneficial or hurtful. The replies show the opinion is almost 6 to 1 on both (*a*) and (*b*), that codes have been helpful rather than hurtful in these respects. While it is true that there is substantial opinion in the 'Of no effect' column, we believe this is due, in large part, to the brief time some of the codes have been in operation. Quite a number of manufacturers noted on their replies that they were unable to express an opinion on these two questions, as their codes had only recently been adopted. We consider this an important evaluation.

"The next group of questions, under capital B, of part 1, offer interesting comment on specific provisions of the codes: (*a*) Maximum hours has a decided vote it is hurtful; (*b*) minimum rates of pay just the reverse, with a substantial opinion that they are helpful.

"Now, compare for a moment the answers to these two questions with the answers to the question above—on 'Reducing unemployment.' Here seems to be absolutely contradictory testimony expressed in positive votes.

"It certainly is generally accepted that the most important influence in relieving unemployment was the shortening of the work week. It obviously requires more people to perform the same number of man-hours; yet the answer in support of the result of the code is favorable, whereas the means employed by the codes, i. e., limitation of hours, for obtaining this result is voted down. This is a most interesting contradiction.

"Study of the returns and comments by members and some checking back indicate that the question on reducing and relieving unemployment has been answered from the social point of view. Some people have voted 'helpful' on this social point of view and 'hurtful' on their own experience with maximum hours of labor, because they personally have found it hard to get extra people in

small towns, hard to handle seasonal and other peaks, hard to break in extra people, hard to handle a double shift, hard to balance work in different departments in which machinery is out of balance. However, it is apparent that maximum-hour provisions will be retained and that manufacturers will adapt their operations to them.

"By contrast, the attitude on minimum wages is strongly favorable. The raising of wages was just as definite an increase in cost as the decrease in hours; but the replies show far less opposition to it, probably because it did not present the administrative difficulties the reduction of hours did. It is a very simple matter to adjust pay-roll cards to the new rates; also all of a manufacturer's competitors had to do likewise.

"The next three questions (*c*), (*d*), and (*e*), are of lesser importance to industry as judged by the replies. Out of the 859 returns only 67 percent answered them.

"Taking them up in order: (*c*) Wage differentials, are regarded by the majority as of no effect, largely because comparatively few codes covered by this survey include such provisions.

"(*d*) Collective bargaining also has a majority of opinion that this code provision which, as you know, is common to all codes, is of no effect. This is quite a surprising opinion, in view of the great controversy there has been ever since the passage of the National Industrial Recovery Act, over the 7 (a) provision. It seems to me very strong evidence that labor relations in New England are on a sound cooperative basis. The collective bargaining provision can only be 'of no effect' to so large a number because it merely gives a name to principles which have been commonly recognized in one manner or another for years past by New England employers.

"(*e*) Limitation of capacity is also voted down; a bare majority consider it of no effect, but the minority vote is heavy and must be listened to. This problem is closely linked up with compliance. We need more data before we can venture any opinion other than the record of the vote.

"The last two questions, (*f*) and (*g*), refer to the general question (*a*), as to the elimination of unfair competitive practices, and the answers to them are sufficiently close in percentage to be considered with the percentages for that question. About 5½ vote helpful to 1 hurtful on the general question, and on (*f*), selling below cost, the ratio is 6 helpful to 1 hurtful; on (*g*) price stabilization, the ratio is about 4 helpful to 1 hurtful.

"One reaches the conclusion, then, that even on the specific provisions of the codes as covered by the questions in division B, part I, taking them as a whole, the weight of opinion is more favorable than unfavorable. At least, in no single question is there a clear majority vote for hurtful.

PART II. CORRECTIONS NEEDED

"Now let us consider part II. Its purpose was to present to those who thought the provisions of the code outlined in part I were either of no effect or hurtful, an opportunity to express their opinion as to the amendment or elimination. As the natural tendency of anyone dissatisfied with a provision would be to vote for its elimination, it seems very significant so large a number of those voting favor amendment.

"We must recognize the actual figures show a decided vote for elimination, but it must be remembered that these figures represent a great variety of codes. We, therefore, segregated the returns from several important codes and tabulated their votes separately.

"While we shall show in the discussion of part III, which follows, that criticism and complaint seem to be in fairly direct proportion to the complexity of the code, the fact is established that there is a substantial number of manufacturers who are interested in building up and bettering their codes by amending them. In other words, the minorities are large enough to be important."

PART III. PERMANENT DESIRABILITY OF CODES

"In part III we seek an opinion as to whether some permanent code, either with Government sanction or without, is desired by New England industry. We have also included in this division the question of compliance, because we found that this was so closely linked up with the whole code idea. Obviously no one can have a permanent interest in any code if there is no compliance.

"The returns on desirability of codes are expressed in greater detail in the table. In this instance, the percentages are figured on the actual number of those who replied to the specific question, i. e., 822, or 96 percent, of the 859 manufacturers sending in returns. Note that this is the highest vote on any one

question. It is without doubt the most important inquiry in our whole questionnaire. The response shows it was so regarded by the manufacturers.

"If we shall consider, first, the bare question—'Do you want a permanent code?', we find that 79.6 percent say 'yes' and only 20.4 percent say 'no',—a ration of 4 to 1. This is overwhelming evidence that in spite of all the grief, criticisms, and desire to eliminate this, that, or the other thing, New England industry comes out unequivocally for the permanent continuance of codes. The subdivision of this answer as to whether codes are desired with or without government supervision is relatively unimportant. On check-up, we find many who prefer the code without Government sanction do so simply because, in their opinion, they will get better compliance or enforcement than they are now getting under codes with Government sanction. Where compliance is weak, it is obvious that the difficulties must be remedied. Manufacturers will have to work together to improve compliance.

"As I said, the question of compliance is closely linked up with this expression regarding desire for permanency. You will note the answer to this specific question is practically evenly divided between the 'yesses', 42.5 percent, and the 'noes', 35.4 percent. But, here again, to get the true significance, the individual replies, classified by industry, must be studied. There are 140 codes represented in the replies to this question. Obviously it was impossible to make any worthwhile comparison in this respect for all 140 codes. We therefore selected as types the Cotton Textile Code, and the Lumber Code, the former representing a simple code and the latter a very complex one. Both industries are of great importance to New England. I ask you to bear in mind that we are comparing two different types of codes. We are not criticizing either code per se.

COTTON TEXTILE CODE, APPROVED JULY 9, 1933

"New England produces 40 percent of the United States total of cotton textiles and employs 37 percent of the total workers in the industry. More than one-half of New England's workers in manufacturing plants are in our cotton-textile plants.

"The industry is principally a consumer-goods industry. It has enjoyed a period of relatively intense activity during the past 12 months as compared with the lumber industry.

"The code is fairly simple, being confined to hours and wage provisions with a simple control of output and division of business. This division of business and control of output is based on the North-South wage differential and the two 40-hours shifts, with some limitation on new machinery. The wage differential and two 40-hour shifts are very simple provisions and hard to chisel without wide publicity both in the community and throughout the industry.

"The cotton-textile industry was previously educated in the necessity for cooperation by the efforts of the Cotton Textile Institute to which most of the New England mills belong. Their effort to eliminate the night run, for example, had front-page publicity a good many times. Hence, I think it fair to say that the code really made law of what was already public opinion.

"Those conditions are reflected in the vote. For example, 84 percent of the cotton-textile group favor the hours and 61 percent the minimum-wage provisions as compared with only 31 and 40 percent, respectively, on these matters for the entire 859 manufacturing concerns. Only 16 percent of the cotton-textile group are dissatisfied with compliance as compared with 37 percent of the entire group. About 94 percent of the cotton-textile group want a code, as compared with 79.6 percent of the 859 group. The cotton group's figures show conclusively the more simple the code is the larger is the majority in favor of it.

LUMBER AND TIMBER PRODUCTS CODE—APPROVED AUGUST 19, 1933

"The Lumber Code is a strong contrast to the Cotton Textile Code.

"In New England, the lumber industry is made up of many small units—some 620 in all, employing on the average about 20 workers each, although a few mills run to 125 or 150 workers in their busy season. Volume of recent years has been relatively low due to inactivity in home building. Competition from other materials is very keen. There is not the same history of experience with cooperative attempts to improve conditions that we have in cotton textiles.

"This industry's code is perhaps as sweeping a code as is to be found among all those approved so far, since it covers not only the usual labor provisions, but established a scale of minimum wages which covers the entire industry by species of lumber and also by classes of product, and also by geographical regions also

establishes a cost-protection program, a program of conservation, and also a production control system by which each mill is given an intricately devised quota or allotment every three months to which it is required to adhere. Under a complete system of price fixing, prices have been raised so much that considerable consumer resistance has been incurred.

"Thus, in an enormously difficult background of poor business, keen competition from inside and outside the industry, and a large number of small units, the code has attempted an extremely difficult job. The tendency to chisel is inevitable.

"Sixty percent of the New England lumber manufacturers are dissatisfied with compliance, as against only 16 percent in the cotton textile group. Forty percent favor maximum hours and 56 percent minimum wages as compared with 84 and 81 percent respectively in the cotton group. Yet, in spite of these unfavorable figures, 90 percent are in favor of a permanent code—a figure almost as high as the 94 percent of the cotton textile group. This, I think, interprets the spirit of the industry as—'Well, with all the grief, we still want to work out our problems and make our code work successfully'.

"Our next major conclusion, then, is that it is necessary to simplify codes in order to make them workable. Since this questionnaire was issued, National Recovery Administration was issued a new ruling in respect to willfully destructive prices, known as 'Office Memorandum 228'.[1] While possibly a reference to this memorandum has no part in presenting the results of this survey, it is bound to affect codes so fundamentally that I think it ought to be briefly noted. If the provisions of this memorandum are incorporated into all existing codes, it will greatly simplify all of the cost and price provisions.

"It is an extremely difficult if not impossible thing to determine the exact cost of any article fo commerce. A provision, therefore, prohibiting selling below cost becomes extremely controversial. On the other hand, a provision which prohibits a willfully destructive price rests on an entirely different basis of facts which can be much more easily proved. Furthermore, in this office memorandum National Recovery Administration has set up administrative machinery which is far simpler and indicates to me a new policy. Under this plan, complaints under this provision are transmitted to the National Recovery Administration only after failure of agreement in conference between the complainer and complainee and the code authority. In short, each industry is given the opportunity to settle its own differences in this respect before the code authority as referee. The great advantage to industry in making such adjustment—avoiding the delay, expense, and time necessary to present the case on appeal to the National Recovery Administrarion—would seem to insure the prompt disposition of these difficulties. I mention this matter because it seems to me one of the biggest steps forward for the simplification, not only of the codes, but of the administration of them.

"We wish to thank the many manufacturers who cooperated with us in making this survey and particularly to emphasize again the two points which we believe the survey clearly indicates,—that New England wants permanent codes and the simpler the code is, the more satisfactory it proves."

Statistical data

Total inquiries sent out to June 16	4,449
Total replies received to June 16	1,069
Percent of response	24
Number of manufacturers' replies	859
Percent of manufacturers' replies of total	80.3

SMALL VERSUS LARGER MANUFACTURERS

Distribution of replies:

	Plants	Percent
Distribution of replies:		
From large manufacturers	157	18.4
From medium manufacturers	379	44.2
From small manufacturers	323	37.4
Total	859	100.0

[1] Office Ruling—on Open Price Filing, etc., No. 228, dated June 7, 1934, from G. A. Lynch, Administrative Officer, National Recovery Administration.

	Plants	Number of employes	Average per plant
Distribution of employees:			
Large	98	118,850	1,212
Medium	165	57,953	349
Small	309	17,871	58
Total	572	194,674	[1] 340
Marked as to large, medium, or small but employes not given	287	97,580	
Grand total	859	292,254	

[1] Weighted average.

Number of replies from other than manufacturers, 210. Percent of these of total, 19.7.

SUMMARY OF MANUFACTURERS' REPLIES

Using the same questionnaire form which went to the New England business men, the council presents the following summary statistical results of its National Recovery Administration survey as developed by the replies from all manufacturers answering the inquiry. The table does not include the statistics for any of the miscellaneous business groups that were also surveyed.

The percentages shown relate to the total number of manufacturers' replies received (859) to this inquiry. The number voting, also not voting, on the particular question is shown.

PART I

SECTION A

	Plants	Percent		Plants	Percent
(a) In eliminating unfair competitive practices, code has proven generally—			(b) In reducing and relieving unemployment, code has proven generally—		
Helpful	375	44	Helpful	398	46
Of no effect	365	43	Of no effect	344	40
Hurtful	71	8	Hurtful	67	8
Total	811	95	Total	809	94
Not voting	48	5	Not voting	50	6
Total	859	100	Total	859	100

SECTION B

(a) Maximum hours of labor:			(c) Wage differentials:		
Helpful	257	31	Helpful	103	12
Of no effect	141	17	Of no effect	353	42
Hurtful	375	44	Hurtful	121	14
Total	773	92	Total	577	68
Not voting	86	8	Not voting	282	32
Total	859	100	Total	859	100
(b) Minimum rates of pay:			(d) Collective bargaining:		
Helpful	340	40	Helpful	31	3.6
Of no effect	246	29	Of no effect	420	48.9
Hurtful	165	44	Hurtful	146	17
Total	751	88	Total	597	69.5
Not voting	108	12	Not voting	262	30.5
Total	859	100	Total	859	100

SECTION B—Continued

	Plants	Percent
(e) Limitation of capacity:		
Helpful	78	9
Of no effect	298	35
Hurtful	205	23
Total	581	67
Not voting	278	33
Total	859	100
(f) Restriction against selling below cost:		
Helpful	271	32
Of no effect	360	42
Hurtful	43	5
Total	674	79
Not voting	185	21
Total	859	100
(g) Price stabilization plan:		
Helpful	225	26
Of no effect	326	38
Hurtful	58	7
Total	609	71
Not voting	250	29
Total	859	100

PART II

	Plants	*Percent*
(a) Maximum hours of labor:		
Amend	164	19
Eliminate	246	29
Total	410	48
Not voting	449	52
Total	859	100
(b) Minimum rates of pay:		
Amend	121	14
Eliminate	126	15
Total	247	29
Not voting	612	71
Total	859	100
(c) Wage differentials:		
Amend	79	9
Eliminate	172	20
Total	251	29
Not voting	608	71
Total	859	100
(d) Collective bargaining:		
Amend	72	8
Eliminate	270	32
Total	342	40
Not voting	517	60
Total	859	100
(e) Limitation of capacity:		
Amend	58	7
Eliminate	263	31
Total	321	38
Not voting	538	62
Total	859	100
(f) Restriction against selling below cost:		
Amend	128	15
Eliminate	111	13
Total	239	28
Not voting	620	72
Total	859	100
(g) Price-stabilization plan:		
Amend	88	10
Eliminate	144	17
Total	232	27
Not voting	627	73
Total	859	100

PART III

	Plants	Percent
Satisfied with compliance:		
Yes	374	44
No	144	17
Total	690	81
Not voting	169	19
Total	859	100
Regard some form of business code permanently desirable or essential:		
(a) With Government sanction and supervision:		
Yes	363	43
No	280	33
(b) Without Government sanction and supervision:		
Yes	305	35
No	184	22

PART III—Continued

	Large	Medium	Small	Total	Percent
1. Code desirable:					
(a) With Government sanction and supervision	69	176	104	349	42.5
(b) Without Government sanction and supervision	49	122	120	291	35.4
(c) Under either situation	3	8	3	14	1.7
2. No code wanted	30	59	79	168	20.4
Total				822	100

Are there any other witnesses?

(No response.)

Senator KING. We will now recess until 10 o'clock tomorrow.

(Thereupon, at 5:15 p. m., the hearing was recessed until 10 a. m., Saturday, Apr. 13, 1935.)

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INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

SATURDAY, APRIL 13, 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, Lonergan, Couzens, Keyes, La Follette, and Capper.

The CHAIRMAN. The committee will be in order. Congressman Boehne of Indiana wishes to make a statement.

STATEMENT OF HON. JOHN W. BOEHNE, JR., MEMBER OF CONGRESS FROM THE STATE OF INDIANA

Mr. BOEHNE. I simply desire to read into the record and present a communication received by me to be presented to the Senate Finance Committee acting as the investigating committee of the National Industrial Recovery Administration, and I shall read the letter and that is all that I will want to present. [Reading:]

APRIL 3, 1935.

SENATE FINANCE COMMITTEE,
United States Senate, Washington, D. C.

HONORABLE SIRS: We, the undersigned manufacturers, of Evansville, Ind., and vicinity, are purchasers and consumers in our manufacturing operations of pig iron and rough castings made from such pig iron.

We beg to bring to your attention unfair price-fixing and discrimination against us as regards the price of southern pig iron shipped to the northern bank of the Ohio River, as compared to the price charged to purchasers of this same pig iron on the southern bank of the same Ohio River.

Since adoption of the Iron and Steel Code under the National Industrial Recovery Administration, pig-iron producers in the Birmingham, Ala. district charge consumers on the northern bank of the Ohio River $2.88 more per ton of pig iron than the price charged to consumers on the southern bank of the Ohio River, while the additional cost of transportation to the northern bank of the river is only 30 cents per ton, thereby discriminating unfairly against consumers of pig iron on the northern bank of the Ohio River to the extent of $2.58 per ton which discrimination will seriously affect the operation of many industries in this district.

We appeal for relief from this unfair discrimination and strongly urge you take whatever action is necessary to secure the elimination of all price fixing from codes permitted under the National Recovery Administration, for if price fixing is tolerated it will be abused as shown by the above example.

We do understand that under the Clayton Act, and other laws of our country, discrimination in price between purchasers is absolutely illegal, and undoubtedly such gross discrimination as set forth in this report, namely a difference of $2.58 per ton of pig iron, to consumers of this material in territories immediately adjoining, was never intended by the legislative and executive branches of our Government. If continued, such price fixing and discrimination will prove ruinous to many industries and we hope you may decide it should not be tolerated.

Numerous appeals to administrators of the National Industrial Recovery Administration and to pit iron furnaces at Birmingham, Ala., for relief from unfair discrimination due to this price-fixing, have been entirely unsuccessful.

Farm Tools, Inc., Vulcan Plow Division; Geo. L. Mesher & Co., by H. F. Koch; Advance Stove Works, J. S. Hopkins, secretary-treasurer; Hartig Foundry Co., S. W. Hartig, president; Sunbeam Electric Manufacturing Co., J. Harry Schrader, vice president; Sernal Inc., W. E. Baker, works manager; Blount Plow Works, V. A. Burch, president; The F. Grote Manufacturing Co., Ernest A. Grote, president; the T. Holtz Co., by H. Holtz, secretary and treasurer; Keck Sonnerman Co., by R. F. Keck.

The CHAIRMAN. Mr. I. H. Kopf of Cincinnati, Ohio.

TESTIMONY OF I. H. KOPF, CINCINNATI, OHIO

(Having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. The committee will give you 10 minutes. You are from Cincinnati?

Mr. KOPF. Yes. I come before you not as the chairman of any committee or anything of that nature. I come before you in the interests of the small merchants who are dominated by what we term as "racketeers." These racketeers operate under an organization known as the "Better Business Bureau" in the big cities, and in the Better Business Bureaus now are administered the codes of the N. R. A., so that if any complaint is filed against the small merchant, the same man who is the head of the Better Business Bureau is the head of your code authority. In other words, the man is found guilty before he even goes to trial.

I know of dozens of merchants who receive letters from the code authorities for violations which did not amount to anything or which did not occur. They did not appear before the code and nothing was done.

Senator KING. Who appoints these Better Business Bureau officials that arrogate so much authority to themselves?

Mr. KOPF. It is a closed corporation selected from the merchants whom they want to belong to it. I do not believe in any Better Business Bureau in the United States. You will find a merchant whose capital is between $1,000 and $15,000 a member of the Better Business Bureau. I think the ones in the Better Business Bureau are trying to drive them out of business.

Senator KING. What do they have to do with the code?

Mr. KOPF. The code is administered in almost every city by the Better Business Bureau. In our city of Cincinnati, Carl Finn is the secretary of the Retail Code Authority. Carl Finn is the manager of the Better Business Bureau. So if anything happens to a small man, Carl Finn is the prosecuting attorney, the judge, and the jury, and the man has no chance.

These small merchants are not coming before you complaining of the code. They are very happy under the code, providing certain provisions can be remedied. One of those provisions is that a small merchant cannot buy goods in the quantity that the large merchants buy, and when he puts on a sale, the first thing he does is to get letters from the code authorities or the Better Business Bureau calling his attention that he cannot buy additional goods. That is what happens when he is doing business or running a sale of his regular merchandise.

For instance, if he is advertising ladies' dresses at $3.95 and he runs out of those and feels that he can sell 25 or 30 more, he just cannot buy them. That is the way it is interpreted. It is things of that kind that the small merchant is complaining about.

You gentlemen may be interested to know where we differ with the small merchant from the big merchant. The small merchant is a local merchant whose capital ranges from $1,000 to $100,000, and a large merchant is one whose capital is over $100,000.

The suggestion we have to offer to remedy this is to eliminate the Better Business Bureau and put it out of existence. It is a nuisance to us and hindering the development of the small merchant, and I can name you 10 men that I know of that would open small stores if they could, with capital from $25,000 to $50,000, but they say, "What is the use? If I do this, the Better Business Bureau will jump on my neck and drive me out of business. They will keep my ads out of the paper." Which has been done.

Senator KING. How do they do that?

Mr. KOPF. By going before, to the newspapers and saying, "We want to see copies on these stores." They criticize the copy and find fault with it and tell these newspapers, "You dasn't run that ad." That has happened within the last 60 days in the city of Cincinnati. It happens in every big city where there is a Better Business Bureau.

What do they do? They get the proof of that small man's ad, and the day he was going to run the ad, or if he does run it, the other stores advertise the same class of merchandise at that price or below.

Senator KING. Violate the code as interpreted by them themselves?

Mr. KOPF. As I say, I am an independent man, coming before you in the interest of these men, because they cannot organize, they cannot come before you, because if they did, the Better Business Bureau would have them out of business in 60 days. They would find fault, they would criticize them, haul them into court and drive them out of business. That is why the small merchants are afraid to come down here. That is why I came at my own expense and not paid by anybody. I would not take a dollar from these men because they need every dollar that they have to fight this Better Business Bureau in the big cities.

And this does not only happen in the cities, but it happens within a radius of 20 miles of the big cities, where the Better Business Bureau says they have jurisdiction. They say, "We have jurisdiction because we are out for better business."

They have their own shopping newspapers, to which they will not permit a small merchant to advertise in. The only way you can advertise in that paper is by buying stock. If a small merchant wants to buy stock in it they say, "We have no stock to sell." In that paper you cannot find any outside merchant who is in business with any line of business that conflicts with the big department stores.

The Better Business Bureaus are owned by the big department stores, and their managers are ruled by the big department stores because they contribute to their support.

The way they get their support, they go to a small merchant who shows that he is advancing and they think that he is going to be a detriment to the big store and they say, "We want you to join the Better Business Bureau." "All right; how much?" "$1,000 a year."

The small merchant says, "I cannot pay that." They will take $750; they will take $500. They will come down to $50. And if he don't join, God help the poor merchant, because he is going to be put out of business in 18 months; I don't care who he is. They are going to drive him out because he shows that his business was progressing.

We are not down here, none of these small merchants ever made one remark in regard to the political affairs or anything of that nature, whether they are Republicans or Democrats—they are not interested. They want this thing regulated so that they can exist.

Senator KING. Are any of the "small businessmen", socalled, named on the codes?

Mr. KOPF. No, sir. We have nobody on the codes in the large cities—I dare say you will find—whose business is under $100,000.

Senator KING. I am speaking, of course, of local codes.

Mr. KOPF. That is what I am speaking of. In the cities where these better business bureaus exist.

Senator KING. Does that local organization of the N. R. A. or of the codes, police it in the sense of keeping in contact with and inquiring into the small business man's operations?

Mr. KOPF. Only when they think he is doing business, they send women into his store to create a disturbance on his busy days, and then they go back and write him letters that such and such was not right, and such and such was not right.

I tried to get several letters to bring down here from the code authorities; but the small business men, the small merchants say, "My names are on those, and they will check up, and when they find I am making a complaint, they will drive me out of business."

You can go through any large city and you will find the vacant room is due not because men do not want to go into business. The small man has got all of the confidence in the world in the future of this country and in his city, but he says: "I cannot go in business as long as there is a Better Business Bureau existing, because if I am successful and do not kick in to their racket, they will drive me out of business. If I do kick in, they question me what I am going to do and all, and the big department stores then run ahead of me."

In regard to sales, as I started to bring that up, the small merchant cannot buy sufficient goods with a capital, we will say, of $10,000, because he does not know what is going to sell. He would be foolish to put the greater part of his capital into certain articles. When he is running a sale or his business is going ahead and he has done advertising, any kind of advertising, which they class as sales now, if a small merchant does it, they immediately send him notice that he is violating the code, that the code says he dasn't buy goods for sales. If a merchant pays $2.25 and sells at $3.98, they cannot say he is not making a sufficient profit, so they come back and say he dasn't buy goods.

Senator KING. Do they fix the prices at which he may sell?

Mr. KOPF. No.

Senator KING. Does he fix a floor price at which he may sell his commodities?

Mr. KOPF. Where the code says he must sell, he must sell above 10 percent over his laid-down cost, and no small merchant can sell under that. He is happy because the people are making more money;

and if you were in the small stores the way I am in Kentucky, West Virginia, Ohio, and Indiana, you will see that the people are tickled to death because they have money to buy, and they are buying.

The CHAIRMAN. Are you a merchant of the type that you have described? A small merchant?

Mr. KOPF. I am an auctioneer; a sales promoter.

Senator KING. Do you travel through those States?

Mr. KOPF. I make towns from crossroads of 87 people to Cleveland and Cincinnati.

Senator KING. Do the conditions which exist in Cincinnati to which you have referred by reason of the course of conduct of the better business bureau organizations go into other cities?

Mr. KOPF. In Columbus, Cleveland, Louisville, Indianapolis, Hamilton, Ohio—in almost every city of any size over 20,000.

The CHAIRMAN. Do you find that the code has had any effect on your business as an auctioneer?

Mr. KOPF. It has, for which I am very happy. It drove men who were in the business and not running a clean business, out of business. I am very happy that this came about.

The CHAIRMAN. It worked to your benefit?

Mr. KOPF. I won't say to my benefit, but to all who are in the business who want to do a clean business.

Senator KING. You mean auctioneers?

Mr. KOPF. Yes, sir; and for which I am very glad, because I happen to be under the license of four States and under bonds in those States. I am under license in 19 cities and under bonds in those cities.

Senator KING. You do not want any competition in your line of business?

Mr. KOPF. We encourage competition, for this reason: If one merchant has a successful sale, other merchants in that town are interested.

The CHAIRMAN. You operate your business independently? It is not incorporated, is it?

Mr. KOPF. No sir; I own and operate the business.

Senator KING. I was interested in your statement that they would censor advertisements that were prepared by the smaller business man and go to the newspapers and see the proof before it was published.

Mr. KOPF. Yes.

Senator KING. Is that practiced very extensively?

Mr. KOPF. In the large cities.

Senator KING. And do the newspapers furnish them his copy?

Mr. KOPF. They have to; otherwise the large advertisers will get off the newspaper, since they have their own papers. In Dayton they have their paper, in Cleveland they have their paper, in Cincinnati they have their own paper—what they call the Shopping News, and only the members of the Better Business Bureau and those whom they want to have stock in that paper can advertise in it. That is the policy of the paper; you must be part owner of the paper or you cannot advertise.

Senator KING. Would that be true with respect to, say, the Cleveland Plain Dealer, or the Cincinnati Enquirer? Would they censor your advertisements in those papers?

Mr. KOPF. They have censored the advertisements. I can make this direct statement to that, they have censored advertisements in

the Cincinnati Post, and they have censored the advertisements in the Cincinnati Times-Star, and in both cases they held up some issues to get on the street before the copy was released.

The CHAIRMAN. Was that true of the Dayton News?

Mr. KOPF. That I cannot say, but I understand the same practice is used in all cities where there is a Better Business Bureau.

The CHAIRMAN. Proceed.

Mr. KOPF. The next thing is something in regard to merchandise given free. There is in the mails, and if you Senators are interested I can send you a copy of it—I have not one with me—of a manufacturer now who is making studio couches. He quotes a price on this couch; but if you buy 10, he gives you 1 free. If you buy 20, he gives you 2 free. I have yet to see the small merchant in any town who has a capital of $50,000 that can afford to buy 10 of these couches of one number to get 1 free. That is cutting prices.

The CHAIRMAN. Has this practice been indulged in before the code went into effect?

Mr. KOPF. No, sir. And this has only happened within the last 30 days.

The CHAIRMAN. Within the last 30 days?

Mr. KOPF. Yes, sir. That is why I have not got one of those furniture ads; but if you are interested, I will be glad to send you one. That is one thing.

The next thing is carload lots of furniture. A carload of furniture as a rule represents 60 pieces of bedroom suites and about 40 pieces of dining-room suites. The manufacturer has a price on 1, and a price on a carload, and a price on 10 carloads. If a concern buys 10 carloads he gets a price which is so low that the retailer buying one cannot buy that number, because the man buying 10 carloads can sell at retail for the price the small retailer has got to pay. That is the big complaint all the way through of the codes. If this was sold and these 10 carloads go into one store of a chain organization, which are the ones doing this, they could not buy 10 carloads because there is no store in Cincinnati and no store in Cleveland that could sell 10 carloads of one manufacturer's furniture in one store, but they buy the 10 carloads, and then order some shipped to one town and some to another town, separating these 10 carloads, but in the long run they are not taking any more into any one store than the small merchant who has a $50,000 to $100,000 capital.

Senator KING. Could two or three of these larger merchants combine and buy 10 cars and buy in one man's name or a company's name, and then distribute to the various persons interested in the venture in different towns or in the same town in different stores?

Mr. KOPF. They not only buy 10 cars, but I know of cases where they have bought 116 cars out of Virginia, and that is done through the consolidated buying offices in New York City of the large interests. A small merchant has a hard time getting into these buying offices. For instance, in our town, if they were to have the three or four largest stores in a buying office in New York, no small merchant in Cincinnati is going to get into that office.

The CHAIRMAN. The chain stores take charge of that situation?

Mr. KOPF. Yes, sir.

The CHAIRMAN. All right; proceed.

Mr. KOPF. The next thing is the discount on merchandise. Some merchants have gotten bills for merchandise dated 1 day. The

express shipment showed 5 days later or the freight bill did. Then when the shipment did get into his house, he had 3 days to pay that bill before it was due. This did not happen before the N. R. A., because the present terms now are 2 percent 30 days. In former days the small merchant got 2 percent 10 days and 60 extra, giving him 70 days on which to operate his business.

No small merchant is going to exist with these kind of terms now, because furniture men cannot turn their stock that quick.

Here is a suggestion we have for remedying the trouble of the Better Business Bureau. We think that in every district of every district court in the United States, there should be formed a board of 7 members, 3 whose business is over $100,000 for taking care of the big interests, 3 whose business or inventory represents $1,000 to $100,000; these men to be selected by the groups from which they represent; these 6 men to select 1 man as the seventh member who must be an attorney, no one else but an attorney can sit as the seventh member of this board. He then can advise them legally and tell them if anything has been violated or if any crime is committed in the operation of a man's business or anything of that kind, and in the case of a deadlock, he has the deciding vote. If any crime has been committed or if the board finds that anything has been violated, then their findings should be sent to the United States district attorney in that court district, and I think if you put in a board of that nature, you will have every small merchant in the country happy, and I think the future of the N. R. A. is assured, and I think the small merchant will tell you, as well as the large merchant, that we are headed right, we are coming out of the depression, because I have known small merchants who, 2 years ago, had 1 help working, and today they have 10. I saw other merchants who had 1 help working 2 years ago, who have 5 working today. They are not complaining of hours, they are not complaining of wages, or anything of that nature—they are wholeheartedly in favor of it, because they realize the more that is paid out in salaries the more that is coming back to them in business.

The CHAIRMAN. The big objection is the discrimination of big business against them?

Mr. KOPF. Yes, sir. And I would like to leave this statement with you.

The CHAIRMAN. Yes; we will put it in the record.

Mr. KOPF. If you want a copy of that advertisement which I spoke of——

The CHAIRMAN (interposing). You may send it down to us.

(Mr. Kopf's statement is as follows:)

Mr. Chairman, Mr. Pat Harrison, and your committee, I feel the first thing you are interested to know is what I am doing here.

My business for the past 20 years has been that of sales promoter, merchandise appraiser, and auctioneer. This work not only brings me in contact with the large merchants but equally, and more so, with the smaller merchants. I feel that right here I should explain what thousands of others and I class as the large merchant and the small merchant, and where we make the distinction or division between them.

Merchants whose inventory is between $1,000 and $100,000 are classed as small merchants. Those whose inventory exceed $100,000 are classed as large merchants or operators, whether they have one or more stores.

I am here in the interest of the merchants whose inventories are between $1,000 and $100,000, being classed as small merchants. It is in the interest of these small merchants that I sent to the United States Senate investigation committee on March 12 the following telegram:

"If you want the low-down on the way small merchants are being persecuted by big shots kindly advise and make arrangements and I will appear before your investigating committee. I can give you not one but hundreds of legitimate merchants, but because they do not belong to a gang of racketeers in the larger cities they are persecuted.

"This I can give you not only from Cincinnati but from many of the larger cities."

From that telegram, you must be interested to know whom we term "racketeers." We would term any organization which is a closed organization, selecting its members and not allowing all merchants to join, anything but a legal organization, an organization which only criticizes the small merchant when he is out fighting for business, who dominates him by sending people into his store to create a disturbance and distract the public from their purchases, cannot be classed as operating for the good of the community or the small merchants.

When these organizations are put in charge of the N. R. A. code enforcement various other branches, how can a small merchant expect to receive justice, when they are the authority? How can small merchants expect justice when the managers of these organizations which are known as the "Better Business Bureaus" of the various cities, are secretaries of the Retail Code Authority and also connected with various other enforcement organizations? What can a small merchant expect if they criticize him when one man is prosecuting attorney, judge, and jury, this man supposed to be in the employ of a big organization controlled by big interests, can never render a decision in favor of the small merchant.

If your committee wishes to verify these facts, I can give dates and instances where they can go to the files and find my statements to be correct. The National Recovery Administration can never expect to survive when almost every article in it is broken by big business.

In the first place, if a small merchant was to jockey the hours of his employees, the employees immediately would run to the Better Business Bureau or the code authorities, but nevertheless, right today, the big department stores are jockeying the hours of their help.

Under the code, it appears that no merchandise should be sold for less than cost, and truth should be stated in advertising. Then here is an instance that should be investigated, for it almost ruined every small retail furniture store in the Cincinnati district.

One of the most prominent stores in Cincinnati, in the month of December 1934, advertised a rug sale. These rugs were away below the wholesale cost. Upon investigating, it was found by retail furniture dealers in this district that the firm in question had purchased a lot of second and drop patterns. The ad did not say this. There was so much pressure brought to bear by the small retailers that some of the mill representatives came to Cincinnati, but it did no good. There was no retraction, no apology of any kind made, but 2 weeks later, a small retailer who was moving from one location to another bought some chairs, and in less than 24 hours he had a letter from the code authority saying he was buying merchandise for a sale. Of course, this was a small merchant, and Mr. Better Business Bureau and Mr. Code Authority jumped on his neck because he was going a little bit of business and was trying to make a little money.

It is a serious state of affairs if a small merchant moving from one location to another, cannot buy merchandise when he is staying in business and when he is making a 50-percent profit. This only proves that the Better Business Bureau and the code authority are out to drive the small merchant out of business. I could give you hundreds of such instances and if you are interested, will gladly do so when your committee has more time. But you will find in every case when a small business man begins to do business, he is dominated by the Better Business Bureau.

Now, your thought should be how to overcome these evils—whether or not it is I cannot say. This can be done by a plan I am about to submit to you which meets the approval of thousands of small merchants.

First, the private police department or Better Business Bureau, should be put out of existence. Appoint a board in each Federal district, three members to be merchants in good standing, whose inventories are between $1,000 to $100,000, these to be classed as representatives of the small merchants; three merchants whose inventories will be $100,000 or over, these to be classed as representatives of the large merchants. These six members are to select a seventh member who must be an attorney, he is to guide them in legal matters, and in case of a deadlock, have a deciding vote. The board to have headquarters in the largest city

of their district with a secretary to take complaints, and so forth, and vote on them. If they find that a crime has been committed in misrepresentation, and so forth, merchandise advertised or any other matter which comes before them, the matter should be recommended to the United States district attorney for prosecution. This board should receive a very small salary as their work should be classed as more for the benefit of the community than for personal gain.

This policy is the suggestion of over 3,000 merchants I have visited and discussed the matter with within the last 18 months.

I will not take up your committee's time any longer, but am now open for any question you may care to ask me at the present time if you wish to question me by your subcommittee. I thank you.

TESTIMONY OF JAMES E. RICE, TRUMANSBURG, N. Y., CORNELL UNIVERSITY, PRESIDENT OF THE NORTHEASTERN POULTRY PRODUCERS COUNCIL AND COORDINATOR OF REGION NO. 9

(Having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. How long do you want, Mr. Rice?

Mr. RICE. I should hope that I might have at least 10 or 15 minutes.

The CHAIRMAN. Try to get through in 10 minutes.

Mr. RICE. I would like to leave a brief also.

The CHAIRMAN. Yes, leave that with the clerk. You represent the committee?

Mr. RICE. Yes.

The CHAIRMAN. You are from Trumansburg, N. Y.?

Mr. RICE. Yes, sir; and a poultryman and for 31 years professor of poultry husbandry at Cornell University and now professor emeritus, and operating a farm of 5,000 birds and 22,000 hatching capacity.

What we would like is to urge upon you the continuation of a commercial and breeder hatchery code, and I would like to read in this connection an extract from a statement which I wrote some time ago that sets forth concisely the particular reasons for so doing. This will save time.

Senator KING. Let me just make an inquiry, if you will pardon me. How extensive is your business? Is this organization confined to New York or is it national in scope?

Mr. RICE. National in scope. I will be glad to present that quite in detail in the form of a brief and also verbally.

Senator KING. Do you have a code for the breeder and hatcheries?

Mr. RICE. We have a code for the commercial and breeder hatchery industry now in operation, which was approved nearly a year and a half ago.

Senator KING. Were you instrumental in procuring the code?

Mr. RICE. I was one of those among a great many in the industry who was responsible for doing that.

Senator KING. Are those who are rearing chickens in all parts of the country interested in this matter?

Mr. RICE. Exceedingly so; almost 100 percent.

The CHAIRMAN. I wish you would put in the record in connection with your brief, the history of the organization, and so forth, to save the time of the committee so that we may refer to it.

Mr. RICE. Thank you. I have that right here in front of me.

The inception, development, administration, and financing of the code is the most significant and far-reaching event in the history of poultry husbandry. The hatchery industry up to the time of the first

code hearing had been unable to meet the situation single-handed. What was everybody's business was nobody's business. Now, due largely to code organization and reorganization, the hatchery industry with Government cooperation is becoming master of the situation.

The formula for making the Commercial and Breeder Hatchery Code was rational and not revolutionary. This is an important distinction. The United States Government proposed but did not demand a code of fair competition. The hatchery industry accepted the proposition and submitted several codes for the consideration of the United States code authorities whose legitimate function it was to assist in the standardization of rules and regulations in harmony with the principles and practices established by other industries in cooperation with the Government code authorities in order to provide legal enforcement. This in principle was Federal cooperation and not Federal domination.

Whatever may be said for or against codes in general, it is clear that each code must stand or fall on its own foundation. Of the Hatchery Code, the facts before us justify us in believing that it has come to stay. The best proof of this fact is the all but universal opinion that the Hatchery Code has been of great benefit to the poultry industry as a whole. Even sincere critics of the Hatchery Code and code violators admit that fact. The early opposition to the Hatchery Code is gradually disappearing. My observation is that at least 95 percent of the hatchery men believe that the code has been and is a distinct benefit to all, regardless of whether or not they have supported it. It is not necessary to receive 100 percent approval of any movement, project, law, code, or Government to make it a pronounced success. Not even the decisions of the United States Supreme Court or of any legislative enactment of State or national election requires unanimous agreement. Not even the Ten Commandments or Declaration of Independence met with complete accord.

I would like also now to read a letter which we received this morning from the managing agent, Mr. Hannah, formerly professor of extension work in Michigan University.

Senator KING. I have a letter here which you sent to the chairman enclosing a copy that you sent out to the county agents of New York.

Mr. RICE. Yes, sir.

Senator KING. Were you using the county agents for the advancement of your organization?

Mr. RICE. Yes, sir; that is universal throughout the United States, by authorization of the Extension Division of the United States Government, 3,000 copies of the Commercial and Breeder Hatchery Code were distributed to the county agents of the United States as an educational movement. And it is distinctly that. It is the most important function—education.

Also in your letter you state that you sent out 27 inspectors there in New York?

Mr. RICE. Oh, no; that is a mistake. Twenty-seven inspectors for the entire United States.

Senator KING. Why did you send them out?

Mr. RICE. The letter must be misleading in its English because my intention was to state that New York alone has one inspector.

Senator KING. Your letter states, "Our inspector for New York will start work within a few days."

Mr. RICE. That is right.

Senator KING. I wanted to know what authority you had to use the county agents to carry out your organization plan?

Mr. RICE. They have no inspection responsibilities. They keep completely free from that, but they assist poultrymen with that educational movement, as they would with every other educational phase of extension work, and I know of no opposition.

Senator KING. In your letter I find the statement that it is going to be stronger for the coming year, a stronger code.

Mr. RICE. As a result of the revisions of the code which have been made, with due care at the public meetings throughout the United States, by mail and otherwise, and by hearings in Washington with the code authorities, the code of last year was strengthened in a good many particulars, some by eliminations, some by additions, but it is a more workable document. It was a tremendous undertaking to bring this about. It was the first time in the history of poultry husbandry in this or any other country that it had undertaken to make a scientific study of itself by surveys, cost-accounting records and other ways, and we were able to develop a code which today is revolutionary in its favorable effect upon the poultry industry.

The CHAIRMAN. What are the beneficial effects?

Mr. RICE. I will be glad to read into the record some of the things that are of distinct benefit.

Senator KING. You sought to unite, did you not, all of the men who raise chickens in the United States into one big organization, and that is to control prices.

Mr. RICE. Oh, no.

Senator KING. Is that not the fact? Is that not the object?

Mr. RICE. Not to control prices, but to prevent unfair competition of selling below cost with intent to injure a competitor, and it must be his own cost and not an average cost of the region or the average cost of the Nation. That would be unfair.

Senator KING. One of the purposes was then to arrange prices by cost accounting or otherwise, at which the producers of chickens might sell to the consuming public.

Mr. RICE. In order that they and the code authorities might have more valuable statistical information on what costs were in the different regions of the United States, and for that reason only a large number of cost accounting records of hatcheries have been secured, and by the pure education process, without any effort whatever at regimentation or domination, these people have discovered for the first time that they were selling chickens below a cost that they could afford, and when they took into consideration all the cost accounting factors of running a hatchery, they very quickly discovered that they were making a mistake.

The CHAIRMAN. This did not apply just to a farmer who raised a few chickens, did it?

Mr. RICE. It did not. The hatchery code does not undertake to deal with any hatchery that does not produce at least 500 chicks to sell, or hatch 1,000 eggs or more for custom hatching, or for dealers who sell 500 chicks or more.

The CHAIRMAN. All right; proceed.

Mr. RICE. The question was asked what the benefits are. I would like to enumerate six.

The first benefit, and the greatest of all is to the farmer, because the farmer produces the eggs that go to the hatchery to be incubated and sold or returned to the farm as chicks. Seventy-five percent approximately of the chicks hatched in the United States are hatched in hatcheries, and of that, a very large proportion go back to the farmers who produce the eggs. They rear their chickens; finding it more economical to do that than it would be to operate their own small incubators or hens.

The farmer benefited in several respects. In the first place, the farmer who had been selling eggs to hatcheries, in many instances, was not getting a sufficient premium for the eggs he sold to justify his sending them to the hatchery and make a fair profit. As a result of the campaign for improving quality, the hatchery men were instrumental in enabling the farmer to produce a higher quality egg by purchasing pure-bred males and by methods of management and by processes of disinfection of incubators, selling a healthier chick. So the farmer benefited as a result of that.

We have a survey made of the different States, which we will submit as an exhibit, showing the premiums paid to farmers by hatchery men in the different States of the United States, which is, as nearly as we are able to estimate it, would mean that the farmers of this country who produce eggs to sell to hatcheries would be benefiting to the extent of $5,000,000 or more.

Those gains are for the farmers first, but their biggest gain is in the fact that the healthier and better-bred chicks come back onto the farms from which as hens they can sell a finer quality of product at a higher price for people to eat.

The second benefit was to the hatchery men, to the small hatchery men as well as to the large hatchery men. We will submit an exhibit showing the number and size of the hatcheries of the United States by States and classified also in groups according to their capacities. We also have figures to submit with respect to the profitableness of the business last year which will indicate that the small hatchery benefited even more than did the large hatchery.

Therefore no one could say that it is a large hatchery business dominating the small hatchery men. The tendency at the present time is for the biggest of the hatcheries to reduce in size, making more local hatcheries rather than have big ones scattered and sending chickens over wider areas. This we believe is a healthy condition.

The CHAIRMAN. Just as a matter of curiosity, what States lead in poultry production now?

Mr. RICE. The States of Iowa, Missouri, Illinois are the outstanding of all of the States, and there are a great many that are pretty close followers.

The CHAIRMAN. I have a curiosity to know where Mississippi stands.

Mr. RICE. Mississippi stands well in many respects, but not particularly so in the chicken business as far as hatcheries are concerned.

The CHAIRMAN. I was afraid of that.

Mr. RICE. I know that, Senator, because I spent one week lecturing at a farmer's week in your State at the State College of Agriculture about 25 years ago, and I can verify the quality of your watermelons. [Laughter.]

The third benefit is to the customer who buys baby chicks, and they have been freed to a large extent, but of course not completely, of the great risks which they have run in the past of buying chicks of poor breeding quality and chicks having disease. I will illustrate perhaps how this thing works. Only a few days ago a poultryman reported to us in New York State that a certain hatchery had sold him a thousand chicks and that he had lost more than seven hundred of them within the first few weeks. That matter was investigated.

The chicks were found to have died of pullorum disease, which might have been completely prevented if the person who bought the chicks had gotten them from a place that had been accredited as pullorum clean or the disease might have come through the infection of somebodys else's eggs in a hatchery that was not properly disinfected; but at any rate, this particular person is suffering this tremendous loss and the hatchery refused to settle the damages. That matter has been taken up by our code inspector. He will report the result to the Kansas City central office and the matter will be properly taken care of, because that is a distinct violation of the code if it is found that he misused terms which the code defines and enforces.

The fourth gain is to the breeder. The breeder gains because the public has become in the last 2 years more quality conscious than ever before in the history of the industry, and partially due to the effect of the code; in other words, the farmers are buying more of the high quality bred males with which to improve their flocks so the breeder is supporting the code.

The fifth gain is to the laborer, because our records show that the wage scale has increased materially as a result of the code's requirements, that the hours have been shortened and because of the first two facts, in the long run it has worked to the material advantage of labor.

It is a benefit to the farmer's family as well as to the hired help. Much of the labor may be performed by the farmer's own family, who gets indirectly the benefit of the higher code wage which is reflected in the general cost of baby chicks and consequently in the selling price of the chicks.

The sixth gain has been to the advertisers. The poultry journals and the agricultural papers of this country were absolutely helpless through any organization or by their own efforts to stop the dishonest advertising in their journals. We tried over and over to accomplish results through the Federal Trade Commission, through poultry organizations and some pretty tragic results have occurred, even to the killing of one of the officers of one of the organizations, because of the fact that he undertook to prevent the dishonest trade practices of one of the members of that organization before the code was established.

So that the papers welcomed this, especially those that carried much advertising. Some of these national advertisers who use elaborate displays pay a good many thousands of dollars a year for that privilege. An examination of the advertising of those same hatchery men before the code went into operation and the advertising of the same advertisers at the present time is exceedingly revealing. We will be very glad if you wish to submit those before and after

records of advertisers to show the wide contrasts. I would not want to give it publicly because of the use of the advertisers names, but we are perfectly willing, of course if you wish to have us do so, to give you proof of all of the facts that I have stated in connection with these six advantages to the hatchery industry under the code.

Senator COUZENS. Do the poultry people use Capper's Weekly? [Laughter.]

Mr. RICE. Well, it has a very high reputation, not only in the West but in the East. Knowing Senator Capper as well as we do, we are perfectly willing to accept his view.

The CHAIRMAN. Senator Capper agrees with you.

Senator COUZENS. Do the newspapers charge more for advertising?

Mr. RICE. They well could afford to.

Senator COUZENS. They charge more, do they not?

Mr. RICE. I don't know.

Senator COUZENS. Do you know whether they are getting more from the advertising than they ever did before?

Mr. RICE. Yes, sir; because partly as the result of the code and partly as the result of economic recovery, the poultry men this year are having a better year than they have had for many years in their sales.

Senator COUZENS. People are eating more chickens and less meat?

Mr. RICE. Chicken is meat.

Senator COUZENS. I mean beef.

Mr. RICE. It will reflect eventually; yes, sir. The higher prices of those meats will have to reflect favorably upon the poultry meat.

So the two great gains are improvement in the quality of eggs, chicks, and stock and square dealing in the handling of the business.

The question was asked a moment ago regarding the size and scope of the hatchery industry, and I will give a few facts in this connection. The baby chicks produced in the United States will exceed 700,000,000 and of these, the commercial hatcheries will account for 400,000,000. The value is $54,000,000. The number of persons employed approximately 10,000 hired help in addition to the hatcheryman's family work. This business is national in scope and the chicks are distributed throughout the entire country on a 72-hour postal regulation by mail or by express.

I would like now to read a letter from the managing agent, John A. Hannah, who was unable to be here and was one of the first prime movers in securing the hatchery code as follows [reading]:

I suggest that you recount briefly the demoralized condition in which the industry found itself from 1929 to 1933 emphasizing the fraud and deception practiced upon farmers purchasing chicks and emphasizing the fact that it was practically impossible for purchasers to determine the true quality of the chicks to be purchased from reading the advertising and sales literature distributed by hatcheries.

I would work in a little information of the magnitude of the industry, stressing the fact that chickens provide an important source of farm income for not less than 4½ million American farmers and that approximately 75 percent of all chickens are now commercially hatched—approximately 700,000,000 of them annually.

The hatchery industry is closely allied with agriculture consisting of the taking of farm-produced eggs and manufacturing them into chicks, 95 percent of which are sold back to the farmers.

I would bring out that after 1 year's operation under the code, State-wide code meetings were held in practically every State in the Union and a national meeting was held in Cleveland with some 1,700 members of the industry in attendance.

Every single State meeting went on record as favoring the continuance of the code and the national meeting went on record with only one dissenting vote asking for a continuation of the code.

I would then emphasize the fact that the code has emphasized improved quality and has been of real benefit to farmers and poultry breeders.

The code was developed by the industry and is being administered by the industry and I would emphasize the fact that every member of the industry has always had an opportunity to take part in all discussions and had a vote in selecting members of the coordinating committee. I suggest that you ask Professor Rice to outline the improvements in quality that the code has encouraged and somewhere in the presentation emphasis should be placed on the cooperation received from the agricultural colleges in all States but Nebraska.

That was purely the opinion of one person in connection with the poultry department of the (Nebraska) institution.

Senator KING. Is that all?

Mr. RICE. If you can spare the time I would like to give a picture of the method of administering the code.

Senator KING. You have had a half an hour. Can you not put it into the record?

Mr. RICE. I can do so; yes, sir, if that is your wish. It is quite important, however, that we do get a clear picture of how the code is administered. I can do it in 2 or 3 minutes with your permission.

Senator KING. All right.

Mr. RICE. Geographically the United States is divided into 20 regions, of which we have one coordinator for each. These coordinators are nominated by ballot by mail. Then they are voted upon by mail. All of the persons who have signed the code compliance and have paid the fees participate in the election. Therefore, these persons who have been chosen are leaders of the industry, and they are persons who themselves all have hatcheries, and many of them are of the small, medium size, as well as the large size, so there is a good cross section there.

The way in which the code is financed; it is entirely by the industry. The way is it enforced is first of all by public opinion and second the value of the code number to those who have complied and have signed the compliance certificate. It is enforced by 35 inspectors throughout the United States who have been selected to do this.

The method of enforcement is not one of coercion, but primarily is one of education. I can say to you that our inspectors are welcomed by the hatcheries and are asked to come again. If violations are evident, nearly all of them are settled purely by having the rules and regulations pointed out to them, so that this past year more than 500 cases of code violations have been settled out of court by the fact that when the matter was brought to their attention, they have decided that it was to their business advantage as well as to that of the industry to comply.

I will bring to you within a day or two a number of exhibits here to back up the statements which I have undertaken to present in this very brief manner.

Senator KING. You may leave them with the secretary of the committee and they will be brought to the attention of the committee. Thank you very much.

(The following data was subsequently submitted by Mr. Rice:)

SUPPLEMENTARY DATA AND INFORMATION TO ACCOMPANY THE VERBAL STATEMENT OF PROF. JAMES E. RICE OF CORNELL UNIVERSITY, PRESIDENT OF THE NORTHEASTERN POULTRY PRODUCERS COUNCIL AND COORDINATOR OF REGION No. 9

On Behalf of the Commercial Breeder Hatchery Coordinating Committee Code No. 8, Jointly Administered by National Recovery Administration and Agricultural Adjustment Administration

[Presented Saturday, Apr. 13, 1935]

The following telegram authorizes me to appear also as representative of the International Baby Chick Association:

"This will be formal authorization for A. H. Demke and James E. Rice to represent me, International Baby Chick Association, at a hearing before the Senate Finance Committee urging continuance of the code.

D. D. SLADE,
President International Baby Chick Association.

I am submitting herewith data asked for by members of the Senate Finance Committee, also supplementary information in support of my oral statement.

The following table shows the number of commercial hatcheries in each State and their distribution according to egg capacity.

Distribution of hatcheries by capacity

State	Under 10,000	10,000 to 54,000	55,000 to 100,000	100,000 to 200,000	200,000 to 300,000	300,000 to 400,000	400,000 to 500,000	500,000 to 600,000	600,000 to 800,000	Over 800,000
Alabama	48	28	0	1	0	0	0	0	0	0
Arizona	10	12	2	0	0	0	0	0	0	0
Arkansas	37	27	1	0	0	0	0	0	0	0
California	226	301	39	27	4	1	2	1	1	0
Colorado	41	56	12	1	0	1	0	0	0	0
Connecticut	78	63	6	2	0	0	0	0	1	0
Delaware	13	28	12	2	0	0	0	0	0	0
Florida	47	28	3	1	0	0	0	0	0	0
Georgia	54	49	0	0	1	0	0	0	0	0
Idaho	32	24	5	1	0	0	0	0	0	0
Illinois	223	321	44	30	8	2	0	0	2	2
Indiana	238	305	59	19	3	5	0	1	0	0
Iowa	274	420	60	37	8	2	2	0	0	0
Kansas	302	252	34	23	5	1	0	0	0	0
Kentucky	48	47	1	0	0	0	0	1	0	0
Louisiana	19	16	1	0	0	0	0	0	0	0
Maine	163	39	0	0	0	0	0	0	0	0
Maryland	50	63	10	4	0	0	0	0	0	0
Massachusetts	224	113	4	3	1	0	0	0	0	0
Michigan	164	223	36	18	3	0	0	0	0	0
Minnesota	164	274	34	24	4	4	0	0	0	2
Mississippi	31	41	1	0	0	0	0	0	0	0
Missouri	332	203	25	20	8	6	1	1	1	3
Montana	11	8	0	0	0	0	0	0	0	0
Nebraska	101	211	26	10	3	0	0	0	1	0
Nevada	1	1	0	0	0	0	0	0	0	0
New Hampshire	99	34	1	0	0	0	0	0	1	0
New Jersey	106	109	10	6	0	2	1	0	0	0
New Mexico	5	10	1	1	0	0	0	0	0	0
New York	285	222	18	2	1	1	0	0	0	0
North Carolina	56	56	1	1	0	0	0	0	0	0
North Dakota	22	31	4	0	1	0	0	0	0	0
Ohio	299	429	70	42	11	4	1	2	0	0
Oklahoma	65	162	11	8	1	0	0	0	0	0
Oregon	126	84	12	3	0	0	1	0	0	0
Pennsylvania	270	342	40	16	3	1	1	0	0	0
Rhode Island	26	11	0	0	0	0	0	0	0	0
South Carolina	34	30	2	2	0	0	0	0	0	0
South Dakota	31	92	6	4	1	0	0	1	0	0
Tennessee	21	28	5	6	1	0	0	0	0	0
Texas	188	410	17	4	2	1	0	0	0	0
Utah	18	14	2	4	1	0	0	0	0	0
Virginia	86	83	6	5	2	0	0	0	0	0
Vermont	49	10	0	0	0	0	0	0	0	0
Washington	116	100	15	11	0	1	0	1	0	0
West Virginia	37	11	0	2	0	0	0	0	0	0
Wisconsin	226	218	26	10	0	0	2	0	0	0
Wyoming	3	6	0	0	0	0	0	0	0	0
District of Columbia	0	2	0	0	0	0	0	0	0	0
To [illegible]	5,055	5,658	672	350	72	32	11	8	7	7

The following table shows, by States, the density of the hatching or incubator capacity, varying from 1,040 eggs per square mile in Delaware to 0.2 of an egg in Nevada. This hatching egg capacity must in each case be multiplied by a factor averagin 2.36 in order to determine the total number of chicks hatched, since the same incubators are used for several hatching each season.

Density of hatching capacity, July 1, 1934

Rank	State	Chicks raised 1929	Chicks raised, 1929, per egg-hatching capacity, 1934	Number chicks raised per square mile 1929	Hatching egg capacity per square mile, 1934
1	Delaware	3,413,677	1.65	1,706.5	1,040.0
2	New Jersey	7,994,678	1.10	1,065.8	388.8
3	Ohio	32,574,580	1.21	800.3	661.7
4	Connecticut	3,510,861	1.30	731.2	560.4
5	Massachusetts	5,067,789	1.25	635.8	507.3
6	Indiana	29,047,735	1.61	806.9	500.4
7	Iowa	48,216,329	2.10	868.7	412.9
8	Illinois	38,125,130	1.89	680.3	359.6
9	Pennsylvania	25,640,180	1.66	572.3	344.4
10	Rhode Island	608,479	1.87	608.0	324.0
11	Maryland	7,422,461	2.66	742.2	279.1
12	Missouri	40,783,071	2.32	593.6	255.5
13	New Hampshire	2,679,070	1.45	207.6	205.1
14	Minnesota	26,578,770	1.65	333.9	201.9
15	Michigan	18,146,102	1.58	315.5	201.4
16	Wisconsin	19,959,817	2.12	361.6	170.4
17	Kansas	33,650,321	2.58	411.9	159.3
18	Nebraska	25,074,163	2.63	338.2	133.8
19	California	26,644,797	1.53	171.2	111.7
20	New York	19,518,198	2.55	410.0	102.3
21	Virginia	16,728,622	4.47	416.1	93.0
22	Oklahoma	23,291,731	3.71	335.6	90.4
23	Washington	11,063,096	2.04	165.6	81.1
24	Tennessee	15,938,501	7.67	382.2	49.8
25	Texas	35,275,063	2.94	138.2	47.0
26	South Dakota	14,658,577	4.21	190.8	45.2
27	Kentucky	17,350,111	9.75	433.9	44.2
28	Maine	3,238,007	2.58	107.9	41.8
29	Vermont	1,377,589	3.87	151.3	39.0
30	Oregon	4,613,673	1.24	48.2	38.8
31	South Carolina	7,447,403	7.19	244.1	33.9
32	North Carolina	14,726,721	10.02	302.4	30.2
33	Colorado	6,333,339	2.22	61.1	27.5
34	West Virginia	5,503,780	9.27	229.3	24.7
35	Georgia	12,263,708	9.13	206.9	22.8
36	Alabama	10,733,979	10.28	210.5	20.5
37	Florida	3,421,394	3.31	62.2	18.7
38	Mississippi	10,712,144	12.46	231.3	18.1
39	North Dakota	8,176,575	8.02	116.8	17.4
40	Utah	3,539,809	2.49	43.1	17.3
41	Arkansas	11,201,907	14.21	213.4	14.9
42	Idaho	3,370,662	2.83	40.4	14.3
43	Louisiana	7,279,168	17.22	160.3	9.3
44	Arizona	997,006	2.05	8.7	4.3
45	New Mexico	1,485,609	3.26	12.1	3.7
46	Montana	3,663,884	12.33	24.4	2.3
47	Wyoming	1,258,343	7.53	12.9	1.7
48	Nevada	439,331	18.54	3.9	.2
	Total	678,092,052	2.36		

The following table shows, by States, the number of applications for compliance certificates under the Hatchery Code during the first season (up to July 1, 1934) that the code was in effect. It will be noted that a total of 11,838 hatcherymen and breeders made such applications, also 1,993 dealers who sold baby chicks.

Application for compliance certificates, to July 1, 1934, by States

Rank	State	Number applications	Number hatchers and breeders	Capacity	Number dealers
1	Ohio	985	858	26,995,652	127
2	Iowa	879	801	22,929,056	78
3	Illinois	763	631	20,185,666	132
4	Indiana	701	630	18,036,754	71
5	Missouri	648	601	17,893,869	47
6	California	662	602	17,526,009	60
7	Minnesota	537	496	16,342,500	41
8	Pennsylvania	881	673	15,520,187	208
9	Kansas	649	617	13,046,176	32
10	Texas	670	620	12,479,530	50
11	Michigan	574	454	11,518,861	120
12	Nebraska	427	351	10,277,053	76
13	Wisconsin	550	481	9,424,912	69
14	New York	684	527	7,692,789	159
15	New Jersey	309	234	6,693,971	75
16	Oklahoma	279	247	6,275,871	32
17	Washington	263	245	5,431,349	18
18	Massachusetts	417	344	4,090,510	73
19	Virginia	197	181	3,749,199	16
20	Oregon	234	226	3,717,528	8
21	South Dakota	142	130	3,502,081	12
22	Colorado	149	111	2,869,103	38
23	Maryland	150	127	2,801,180	23
24	Connecticut	187	149	2,709,512	38
25	Delaware	65	56	2,080,198	9
26	Tennessee	89	61	2,077,184	28
27	New Hampshire	167	144	1,856,345	23
28	Kentucky	116	96	1,803,787	20
29	North Carolina	124	114	1,474,585	10
30	Utah	58	39	1,423,932	19
31	Georgia	123	104	1,355,160	19
32	Maine	231	201	1,258,415	30
33	Idaho	76	62	1,191,304	14
34	North Dakota	68	58	1,162,128	10
35	Alabama	101	77	1,044,474	24
36	Florida	134	79	1,039,465	55
37	South Carolina	85	68	1,037,166	17
38	Mississippi	88	73	859,324	15
39	Arkansas	68	64	790,999	4
40	West Virginia	74	44	593,526	30
41	New Mexico	19	17	502,065	2
42	Arizona	37	24	455,398	13
43	Louisiana	48	36	430,512	12
44	Vermont	68	59	365,141	9
45	Rhode Island	50	37	324,417	13
46	Montana	22	19	297,065	3
47	Wyoming	11	9	167,204	2
48	District of Columbia	8	2	33,440	6
49	Nevada	5	2	23,700	3
	Total	13,831	11,838	286,685,229	1,993

As proof that in this industry the coordinating committee (the code authority) is not dominated by the larger units, I present the following tabulation of the membership with each member's hatching capacity. It will be recalled from tables given above that there are 7 members of the industry having hatching capacities of 800,000 or more eggs, also 7 having capacities of 600,000 to 800,000 and 8 having capacities of 500,000 to 600,000. Only two in these larger capacities are members of the code authority.

	Capacity		Capacity
L. C. Beall	31,000	G. R. Spitzer	219,760
E. A. Nisson	514,000	G. H. Hocker	22,000
A. H. Demke	52,000	G. S. Vickers	(1)
H. S. Cox	20,000	J. A. Davidson	(1)
G. H. Wood	41,000	C. I. Bashore	345,000
D. D. Slade	517,000	Frank Gripton	31,360
Dr. E. E. Boyd	48,000	V. C. Ramseyer	255,000
Erle Smiley	61,000	K. I. Miller	198,000
F. R. Hazard	27,000	C. Howard King	9,120
J. E. Rice	22,000	E. B. Anderson	60,000

As further evidence that this code has not operated to the disadvantage of the smaller units of the industry, I submit herewith a tabulation showing the results of a survey of 683 hatcheries of various sizes in the 1934 season, grouped according to incubator capacities. It will be noted that the percentage of hatcheries showing a profit decreased as the size of the hatchery increased.

Capacity groups and percent of hatcheries reporting profit

Under 10,000	92	100,000 to 199,999	87
10,000 to 24,999	87	200,000 to 499,999	86
25,000 to 39,999	88	500,000 and over	(2)
40,000 to 59,999	89		
60,000 to 99,999	72	All capacity groups	88

This same survey showed also that the margin of gross profit was less among the larger hatcheries than among the hatcheries of small to medium capacity.

Capacity groups	Gross income from all hatchery operations (percent)	Total expense (percent)	Margin of profit (percent)
Under 10,000	100	75.8	24.2
10,000 to 24,999	100	81.0	19.0
25,000 to 39,999	100	83.5	16.5
40,000 to 59,999	100	83.7	16.3
60,000 to 99,999	100	84.8	15.2
100,000 to 199,999	100	87.9	12.1
200,000 to 499,999	100	87.7	12.3
500,000 and over	100	85.1	14.9
All capacity groups	100	84.6	15.4

It should be pointed out in this connection that there are natural and almost automatic checks in the hatchery industry to safeguard the farmer against overcharges for baby chicks. Whenever the farmer or poultryman feels that the price is too high he has the remedy in his own hands. Most farmers still have small incubators stored away and could put them into operation very quickly. Even though no such small incubator was available, the old hen is still on the job and ready to perform the hatching operation.

Of course a considerable percentage of eggs are still hatched by hens or small home incubators each year and many more could be so hatched on short notice. An automatic price balance is thus preserved so that the farmer need pay no more for commercial hatching than the service is worth to him as compared with doing it at home.

[1] Field representative.
[2] Sample not adequate.

PREMIUMS PAID FARMERS FOR BETTER EGGS

The provision in the code which requires the payment of premiums for hatching eggs and the elimination of underweight eggs, not only results in a better quality chick but directly increases the farmers' revenue.

The following table shows the average premium paid above market egg prices by hatcheries in 1934.

Average premium paid over market price by hatcheries for eggs bought

State	Number hatcheries reporting	Average premium paid (per dozen)	State	Number hatcheries reporting	Average premium paid (per dozen)
Alabama	9	$0.108	Nebraska	51	$0.063
Arizona	10	.127	New Hampshire	9	.145
Arkansas	12	.081	New Jersey	21	.133
California	116	.134	New Mexico	5	.098
Colorado	21	.077	New York	59	.094
Connecticut	7	.118	North Carolina	22	.112
Delaware	5	.084	North Dakota	10	.058
Florida	21	.106	Ohio	155	.075
Georgia	12	.092	Oklahoma	41	.082
Idaho	11	.095	Oregon	21	.107
Illinois	98	.079	Pennsylvania	99	.098
Indiana	93	.070	Rhode Island	4	.073
Iowa	131	.064	South Carolina	11	.105
Kansas	83	.077	South Dakota	13	.063
Kentucky	9	.088	Tennessee	8	.091
Louisiana	1	.065	Texas	127	.077
Maine	7	.118	Utah	6	.073
Maryland	14	.088	Virginia	23	.119
Massachusetts	29	.128	Vermont	4	.096
Michigan	27	.090	Washington	30	.104
Minnesota	68	.064	Wisconsin	108	.069
Montana			West Virginia	4	.100
Mississippi	4	.111	Wyoming	4	.081
Missouri	96	.067			
Nevada	1	.100	Total	1,720	.085

BENEFITS TO LABOR

Data collected by the Planning and Research Division of National Recovery Administration, based on a survey which brought usable data from 554 hatcheries, indicated an increase of 66.9 percent over 1933 in wages for unskilled labor. This applied to approximately 6,068 full-time workers and 3,088 part-time workers employed in this industry.

This rate of wage increase in an industry so closely associated with agriculture and usually located in an agricultural community proved too great, however, and resulted in some decrease in employment in the smaller and medium sized hatcheries where members of the owners' families could lengthen their own hours and do more of the work.

This difficulty was largely overcome during the 1935 season by a moderate reduction in wage rate and a moderate lengthening of hours—approximately the same weekly wage as in 1934—which is still a big advantage to labor as compared to pre-code days. Somewhat similar adjustments had to be made also on skilled labor. Incidentally, this experience shows that labor may defeat its own objectives by going too fast in the matter of raising wage rates and reducing hours.

A FEW OF THE INDUSTRY EVILS CORRECTED

Among the many benefits of the code I desire to call particular attention to some of the more flagrant evils that have been corrected, either wholly or very largely.

Advertising.—It has long been a matter of regret to reputable hatcherymen that baby-chick advertising has often been misleading and even untruthful. Great progress has been made under the code in correcting this situation. The code prevents advertisers from claiming qualities in their chicks unless they actually possess such qualities, such as high egg-producing qualities, quick maturity, high degree of livability, freedom from disease, connection with breeding farms, and similar claims.

A member of the industry is prohibited from advertising his stock as from the strain of a particular breeder without first getting the written permission of such breeder.

Guarantees made must be lived up to or modified to conform to the facts.

No member may advertise his products as "disease free" unless they have been officially tested and found free.

When the term "disease tested" is used in advertising it must be accompanied by a statement telling for what disease, by what method, and by whom the test was made.

Scientific terms must be used only in strict accordance with definitions set forth.

Shipments must be sent to customers on the dates promised unless permission is secured from the customer to ship otherwise.

Auction sales of unidentified chicks at low prices which were formerly held in some sections as a means of disposing of inferior stocks or chicks weakened by delayed sale—in other words these auctions were dumping grounds for certain hatcheries—have now been largely eliminated by reason of the code rule which requires the hatcheryman's name and address and date of hatch to accompany all shipments of chicks. Elimination of this type of auction has not only eliminated the distribution of inferior stock but has helped in preventing destructive price cutting. The farmer purchaser is also protected against losses that follow purchases of such inferior stocks.

A provision of the code prohibiting sales below the individual's own cost has not only aided in stabilizing prices and eliminating destructive price cutting, but has tended to restrict production to the actual demand, thereby placing the hatchery business on a sounder and more businesslike basis. This we consider highly important and to the ultimate benefit of all concerned, including the consumer and labor as well as the hatcheryman.

ENFORCEMENT

While the acceptance and observance of this code to date hsa been based largely on educational efforts and the benefits to the industry, yet it must not be forgotten that for continuous and proper operation of the code we must have definite legal enforcement provisions, with proper penalties for the wilful violator. The very small minority of members who violate the code—certainly less than 5 percent—could gradually undermine and destroy the code unless effective means of punishment are available.

We therefore feel that the enforcement provisions should be strengthened in the new National Recovery Act.

The following is a typical letter received from representative members of the industry asking for the continuation of the code:

JEFFERSON CHICK HATCHERY,
Jefferson, Iowa, April 10, 1935.

NATIONAL COMMERCIAL BREEDER HATCHERY COORDINATING COMMITTEE,
Kansas City, Mo.

GENTS: As I have heard of some rumors that the Hatchery Code was to be done away with I for one would regret very much to see it discarded.

For the last 2 years I think we have been benefited by it, in several ways. First, it has stabilized prices to a certain extent, of which the hatchery industry was very much in need.

Second. It helped very much in preventing oversetting early in the season, eliminating heavy surplus, also in closing down early in June, saving a worthless lot of stuff being placed in the hands of buyers who only bought the chicks because they were cheap. No profit to the hatchery or producer.

Third. In an effort to place on the market a very much higher quality of chicks, also the eliminating of the setting of undersized eggs.

Fourth. Last but not least, in its efforts to induce honest advertising and eliminating worthless premiums with chick orders.

I might say much more in favor of the code and I will say this, that if the code is abandoned I will have a hatchery for sale and the fellow that makes the sale will have a good commission out of it.

Yours truly,

L. B. PEESO.

TESTIMONY OF FRED BRENCKMAN, REPRESENTING NATIONAL GRANGE, WASHINGTON, D. C.

(After having first been duly sworn, testified as follows:)

Senator KING: You represent the National Grange?

Mr. BRENCKMAN. Yes, sir.

Senator KING. Proceed.

Mr. BRENCKMAN. This committee deserves to be commended for conducting the hearings which have been in progress during the past several weeks. Before Congress reenacts the N. R. A. for another period of 2 years, it is only reasonable and right that it should make inquiry, as to how this legislation has worked during the past 2 years.

The declared policy of Congress as expressed in the A. A. A. is to reestablish and maintain the same price parity between agricultural and industrial commodities which existed in the prewar period. In May 1933 when the Adjustment Act was passed, the average level of farm prices stood at 62 percent of prewar while industrial commodities commonly purchased by farmers were at 101, making a spread of 39 points to the disadvantage of agriculture.

The N. R. A. was approved by the President on June 16, 1933. One year later, on June 13, 1934, the average level of farm prices had advanced to 85 percent of prewar, but industrial prices stood at 122. From this it will be seen that the spread between agriculture and industry was still 37 points. It was not until the scarcity occasioned by the drought of last year that farm prices began to approach their prewar level.

The latest price index of the Department of Agriculture issued on March 29, 1935, shows farm prices to be at 108, while the industrial price level is 128, making a spread of 20 points. The purchasing power of the farm dollar as of that date was 84 cents.

This does not include rental or benefit payments under the A. A. A., but it is worthy of note that only about one-half the farmers of the country are engaged in the production of so-called "basic commodities" upon which rental or benefit payments are made.

From the inception of the recovery program, the National Grange has been animated with a sincere desire to cooperate in every possible way toward making it a success. However, it is my opinion that one of the major factors in retarding recovery has been the continued disparity between agricultural and industrial prices. This disparity has been largely due to the artificial and arbitrary regulation and regimentation of industry under the N. R. A.

The growth of monopoly, the fostering of illegal combinations for the artificial fixation of prices, the many and varied restrictions placed upon industry have all contributed to increased cost of production. To a large extent, this has placed industrial commodities beyond the reach of our agricultural population. Is it any wonder that there are still so many millions of workers unemployed and subsisting upon Government relief when lack of purchasing power keeps the farmer out of the market? It may confidently be said that what is true of the farm population in this connection, likewise applies to other large groups whose purchasing power has remained stationary or has not kept pace with the increased prices under the N. R. A.

One of the most glaring examples of the manner in which the consumers of the country are being gouged is by price fixing, which since

the inception of the N. R. A., has been present in the majority of the industrial codes. It is true that in many of the codes, the term "price fixing" has been camouflaged under such innocent sounding titles as "open price filing," "price protection," "cost accounting," and "minimum prices."

On June 7 of last year, the N. R. A. made a half-hearted attempt to correct this evil by the issuance of Office Memorandum 228, which in general terms instructed all administrators to withhold all approval of price-fixing provisions in pending codes and to bring existing codes into conformity with that policy wherever practicable. The emptiness of this gesture is made manifest from the following information which is on file in the office of the Chief of Post Code Analysis Division of the N. R. A.

Out of 554 codes and their supplements approved, 552 contain some form of minimum prices. Codes and their supplements having some form of open-price filing number 438. Codes calling for cost-accounting systems number 520. Approved codes that do not conform with Office Memorandum No. 228 total number 269.

The reports of the Darrow board and the thousands of complaints received by Members of Congress show that many of these codes have been written, interpreted, and administered for the favored few, who through their financial power have been able to dominate and control the minority groups in the different industries.

We have all heard of many cases where small businesses have been oppressed under the administration of the various codes.

A case in point that comes to mind is the Code for the Wheat Flour Milling Industry. When this code was proposed, Mr. Chairman, it contained a provision that nothing therein contained should be used to embarrass the little fellow or to eliminate small industries, and after having paid lip service to that proposition, there was a provision written into it that the big highly mechanized mills should be allowed to operate on a schedule of 144 hours a week, and certain restrictions were placed upon the smaller mills that employed more hand labor. If the code had been adopted as written, there can be no doubt whatever that it would have in due time driven out all of the independent millers of the United States. I appeared in opposition to that code and asked that it be put in fairer shape, just as we did in the case of very many other codes that have been adopted.

The attempt to regiment this highly competitive industry has led to the destruction of many small units that were in the aggregate the means of giving employment to many people. From the promulgation of the code, the large and highly mechanized mills have endeavored with every means within their power to exterminate the small, independent millers, and have written into the code provisions that threaten his economic extinction.

The small millers have not been subservient, but have manfully fought for their rights. A minority group held a referendum among all millers regarding the continuance of the code. Out of 658 votes cast, 70 were for continuance while 532 millers, large and small, voted in opposition.

The small mills of the country are going out of existence at the rate of about 300 a year. Every time one of these mills closes, it leaves the community in which it was situated so much poorer and it strengthens the grip of monopoly on the milling industry.

On September 15, 1933, when the Code for the Farm Implement and Machinery Industry was adopted, the price level of this kind of equipment was at 139 of pre-war. On December 15, 1934, this index stood at 146. There have been times during recent years when this industry was running at only 20 percent of its capacity, and the principal reason for it was, as I see it, that in many instances prices for farm implements and machinery in most common use was practically twice as high as during the pre-war period.

Let me give you a few examples, Mr. Chairman. Twelve tube-disk drills that in 1914 sold for $85.38 on the average, in 1934 were priced at $143.

Six-foot grain binders which in 1914 sold for $131.28, in 1934 cost $228.

Hay loaders, which in 1914 retailed to the farmer at $66.73, in 1934 cost $117.

A 5-foot 2-horse mower that sold for $47.50 in 1914, cost on the average $79.90 in 1934.

A 2-row corn planter that sold for $41.96 in 1914, sold for $81.30 in 1934.

This list could be considerably lengthened, but the comparisons I have made will show the unreasonable increase in the prices of equipment of this kind that have taken place since the pre-war period.

The Grange is asking Congress to enact legislation directing the Federal Trade Commission to investigate the farm implement and machinery industry so as to definitely establish whether or not price fixing and unfair trade practices are responsible for the unreasonably high prices that farmers are asked to pay for such equipment.

The main objective of the N. R. A. was to increase employment and to spread purchasing power. As a recovery measure, it cannot be denied that the result of its 2 years of operation leaves much to be desired.

At our last annual convention, the National Grange took the position that if this legislation was to be reenacted in any form, definite safeguards should be adopted to prevent all arbitrary and artificial price boosting in industry. If this legislation is to be continued, we demand the observance and enforcement of section 3 of the Recovery Act, which forbids code provisions calculated to eliminate or suppress small enterprises, and which expressly prohibits monopolies or monopolistic practices.

Senator KING. Thank you very much. I would like to ask you just one question. When some of these codes to which you have referred, were being drafted, did you appear before any of the gatherings and protest against them or insist upon different provisions?

Mr. BRENCKMAN. Yes, indeed. A very large part of our time during the first year after the enactment of the N. R. A. was consumed in attending code hearings and in the efforts to protect the interest of agriculture under the Recovery Act.

Senator KING. Take for instance the Wheat Code to which you have referred, the Flour Milling Code. Who were the dominant factors or persons in the drafting of that code? Was it the big mills or the little mills that were there represented?

Mr. BRENCKMAN. That code, like practically all of the codes, was drafted by the dominant people in the industry, and it was written, as I understand, by the milling trust, composed of about 33 big cor-

porations, and they have dominated the code and have administered it ever since.

Senator KING. Take the Agricultural Implement Code. Did you or representatives of the Grange or of agriculturalists, appear there in the formulation of that code?

Mr. BRENCKMAN. I am sorry to say that we did not appear in connection with that particular code because we could not attend all of these hearings, and some of them were held at times and places that we did not even get any notice of.

I want to mention while we are talking of that, of another code that was adopted and under which there was price fixing that proved very burdensome to the farmers along with the rest of the consuming population of the country, and that was the code for the rubber tire industry. They fixed prices under that code for a time, and it was estimated that the three increases in the price of tires that took place after the adoption of that code cost the farmers of the country alone at the rate of approximately $40,000,000 a year in increased prices. Price fixing under the Rubber Tire Code was abandoned, I think, on the first of October of last year.

Senator KING. Thank you very much. Mr. Hollingsworth and Mr. Meyer, I notice on the list here, represent the Retail Tobacco Dealers. One is the president and the other is director. Do both of them desire to testify?

Mr. HOLLINGSWORTH. Mr. Chairman, I am Mr. Hollingsworth, and Mr. Meyer has Mr. Lefkowitz appearing in his stead. He will take about 10 minutes.

Senator KING. How much time do you want, Mr. Hollingsworth?

Mr. HOLLINGSWORTH. About 10 minutes.

Senator KING. All right; proceed.

TESTIMONY OF W. A. HOLLINGSWORTH, NEW YORK, N. Y., PRESIDENT OF THE RETAIL TOBACCO DEALERS OF AMERICA

(The witness was duly sworn by Senator King.)

Mr. HOLLINGSWORTH. Mr. Chairman and members of the committee, I appear here as president of the Retail Tobacco Dealers of America, the national organization of retail tobacconists, representing through membership and proxy about 750,000 retail outlets selling tobacco products in every State.

Never was a great number of people more grateful for an act of Congress than were the members of the retail tobacco trade for the N. R. A.; for about the time the N. R. A. was enacted into law, the morale of the trade was at its lowest ebb. The trade was burdened with constant misery and was suffering from every economic ill imaginable. Its casualty list was rapidly reaching a balance with its roster and its inventory was beginning to resemble an entry in the "doomsday book."

Labor employed in the industry, realizing the deplorable financial condition of their employers, were glad to hold their jobs at any price, and on any terms. The outlook for the industry was hopeless.

Little wonder the N. R. A. was greeted with thanksgiving and rejoicing. Eyes were turned heavenwards and prayers of sincere gratitude were offered in the name of those who fostered this legislation. Almost overnight, the Blue Eagle became the symbol of

emancipation from debt-ridden depression; and hopefulness, enthusiasm, and confidence replaced fear and despair.

Today, retail tobacco dealers are catching upon back bills, amortizing long-standing obligations, liquidating arrears in rent and, best of all, regaining their credit standing with the wholesalers and manufacturers. A short time ago, one large wholesaler in the metropolitan area of New York told of restoring credit accounts to more than 7,000 retailers; also, a large manufacturer cited how rapidly his slow-moving retail accounts were coming into line with the company's credit terms throughout the country.

One of the loudest general criticisms against N. R. A. is that it has operated to hinder small enterprise. Several antagonists of N. R. A. have framed their protests against the act in this vein, and made assertions that they speak for the small business man.

I cannot speak for other industries, but I do know about everything pertaining to formulating and negotiating the Retail Tobacco Code, and I want to say here and now that the code of the retail tobacco trade was conceived by the little man, initiated by the little man, operates for the little man, and is administered and managed by the little man.

Under the code, the little retail tobacco dealer is enjoying progress and assurances of protection against his natural enemies never enjoyed before, and he wants it continued. So, to those who profess and assume to speak for small enterprise—who, according to their assertions, want N. R. A. done away with—we, the hundreds of thousands of small shopkeepers say they absolutely do not represent us.

Senator KING. Who are his natural enemies? The men in the trade that sold cigarettes a little cheaper than he did?

Mr. HOLLINGSWORTH. The natural enemies are the loss-leader practitioners, a few cut-rate pirates who demoralized the retail prices in the entire trading area, and certain large manufacturing concerns who had to meet competition, and who were unwilling to stand the expense of meeting that burden, and instigated a reduction in price in a trading area which they knew would multiply rapidly and cause everyone to fall in line with that extremely low price.

The N. R. A. is rehabilitating thousands of small merchants, and if its protecting arms are lifted, and the lean and hungry wolves of ruthless price cutting are turned loose upon them again, what slaughter will take place! The little man will be completely routed out—muscled out—driven out, and his small remaining capital devoured by a competition so ruthless as to be inhuman and heartless.

The earnings of thousands of these little shopkeepers may well be considered as wages, for comparatively few of them do a gross dollar volume of business exceeding $10,000 a year.

Senator KING. You are speaking now of these little cigar stores?

Mr. HOLLINGSWORTH. I am speaking of the little cigar stores and candy stores, and stores that deal in newspapers, cigars, and tobacco, and handle a few other items.

On this gross volume, their net income floats between $25 and $30 a week. If the National Industrial Recovery Act is not continued, and ruthless price-cutting rustlers are again allowed to prey upon their patrons, these small earnings will vanish and a great number of families will be added to the rolls of the relief agencies. The only hope the little retail tobacco dealer has to continue even a meager

Labor has given its unqualified endorsement to the Retail Tobacco Dealers' Code. It is conceded a substantial amount of reemployment has taken place in the industry since the code was approved, and it is also agreed that wages in the industry have increased materially. The improved condition of the retailer is reflected throughout the entire tobacco industry, from handling the seed to consumer, for the wherewithal to meet all the pay rolls of the tobacco industry flows from the cash registers of the retail dealer.

In the retail tobacco business unbridled competition and price cutting have proved to be the inhuman instruments of monopoly. More than 80 percent of the cigarettes consumed in the United States are manufactured under three standard-brand trade-marks. The sale of these brands accounts for more than 50 percent of the average retail tobacco dealer's volume, and his general welfare is largely dependent upon profits made from the distribution of these highly advertised brands of cigarettes. Recently, when the dominating position held by the three big brands was threatened with the competition of the rapidly growing 10-cent brands, in some mysterious manner, retail price wars broke out all over the country. During the period of these wars, the little retailers were not only denied compensation for their services as distributors, but were compelled to sell these cigarettes to the consumer at an actual loss. The three big brands came out of the war undisputed victors, but the little retailers who had been forced to act as shields in the battles were left upon the field financial cripples and commercial wrecks.

Worst of all burdens upon the little retailer was the ever-increasing attacks of the loss-leader pirates upon their small business. Because cut rating tobacco products had become known as good bait to induce traffic into establishments depending upon the sale of other lines of general merchandise, several unrelated and alien businesses sold tobacco products to the consumer at net invoice cost, or below, to secure patronage for their large-profit items of merchandise, and the little retailers were faced with either losing their entire trade to the loss-leader pirates, or meeting the ruinous cut prices established by them.

Senator KING. Has there been any increase in the consumption of cigars?

Mr. HOLLINGSWORTH. The increase in the consumption of cigars is about 6.9 percent.

Senator KING. During what period?

Mr. HOLLINGSWORTH. In the latter part of 1934.

Senator KING. Just recently, then?

Mr. HOLLINGSWORTH. Yes, that is correct. The retailers' code and the price-fixing provision in the retailers' code went into effect on July 19.

Senator KING. The principal product you sell is the cigarettes?

Mr. HOLLINGSWORTH. Cigarettes account for about 50 percent of the volume.

Senator KING. Cigars amount to how much?

Mr. HOLLINGSWORTH. Cigars about 25 percent, and smoking tobacco, chewing tobacco, and snuff account for about 25 percent. That is the round figures.

Senator KING. How many stores are there in the United States where these four tobacco products are vended?

Mr. HOLLINGSWORTH. There are variable estimates. Because we cannot cover all of the byways where they have a little stand that will sell soda water, frankfurters, and so forth, we cannot reach it exactly, but the large manufacturing concerns have it pretty well tabulated, and they estimate that there are between 780,000 and 800,000 outlets for tobacco products

I dare say cigarettes and tobacco products are sold in more avenues of commerce than any other article we have to deal with.

Senator KING. I suppose since cigarettes have become so popular and the ladies are smoking them, the consumption has been greatly increased.

Mr. HOLLINGSWORTH. That is correct, it has been greatly increased. They say it accounts for about 35 percent of the increase.

It is a well-know fact that before the National Industrial Recovery Administration approved an order establishing minimum retail prices for cigarettes, certain concerns engaged in the sale at retail of products other than tobacco, had adopted as a permanent policy the practice of selling cigarettes at less than cost of purchase and handling.

Tobacco products, and especially cigarettes, are particularly adaptable to the nefarious loss-leader practice:

1. They are in universal demand.

2. They consist almost entirely of extensively advertised and nationally known trade-marked brands for which a great public demand has been created.

3. They are sold at retail at low unit prices and their intended prices are of such general knowledge that a cut price is immediately recognized.

4. They have an unusual velocity of sale, thus, the possibility of compelling the frequent return of the purchaser.

The Administrative order establishing minimum retail prices for cigarettes has been in operation roundly 10 months, and though it affects and pretends to control the retail price of cigarettes in roundly 750,000 outlets, there are not more than half a dozen important violations now existing throughout the entire 48 States; and the acceptance by the consumer of the now stable minimum prices of cigarettes has been so complete that not a single instance of consumer resistance has been reported to either the National Association or the Code Authority

Senator KING. Has there been an increase in the price?

Mr. HOLLINGSWORTH. The price has been stabilized at what was formerly known as the prevailing price.

Senator KING. Has it been increased?

Mr. HOLLINGSWORTH. There has been no increase.

Senator KING. Then cigarettes have not been increased in price, notwithstanding the increase in consumption.

Mr. HOLLINGSWORTH. Yes; that is correct. The loss-leader practitioner was selling cigarettss, as I have stated here, very often at cost. The general prevailing price for cigarettes was 13 cents per pack, or two packs for a quarter, or $1.20 a carton, and that price prevails today.

That is what was known as the general prevailing price at the time the cigarette order began to operate.

Internal Revenue figures show cigarette consumption in this country reached its all-time peak in 1934. During the last half of 1934, the Administrative order establishing minimum prices for cigar-

ettes operated successfully for the retailers and in the month of November, cigarette production increased 42 percent over the same month in 1933. No further evidence should be required to prove the consumers' complete acquiescence in the cigarette order. Incidentally, this increase of cigarette consumption added many additional millions of dollars to the collections of the Internal Revenue Department.

The inherent characteristics of the retail trades and the particular kind of economic and commercial ills which they are susceptible to, makes necessary trade-practice provisions in their codes including minimum price protection. Some other method may be adequate to correct unfair competition in the manufacturing industries, but without a stop-loss minimum price, the retail trades, particularly those dealing in tobacco products, are, at all times, subject to complete demoralization, or even destruction, by the loss leader use of the products upon which they depend for their principal income.

The phrase "price fixing" as the term is generally understood, frequently brings resentment to the surface of any discussion concerning it, because the mere mention of the term in its broad concept prompts the mind to envisage a scheme which implies collusion between competing manufacturers or producers to fix prices for mutual profit. Minimum prices or stop-loss prices differ vastly from this commonplace construction of the term "price fixing", and certainly no implication of impropriety is justified, as the establishment of minimum prices is for the purpose of protecting the weak against the strong and serves only to stop an actual loss.

The retail tobacco dealers of this country feel that the protection afforded them by their code is both virtuous and equitable—and their only fear is that selfish interests and big business may conspire to deprive them of what they have rightfully gained.

There is available a preponderance of evidence to prove the ruinous effects of cut-rating and the loss-leader practice upon small tobacco dealers. At the public hearing on the Retail Tobacco Dealers' Code and at the hearing held on price provisions in codes of fair competition last January, comprehensive testimony was submitted to prove the disastrous effects of unfair competition upon small enterprise within the retail tobacco industry. Rather than burden the committee by reiterating it here, I beg permission to submit this evidence in the form of briefs and exhibits.

Now, rather than burden this committee further with testimony, I have here three briefs I would like to offer for your consideration.

Senator KING. Those may be filed with the clerk.

Is Mr. Meyer present?

Senator LA FOLLETTE. Mr. Chairman, after listening through Mr. Brenckman's testimony, it has occurred to me that since a number of these codes were in the charge of the Agricultural Adjustment Administration when they were drawn, I think it would be helpful to have someone furnish us with a list of the codes that were handled and drawn in the Agricultural Adjustment Administration, if there be such.

Of course, as we all know, they were transferred by Executive order some time in March 1935 to the N. R. A., but in order to have a history of the negotiations of these codes, and which part of the administration was responsible for their drafting, it would be helpful to have such a list.

Senator KING. I think that is a good suggestion, and Mr. Whiteley, you will take care of that.

Mr. HOLLINGSWORTH. Mr. Chairman and gentlemen, Mr. Meyer cannot be here, and we would like your permission to have Mr. Lefkowitz substitute for him.

Senator KING. That will be satisfactory. Please come forward and be sworn, Mr. Lefkowitz.

TESTIMONY OF ISAAC H. LEFKOWITZ, OF NEW YORK, N. Y., PRESIDENT ASSOCIATED RETAILERS, INC., VICE PRESIDENT NEW YORK TOBACCO COUNCIL.

(The witness was duly sworn by Senator King.)

Senator KING. Will you give your full name?

Mr. LEFKOWITZ. Isaac H. Lefkowitz.

Senator KING. Where do you live?

Mr. LEFKOWITZ. Residence or business?

Senator KING. Where do you live; in New York?

Mr. LEFKOWITZ. Yes, sir.

Senator COUZENS. Is your testimony substantially the same as the previous witness?

Mr. LEFKOWITZ. It is entirely different, I believe, to a great extent.

Senator KING. Are you a member of the code authority?

Mr. LEFKOWITZ. I am a member of the code authority.

Senator KING. Some member of the code authority came to see me a few days ago, and I asked him about his connection with it, and he said he was an officer and getting $20,000 a year, and several of the secretaries had salaries paid to them. Are you one of these salaried officials?

Mr. LEFKOWITZ. No, sir; I am not.

Senator KING. You may proceed.

Mr. LEFKOWITZ. My business consists of a single small tobacco store located on a side street, and my customers are principally factory workers and persons of small means.

I am also the president of a trade association known as "Associated Retailers, Inc.," and the vice president of New York Tobacco Council. As such, I represent thousands of the small shopkeepers of the city of New York.

Senator KING. Is that council incorporated?

Mr. LEFKOWITZ. No; it is not incorporated. That is an organization consisting of the various retailers within a radius probably of 10 to 15 miles of New York.

Practically all of my life has been spent in the retail end of the tobacco business and I honestly believe I can qualify as an expert witness on conditions in that trade.

At the very beginning I want to say so strongly that there never will again be any doubt on the point that the Code of Fair Competition for the Retail Tobacco Trade was the result of a demand from every part of the country of the small tobacco dealer. If anyone says that our code was made for us by the jobbers or the manufacturers or even by the larger retailers, if anyone states that it is run by the big men or for the big men, I can answer, from personal knowledge, that he is not telling the truth.

At the public hearings of our code, our attorney filed written proxies of about 250,000 retail outlets and in each of them a special

plea was made for the approval of this code. Over 90 percent of those petitions were made by small shopkeepers doing a business of less than $10,000 a year, and if we had had more money, we could have gotten many more proxies, for the whole industry realized, then and now, that only a code of fair competition could save it from certain ruin.

It is this great number of small shopkeepers, whose interests are so tremendously affected, that I must try to represent today. And when I think of all the small cigar stores, grocers, and drug stores, and, in fact, all the 700,000 little men who sell tobacco, and that in a way I represent all of them, it makes me feel a great responsibility.

I never wished so much that I was wiser or had more knowledge because I know that I am speaking for a just cause, and that if I were only able to find the right words and make you feel the facts, you would decide to continue the N. R. A. legislation. You see, I know of my own knowledge the terrible conditions that existed before we had a code. If you were interested, I think I could name a great number of men among my own friends who were ruined by the terrible price cutting of the year 1933. Those men had been responsible merchants; many of them had been successful in a little way, and some of them even had assistants in their shops. The assistants, of course, went first, and the long day's work that sometimes lasts for 18 hours had to be done by the shopkeepers and their wives. Then their savings went, and at last they locked the door. You see, small shopkeepers cannot afford bankruptcy; they just turn the key in the lock when they can go no further. Of course, I cannot expect you to feel all this the way I do. The story of poor people is too short and simple to be interesting. But I lived with it, and when I think of those days, it makes me both very sad and very angry.

For that 1933 price cut that I mentioned was in one way different from other cuts that had gone before. In my opinion, and in the opinion of hundreds of thousands who suffered with me, that cut did not start as a matter of chance. No; it was brought about by big companies who were looking to protect their brands and their dividends and who did not care about the suffering they caused. Yes; it was brought about by the same "big four" who under cover have attacked our code at every turn because they know that retail price control is a menace to monopoly. You gentlemen have listened to much nonsense about price control fostering monopoly that a few cold facts to the contrary may be refreshing.

In the fall of 1929, before the crash, the manufacturers' list price of the four big brands of cigarettes was $6.40 a thousand, and the prevailing retail price was 2 packs of cigarettes for 25 cents. In the summer of 1931, a year and a half after the crash, the list price of these cigarettes went to $6.85 a thousand and the prevailing retail price went to 14 cents. Shortly after this, some brands of 10-cent cigarettes came on the market and were very successful. Before the end of 1932 these 10-cent brands had captured over 20 percent of the cigarette business. In February 1933 the list price of the four big brands of cigarettes was reduced to $5.50 a thousand and on the same day the largest grocery chain in the country put posters on the windows of their 16,000 stores offering these four big brands of cigarettes at 10 cents a pack and at 97 cents for a carton of 10 packs.

These cigarettes were costing the jobber 9.7 cents a pack and the small dealer was paying a little over 10 cents a pack for them. Now, I cannot prove, though I naturally suspect, that the big grocery chain was paid for its services; but whether it was paid or was not paid does not make the least difference, for I should think that these facts, at least, are clear.

A year and a half after the crash, when all other retail merchandise was going down in price, and when the cost of their raw material was going down too, these four manufacturers increased their list price 45 cents a thousand over the October 1929 figure.

Although they made the largest profits in their history in the year 1932, they had really made a bad mistake. Not even their big advertising could keep out the competition of the 10-cent cigarettes when the retail price of their cigarettes when to 14 cents.

Before the end of 1932 they knew they had to do something to stop the growth of the 10-cent brands. Their attempt to charge more, just when people could afford to pay less, was bringing its inevitable results. But they did not want to bring out their own 10-cent brands to compete with their own profitable brands and they also did not want to reduce their list price to $4.75 a thousand, the level of their 10-cent competitors. Either of these ways would have forced them to pay for their own greedy mistake, and they were looking for a way to make other people share the paying with them.

So, on the same day, they all reduced their prices, not to $4.75 a thousand, but to $5.50 a thousand. That is a funny habit these big companies have. Whether their prices go up or down, they always change together. If it were not that someone told me it was against the law, I should think that they consulted about it beforehand.

They also made an arrangement, for the very same day, with a big grocery company to have these cigarettes featured at 10 cents a pack and 97 cents a carton. No one knows the nature of the cigarette business better than they do, and they just sat and waited for the cut that they had started to spread like wildfire through the whole country.

And they were successful. The little retailer made his heavy contribution toward saving the "four big" brands. When the cut spread, he had two choices: He could refuse to cut, and lose his cigarette volume, his customers, and the goodwill of his business; or he could follow the cut, and do half of his business below cost. Faced with the choice of two ways of committing suicide, is it any wonder that many of them chose the latter and for 10 months took a loss on every cigarette they sold rather than see their customers walk out of their stores?

Yes; the trust was successful. The 10-cent brands dried up. The brands of the four big manufacturers regained their volume. In January 1934, they increased their list prices to $6.10 a thousand and today they are doing a business bigger than ever.

Oh, yes; the "big four" were successful. At the cost in blood and tears of more than a half million American citizens, and through the help of an entirely free price, they were able to stifle competition. Under the price control of the code, that would have been impossible. Under the price control of the code, the "big four" could only have met their competitor's retail price by meeting his list price. Under the price control of the code, they would have had to pay the piper themselves and that is the one thing that they are absolutely opposed to doing.

Look at the matter another way. A man would be a child who would believe that if right now the cigarette order was lifted anyone except the four big cigarette manufacturers would be helped. Their list prices would go up as soon as they could decently raise them, or perhaps a little sooner than that, the retail price would stay just where it is, and the little shopkeeper, who, God knows, cannot afford it, would pay to make rich companies and rich people a little richer than they are.

I want to be careful though to be fair to the big companies and to say that I do not mean that they have engineered all of the big price cuts, or even most of them. No; these cuts come from all sorts of causes. A big department store may decide to sell cigarettes for the cost of the revenue stamps. Why not? It is only a tiny part of their volume and will cause a lot of talk. A baby department store, calling itself a "drug store", will sell brands of popular cigars at the retailer's cost. Is not competition the soul of trade and does not it make grand advertising, particularly when cigars are 2 percent of your business and 30 percent of the other fellow's? A chain of grocery stores will decide to go on a 3 months' spree of selling cigarette cartons at cost; have not we a free country and who would want to interfere with the enterprising merchant whose only object is to help the consumer? But I cannot begin to tell you all the ways in which cuts start in the retail tobacco trade. I can only tell you that, when they do start, they spread quickly and continue for a long time, and that the retailer is made to suffer cruelly while they last. I can also tell you that our code has cured this evil, and that for the first time the retail tobacconist is shielded from the depredations of what we contend is grossly unfair competition. Is it any wonder then that the whole retail tobacco industry, and expecially the small retailer, stands squarely behind the code?

After all, what does the code give me? It gives me a gross profit of 11 percent on cigarettes, whatever the manufacturer may allow on cigars, and for all practical purposes nothing on pipe tobacco. I am a fairly competent man, as shopkeepers go, and after I allow myself a salary of $35 a week, my business just about breaks even. My volume has gone up about 15 percent, and continues to increase slightly. It does not sound like anything to boast about, but when I compare what I have now with my condition before the code, I seem to be living in clover.

Senator KING. What was your condition in 1927, 1928, and 1929?

Mr. LEFKOWITZ. Well, it was probably the same as it is today.

I can pay my bills and take care of my family, and I do not have to worry about turning the key in the lock of my store. Of course, that is not much of an ambition, but most people have small ambitions; and I am not telling you all about it because I flatter myself that anyone is interested in me, but because I believe that some of you gentlemen will be interested in the 700,000 people that I am trying to represent and whose position is very much like mine. Their worry today, like mine, is that you may take away the little that has been given to them, and they tell you, through me, that it just seems unthinkable to them that you should do that.

When our President took office and when the "new deal" was announced, it opened up, for men like me, a new hope; it gave us a feeling that was almost security. What we felt was that for the first

time we had an administration that was interested in our problems and recognized that we were really a part of the business world that needed help; yes—I think the part of the business world that stood most in need of that kind of interest and assistance. You will understand what I mean when I say that to destroy that new-found faith and hope in the hearts of millions of your fellow citizens would be even a graver step than to take away that first little glimmer of economic benefit that its code has given to the retail tobacconists of America.

Senator KING. Thank you very much.

Will Mr. Kleinfeld please come forward?

TESTIMONY OF IRVING KLEINFELD, OF NEW YORK, N. Y., REPRESENTING THE GREATER CITY MASTER PLUMBERS ASSOCIATION, INC.

(The witness was duly sworn by Senator King.)

Senator KING. There has been filed with the committee, and the clerk hands to me, a resolution adopted by the Greater City Master Plumbers Association. Is that what you wanted to present?

Mr. KLEINFELD. That has been presented, and I have a statement here. I am not going to burden you to any great extent and will try to be as brief as possible.

Senator KING. The resolution referred to will be incorporated in the record at the conclusion of your statement, and you may proceed.

Mr. KLEINFELD. The association in Manhattan, which is subsidiary to and affiliated with the National Association of Master Plumbers, is called the Association of Master Plumbers, Manhattan Branch. The association in New York State, which is a subsidiary of and associated with the National Association of Master Plumbers, is the State Association of Master Plumbers of New York. This national association has a subsidiary and affiliated organization, in addition to the aforementioned branch in Manhattan, a plumbing association in each borough in New York City. The National Association of Master Plumbers it is admitted, submitted a code which was approved by the National Recovery Administration.

The divisional code authority is composed of 13 members, 7 of whom, or a majority, come from the board of directors of the National Association of Master Plumbers, and 3 others are appointed by the board of directors of this National Association of Master Plumbers. The executive director of the divisional code authority is a past and the retiring president of the association, the secretary and treasurer is the executive secretary of the said association and the editor of their monthly official publication.

The State code compliance committee, which is under the jurisdiction of this divisional code authority, has as its chairman the chairman of the State Association of Master Plumbers in New York State, and is composed of 9 members, 6 of whom are members of the organization.

The local code compliance committee, under the jurisdiction of the divisional code authority and the State code compliance committee, is composed of 9 men, consisting of 6 men who are members and officers of the State and national associations, as aforesaid, or their affiliates, and 3 men who are appointed by them.

The actual management of the divisional code authority, State code compliance committee, and the local code compliance committees is controlled by the members and officers of the said organizations on the committees, and there is no active participation therein on the part of those members of these committees who are nonmembers of these affiliated organizations.

It is a well-known fact that the members of the Manhattan branch of this affiliated organization consist primarily of licensed plumbers engaged in contracting for construction work, involving primarily big jobs. Approximately 75 percent of the licensed plumbers in New York City, and more especially in Manhattan, are engaged primarily in jobbing-contracting work dealing merely with small repair jobs and practically no big construction work. There can be no denial of the fact that the Association of Master Plumbers, Manhattan Branch, is not at all representative of the plurality of plumbers in New York City by virtue of that fact.

Despite this situation, a majority of the members of the various Plumbing Code committees are administering the code which affects a plurality of individuals not engaged in the same phase of work in this industry and with whose difficulties, experiences, and hardships they are not familiar. Despite the many protests for equitable changes, despite the requests of individuals representing a plurality of plumbers in Manhattan—which means the licensed plumber engaged in small repair work—for representation on these code committees, the same has been consistently refused.

It must be apparent that the same conditions cannot exist in these two phases of the plumbing business and that the same regulations with respect to prices and wages cannot apply to both and that some differentiation must be made which will do justice to the small plumber engaged in small repair jobs.

To substantiate the fact that the present code is unfair, unreasonable, inequitable, and does not tend to eradicate any of the many evils that exist in the trade, and causes tremendous hardship and oppresses the small plumber, this association has in its possession approximately 800 duly executed and signed protests by plumbers in the Borough of Manhattan, protesting against the present Plumbing Code. This should be contrasted with the membership of the Association of Master Plumbers, Manhattan Branch, which does not equal and has never aspired to that number in membership.

Although the plumbing contracting division is merely one of the phases of the construction industry and its code comes under the Construction Code, the budget of the Plumbing Code exceeds by approximately $1,000,000 the budget of the Construction Code. The budget of the Plumbing Code is approximately $1,350,000. For the purpose of meeting this budget, every plumber in the United States has been ordered to pay one-quarter of 1 percent of his gross business done in the year 1933, with a minimum assessment of $5. This assessment is based on the gross business, irrespective of whether or not the plumber involved has made a profit or sustained a loss in the year 1933. In addition thereto, this assessment was imposed in the latter part of 1934, at a time when it was apparent that no provision, therefore, could have been anticipated in the business of the year on which the assessment is based.

In addition thereto, all estimates for plumbing work involving more than $100 must be filed with a bid depository, and with the filing of the estimate a filing fee of $1 must be paid. There can be no denial of the fact that the average small plumber is called upon to estimate on an average of 25 jobs, involving more than $100 each a month, and if this regulation requiring the filing of a copy and the payment of a $1 filing fee were enforced, each plumber in the United States would, in addition to paying the one-quarter of 1-percent assessment as above, be required to pay to the bid depository $25 a month; and this payment must be made, irrespective of whether or not the plumber filing and paying is the successful bidder and actually procures the job. This committee must be cognizant of the fact that on the usual plumbing job anywhere from 3 to 10 plumbers are called upon to submit bids.

The local code compliance committee in Manhattan has consistently endeavored to enforce the provisions of the Plumbing Code, and more particularly the requirement involving the payment of the assessment and the filing fees on the filing of estimates. Letter after letter, registered letters, and telegrams have been sent to plumbers directing, ordering, and requesting them to show cause before the code compliance committee for an alleged violation of the Plumbing Code, more particularly the requirement involving the payment of the filing fee on estimates. The code compliance committee refused to accept estimates for filing when offered by plumbers unless accompanied by a filing fee. Criminal actions have been instituted in the magistrates court against alleged violators. In the commercial frauds division of the magistrate courts in Manhattan the judge who presided at some of these cases refused to enforce the regulation requiring the filing of the bid and the payment of the filing fee and found that—

> The provision for the payment of the $1 fee is unreasonable and its operation inequitable and is not properly related to the matter of the code.

He further found that "Such a rule would be unreasonable, harsh, inequitable, and capricious, and would tend to discourage trade." After this decision the chairman of the State code compliance committee wrote to the attorney for this association and advised him of the fact that estimates would be accepted with or without the filing fee. Despite this letter, and despite the decision aforesaid, the local code compliance committee has continued and persisted in its practice of citing alleged violators of this provision and ordering, directing, and requesting them to show cause for a violation of the same.

Practically every communication from the code compliance committee, instead of preaching cooperation for the betterment of the industry, threatens a $500 fine for each day of violation, and jail. Threats and statements are made that plumbers' licenses will be revoked unless certificates of compliance with the Plumbing Contracting Code are filed. Plumbers are warned that unless they pay the salaries to their employees provided for in the code, they will go to jail under body attachments. They are also advised that if they do not pay the wage rate in the code, the code compliance committee will advertise in newspapers of all nationalities advising their employees to sue for back wages or the difference between the wages paid and accepted and those required by the code, despite the fact that it is common knowledge in New York that men working for licensed

plumbers on construction work have always received a greater wage rate than those doing minor repairs.

Protests have been repeatedly made to all code committees and to the National Recovery Administration itself, earnestly petitioning for hearings dealing with the necessity for more equitable changes in the present code. No hearings have been granted. Threats by officers of the local code compliance committee to the effect that if plumbers "chiseled" on filing bids and paying the filing fee by splitting their estimates, the code compliance committee would reduce the filing requirement to $50 for estimates and if still continued to a further minimum of $25. To bear out this threat an amendment has been proposed to the code of fair competition for the Plumbing Contracting Division by this divisional code authority affiliated with the National Association of Master Plumbers, reducing the minimum on estimates required to be filed from $100 to $50. No official notice of this proposed change was given to this organization, despite its known interest in the proposition, and the same was merely learned by a casual visit to the offices of the National Recovery Administration of the Plumbing Contracting Division. Counsel for this association has been advised in writing by the Deputy Administrator in charge of the Plumbing Contracting Code that this amendment is now being drafted in final form and will be sent forward for final approval within a very short time.

This association and its representatives have been advised by the National Recovery Administration, and more particularly the Division in charge of the plumbing contracting code, that if the provisions of the Plumbing Contracting Code are found to work a hardship upon them, each firm or plumber desiring to make an application for exemption must furnish the following information:

1. Statement of exact territory the exemption is to cover.
2. Total number of master plumbers in area to be exempted.
3. Percentage of employers in area requesting exemption.
4. Total number of journeyman plumbers employed by master plumbers in the area and percentage of these employees in favor of the exemption.
5. A substitute skilled wage rate should be suggested on all applications for exemption from the skilled wage rate provided in the code.
6. Approximate total volume of business performed in 1929 and 1933 in the locality requesting exemption.
7. Wage rates which were paid to journeyman plumbers in 1929 and 1933.
8. A notarized statement to which all applicants are a party to the effect that they have complied with the wage and hour provisions of the Plumbing Construction Code since its effective date, June 4, 1934.
9. Give any additional information pertinent to the application which would tend to substantiate the advisability of having skilled wage rates under Plumbing Contracting Code reduced or any other change made in the code.

The mere reading of these requirements indicates per se that compliance therewith by each plumber seeking this relief practically nullifies the opportunity for exemption offered because of the tremendous hardships and difficulty in complying therewith. Repeated requests have been made for an arrangement to hold a hearing in the locality involved on the question of going through this cumbersome and expensive procedure, but the same have been refused.

Some of the affiliated organizations in the boroughs of New York City, in their organization magazines, have repeatedly gloated over the fact that the provisions of the code are forcing plumbers to turn in their license plates, and they proudly announce the fact that many more are expected to do so. This is merely an admission on the part of those affiliated with the code compliance that the code is oppressing the small plumber in New York and forcing him out of business.

This statement is merely a summary of the high lights of the evils caused by this code. A repetition of all the instances of oppression and hardship would make this statement too cumbersome to read. It is the firm belief of this organization, which belief is based on the experience of its members with the plumbing code, that the same is unfair and inequitable and oppresses and tends to oppress the small plumber in New York City engaged in the jobbing phase of the plumbing business involving repair work. It is the firm opinion of this organization and its members that if the National Administration desires to correct the evil of unfair competition, that a separate and distinct code should be promulgated for this phase of the plumbing business and only after an opportunity to be heard is afforded to the individuals who will be directly affected by this code, which opportunity was not afforded to these plumbers at the time when the present Plumbing Code was approved and adopted. There is no question about the fact that plumbing repair work is a local business, purely intrastate in nature, and does not, within the widest stretch of the imagination, in any way affect interstate commerce.

I also have, Mr. Chairman and gentlemen, a few suggestions in regard to the proposed law which may be enacted, and I would like to submit those.

Senator KING. Those suggestions may be included in the record at this time.

(The paper referred to is as follows:)

I am a licensed plumber, duly licensed in the city of New York as such, for approximately 9 years. I have been engaged in the plumbing business for 21 years. I am the executive secretary of the Greater City Master Plumbers Association, Inc., of 1123 Broadway, New York City, since April 1, 1935. I, this day, submitted to the Senate Finance Committee, investigating the National Industrial Recovery Act, a statement in the support of a resolution heretofore submitted to the said committee, requesting that the National Industrial Recovery Act be discontinued unless equitable changes are made therein, after a due opportunity to be heard is given to all interested parties.

In view of the fact that certain equitable changes are suggested, I feel it necessary to refer to the same with my experience in the business and my knowledge of the reactions of the many members of this association as a basis therefor.

It is my unalterable opinion that an opportunity for hearings should be afforded to all members of this trade affected by any Plumbing Code, so that the promulgators of any new code may understand the evils and oppression caused by the present code with a view and basis for remedying the same.

Assessments, if any, should be based not on gross business, but on a profitable return from business. Filing fees, if necessary, should be paid only on jobs actually awarded to bidders and not on bids. Cost of administration should be distributed equitably by an assessment in which the entire trade partakes in ratably out of business procured, instead of business which one may receive and which never comes.

Compliance and management should be put in the hands of impartial individuals in no way affiliated with a trade, instead of in the hands of competitors in a trade, with true representatives of each phase of the trade as advisers to the members of the compliance committee. Compliance committees, if any, should not be primarily interested in the collection of assessments and filing fees as they presently are in this trade, but should be primarily interested in eradicating the

evils that may exist in a trade and in that way encourage compliance with its regulations, and voluntary, whole-hearted payment of assessment to a good and helpful cause. Price fixing should be entirely eliminated because it tends to stifle competition which is the crux of all business. Compliance should not be put in the hands of members of a particular association, resulting in discrimination against other worthy organizations in the same trade because the same must lead to discrimination against nonmembers of the particular organization which is administering the code.

In the final analysis, it is my opinion that the National Industrial Recovery Act, if it is going to affect local plumbers in a particular locality engaged in small repair work, should be allowed to expire and not continue. That type of work is purely local and accordingly at the most only involves intrastate commerce, and in no way affects interstate commerce. The administration of unfair competition in particular localities should be left to the municipal departments, in the particular localities involved. It is impossible to make a general rule or rules to cover this entire United States, and attempt to do justice to every particular locality in these United States. The conditions existing in this business in many instances differ from mile to mile. It is a known fact that in the city of New York there are differences in the conditions from borough to borough. They certainly are not the same in all the cities in New York State. It is impossible for a national code to attempt to regulate this business on certain set primary rules affecting the entire country when this condition exists.

The present code has oppressed the small business man and will continue to oppress him. Changes must be made. I do not hesitate to state that the evils that existed before the adoption of the plumbing code in no way match the added evils which have continued to burden the plumber in New York since the adoption of the national plumbing code.

I submit this statement with the knowledge and approval of the officers and members of the Greater City Master Plumbers Association, Inc., which has a membership of approximately 400 licensed plumbers in the Borough of Manhattan.

(The resolution of the Greater City Master Plumbers Association, Inc., heretofore referred to, is as follows:)

RESOLUTION UNANIMOUSLY ADOPTED BY THE GREATER CITY MASTER PLUMBERS ASSOCIATION, INC., OF 1123 BROADWAY, NEW YORK CITY, TO THE SENATE FINANCE COMMITTEE INVESTIGATING THE NATIONAL INDUSTRIAL RECOVERY ACT

Whereas the Greater City Master Plumbers Association, Inc., consisting of licensed master plumbers in the Boroughs of Manhattan and the Bronx, in the city and State of New York, was incorporated in New York State in 1930 for the following purposes:

"For the betterment of the industry pertaining to licensed plumbers in the city of New York; to create a fraternal union and spirit of good fellowship among its members and by mutual intercourse and group discussion attain a higher knowledge of all that pertains to the science and art of the useful and important industry of sanitary plumbing"; and

Whereas the Greater City Master Plumbers Association, Inc., has the largest membership of licensed master plumbers in the Bough of Manhattan engaged in the jobbing contracting business, which consists of minor plumbing repairs, and is the truest representative of that phase of the plumbing trade in that borough; and

Whereas the said association, as evidence of its patriotism to its country, and to fully cooperate with the President of the United States, preparcd, printed, and submitted to the National Recovery Administration a proposed Code of Fair Competition for the Plumbing Contracting Industry: and

Whereas the National Recovery Administration approved and submitted to the President of the United States, and the President of the United States signed a Code of Fair Competition for the Plumbing Contracting Industry, other than the code submitted by this association, and without notice or opportunity to be heard to the said Greater City Master Plumbers Association, Inc., and

Whereas the existing Code of Fair Competition for the Plumbing Industry is one which was submitted by the National Association of Master Plumbers, and

Whereas the administration and enforcement of the said code was placed in the hands of the officers and members of the said National Association of Master Plumbers and its affiliated organizations and associations, and

Whereas the Greater City Master Plumbers Association, Inc., is not in anywise affiliated with said National Association of Master Plumbers, and

Whereas the organization affiliated with the National Association of Master Plumbers in the Borough of Manhattan is not truly representative of the trade in this jurisdiction, and

Whereas the said code is locally administered through the offices of the New York Master Plumbers Association, an association affiliated with the Association of Master Plumbers, and

Whereas the said Code of Fair Competition for the Plumbing Contracting Industry approved by the President of the United States and now in operation is unfair, unreasonable, inequitable, does not tend to eradicate any of the many evils that exist in the trade, does not correct unfair competitive practices which have existed, causes tremendous hardship to and has oppressed the small plumber, discourages property owners from making repairs because of the increased cost caused thereby, did not take into consideration and does not cover the situation involving jobbing contracting plumbers engaged in repair work, and

Whereas the provisions of the said code and the regulations promulgated by the divisional code authority after 1933 and during the latter part of the year 1934 imposed an assessment equal to one-fourth of 1 percent of the gross business done by each and every plumber in the United States in the year 1933, irrespective of whether or not the individual plumber made or lost money during that year, and

Whereas all licensed plumbers are required to file written estimates on jobs of $100 or more with a designated depository and pay a filing fee of $1 therewith, irrespective of whether or not the plumber procures the particular job on which he has so filed and paid, and

Whereas there are various phases of the said plumbing contracting industry, such as plumbers doing new construction work and plumbers doing minor repair work, which clearly differ from each other and require separate and different regulations and requirements, and

Whereas the said code does not differentiate between the types of work done by plumbers, and makes all regulations mandatory on each and all of them, and

Whereas the National Recovery Administration, the divisional code authority, the local code compliance committee, and all agents and representatives affiliated with the said code, have consistently failed to comply with any of the requests for equitable changes, in order to insure fair regulations and avoid oppression to the small plumber, and

Whereas the said Plumbing Contracting Code, as it now stands, is forcing the "small" plumber to retire from business because of his inability to comply therewith, to the detriment of his business and because compliance therewith would mean annihilation in this said business, and

Whereas the members of this association have, with a thought to their patriotic duty and cooperation with the President of the United States, actually attempted to comply with all the rules and regulations of the Plumbing Contracting Code, but have found that they could not remain in business if they were compelled to fully comply therewith, with the realization that a continuation of their business on a reasonably profitable basis would necessitate a violation of the said code; Now, therefore be it

Resolved, That the Senate Finance Committee to investigate the N. I. R. A. report back to the Senate of the United States that the N. I. R. A. should not be continued after June 16, 1935, on the ground that if the same is continued and enforced in its present form it will result in oppressing the small business man and the small jobbing contracting plumber engaged in doing minor repair work, and will ultimately tend to force them out of business and create a monopolistic control of business by the more influential men in the trade engaged in bigger divisions, unless equitable changes are made in the National Industrial Recovery Act and the Code of Fair Competition for the Plumbing Contracting Industry, after an opportunity to be heard is granted to all members and trade associations of this particular industry.

Respectfully submitted.

GREATER CITY MASTER PLUMBERS ASSOCIATION, INC.,
IRVING KLEINFELD, *Executive Secretary.*

NEW YORK, *April 6, 1935.*

The CHAIRMAN. I want to make this announcement, that it is the intention of the committee to close these hearings next week, and that no other witnesses will be heard excepting General Johnson in public hearings after Thursday of next week. General Johnson has been requested to be here Thursday morning, and after he is heard the com-

mittee hopes to close these hearings and go into executive session in the writing of the bill.

Senator LA FOLLETTE. Mr. Goode is the next witness. Will you please come forward?

TESTIMONY OF JOHN A. GOODE, ASHEVILLE, N. C., REPRESENTING THE NATIONAL RETAIL DRUG CODE AUTHORITY

(The witness was duly sworn by Senator La Follette.)

Senator LA FOLLETTE. Will you give your full name and address and whom you represent.

Mr. GOODE. My full name is John A. Goode, Asheville, N. C. I am chairman of the National Retail Drug Code Authority, and actively engaged in the operation of a retail drug store.

Senator LA FOLLETTE. You may proceed.

Mr. GOODE. The National Retail Drug Trade Code Authority presents the following brief in connection with S. 2445 now before your committee [reading]:

The code has been effective for 18 months, being approved on October 21, 1933. It is estimated that 60 percent of the trade, which is made up of about 58,000 drug stores, sponsored the code. It has been supported financially by the trade without cost to the tax-payers, although operated very economically—the National Retail Drug Code Authority has spent less than $30,000 to date. The total budget for the trade is $198,979.05 for the 6 months' period ending April 30. The code is administreed through 340 local code authorities.

That, after being thus in operation for a year and a half, this code is desired and its continuance, and the continuance of N. R. A. itself, of course, wanted by those subject to it, is demonstrated by the answers to a Nation-wide survey summarized in exhibit A.

That the enforcement of the code has been both satisfactory and effective is shown by the figures, selected at random, in exhibit B, which details actual performance. That infractions have not been abnormal nor prompt handling of complaints lacking is shown by exhibit C, which tabulation, incidentally, shows that the local authorities themselves settled over 92 percent of all alleged violations.

That the terms of the code are effective is thus shown. That they are nevertheless acceptable is demonstrated by the fact that but six exemptions have been requested during its operation, although it is estimated that the code hour and wage provisions had, by 1934, increased employment in the trade 10 percent over 1929 employment.

That the code has actually resulted in lower prices has been demonstrated by an impartial national price survey undertaken by Prof. John H. Cover, professor of statistics at the University of Chicago. This survey showed drug items to be the exception among all the 631 items in 17 lines surveyed, in that they alone in 1934 recorded decreases instead of increases. Reports from communities as scattered as Atlanta, New York, Washington, Brooklyn, Minneapolis, St. Paul, Hibbing, Mankato, and Winona showed in all instances 1934 drug prices below the corresponding 1933 prices, the lowering ranging from 6.82 percent to 1.76 percent. This remkarable fact is detailed in exhibit D. Special surveys instigated by the code authority and conducted by an independent organization confirm these remarkable results. An example of these confirmatory reports is given in exhibit E.

That this trade needs the code is demonstrated by the fact that the predatory loss leader selling and the natural results of the depression had brought its members to a sad plight, which has been only in part corrected by the operation of the code to date and the improvement in general conditions which has taken place since 1932. It has been estimated that in 1933 between 50 and 60 percent of the retail druggists in the country were on a C. O. D. basis, and that the wholesale druggists had over one hundred million dollars in past due accounts outstanding and in 1932 wrote off a loss of 2.49 percent of sales due to bad debts. The United States Census of Distribution estimated that in 1929 the total sales of retail druggists were $1,690,399,000. It is estimated this was reduced to

$1,068,252,000 in 1933. In 1929 there were 179,000 part-time and full-time retail drug store employees receiving more than $204,000,000 in wages. In 1933, 154,424 part-time and full-time employees received but $137,908,000 in wages. The approximate annual earnings of a drug-store employee in 1929 was $1,260; in 1933, $985, according to the Bureau of Census figures. The census figures indicate that the loss in volume of sales and number of employees between 1929 and 1933 was heavier for the independent pharmacies than for the chain or cut-rate drug stores. During this 4-year period the net sales in chain stores decreased 15 percent, whereas the net sales in drug stores of all types decreased 37 percent. The number of chain stores actually increased approximately 7 percent.

Figures reflecting similar trends come, of course, from all lines of retailing. And retailing is not only one of the largest employers, but its hundreds of thousands of small proprietors, if prosperous, can, to an important extent, affect the prosperity of the entire Nation. These men are an important part of that great body of small men who, after all, are the bulk of American business.

This code authority has found in actual practice that a code of fair competition can actually improve trade conditions, increase pay rolls and benefit the consumer. It sees no reason why this experience cannot be duplicated generally, just as it has actually been paralleled in several trades under their codes. Therefore, the authority is in favor of the enactment of S. 2445 and the continuation of N. R. A.

Attached to our brief is an interesting survey which I shall not take the time to read, but it asks some very interesting questions, such as, "Should the N. I. R. A. be continued after June 1936", and, "Is collective bargaining of any importance to you?" and, "Has the Drug Code been of value to the trade?"

Senator LA FOLLETTE. That may be incorporated in the record at this point.

(Said survey is as follows:)

EXHIBIT A

Question	Percent vote	
	Yes	No
	Percent	*Percent*
1. Should N. I. R. A. be continued after June 1935?	81.1	18.9
2. Is collective bargaining of any importance to you?	19.5	80.5
3. Has the Drug Code been of value to the trade?	89.7	10.3
4. Has reemployment increased?	65.0	35.0
5. Have wages been increased?	71.8	28.2
6. Have trade practices improved?	81.6	18.4
7. Should the Drug Code be continued?	90.2	9.8
8. Should some other form of business control replace the code?	12.2	87.8
9. Should retailers in the towns of less than 2,500 population be exempted?	30.6	69.4
10. Are the provisions governing hours of labor satisfactory?	47.5	52.5
11. Should they be increased?	19.0	81.0
12. Should they be decreased?	45.2	54.8
13. Are the minimum wages satisfactory?	45.7	54.3
14. Should they be increased?	52.2	47.8
15. Should they be decreased?	11.6	88.4
16. Should the present loss-limitation provision be continued?	92.7	7.3
17. Are the other trade-practice provisions satisfactory?	78.8	21.2

Mr. GOODE. The industry, at the conclusion of the foregoing survey, shows itself to be in favor of the continuance of our code to the extent of 92 percent.

Our code has done a very unusual thing, in reducing over 500 leading products and items in cost to the consumer, because a great many manufacturers had list prices on which they marked down with secret and abnormal discounts to big buyers, and forced the little fellow to sell at approximately his cost, to meet that competition, fearing, of course, his customers would go away if he did not.

A provision in our code provides that you cannot sell below the manufacturer's wholesale list price, and it so happens in our business,

in 90 percent of the merchandise, we deal in dozen lots, so that the wholesale list price was the wholesale list price per dozen of the manufacturer, and when it came to the point where the larger buyer could not use his big discount to sell below the wholesale list prices of this manufacturer, the manufacturer then very promptly dropped some 500-odd items, and the wholesale price went down so that the consumer got a saving.

By reason of the fact we deal, to a larger extent than possibly any other type of business, in standardized advertised merchandize, the sale of counterfeit merchandise has been great in our industry, and has been going tremendously.

In order to try to control the wide distinction, or the difference in prices of competitive articles, which is, of course, what the cut prices are built upon, they use as bait and advertising this counterfeit merchandise, which furnishes a wonderfully cheap medium for doing that. Any number of manufacturers have run into this condition. The razor-blade manufacturers have a tremendous amount of it, where they have counterfeit merchandise made out of nothing but tin, but in all other respects it is the same as the genuine article, and also the leading perfume manufacturers have had trouble with the same thing, and I could go on and name many standard merchandises that have been counterfeited.

Now, no matter how low that price may be on the counterfeit merchandise, under the code they can no longer sell it below the list price of the manufacturer, so that it has been quite a protection to the public and the legitimate dealer, and I may say also to the public health, in many instances.

Another great disadvantage we have to deal with, the average independent retail drug store, and I speak as a man who works behind the counter, in the everyday practice of the mechanics of the thing, so that I know, one of our great problems is discrimination between the large buyer and the small buyer.

When the time comes that the average efficient retail drug store can own its retail merchandise as cheap as his competitor, a great many of our problems will be solved, but we must have some protection in the retail sale of our merchandise if we are to employ additional people, for the reason our bankroll is not long enough to compete with the fellow who has the advantage of the extreme quantity discount.

One other thing I would like to call to the attention of the committee is better enforcement of the N. R. A. than they have now. These unfair practices have been growing for possibly 25 or 50 years, and we cannot cure them overnight, but possibly a little better job could be done in the set-up and enforcement of the code than now exists.

I think if you repealed the N. R. A. and took away all of the protection, you would see an orgy of cutthroat competition that will put lots of the small drug stores out of business.

A great many of the large combines, during the period of the depression, have taken advantage of the situation and extended their outlet, their leases and opportunities for competition, and I say you would see a comeback in the sale of counterfeit merchandise, and I think you would see a great many additional vacant store buildings in the country.

The small man, we feel, has his part in this picture He is certainly a part of the nucleus that makes the small communities grow.

We feel the eyes of the business world are more on this committee today than any other part of our Government. I think it is the most important piece of work that is going on today.

Just what is going to be done about our future business practices?

The large combines and interests are turning now to control manufacture, wholesaling, and retailing. Just what is to be done with the future of the retailer and the boy and girl, how are they going to go into business if the big business is to control it, I do not know.

If the N. R. A. is going to be done away with and let big business have it, we had better look toward a formula somewhere in the tax plan so that the taxes can be paid by them, because the little business man cannot go out and earn any profits.

Senator LA FOLLETTE. Thank you, Mr. Goode. If you have anything further to present, you may file it.

Mr. GOODE. I would like to hand to the clerk for insertion in the record, certain exhibits giving prices, and so forth, which are attached to my written statement which has been presented.

Senator LA FOLLETTE. Those may be included in the record.

(Said exhibits are as follows:)

EXHIBIT B

Milwaukee, Wis.

Item and size	Manufacturer's suggested retail price	Code minimum price	Reed's and Walgreen's Mar. 21, 1935
	Cents	*Cents*	*Cents*
Feenamint (25 cents)	19	17	17
Pebeco Tooth Paste (25 cents)	----------	18	18
Blue Jay Corn Plasters (25 cents)	21	17	17
Probak Blades, 5's (25 cents)	25	19	19
Johnson & Johnson Baby Talc (25 cents)	19	17	17
Gem Blades, 5's (35 cents)	27	24	23
Bost Tooth Paste (40 cents)	32	27	27
Pepsodent Tooth Paste (50 cents)	38	31	31
Ipana Tooth Paste (50 cents)	39	34	34
Forhan's Tooth Paste (50 cents)	39	34	34
Hind's Honey and Almond Lotion (50 cents)	39	37	37
Ex Lax (50 cents)	39	34	34
Lysol Disinfectant (50 cents)	43	38	38
Gillette Blue Blades, 10's (50 cents)	49	37	37
Iodent Tooth Paste (50 cents)	39	35	34
Italian Balm (60 cents)	55	44	44

Allentown, Pa.

Item and size	Manufacturer's suggested retail price	Code minimum price	Liggett's Drug Store Mar. 7, 1935
	Cents	*Cents*	*Cents*
Ex Lax (25 cents)	19	17	17
Lysol (25 cents)	21	19	19
Feenamint (25 cents)	19	17	----------
Palmolive Shaving Cream (25 cents)	23	20	20
Epso Tabs (25 cents)	----------	17	----------
Palmolive Shampoo (25 cents)	23	20	20
Phillip's Milk of Magnesia (25 cents)	----------	19	----------
Colgate's Shaving Cream (25 cents)	23	20	20
Squibb's Milk of Magnesia (25 cents)	----------	15	----------
Anacin Tablets (25 cents)	----------	17	----------
Carter's Little Liver Pills (25 cents)	----------	17	----------
Zonite (30 cents)	----------	21	----------
Vick's Nose Drops (30 cents)	----------	21	----------
Bromo Seltzer (30 cents)	25	20	20
Grove's Laxative Bromo Quinine (35 cents)	----------	24	24

EXHIBIT B—Continued

Baltimore, Md.

Item and size	Manufacturers suggested retail price	Week of Mar. 18, 1935		
		Ben's Cut-Rate Drugs	James' Drug Store	Star Cut-Rate Store
	Cents	*Cents*	*Cents*	*Cents*
Bayer's Aspirin (15 cents)	12	10	12	
Modess		16		
Kotex		17		17
Kleenex (20 cents)		14		
Lavoris (25 cents)	21	17	17	
Pebeco Tooth Paste (25 cents)		18		18
Epso Tabs (25 cents)		17		17
Feenamint (25 cents)	19	17		17
Carter's Little Liver Pills (25 cents)		17	17	
Bayer's Aspirin (25 cents)	19	17	19	
Ex Lax (25 cents)	19	17		
Palmolive Shampoo (25 cents)	23	20	20	
Dr. West's Tooth Paste (25 cents)		17		2/25
Pepsodent Antiseptic (25 cents)		16		16
Listerine Tooth Paste (25 cents)	19	25		17
Cascarets (25 cents)		17		17

Kansas City, Mo.

Item and size	Manufacturers suggested retail price	Code minimum price	Katz Drug, Mar. 17
	Cents	*Cents*	*Cents*
Glazo (25 cents)	23	17	19
Anacin Tablets (25 cents)		17	17
Barbasol (25 cents)		18	17
Forhan's Tooth Paste (25 cents)	25	20	18
Kolynos Tooth Paste (25 cents)		17	18
Hill's Cascara Quinine (30 cents)		19	19
Dr. Mile's Alka Seltzer (30 cents)	24	20	20
Dr. Lyons' Tooth Powder (35 cents)		24	26
Frostilla Lotion (35 cents)		26	24
Ingrams' Shaving Cream (35 cents)	29	24	24
Italian Balm (35 cents)		26	26
Groves' Laxative Bromo Quinine (35 cents)		24	24

Battle Creek, Mich.

Item and size	Manufacturers' suggested retail price	Code minimum price	Mar. 15, 16, 22, 23, 1935	
			Liggett's Drug	Walgreen's Drug
	Cents	*Cents*	*Cents*	*Cents*
Anacin Tablets (25 cents)		17		17
Bost Tooth Paste (40 cents)	32	27	27	27
Dr. Lyon's Tooth Paste (50 cents)	43	35	35	35
Rem (60 cents)	49	40		40
Squibb's Mineral Oil (75 cents)		50		50
Lavoris ($1)	79	67		67

Cincinnati, Ohio

Item and size	Manufacturers' suggested retail price	Code minimum price	King's Drug Store Mar. 14, 1935
	Cents	*Cents*	*Cents*
Scholl's Zino Pads (35 cents)	29	24	28
Pepsodent Tooth Paste (50 cents)	38	31	31
Williams' Shaving Cream (50 cents)	39	34	34
Pebeco Tooth Paste (50 cents)	39	35	35
Forhan's Tooth Paste (50 cents)	39	34	34
Ipana Tooth Paste (50 cents)	39	34	34

EXHIBIT B—Continued

Cincinnati, Ohio—Continued

Item and size	Manufacturers suggested retail price	Code minimum price	King's Drug Store Mar. 14
Barbasol Shaving Cream (50 cents)	$0.39	$0.35	$0.35
Rem (60 cents)	.49	.40	.40
Pepsodent Antiseptic ($1)	.79	.67	.67
Lavoris ($1)	.79	.67	.67
Lysol ($1)	.83	.75	.75
Evening-in-Paris Perfume ($1.10)	1.10	.74	.79
Scott's Emulsion ($1.20)	.94	.80	.80
Pertussin ($1.50)	1.19	1.00	1.00
Agarol ($1.50)	1.09	1.00	1.00
Irradol A, Parke, Davis ($1.50)	1.19	1.00	1.00

EXHIBIT C

State	Congressional district	Loss limit complaints		Other trade practice complaints		Labor complaints		Compliance not adjusted but referred	
		Received	Adjusted	Received	Adjusted	Received	Adjusted	N. R. D. C. A.	N. R. A.
District of Columbia.	District of Columbia	59	52	7	7	6	6	0	0
Arkansas	Fourth	6	5	6	6	3	1	0	3
Do	Fifth	65	64	4	4	5	5	0	1
California	Oakland	41	41	0	0	7	7	0	0
Alabama	Sixth	0	0	0	0	0	0	0	0
California	First, second, third, fourth, fifth, ninth.	1,036	1,036	0	0	10	8	0	2
Do	Tenth-A	0	0	0	0	0	0	0	0
Do	Tenth-B	10	5	6	3	0	0	0	7
Do	Nineteenth	50	50	0	0	0	0	0	0
Do	Los Angeles	1,043	862	11	58	33	30	185	137
Connecticut	Fourth	19	18	2	2	2	1	1	2
Georgia	do	0	0	0	0	0	3	0	0
Do	Fifth	30	30	13	13	6	6	0	0
Do	Sixth	0	0	0	0	3	2	0	2
Illinois	Twelfth	40	40	10	10	0	0	0	0
Indiana	Fourth	3	3	0	0	0	0	0	
Do	Tenth	0	0	0	0	0	0	0	0
Do	Twelfth	284	284	123	86	2	0	0	0
Iowa	Second	20	6	1	1	1	1	0	14
Do	Sixth	10	10	2	2	2	1	0	1
Do	Ninth	10	10	0	0	0	0	0	0
Kansas	Third	5	5	0	0	0	0	0	0
Do	Fifth	312	312	69	57	9	9	0	44
Kentucky	Third	10	9	0	0	0	0	0	1
Do	Ninth	0	0	0	0	0	0	0	0
Louisiana	First, Second, Third, Fifth, Seventh, and Eighth.	47	47	45	27	0	0	1	19
Massachusetts	Sixth	60	60	22	22	1	0	0	1
Do	Eighth	0	0	0	0	0	0	0	0
Do	Boston								
Do	Fifteenth	176	175	0	0	0	0	0	0
Michigan	Detroit	369	364	3	3	27	27	1	3
Do	Second	11	11	1	1	1	0	0	0
Do	Seventh	1	1	0	0	0	0	0	0
Do	Seventeenth	5	5	1	1	0	0	0	0
Minnesota	Second	0	0	0	0	0	0	0	0
Do	Fourth	130	126	11	11	3	0	0	6
Do	Sixth	0	0	0	0	0	0	0	0
Mississippi	First	0	0	0	0	0	0	0	0
Missouri	Kansas City	264	263	329	329	21	1	0	1
Do	Eleventh, Twelfth, and Thirteenth.	89	77	42	41	33	21 27	7	15
New Mexico	State	0	0	0	0	0	0	0	0
New York	City	7,731	7,070	661	540	26	3	8	682
Do	Twenty-seventh	4	2	0	0	0	0	3	0
Do	Twenty-ninth	1	0	0	0	0	0	0	1
Do	Thirty-fourth	9	8	1	0	0	0	0	2
Do	Thirty-ninth, Fortieth, Forty-first, Forty-second.	608	591	95	89	0	0	0	3

EXHIBIT C—Continued

State	Congressional district	Loss limit complaints		Other trade practice complaints		Labor complaints		Compliance not adjusted but referred	
		Received	Adjusted	Received	Adjusted	Received	Adjusted	N. R. D. C. A.	N. R. A.
North Carolina	Seventh								
Do	Eighth								
Do	Tenth	(1)	(1)	7	6	1	0	0	1
Do	Eleventh	21	21	3	6	2	2	0	0
Ohio	Third	164	164	0	0	1	1	0	0
Do	Third A								
Do	Ninth	670	131	0	0	0	0	0	42
Do	Fourteenth								
Do	Sixteenth	26	26	7	7	1	0	0	1
Do	Twentieth, Twenty-first, Twenty-second.	206	201	3	3	18	15	2	6
Oklahoma	Third	0	0	0	0	0	0	0	0
Oregon	First	44	42	0	0	1	1	0	2
Pennsylvania	Allegheny	49	47	14	11	6	1	1	9
Do	Westmoreland	6	6	0	0	0	0	0	0
Do	Eighth	39	38	0	0	2	1	0	1
Do	Ninth	11	35	0	0	0	0	0	0
Do	Sixteenth	15	14	11	11	0	0	1	0
Do	Seventeenth	0	0	15	15	1	1	0	2
Do	Twentieth	70	70	0	0	0	0	0	0
Rhode Island	State	0	0	0	0	0	0	0	0
South Carolina	First	6	3	0	0	0	0	3	0
Do	Fourth	1	1	0	0	3	1	1	1
Tennessee	Fourth	0	0	0	0	0	0	0	0
Do	Ninth	9	9	1	2	12	12	0	2
Texas	Eighth	55	55	4	4	28	28	0	0
Do	Ninth	1	1	0	0	0	0	0	0
Do	Eleventh	1	2	1	2	1	0	0	0
Do	Twelfth	52	41	47	44	9	6	5	13
Do	Thirteenth	23	23	14	13	3	3	0	0
Do	Seventeenth	0	0	0	0	0	0	0	0
Do	Eighteenth	1	1	0	0	0	0	0	0
Do	Nineteenth	12	12	0	0	7	0	0	7
Virginia	First	0	0	0	0	0	0	0	0
Do	Third	23	21	0	0	18	15	2	5
Do	Fourth	2	2	0	0	0	0	0	0
West Virginia	Fifth	0	0	0	0	0	0	0	0
Wisconsin	Second	12	12	12	12	0	0	0	0
Wyoming	First	19	17	1	0	0	0	1	1
Total		14,095	12,637	1,605	1,449	322	249	223	1,038

EXHIBIT D

PRICES OF DRUG STORE ARTICLES BY GROUPS AND COMMUNITIES

(Percent 1934 of 1933 prices)

Communities	26 drugs	5 prescriptions	22 toiletries	17 hospital supplies	All items
Atlanta	93.43	100.25	98.16	100.29	96.84
Washington	95.16	98.71	100.60	100.76	98.80
Manhattan	95.75	99.33	98.96	97.49	97.49
Bronx	96.70	99.27	98.64	95.53	97.34
Brooklyn-Queens	96.78	99.13	97.38	96.12	97.13
Minneapolis	93.18	99.02	98.04	95.49	96.66
St. Paul	93.97	99.52	99.71	94.96	96.38
Hibbing	93.64	100.00	96.29	102.91	96.80
Mankato	96.08	100.00	98.23	100.91	98.10
Winona	97.24	100.28	98.26	98.37	98.05
All communities	95.11	99.54	98.42	98.27	97.19

[1] Numerous

EXHIBIT E

SELLING PRICES ON 12 LEADING ITEMS IN 9 DRUG STORES IN UPPER MANHATTAN BEFORE AND AFTER ADOPTION OF CODE

Store	Listerine antiseptic	Pepsodent antiseptic	Kotex	Modess	Gillette 5's	Gem 5's	Ipana tooth paste	Colgate's tooth-paste	Lyon's tooth powder	Grove's L. B. Q.	Bayer's aspirin 12's	Nujol
No. 1:												
March 1934	$0.59	$0.89	$0.19	$0.19	$0.25	$0.29	$0.39	$0.19	$0.45	$0.30	$0.15	$0.69
November 1934	.50	.67	.16	.16	.19	.24	(1)	(1)	(1)	(1)	.10	(1)
No. 2:												
March 1934	.59	.69	.19	.15	.25	.25	.29	.19	.49	.23	.15	.59
November 1934	.51	.69	.19	.19	.23	.25	.39	.19	.45	.25	.12	.59
No. 3:												
March 1934	.59	.89	.19	.19	.25	.29	.39	.25	.45	.25	.15	.69
November 1934	.50	.73	.17	.16	.19	.24	.34	.17	.35	.22	.12	.67
No. 4:												
March 1934	.89	.89	.19	.19	.25	.29	.39	.25	.45	.25	.15	.69
November 1934	.51	.75	.17	.17	.19	.24	.38	.18	.35	.21	.11	.67
No. 5:												
March 1934	.89	.89	.19	.19	.25	.29	.39	.25	.45	.25	.15	.69
November 1934	.53	.70	.17	.17	.25	.24	.39	.19	.35	.21	.12	.67
No. 6:												
March 1934	.59	.67	.17	.15	.25	.21	.29	.16	.39	.19	.12	.59
November 1934	.50	.67	.17	.16	.19	.24	.34	.16	.35	.20	.10	.67
No. 7:												
March 1924	.59	.89	.19	.19	.25	.29	.39	.25	.45	.25	.15	.69
November 1934	.51	.69	.17	.16	.23	.24	.35	.19	.39	.23	.11	(1)
No. 8:												
March 1934	.59	.89	.19	.19	.25	.29	.34	(1)	.45	.25	.15	.69
November 1934	.50	.67	.17	.16	.19	.25	.34	.19	.35	.20	.10	.67
No. 9:												
March 1934	.59	.79	.17	.17	.25	.30	.39	.19	.45	.25	.15	.59
November 1934	.50	.70	.17	.16	.25	.25	.39	.19	.45	.25	.15	.67
Most common:												
Selling price	.59	.89	.19	.19	.25	.29	.39	.25	.45	.25	.15	.69
November 1934	.50	.67	.17	.16	.19	.25	.34	.19	.35	.21	.12	.67
Percent of decrease	15.2	24.7	10.5	15.8	24.0	13.8	12.8	24.0	22.2	16.0	20.0	3.0

SELLING PRICES ON 12 LEADING ITEMS IN 23 DRUG STORES IN DISTRICT NO. 2, UPPER EAST SIDE, BEFORE AND AFTER THE ADOPTION OF CODE

No. 1:												
March 1934	$0.59	(1)	$0.15	$0.15	$0.25	$0.25	$0.35	$0.19	$0.45	$0.25	$0.15	(1)
November 1934	.59	$0.89	.17	.19	.25	.25	.36	.19	.39	.25	.15	$0.79
No. 2:												
March 1934	.59	.69	.19	.13	.25	.25	.34	.19	.39	.19	(1)	.57
November 1934	.50	.69	.17	.16	.19	.24	.34	.16	.35	.20	12.	.67
No. 3:												
March 1934	.59	.79	.17	.17	.25	.24	.35	.19	.39	.23	.15	.69
November 1934	.50	.69	.17	.16	.19	.24	.35	.16	.35	.20	.10	.69
No. 4:												
March 1934	.59	.79	.15	.15	.23	.23	.33	.19	.45	.19	.15	.63
November 1934	.50	.79	.17	(1)	.23	.25	.35	.18	.35	.23	.12	.67
No. 5:												
March 1934	.59	.69	.19	.18	.23	.23	.32	.20	.39	.23	.13	.60
November 1934	.54	.70	.18	.17	.21	.24	.34	.18	.35	.20	.12	.67
No. 6:												
March 1934	.69	.79	.21	.19	.25	.39	.39	.25	.49	(1)	.15	.79
November 1934	.69	.89	.19	.19	.23	.32	.39	.20	.45	.29	.15	.89
No. 7:												
March 1934	.69	.79	.19	.19	.25	.29	.35	.20	.49	.25	.15	.79
November 1934	.59	.79	.19	.19	.25	.29	.39	.19	.39	.25	.15	.79
No. 8:												
March 1934	.59	.75	.19	.19	.25	.25	.37	.19	.39	.25	.15	.69
November 1934	.59	.95	.19	.19	.25	.27	.39	.19	.45	.25	.15	.89
No. 9:												
March 1934	.59	.74	.19	.17	.23	.24	.34	.16	.39	.19	.13	.57
November 1934	.50	(1)	.17	.16	.19	.24	.34	.16	.35	.20	.10	.67
No. 10:												
March 1934	.59	.69	.14	.12	.21	.21	.30	.19	.30	.19	.11	.59
November 1934	.50	.67	.17	.16	.19	.24	.34	.16	.35	.20	.10	.67
No. 11:												
March 1934	.69	.69	.19	.15	.25	.29	.35	.19	.45	.25	.15	(1)
November 1934	.59	(1)	.19	.19	.25	.29	.39	.19	.45	.25	.15	(1)

[1] No price given.
[2] Discontinued.

EXHIBIT E—Continued

SELLING PRICES ON 12 LEADING ITEMS IN 23 DRUG STORES IN DISTRICT NO. 2, UPPER EAST SIDE, BEFORE AND AFTER THE ADOPTION OF CODE—Continued

Store	Listerine antiseptic	Pepsodent antiseptic	Kotex	Modess	Gillette 5's	Gem 5's	Ipana tooth paste	Colgate's tooth paste	Lyon's tooth powder	Grove's L. B. Q.	Bayer's aspirin 12's	Nujol
No. 12:												
March 1934	.50	.98	.19	.17	.25	.25	.34	(1)	.39	.19	.15	.69
November 1934	.53	.69	.17	.16	.19	.24	.35	.19	.36	.20	.12	.69
No. 13:												
March 1934	.59	.79	.19	.19	.25	.25	.34	.19	.39	.25	.15	.69
November 1934	.65	.79	.17	.17	.25	.25	.39	.20	.39	.25	.12	.85
No. 14:												
March 1934	.65	.79	.19	.19	.25	.25	.39	.19	.50	.25	.15	.85
November 1934	.65	.79	.17	.17	.25	.25	.39	.20	.39	.25	.12	.85
No. 15:												
March 1934	.95	.95	.20	.20	.25	.35	.45	.20	.50	.25	.15	.89
November 1934	.69	.95	.20	.20	.25	.35	.45	.20	.50	.25	.15	.89
No. 16:												
March 1934	.69	.89	.19	.19	.25	.25	.39	.19	.50	.25	.15	.89
November 1934	.69	.89	.19	.17	.25	.25	.39	.19	.49	.25	.15	.89
No. 17:												
March 1934	.59	.65	.20	.20	.25	.29	.35	.23	.40	.20	.15	.69
November 1934	.59	.79	.20	.20	.25	.32	.39	.20	.41	.25	.13	.79
No. 18:												
March 1934	.59	.79	.16	.16	.25	.29	.39	.20	.40	.25	.12	.65
November 1934	.59	.79	.17	.17	.20	.24	.35	.17	.39	.20	.10	.69
No. 19:												
March 1934	.59	.79	.19	.17	.25	.25	.35	.23	.45	.25	.15	.69
November 1934	.50	.69	.17	.16	.19	.24	.34	.16	.35	.20	.10	.67
No. 20:												
March 1934	.59	.89	.19	.19	.25	.25	.33	.19	.45	.25	.13	.75
November 1934	.59	.89	.19	.19	.23	.25	.35	.19	.39	.25	.13	.69
No. 21:												
March 1934	.59	.73	.19	.19	.25	.25	.39	.20	.49	.23	.15	.69
November 1934	.59	.75	.19	.19	.25	.25	.35	.19	.39	.23	.12	.69
No. 22:												
March 1934	.69	(1)	.19	.19	.25	.25	.39	.19	.45	.25	.15	.79
November 1934	.59	.89	.19	.18	.25	.29	.39	.19	.45	.25	.12	.69
No. 23:												
March 1934	.59	.75	.19	.19	.25	.40	.39	.20	.45	.25	.15	.79
November 1934	.59	.85	.19	.19	.25	.40	.39	.19	.45	.25	.15	.69
Most common selling price:												
March 1934	.59	.79	.19	.19	.25	.25	.39	.19	.45	.25	.15	.69
November 1934	.59	.79	.17	.19	.25	.21	.39	.19	.39	.25	.12	.69
Percent decrease	(1)	(1)	10.5	(1)	(1)	4.0	(1)	(1)	13.3	(1)	20 00	(1)

Mr. GOODE. I would also like to hand to the clerk for inclusion in the record a report from the Drug Institute giving certain data, and a brief from the committee of 10,000, a committee of small business men, and this report of the code authority.

Senator LA FOLLETTE. The material you present will be given consideration by the committee, and if it is thought wise it will be incorporated at the conclusion of your statement.

(The briefs referred to by the witness are as follows:)

BRIEF IN SUPPORT OF THE CONTINUATION OF THE NATIONAL INDUSTRIAL RECOVERY ACT, BY WHEELER SAMMONS, MANAGING DIRECTOR, DRUG INSTITUTE OF AMERICA, NEW YORK, N. Y.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: The Drug Institute of America, Inc., over 27,000 of whose members are small retailers, respectfully lays before your committee, in connection with its consideration of S. 2445, the following:

The Drug Institute of America, Inc., has the benefit of practical contact with, and a minor participation in, the actual working of the National Industrial

Recovery Act as a code qualifying the organization designated in the Retail Drug Trade Code, and in addition has among its membership over 27,000 small retail druggists. Based on this experience and this ability to reflect the actual position of the small man, the institute brings the following as its conclusions to the attention of the committee, and in so doing feels it is acting in the interest of, and in behalf of, the 60,000 members of the retail drug trade:

First. The first necessities of successful code administration under N. I. R. A. (S. 2445), or any law generally similar, are prompt enforcement and the giving to the businesses involved a degree of protection from harmful practices at least worth the payment of code assessments and the observance of code wages and hours. Without such effective enforcement and such protective provisions, codes will be a failure, as will obviously any attempt to enforce merely hours and wages, while protective provisions remain limited to merely general trade practices of the sort coming before Federal Trade Commission trade conferences.

Second. So far under N. R. A. enforcement has been ineffective under many codes and the small man as a whole has not been given protection from predatory practices which he feels worth the cost of supporting a code. These are the principal reasons for the failure of the N. I. R. A. in the opinion of many small men.

Third. Enforcement can be made effective, and the difficulty arising from intrastate legal questions also largely overcome, by making the "blue eagle" (or any other insignia) an effective symbol of trade ostracism within business itself. The "blue eagle" (or some replacing insignia) is a vital necessity, and this remains a fact despite its ineffectiveness in connection with the consumer. As a matter of fact, the "blue eagle" or a replacing insignia, can be of its greatest use in the intraindustry manner suggested. In practice, this use of an insignia would simply mean that all codes would provide that no business subject to a code would knowingly deal with a business from which the "blue eagle" (or replacing insignia) had been removed because of infraction of the trade practices of the code governing that business. This would at once give business a real opportunity to govern itself under governmental supervision, provide real enforcement without involving a flood of legal actions, and remove the danger of intrastate legal limitations. The removal of the insignia would then mean something, and some such method of effective enforcement not involving court action is a prime necessity.

Fourth. The small man wants N. R. A. if it gives him a code that really protects him from predatory practices. What he is now objecting to in many cases is that he has not been given such protection. The duty of the committee is to see that the small man gets the protection he deserves under codes, and it will not be fulfilling its duty by allowing N. R. A. to die simply because the small man has not been protected suitably under codes, or by limiting his protection to more general trade practice provisions such as those commonly resulting from Federal Trade Commission trade conferences. Unless he is given such protection now at the hands of the Congress, the small man will be gradually exterminated throughout wide areas, and monopoly will spread.

Fifth. The small man in distribution requires protection from the translation of the advantages of large business in terms of retail prices; the small man in production requires protection from different types of predatory action by large businesses. It is vital that this all-important distinction be kept in mind by the members of the committee.

Sixth. The committee and the National Recovery Administration should take steps to meet the unjust situation which code authorities in many instances now face because of lack of enforcement, publicity indicating that N. I. R. A. will either lapse on June 16 or that many codes will be disbanded, and the failure to give those small business men subject to codes any important degree of protection from predatory practices. This situation makes it obviously impossible to collect code assessments and code authorities face deficits which will be unjustly embarrassing. Provision should be made for the payment of code authority obligations that have arisen under approved budgets if N. I. R. A. lapses or is so restricted as to be of no interest to the small man.

Seventh. The N. I. R. A. offers the only method as yet suggested for protecting the small man from predatory practices, increasing purchasing power and giving the consumer the benefits of profitable business activity under the capitalistic system. It should be continued and its administration assured along lines which will realize its possibilities.

Eighth. The N. I. R. A. is sound in principle and N. R. A. is making sound progress toward effective administration.

Ninth. There are advantageous amendments or clarifications that could be made to or within S. 2445, of course. For example, the small man in all fields in which trade-marked articles are important would undoubtedly urge earnestly that section 4 provide specifically (as a corresponding section of the original law was intended to) that manufacturers may make agreements, if in good standing under the code applying to them, to protect the resale prices of their trade-marked products. This could be accomplished by inserting "manufacturers and distributors prescribing the resale prices of trade-marked commodities or products, or entered into between and among" after "among" in line 3 of section 4, paragraph (a).

Paragraph (b), section 10 should, by all means, specifically provide for not dealing with disqualified businesses. This can be accomplished by inserting after "agreements" in line 6 of that paragraph, "by requirements that persons disqualified from the use of approved insignia be specified in codes as not to be dealt with by those subject to codes."

Tenth. The institute's statisticians have assembled extensive proof that the Retail Drug Trade Code has increased employment, benefited the small man, and reduced prices to the consumer. These facts have been presented before various hearings on the Retail Drug Trade Code (principally on June 7–8, 1934, and Jan. 10–12, 1935), and are of public record. These results have been accomplished although only a minimum of protection was given the small man under the code in question. With an adequate degree of protection given the small business man in the trade, and the administrative strengthenings herein suggested made, the beneficial effects of this code would have been far more impressive. It may be true that the experience is paralleled in but a few instances, but this does not mean that it could not be made the rule rather than the exception. In other words, the institute knows from actual experience that N. I. R. A. can be applied to the benefit of the small business man, the worker and the consumer. It will be to the lasting disgrace of both the Congress and the administration if it is not continued and so administered as to realize these objectives. Millions have been spent under the National Industrial Recovery Act. Not only would these vast expenditures of time and money be thrown overboard by emasculating the law or allowing it to lapse, but, what is more important, the great opportunity to give the small man a break against large businesses will be lost. And such a loss in the present temper of the times may endanger in the end the very foundations of recovery, and thereby of the Republic.

Respectfully yours,

THE DRUG INSTITUTE OF AMERICA, INC.,
By WHEELER SAMMONS, *Managing Director.*

BRIEF IN SUPPORT OF THE CONTINUATION OF THE NATIONAL INDUSTRIAL RECOVERY ACT, BY THE COMMITTEE OF TEN THOUSAND

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In connection with your committee's consideration of S. 2445, the Committee of Ten Thousand, made up of 10,000 small business men in every State of the Union, and contacting through these members, acting under 48 State chairmen, 1,000,000 other small business men in all lines, submits the following:

Last March two important observations were made by two gentlemen today connected with the National Recovery Administration, and now, as then, very ably so—Mr. Blackwell Smith and Mr. W. A. Harriman. Mr. Smith called attention to the importance of showing that price provisions in codes are necessary and helpful in effectuating the policies of title I of the proposed legislation for continuing the National Recovery Act, and that they do not fall under any of the prohibitions contained in the act, particularly these in respect to monopolies.

Mr. Harriman observed that the question of price control had long been discussed, and pointed out as probably representing present opinion the results of the Federal Trade Commission study, namely, favorable on the part of manufacturer, wholesaler, and independent retailer, with—in respect to professional groups and trade-marked or branded articles—consumers about equally divided; those opposed, department stores and chain stores; mail-order houses were not covered.

Mr. Harriman also pointed to the demonstrated difference between branded and nonbranded goods in respect to price control, and Mr. Henry S. Dennison, representing the Industrial Advisory Board, immediately arose to emphasize this distinction. Said Mr. Dennison:

"Branded goods, it seems to us, have in the past carried certain different, quite different, circumstances around them than the staple and unbranded goods."

Mr. Dennison also emphasized the importance of taking into consideration the attitude of all branches of the particular industry involved, as intra-industry differences existed favorable to price control or otherwise.

General Johnson had earlier pointed out the importance of making sure that cost-control provisions did not either oppress the small man or exploit the consumer, encourage monopoly, or fail to protect the wage level against predatory and cutthroat competition.

Later a group appointed by General Johnson, representative of all distribution and service trades, after careful consideration advised the general, among other things, that the small distributor should be protected from predatory and cutthroat competition by means of stop-loss cost-control provisions, and pointed out that these provisions must be so framed as to take into account the fact that the small man's purchases are much smaller than the big man's. This very important document is, of course, in the administration's files.

The above references just about give the entire background justifying the stop-loss provision in retail codes, a provision which by its success has done much to demonstrate the possibilities that exist in the National Industrial Recovery Act to benefit consumer, business man, worker, and Government alike. For—

First. These provisions do effectuate the purposes of title I of S. 2445, because they both strike at an unfair competitive practice (see records of the hearing on the amendment to the Retail Drug Trade Code, June 7–8, 1934, for adequate data on the prevalence of this unfair practice) and at the same time at a monopoly. Furthermore, they help to rescue the small man from discrimination and oppression.

It must be clearly kept in mind that stop-loss provisions in the distributive fields are measures that protect the small man from his big competitor who uses his power in a predatory way by featuring branded articles—usually—at prices ruinous to the small man. In the production fields the situation may well be exactly reversed—here the big man uses his power to smash the little man by "snatching" customers, or other means, and the small man is often the one to offer the lowest cash price. It is the failure to keep in mind this fundamental difference between production and distribution which has led to much of the unfounded feeling that the stop-loss provisions in the distributive codes are a price-fixing measure, when they are in reality stop-loss provisions qualfying 100 percent under title I of S. 2445 if any provision in any code ever did. The differences between production and distribution on such matters—and others—are great, and "Never the 'twain shall meet"; which fact it is imperative to keep in mind to understand that the stop-loss provisions strike but one blow, and that one blow is both for the small man and against monopoly—which fits title I of S. 2445 like a glove, of course.

Second. Turning now from Mr. Blackwell Smith's point to those raised by Messrs. Harriman and Dennison: The stop-loss provisions in retail codes are opposed—of course, price cutters themselves oppose it—by the remnants of that same team mentioned by Mr. Harriman—certain chains (outside of the leaders in the drug field, to cite an exception to prove the rule) and certain department-store chains. This is so, because these two classes of outlets like to use branded articles—particularly those of low-unit value, such as the drug, tobacco, and book fields have many of—to attract customers when sold at commercially ridiculous prices, in order that the customer may be importuned to buy high profit, usually not nationally advertised and branded, lines. In other words, such items have been used as trade-getters by them, and they do not like to have their use restricted, naturally.

Third. Finally, we come to General Johnson's point, that the consumer must not be exploited. Ample facts are on file with the Administration to demonstrate that while the stop-loss provisions could possibly only cost the consumer an infinitesimal amount, they have actually resulted in advantages to the consumer, in that articles "written up" to cover losses on the "bait merchandise" do not have to be "written up" so much, and have leveled off, while many manufacturers have reduced wholesale list prices under their operation, because of a natural effort to attract retail support by offering a larger margin to retailers. Hence, the actual result has been an improvement in the retailers' gross—helpful to those who were asked to take on code wages and hours—and at the same time a reduction in price to the consumer.

Certainly this is a combination which should more than satisfy even the consumer, for it meets exactly what Dexter Keezer, formerly advisor to the Consumers' Advisory Board of the National Recovery Administration, has stated on behalf of that Board to be the consumers' desire: "The lowest prices which are consistent with conservation, with honest merchandising, with proper quality, and with decent wages and hours and working conditions."

Thus it is seen that such provisions fit the effectuating title, strike at both predatory competitive practices and monopoly, strengthen the small man called upon to take tax and wage additions, and improve the consumers' position. This practically ideal application is, it is probably true, unique among cost provisions in codes. However, it must be remembered that such provisions are stop-loss provisions, designed to protect small dealers, and in the end consumers, from a definite predatory competitive factor—the "chiseler."

It is conceivable that other sound provisions—even within this exceedingly delicate field of price control—could have been developed for many codes by the National Recovery Administration if given a similar background of unselfish all-industry support and the benefit of a small man backing. It is unfortunate that such similar opportunities did not arise, for obviously the failure of such provisions to appear rests not in the fact that they would be harmful but rather because they were not worked out unselfishly and correctly supervised and enforced. Here, perhaps, is a great tragedy, for it was possible—and let us hope is still possible—that in such clauses, properly drawn, supervised, and enforced, lay the most direct opportunity for codes to carry out the purposes and objectives underlying S. 2445. Probably in the years to come the loss—if it should be lost through failure to enact S. 2445—of this great opportunity to retrieve the disorganization brought by uncontrolled competition, culminating in the depression, and to provide for a control of destructive abuses of "rugged individualism" in competition as well as in other directions, will be remarked upon with strong emphasis. It must be remembered that it has not been demonstrated yet by National Recovery Administration experience that price-control provisions—properly drawn, supervised, and enforced—are socially disadvantageous. Actually much evidence is opposite, and that to lack of proper drawing, supervision, and enforcement belongs the real blame.

Be that as it may, the stop-loss provisions of retail codes, with over a year of enforcement back of them in some cases, with no harm to consumer or business developing, and much good being instead on record, stand as direct, constructive code-making achievements. To eliminate them or to let the National Recovery Administration die, is hardly conceivable—it would be sheer retrogression; a step backward as destructive as wiping out wage provisions which banish child labor; an admission of inability to distinguish between distributive stop-loss provisions and production price fixing; a sure signal that tens of thousands of small merchants are marked for absolute extinction during the next few years in order that some chains and some department stores may grow; and, finally, a snuffing out of that which to the small man seems to be a start toward carrying out the President's prescription of the 10-percent chiseling element. Certainly it is inconceivable that such a price should be even seriously considered.

Respectfully yours,

THE COMMITTEE OF TEN THOUSAND,
By ARTHUR GREENWOOD, *Secretary*.

APRIL 12, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In connection with your committee's consideration of the small business man's opinion of the National Recovery Administration and S. 2445 as presented to you by some trade association officials claiming to represent the small man, and particularly as in the testimony before you on April 12 of Rivers Peterson, chairman of the National Retail Code Authority, the Committee of Ten Thousand, made up of 10,000 small business men in every State of the Union, and contacting through these members acting under 48 State chairmen, 1,000,000 small businessmen in all lines, feels it a duty to submit to you the following:

In order to understand the position under National Industrial Recovery Act of the small business man engaged in retailing it is necessary to keep in mind the history of the retail codes and the fact that except under three retail codes the

small retailer has had no voice, such as National Recovery Administration contemplates, in the making of the retail code applying to him. It is indeed a serious question if there is actually any retail code, aside from the three referred to, that is thoroughly qualified as truly representative of the small retailers brought under it.

This remarkable but true statement is explained by the early decision of National Recovery Administration to attempt to have but one code for retailing and but one for wholesaling. As a result of this decision, in its early stages National Recovery Administration made the mistake of practically forcing most lines of retailing, by threat of boycott through the then effective Blue Eagle and of ruinous hours under the President's Reemployment Agreement under what is called the "General Retail Code". This mistake might not have arisen had the National Recovery Administration taken pains to see that each type of retailing worked out a code suited to the needs of the average business involved and then simply, for the sake of simplicity, brought their codes together under one coordinating general retail code.

But instead, the National Recovery Administration, in its haste to be under way, allowed those most effectively organized and those most energetically represented at Washington—of course the large department stores dominating the National Retail Dry Goods Association—to work out a code suited primarily to the purposes of large department stores, and then, regardless of the fact that the entire membership of the National Retail Dry Goods Association amounted to but a fraction of 1 percent of the retailers of the country, really cooperated with the representatives of that association in using every means between blackjacking and beguiling to get the representatives of other lines of retailing to place the retailers supporting them under that code. At first the code was actually advanced, in total disregard of the facts and the requirements of the National Industrial Recovery Act as truly representative of all retailing. Later, as some really responsive to the small man's interests continued to challenge this absurd claim, and finally threatened legal action, this general code was offered for voluntary assumption by organizations purporting to be truly representative of specific trades. But assumption, as already stated, was still actively proselyted among the officers of retail trade associations, and the Blue Eagle boycott and disastrous President's Reemployment Agreement continued as "persuaders." Of course, in most instances the large chains at once organized so as to join hands with the large department stores in forwarding this general code.

A number of trade association officials outside the department store field made the mistake of advising their associations to help sponsor this general retail code under these circumstances. They probably thought it the best thing to do—no one knew much about National Recovery Administration at the time. It obviously looked like a fine chance to sit in on a big retail code authority at Washington and perhaps to become an officer of it. Certainly the small business men who are members of the associations so acting were thereby brought under this code knew less regarding what it was all about than the officers of their associations did. They simply in most cases knew they would get a Blue Eagle, thereby, help the President in his call for recovery action, and escape ruinous President's Reemployment Agreement hours.

Certainly they did not realize they were becoming subject to a so-called "stop-loss provision" which legalized the big chains and the big department stores in underselling them. Nor did they realize they would become in some cases subject to a lot of other codes.

The outstanding error and ultimate injustice reflected by these facts was repeatedly at the time called to the attention of the National Recovery Administration by some who knew the practical retailing situation and the small man's real problems. It was urged that small retailers be left to one side until the National Recovery Administration program was well under way, and that at least they be educated to the making of a real code. It was also urged that all codes be grouped by industries under 40 to 80 general coordinating codes. But the approved plans of the Research and Planning Division of the National Recovery Administration from the start called for a code for each little subdivision of industry that wanted one, yet for only one retail and one wholesale code, and the approved plan was forced over. The result is the National Recovery Administration's present plight which S. 2445 evidently seeks to correct—hundreds of small codes that can be neither adequately enforced nor supervised, no effective wholesale code at all, and a general retail code that has turned many small men against the National Recovery Administration because they have never been permitted to learn how the National Industrial Recovery Act could have helped them, the wage earner, the consumer, and the Nation.

To return to the specific retail situation resulting from this general policy, now in retrospect so clearly a mistake. The small retailers whose trade association officers had led them under the general retail code instead of demanding a real code suited to their specific needs, as the National Industrial Recovery Act intended they should have, became disgusted with the National Recovery Administration in those lines particularly subject to department store or chain competition and also particularly liable to fall, because of the number of basically different classes of goods traded in, under provisions of codes other than the general retail code.

They did not realize their association officers should have gotten a code for them suited to their own needs, and of course these paid officers have not admitted this fact to them. So they are now represented in some cases by these officers as disgusted with National Recovery Administration, and the "heat" they have put on some of these officers, often by declining to longer help pay the dues supporting them, has evidently caused these officers to turn on the very general retail code authority they themselves helped set up, and on the very National Recovery Administration officials they worked with earlier hand and glove.

Such is the case with the small hardware dealer. He deals in lines basically different in many cases, he is frequently a combined roofer, seller of farm equipment, plumber, electrician, contractor, and tire dealer, in addition to being a retailer of hardware. Naturally when the trade association in his line became a sponsor of the general retail code, he got a code acceptable to the big department stores and chains, but of little use to him. Next he found the plumbers, roofers, electrical dealers, builders and contractors did not want him "chiseling" on them when they had to observe the wage and hour provision of their codes.

He has not, being naturally unable to spend time at Washington, known that he could have either gotten a code suited to his own needs or declined to take any code. So he has come to feel National Recovery Administration, and not his trade association officials, to blame.

The Retail Hardware Trade Association was and is the National Association of Retail Hardware Dealers, an association of retail hardware dealers, and an association of great and long-standing repute, but one domiciled always in the West, and not headquartered it Washington. When National Recovery Administration came into being, as its representative Rivers Peterson naturally came into notice at Washington as a representative of small retailers. The sponsorship of small dealers he represented was naturally greatly desired by the large stores desiring a "backing" of small men for the code they were working out feverishly. His counsel was sought heavily on code matters, and soon the National Association of Retail Hardware Dealers was one of the sponsors for the General Retail Code, being earnestly sought at the time by powerful retail and National Recovery Administration figures interested in getting small businesses, in addition to the large department store and chain-store enterprises, "signed up" for it. Mr. Peterson became the chairman of the General Retail Code, chairman of the Committee of Twelve representing retail and service trades, member of the National Industrial Advisory Board, and finally, as he has stated to the committee yesterday, he was offered a position with the National Recovery Administration.

But all the time the small hardware dealer was naturally getting less than nothing out of the code of which Mr. Peterson had become the chairman. The big department stores and the chains were getting along all right, because they could, under that code, use their immense buying power against Mr. Peterson's small hardware dealers to the last cent of their vast resources, to the last ounce of pressure and ingenuity their most hardboiled buyers could muster and then add but 10 percent to the rock bottom prices thus obtained. They did not rebel against the code authority to the chairmanship of which they had helped elect the little hardware man's association official, but the little hardware man himself finally did. He made his rebellion known moreover. When the National Association of Retail Hardware Dealers helped sponsor the General Retail Code the Government's figures reported about 32,000 retailers in the trade (37,600 in 1929). Currently the dues-paying membership of the National Association of Retail Hardware Dealers is reported as about 12,000. These members undoubtedly reflected their opinions of the code treatment they had received to Mr. Peterson and his associates among the officers of the association with great definiteness. And on April 12, 1935, Mr. Peterson told the Senate Finance Committee, the code authority of which he held the chairmanship, was in effect hijacking money from retailers and that National Recovery Administration is a flop in the small man's opinion and his own.

Mr. Peterson however did not say to the committee that he had failed to stand out for a code suited to the small hardware dealer. He did not say to the committee that many small hardware dealers have written to him saying they want a code like those obtained by the three retail lines whose representatives fought for and obtained separate codes with some provisions actually helpful to the small man. He did not tell the committee he could have fought for similar provisions for the small hardware dealers or have legally refused to place them under any code. He did not tell the committee that the small hardware dealer might not want to chisel on the plumbers, roofers, tire dealers, and electricians if he had the benefit of a code suited to his own needs.

The adverse attitude toward National Recovery Administration of not only many small hardware men, but of many small grocers, and of small men in many lines of retailing, is explained by the above situation. The grocers' end experience has been the same as the small hardware dealers', only along another route. Because these small men were not given what National Industrial Recovery Act was intended to give them does not prove that National Industrial Recovery Act should be discontinued, that National Industrial Recovery Act could not have helped them, or that enactment of S. 2445 cannot help them prosper.

Rather, since the tens of thousands of small men in retailing who obtained under National Industrial Recovery Act a code at least fundamentally geared to their needs are 90 percent or more for National Recovery Administration, the druggists, the tobacconists, and the booksellers, to cite examples. It is very clearly indeed indicated that the mistake involved should be connected under a continued National Recovery Administration for it is irrefutably demonstratable these retailers favorable to National Recovery Administration increased their pay rolls and thereby helped the recovery program.

But in each instance of Retail Code experience satisfactory to the small man, we find that the code involved was actually drawn up by the small men themselves, that it is therefore truly representative of them, and that it has been administered by the small men themselves through representatives responsive to them. Make a code for the small man that way, and administer it that way, and then enforce it and supervise it, and the result will be in the public interest and satisfactory to the small man. There is but one other requirement: Trade practice provisions really helpful to the small man must be included in the code, for if he is not given enough protection to make it possible for him to pay the required wages and hours, he naturally will not be able to support the code and a standing army of 1,000,000 could not make him support it under such circumstances. Certainly that is a simple enough recipe for making National Recovery Administration successful among small retailers, and an National Recovery Administration successful among small retailers means a big step taken away from depression.

The small man in manufacturing needs protection from price fixing by large interests and certain well-known predatory practices, while the small man in retailing needs primarily protection from the ability of the large competitor to sell below his cost and from the "chisler" exploiting his fast turning, unidentifiable lines. In manufacturing the small man requires protection from price fixing covering large depreciation and overhead items he wishes to avoid. He can usually pay the required pay roll if given a free hand and protected from outright commercial murder. In retailing, he must be protected from the big man's buying power or he cannot pay even part of his pay roll.

These differences between the small manufacturers' and the small retailers' needs must be kept in mind in judging the effect of codes on the small enterprise. But with these particular needs cared for suitably under codes, and the public's interest protected by suitable supervision, the small man in manufacturing can be given what amounts to a lifesaving opportunity under National Recovery Administration.

If the National Industrial Recovery Act is allowed to lapse simply because it is assumed the small man has been harmed by it, while in actuality the real point is that he has not been given what is really coming to him under it the small man will be forced far down again among the ruthless onslaughts of large competitors and the merciless snipings of "chiselers" which were slowly exterminating at least one of every two among him before the enactment of the National Industrial Recovery Act. Perhaps, as some feel, this 50 percent of the small men should be exterminated. Perhaps with half the small men put out of business the resulting monopolies, or semimonopolies, would give the consumer service a few cents in the dollar cheaper than the consumer is given service today. And perhaps once the large corporations had grown to that extent the consumer would find

they were not so anxious to serve him at minimum costs. And perhaps then the Government would take over all the large enterprises and in effect attempt to run American business. And perhaps the Government would provide lower costs and better service than independent business men. And perhaps about then the world would come to a sudden end.

No; the only answer without "perhapses" is that either the small man must be made reasonably prosperous or we face a far different United States of America than any among us cares to face. The National Industrial Recovery Act offers, administered along the simple precepts outlined above, a sound opportunity to assure the small man enough prosperity to make it possible for him to pay one way to recovery. The members of the committee will only adequately discharge the great responsibility placed upon them if they look beneath reports that the little man is endangered by, or dissatisfied with the National Recovery Administration and codes, to these fundamental explanatory facts.

THE COMMITTEE OF TEN THOUSAND,
ARTHUR GRIMWOOD, *Secretary.*

NEW YORK CITY, *April 13, 1935.*

Mr. GOODE. I would like now to have you give a few minutes' time to Dr. Kelly, representing the National Retail Drug Code Authority.

Senator LA FOLLETTE. You may come forward, Mr. Kelly.

TESTIMONY OF DR. E. F. KELLY, WASHINGTON, D. C., SECRETARY OF THE NATIONAL RETAIL DRUG CODE AUTHORITY, THE AMERICAN PHARMACEUTICAL ASSOCIATION, AND THE DRUG INSTITUTE OF AMERICA

(After having been first duly sworn by Senator La Follette, the witness testified as follows:)

Senator LA FOLLETTE. Will you please give your full name and whom you represent?

Mr. KELLY. My full name is E. F. Kelly, Washington, D. C., and I represent the National Retail Drug Code Authority, the American Pharmaceutical Association, and the Drug Institute of America.

Senator LA FOLLETTE. Will you please, in an endeavor to save time, not repeat any of the statements which have been made by the previous witness.

Mr. KELLY. Mr. Chairman, one or two observations I will make will be in line with what the chairman of the code authority has referred to, but I will endeavor to support that by my experience as secretary of the code authority, and it will be very briefly stated to you.

I am delegated to represent before you the National Retail Drug Code Authority, of which I am the secretary. The National Association of Retail Druggists, the Retail Druggists' National Trade Association, will also file a brief and its past president, John A. Goode, the chairman of the National Retail Drug Code Authority, is planning to appear before you. Since all of these organizations are of the same mind as to the vital importance of the N. R. A. to the small man, it was felt that this method of presenting their conclusions regarding the proposed legislation you are considering would not only conserve your time but give you the benefit of the opinion of the great majority of the fifty-odd-thousand small business men who have operated under the Retail Drug Code and also of thousands of other small business men who have actual experience operating under codes of fair competition.

This combined experience which I shall endeavor to reflect to you indicates to me what I think are several broad conclusions of extreme importance in measuring the need for the legislation before you.

The first of these broad conclusions is that when the small-business man has actually himself framed his code and has actually administered it himself, he had been benefited, has increased his pay rolls, has obtained observance of it, has financed its support without cost to the taxpayers, and wants it continued. I urge you before finally evaluating the small man's reactions to codes to ascertain whether or not a code actually framed by the small man and actually administered by him is involved. In other words, whether a code truly representative under the provisions of the legislation before you underlies the opinion you are considering.

A second broad conclusion to be drawn from the wide experience I lay before you is that the practices that lead to monopoly, the exploitation of the consumer or the ruination of the small man are radically different in distribution than in production. In distribution the large unit drives the small man to the wall by using its buying power and financial resources to undersell him. In production the large unit uses price controls coupled with superior sales resources to freeze out the small man.

Therefore, the small man in distribution requires stop-loss provisions, which prevent selling at least below the levels at which he can buy; while in the production field the small man requires protection that gives him a free hand, so long as he plays fair. This fact was recognized by the Committee of Twelve for Distribution and Consumers' Service Trades, representative of all distribution and of which Mr. Rivers Peterson was chairman, appointed a year ago, which as a part of its final conclusions stated [reading:]

No effective rule for the purpose of preventing sales below cost can be of benefit to the large majority of retail and wholesale distributors until there is recognition of the principle that base prices must be established which will approximate the invoice or current market cost of the efficient smaller operator and that sales below such established bases are treated as unfair competition in violation of the respective codes. Nothing in this section shall be construed to prohibit reasonable and fair differentials in purchase prices based upon sound economic reasons therefor.

The object of such a provision is not to guarantee a profit to any distributor nor to perpetuate the inefficient. The committee recognizes the fact that most efforts of this nature are met with the objection that they will encourage and perpetuate inefficiency and believes it advisable to point out that too frequently the size of a business seems to be the gage by which its efficiency is estimated.

The need for the existence of efficient small business establishments is fully recognized and has been unquestionably demonstrated in the public interest, and those entitled to continue in business will amply demonstrate their efficiency when relieved of the price handicaps under which they now labor.

Many businesses are suffering as the result of price differentials allowed large distributors which are out of proportion to actual economics effected through quantity purchases.

Problems of the various branches of trade are so different that it is not possible to outline a definite rule for determining base costs which can be applied to all. It is recommended that the principle stated in the first paragraph of this section be approved and that code authorities submit plans in accordance with it which will best meet the needs of their particular industries.

It follows that stop-loss provisions in distributive codes which restrict loss-leader and other predatory retail sales practices are not price-fixing measures, and instead of encouraging monopoly, help save the small man's life. On the other hand, actual price-fixing provisions in production codes may well ham-string the small man and encourage monopoly. Keeping this basic fact in mind will help clear up much confusion that exists on the subject, and as well explain why many

who really believe they are speaking for the small man's interests when they state codes endanger him are in reality putting him in danger of losing the great opportunity for help which codes can offer him.

A third broad conclusion of basic importance indicated by the experience it is my privilege to reflect to you is that if the small business man is asked to increase his pay roll under code provisions he must be given trade-practice provisions which protect him sufficiently to enable him to pay the larger pay rolls. No program which does not give this elementary square deal can ever be enforced. Its record would be the record of the eighteenth amendment.

A fourth conclusion is that quick and positive enforcement is necessary. Such enforcement should be with a minimum of actual court procedure. This is possible, in the opinion of those I represent, by providing for intra-trade enforcement simply through providing in the appropriate codes against trading with those formally found guilty by the Government of code trade-practice violations; in other words, by simply extending the principle under which the Government itself now prohibits its agents from trading with those concerns which stand so adjudged. This method of enforcement may have been in mind when paragraph (b) of section 10 of the proposed legislation was framed.

If it was not, that paragraph should be framed, in our opinion, so as to provide for this method by suitable Presidential regulation. Such a method would, we are convinced, have practically removed the necessity for appealing to the courts had it been available under the code with which we have gained our actual experience with N. R. A., in operation. It simply in effect, transfers the insignia idea from the consumer field, where it has been proved ineffective, to the intertrade field, where it can be used practically.

The code from which our practical experience with the actual operation of legislation such as that before the committee has been most heavily drawn is the Retail Drug Code. This code has been operative a year and a half. It applies to over 50,000 small business men. It represents what could be obtained in the approved code from among the expressed desires of these men. It has been administered by these small men through their own representatives.

These small men know this code has helped them. They want it continued. They have loyally supported it, both in the observance of it and the financial support of it without cost to the consumer. It has increased pay rolls in the trade and yet actually has resulted in the drug manufacturers' prices for many leading trade items being reduced. That, it seems to me, is the answer to whether the N. R. A. can be effective, whether the small man can benefit under it.

You will want substantiation of the statements I have just made. First, the statement that these retail druggists want the code continued. We asked them, and 90.2 percent answered that they wanted it continued. We asked them also if they wanted N. R. A. continued after June 16, and 81.1 percent replied that they wanted it continued; 65 percent stated employment had increased as a result of the Retail Drug Code; 81.6 percent stated that trade practice had improved under the code; and 71.8 percent stated that wages had increased. Actually 92.7 percent asked that the stop-loss provisions of the code

be continued, and 89.7 percent gave it as their conclusion that the code had been of value to the trade.

The high degree of observance of the code to which I have referred is substantiated by the fact that during the entire life of the code complaints of violations have averaged only about 1,000 per month for the entire United States, and were practically 80 percent adjusted at the time of the last detailed survey of 32,527 outlets. It is also significant that 92.3 percent of the alleged violations were settled by the local retail drug code authorities in the various districts. The retailers subject to the code have financed its operation without cost to the taxpayer, and without large cost to themselves, for the National Retail Drug Code Authority has itself spent but $27,994.95 during its entire existence.

The statement that the drug manufacturers have as a result of the stop-loss provisions in the Retail Drug Code actually reduced their prices, probably at once challenged your attention. In substantiation of it I have, however, simply to read you the following list of actual reductions, which, while by no means complete, is ample to prove my statement.

I have included in my statement these statistics and with your permission I would like to have them made a part of the record at this time.

Senator LA FOLLETTE. They may be included with your statement.

(The statistics are as follows:)

Items reduced

Company and item	Old list	New list	Date	Old retail price if sold at code	New retail price if sold at code
	Dozen	*Dozen*			
Allcock Manufacturing Co.: Salvacea, tubes	$4.59	$2.42	Apr. 15, 1934	$0.39	$0.21
Bathasweet Corporation: Bathasweet:					
Small	4.95	4.50	May 15, 1934	.42	.38
Large	9.90	9.00		.83	.75
Bayer Co.: Aspirin:					
Box, 12's	1.44	1.20	June 1, 1934	.12	.10
Box, 24's	2.64	2.00		.22	.17
Box, 100's	7.20	6.00		.60	.50
Bay Roma Co.: Bay Roma, 8-ounce	8.00	6.80	Apr. 21, 1934	.67	.57
Bell & Co.: Bell-ans:					
Small	2.00	2.00	May 1, 1934	.17	.17
Large	6.00	5.88		.50	.49
Bost, Inc.: Bost toothpaste	4.00	3.20	May 8, 1934	.34	.27
Bristol-Myers Co.: Minit-Rub:					
Medium	4.00	2.80	Apr. 17, 1934	.34	.24
Large	8.00	4.80		.67	.40
H. C. Ritchie: Eno Effervescent Salt:					
Trial size	2.10	2.00	June 18, 1934	.18	.17
Handy size	6.45	6.00		.53	.50
Household size	10.60	10.00		.89	.84
Large size	2.00	2.00	Jan. 2, 1935	.17	.17
Handy size	6.00	4.68		.50	.39
Household size	10.00	9.24		.84	.77
Hexin, Inc.: Hexin tabs, 12's	2.80	2.00	May 1, 1934	.24	.17
E. W. Hoyt Co.: Rubifoam	2.10	2.00	May 18, 1934	.18	.17
Lehn & Fink: Lysol shaving cream	3.15	2.94	May 11, 1934	.27	.25
Luxor, Ltd.: Luxor shaving cream	3.08	2.20	Apr. 30, 1934	.26	.19
Pepsodent Co.:					
Pesodent antiseptic:					
Small	2.10	2.00	May 15, 1934	.18	.17
Medium	4.20	4.00		.35	.34
Large	8.80	8.00		.70	.67
Junis cream:					
Small	4.40	4.25		.37	.34
Large	8.80	8.00		.74	.67
Pepsodent tooth paste	4.47	4.25		.38	.36

Items reduced—Continued

Company and item	Old list	New list	Date	Old retail price if sold at code	New retail[1] price if sold at code
Pepsodent Co.—Continued.					
Pepsodent antiseptic:	*Dozen*	*Dozen*			
Small	$2.00	$1.90	Jan. 2, 1935	$0.17	$0.13
Medium	4.00	3.90		.34	.37
Large	8.00	8.00		.67	.69
Junis cream:					
Small	4.00	3.90	Jan. 2, 1935	.34	.33
Large	8.00	8.00		.67	.67
Pepsodent tooth paste	4.25	3.72		.36	.31
Petrolagar Laboratory:					
Petrolagar:					
8-ounce	6.80	6.00	May 1, 1934	.37	.50
16-ounce	12.00	10.00		1.00	.84
Sodiphene-Corporation: Sodiphene, 16-ounce	8.00	7.00	May 1, 1934	.67	.59
C. H. Phillips Chemical Co.:					
Phillips' milk of magnesia:					
4-ounce	2.25	2.00	July 2, 1934	.19	.17
12-ounce	4.25	4.00		.36	.34
McKesson & Robbins Calox tooth powder:					
Small	2.80	2.40	June 28, 1934	.24	.20
Large	4.80	4.00		.40	.34
Lewis Medicine Co.: Tums	2.15	2.00	Aug. 27, 1934	.18	.17
Maltine Co.: Maltine Tabs	8.00	6.00	June 11, 1934	.67	.50
Drug Trade Products Co.: Kolor-Bak	13.20	11.75	Sept. 1, 1934	1.10	.98
Rubbersan Products Co.: Mystic cleansing cream:					
Small	4.40	3.00	Sept. 19, 1934	.37	.25
Large	8.80	5.72		.74	.48
Mystic skin cream, large	8.80	6.60		.74	.55
Eli Lilly & Co.: Insulin:	*Each*	*Each*			
U20-5 cc	.45	.40	June 11, 1934	.45	.40
U20-10 cc	.90	.75		.90	.75
U40-5 cc	.85	.70		.85	.70
U40-10 cc	1.65	1.35		1.65	1.35
U80-10 cc	3.10	2.65		3.10	2.65
McKesson & Robbins: Viosterol:	*Dozen*	*Dozen*			
5 cc	5.75	5.10	Aug. 28, 1934	.48	.43
50 cc	34.40	30.60		2.87	2.55
Following brands:					
Parke, Davis Co					
Mead-Johnson					
Squibb					
Abbott					
E. R. Squibb Co.:					
Aspirin tablets, 24's	1.75	1.50	Aug. 1, 1934	.15	.13
Milk magnesia:					
4-ounce	2.00	1.70		.17	.15
1.2-ounce	4.00	3.60		.34	.30
Chocolate Vitavose	6.00	4.00	Nov. 1, 1934	.50	.34
Dextro Vitavose	6.80	6.00		.57	.50
Vitavose	8.00	6.00		.67	.50
J. B. Williams Co.:					
Aqua Velva:					
5-ounce	4.50	4.00	July 9, 1934	.38	.34
11-ounce	9.00	8.00		.75	.67
Shaving cream:					
Double	4.25	4.00		.36	.34
Brushless	4.25	4.00		.36	.34
Wildroot Co.: Wildroot hair tonic, 14-ounce	9.68	8.80	July 12, 1934	.81	.74
Lavoris Co.: Lavoris:					
Small	2.10	2.00	June 9, 1934	.19	.17
Medium	4.20	4.00		.35	.34
Large	8.40	8.00		.70	.67
Parke, Davis & Co.: Medicated throat discs	2.25	1.30	Oct. 1, 1934	.19	.11
Wander Co.: Ovaltine, 6-ounce	4.50	3.60	Aug 18, 1934	.35	.28
Wander Co.: Ovaltine:					
14-ounce	9.00	6.75		.69	.52
Hospital	36.00	27.00		2.75	2.07
Segal Safety Razor Corporation: Segal blades:					
5's		1.80	Nov. 1, 1934	.17	.15
10's		3.00		.34	.25
School Manufacturing Co.: Pedicreme	1.00	2.75	Sept. 24, 1934	.34	.23
Walter Janvier: Seecham's pills:					
Small	2.10	2.00	Oct. 15, 1934	.18	.17
Large	4.20	4.00	do	.35	.34
Paul Westphal: Westphal Anvilator:					
Small	5.00	4.15	Nov. 1, 1934	.42	.35
Large	10.00	8.25		.84	.69
Peck & Sterba: Lucerol outfit	16.00	12.80	Nov. 2, 1934	1.34	1.07

[1] There was no old list price. List prices were 25 cents and 50 cents less 30 percent and 2 percent.

Items reduced—Continued

Company and item	Old list	New list	Date	Old retail price if sold at code	New retail price if sold at code
Bristol-Myers: Analka:	*Dozen*	*Dozen*			
Small	$2.10	$2.00	Nov. 8, 1934	$0.18	$0.17
Medium	4.20	4.00		.38	.34
Large	8.40	8.00		.70	.67
N. F. Ritchie Co.: La Geradine:					
6-ounce	8.80	6.60	Dec. 4, 1934	.74	.55
8-ounce	13.20	8.80		1.10	.74
12-ounce	17.60	13.20		1.47	1.10
Crazy Water Crystals Co.: Crazy Water Crystals	12.00	8.00	Nov. 26, 1934	1.00	.67
Pinaud, Inc.: Eau de Quinine, 14-ounce	31.20	30.00	Dec. 10, 1934	1.82	1.75
Stirlral Co.: Stirlral [1]	8.00	4.80	Nov. 22, 1934	.67	.40
W. R. Warner:					
Albodon tooth powder	2.04	2.80	Dec. 1, 1934	.26	.24
Do	5.04	4.80		.42	.40
E. Fougera & Co.: Flaxolyn liquid	9.00	7.20	Dec. 13, 1934	.75	.60
Parke, Davis & Co.: Peroxide of hydrogen:					
8-ounce	3.00	2.20	Nov. 4, 1934	.26	.19
16-ounce	4.70	3.40		.40	.29
Texas Crystal Co.: Texas Crystals	8.00	6.00	Dec. 18, 1934	.67	.50
Lamont Corliss Co.:					
Pond's cold and vanishing cream:					
72-cent jar	6.05	4.68	Oct. 18, 1934	.45	.39
$1.10 jar	9.35	8.75	(See note A).	.75	.73
Pond's face powder:					
Large	9.35	8.75	May 17, 1934	.78	.73
Medium	4.95	4.65		.42	.39
Lehn & Fink: Hind's cream, large	[2] 8.75	[2] 8.00	Jan. 1, 1935	.81	.74

[1] Contents reduced from 7 ounces to 6 ounces.
[2] Plus tax

In addition to this very definite and specific substantiation of this important statement, there are two equally important supporting records, although they are more general in nature. First, Leon Henderson, Director of Research and Planning Division of the National Recovery Administration, stated on January 9th before the National Recovery Board that "we have noticed that the tendency in the drug business is for the mark-up to move down." Second, John H. Cover, professor of statistics at the University of Chicago, undertook a detailed study of retail price behavior between 1933 and 1934. He found drugs, toiletries, and sundries to be the exception in that they showed price declines. The decreases found by Professor Cover for all types of drug outlets ranged during 1934 from 9 percent down to 2 percent. Here in Washington cash independent prices decreased 6 percent, for example.

I submit to this committee, in conclusion, on behalf of those I represent and the tens of thousands of small business men involved in this representation, that the record I have detailed proves conclusively that the legislation before you can be made a sound foundation for national recovery. It can be made the salvation of the small business man. It can be made the exterminator of the chiseler and the selfish exploiter, which is what the President stated it should become. And it can be made the all-necessary means of protecting those who pay the higher wages required to support the increased purchasing power vital to recovery and prosperity.

For what has been accomplished in the field I report on to you, can, of course, be accomplished in any segment of business. It has been accomplished in others, as can, and probably will, be demon-

strated to the committee. These accomplishments have taught already the lessons for duplicating them generally. Obviously, such lessons can only be crystallized over a rough road of trial, experimentation, and error, and surely 18 months is all too short a period in which to expect them to be definitely established with finality.

The fact to be acted upon is the simply common sense one of following up on the most successful results of the experimentation and of discarding the experiments that were not as successful. And N. R. A. has proved within 18 months enough successes to justify enactment of the continuation of legislation before you with absolute confidence that the final result will be highly satisfactory.

To fail to enact the proposed legislation and to allow N. R. A. to die on June 16 would, in the particular trade on behalf of which I am before you, result in unemployment immediately and a return to the extremely chaotic conditions which preceded the promulgation of the code. The entire trade would be prostrated to the benefit of the chiseling 10 percent.

I am handing to you herewith briefs from each group it has been my privilege to represent before you. They contain in great detail statistics supporting every statement I have made in their behalf and as my personal opinion.

Senator LA FOLLETTE. Thank you, Dr. Kelly. The next witness is Mr. Horowitz.

Mr. FISHEL. Mr. Chairman, Mr. Horowitz was taken ill and could not appear today, and has asked me to appear in his stead, if that is agreeable to the committee.

Senator LA FOLLETTE. That will be agreeable.

TESTIMONY OF MORTIMER FISHEL, NEW YORK, N. Y., GENERAL COUNSEL FOR NATIONAL WORK SHIRT MANUFACTURERS ASSOCIATION

(After having been duly sworn by Senator La Follette, the witness testified as follows:)

Senator LA FOLLETTE. Will you state your full name, your residence, and for whom you appear?

Mr. FISHEL. My name is Mortimer Fishel, New York City, I am general counsel for National Work Shirt Manufacturers Association.

Senator LA FOLLETTE. You may proceed.

Mr. FISHEL. I was telephoned to last night, to come down here, and will take up before you only one topic, about which I think this committee should be enlightened, so that it may consider whether it should not be suggested in the new act, if it is enacted, a provision to prevent the recurrence of what I am going to call to your attention, and that is the orgies in the handling of the code funds and to provide guards against what I am going to call to your attention, and that is an orgy of extravagant expenditures in code funds.

It is the cotton-garment code authority under which this organization, and the members of our industry operate, and I am speaking of what has been given to me at the last minute on a situation that has existed, and how far it has gone, this committee can learn.

Between November 1933 and January 1935, the cotton-garment code authority collected in funds from members of the industry by reason of label money or assessments, the sum of $1,040,000. That sum was not deposited in a bank account of the cotton garment code

authority, but that $1,000,000 was deposited in the private bank account of a private trade association.

Senator LA FOLLETTE. What was the name of that association?

Mr. FISHEL. The International Association of Garment Manufacturers, and all expenditures were made by the Cotton Garment Code Authority. Those expenditures were made by checks on that private trade association bank account. Those funds were siphoned into the trade association by assessments and label sales during the period of 14 months, and this trade association was used as the fiscal agent of the code authority. What the motive was we have never been able to fathom.

Senator LA FOLLETTE. Do you charge misapplication of funds?

Mr. FISHEL. That is for you to conclude.

Senator LA FOLLETTE. I am not on the witness stand.

Mr. FISHEL. I beg your pardon, I am carrying here a "message to Garcia".

Senator LA FOLLETTE. I am asking you whether you charge any misapplication of these funds?

Mr. FISHEL. I do not know what has happened to these funds, so far as an accounting is concerned, but here is the situation: The affairs of the Cotton Garment Code Authority—their proceedings are not open to us, their minutes are not open to us, their records and their books are not open to us.

In December 1934 an order was made by the National Industrial Recovery Board requiring the Cotton Garment Code Authority to segregate its property and its affairs from that particular association, and this segregation did not occur until January 1934. About 2 weeks ago, after much effort, we received from the files of the National Industrial Recovery Board down here in Washington, the proposed budget for the fiscal year 1935–36 of the Cotton Garment Code Authority.

In that proposed budget, which I am going to ask leave to file with you, is the first statement as to what happened to that million dollars. That statement is contained on one page. It is not an accounting, and it contains this item, for example, "Salaries $361,000; traveling expenses $107,000 with a note which reads as follows:

> Allocation is not readily obtainable, but upon request can be obtained on 2 weeks' notice.

By allocation they evidently mean only its allocation to the code authority and employees for salaries, allocation to executives and employees for traveling expenses. That is one page, and that is the first piece of paper we have ever seen as to the expenditure of that $1,040,000.

What I am calling to your attention is this, the fact that those funds were for 14 months kept in the bank account of a private trade association.

While those funds have now been taken out and put in the bank account of the code authority, under the N. R. A. there is nothing to prevent that happening again, not only with this code authority, but with any code authority, unless there is a mandatory provision precluding any such act occurring again.

According to this statement, $804,805 was paid for enforcement of the Cotton Garment Code from November 1933 to January 12, 1935, exclusive of what they call the subcode authority.

I do not know whether you are familiar with what is meant by that or not, but at all events it is another enforcement element of the code authority. Exclusive of that, the subcode authority, they expended $805,000 in those 14 months.

How many seat-warmers there were, how many seat-warmers there are, we ask this committee in some way and somehow to have an investigation made.

How far nepotism reaches into the employment of personnel, we ask this committee to inquire. We cannot get it, we cannot have any inquiry, we do not know where to go for an inquiry.

We say to this committee, if this thing is to continue, the machinery by which it is to continue must be honest, efficient, and economical. We are calling your attention to things that do now exist, and asking you to inquire into it.

Going back to the $805,000 they expended in 14 months from November 1933 to January 1935, the executive director was paid $25,000 a year. What is to happen for the next fiscal year, are they going to cut down on that extravagance? On the contrary, instead of $805,000 for 14 months, the new budget showed $855,000 for the next 12 months, in addition to a contingency fund of $25,000 for possible other additional expenditures, making it $880,000; in other words, $75,000 more for 1935 as against what they extravagantly expended, $805,000 for the term of 14 months.

I say to you, Senator La Follette, whether the N. R. A. is good, whether the N. R. A. is bad, is beside the question so far as my discussion here is concerned. Whether the codes are good, whether the codes are bad, is outside of this discussion.

I say to you, if this N. R. A. is to continue, and if these codes are to be enforced, there must be respect for the enforcement authority, and there can be no respect for an enforcement authority when funds have been handled in the way those funds have been handled, when there is that continued orgy of extravagance, and when nepotism is rampant in the employment of personnel.

I say to you, where you will find seat-warmer after seat-warmer, it is in this code authority set-up. They have subcode authorities for which they have allowed in this proposed budget for 1935–36 the sum of $25,000 for organization purposes, and I understand they have put in application for about $200,000 for those subcode authorities, which is in addition to the $880,000 I have heretofore mentioned.

In those sub code authorities they have been sitting there now for 3 or 4 weeks to my knowledge, some of them, without a piece of stationery, with an allowance of I think $80 per week for a secretary in addition to a stenographer.

When the request is made of them, what are you doing this week and what is your program, there is no answer. For 3 weeks, week after week that request has been made by some members of the industry with no answer.

Another one of those subcode authorities, for which this $25,000 for organization purposes has been allowed, and for which $200,000 more has been asked for this year, when they are asked why do you not communicate with so and so, the answer is I have not even been given a piece of stationery on which to write; I have no letterheads.

That is why I say to you this committee should inquire into it. There is somewhere we should get relief.

Here is this proposed budget, where they ask us to file suggestions and objections, and they say to us, state your facts, which is perfectly proper, but how are we going to state facts when their files are not open to us? How do we know these 150 employees they have in the New York office alone are doing the work; how do we know that the 250 employees, all told, that they have, are doing work; how are we in a position to present facts?

I have given you these instances to which I have referred as to the subcode authorities, and somebody somewhere should inquire as to what those people are doing in that New York office and in the other offices. Are they earning their money; how much time are they giving to their work; how much time are they giving to warming their chairs; to whom are they related; what did they get before they came into the code authority; and how much are they getting now?

Unless those things are done, you never will be able to enforce your codes, because where there is no respect, when the industry might concede that the enforcement agencies are vulnerable, there can be no respect; where there is no respect there is no confidence; and where there is no confidence or respect, you will never have support.

May I submit budget and the order segregating the properties of the code authority?

Senator LA FOLLETTE. They will be considered by the committee, and if thought wise, will be included in the record.

(The documents referred to by the witness are as follows:)

BUDGET OF COTTON GARMENT CODE AUTHORITY, INC., JANUARY 12, 1935, TO JANUARY 11, 1936

1. Cotton Garment Code Authority, Inc.
2. 40 Worth Street, New York, N. Y.
3. Budgetary period from January 12, 1935, to January 11, 1936 (12 months).
4. Effective date of code, November 27, 1933.
5. Basis of assessment, sale of labels.
6. There are approximately 3,600 plants in the cotton garment industry owned by 3,200 companies. With few exceptions, the companies order labels for all plants combined, rather than for each factory. About 100 firms are ineligible for labels since they are cutters and distributors performing no sewing operations. Thus there are approximately 3,100 companies who are potential purchasers of labels. Perhaps 100 companies have thus far failed to order labels. There have likely been as many as 3,200 firms which ordered labels at some time since the commencement of the code, but a number of these have withdrawn from business or changed to other codes. Approximately 3,000 companies order labels in contributing to the support of the Cotton Garment Code Authority.

Classification of firms ordering labels as of Sept. 24, 1934

Product	Type of label	Number of firms
Men's shirts	A	324
Boys' blouses and shirts	B	92
Men's shirts (contractors)	C	133
Boys' blouses and shirts (contractors)	D	63
Men's and boys' pajamas	E	144
Work clothes	F	898
Work shirts	G	238
Sheep lined and leather	H	156
Cotton wash dresses ($13.49 and below)	J	1,115
Cotton wash dresses ($13.50 and above)	J	302
Oiled cotton garments	K	26
Nurses' and maids' aprons and uniforms	L	191
Washable service apparel	M	137
Men's wash suits	N	48
Boys' wash suits	O	35
Women's undergarments and sleeping wear	P	185
Union-Made Garment Manufacturing Association	Q	60
Miscellaneous	R	248

Classification of firms ordering labels as of Sept. 24, 1934—Continued

Product	Type of label	Number of firms
WASHABLE LABELS		
Custom-made shirts	ACA	43
Full dress shirts	ACA	27
Custom-made pajamas	ACA	8
Washable service apparel	RCA	8
Miscellaneous	RCA	12
Total		4,493

The total exceeds 3,000 since many firms order more than one type of label.

7. GENERAL INFORMATION

A—Number of establishments in industry/trade (plants)	3,600
B—Number of establishments to be assessed (companies)	3,100
C—Number of establishments which have paid assessments (companies)	3,000
D—Annual sales for 1934 (excluding firms no longer under this code)	$500,000,000
E—Amount of labels on which assessments have been collected from Apr. 23, 1934, to Jan. 31, 1935 (labels)	486,591,000
F—Volume of labels on which assessments will be collected for period from Jan. 12, 1935, to Jan. 11, 1936 (estimated labels)	599,028,000
G—Number of employees as of December 1934	170,000
H—Total annual pay roll for industry/trade, year 1934	$112,000,000

I—Estimated volume of business in each geographical section of the United States. The sections in the table below are the classification of the United States Census. The 1934 figures are based on label and production reports from the Cotton Garment Code Authority. The Pacific and Rocky Mountain regions are closely estimated but data for the other sections of the country are rough approximations.

	Estimated 1934 volume of business
New England	$43,000,000
Middle Atlantic	170,000,000
East North Central	91,000,000
West North Central	40,000,000
South Atlantic	78,000,000
East South Central	38,000,000
West South Central	19,000,000
Mountain	2,000,000
Pacific	19,000,000
Total	500,000,000

Schedule of proposed new label prices and estimated label sales and income for the year 1935

Symbol		Estimated label sales	Prevailing price (per thousand)	Proposed new price (per thousand)	Estimated to realize
A	Men's shirts (excluding work shirts)	129,818,000	$2.00 [1] 2.50	$1.50	$194,727.00
ACA	Men's shirts (special washable label)	2,157,000	2.25	1.75	3,774.75
B	Boys' blouses and shirts	28,327,000	2.00 [1] 2.50	1.50	42,490.50
C	Contractors			1.50	
D	do			1.50	

[1] Special prices for contractors to be discontinued.

Schedule of proposed new label prices and estimated label sales and income for the year 1935—Continued

Symbol		Estimated label sales	Prevailing price (per thousand)	Proposed new price (per thousand)	Estimated to realize
E	Men's and boys' pajamas and nightshirts	21,981,000	$2.00	$1.50	$32,971.50
F	Work clothes (except work shirts)	149,212,000	2.00	1.50	223,818.00
G	Work shirts	66,464,000	1.50	1.25	83,080.00
H	Sheep-lined and leather garments	4,405,000	7.50	2.60	11,453.00
J	House dresses (selling at $3.50 and below)	96,989,000	2.00	1.50	145,483.50
JN	House dresses (selling at $3.51 and over)	15,597,000	3.50	2.50	38,992.50
K	Oiled cotton garments	2,513,000	2.00	1.50	3,769.50
L	Nurses' and maids' aprons and uniforms	13,104,000	1.75	1.50	19,656.00
M	Washable service apparel	7,852,000	2.50	1.50	11,778.00
MCA	do		2.75	1.75	
N	Men's cotton wash suits	770,000	2.00	1.50	1,155.00
O	Boys' wash suits	2,023,000	2.00	1.50	3,034.50
P	Women's cotton undergarments	26,280,000	2.00	1.50	39,433.50
Q	Union-made garments	21,097,000	2.00	1.50	31,645.50
R	Miscellaneous	10,430,000	2.00	1.50	15,645.00
	Total	599,028,000			902,907.75

Estimated expenditures, period from Jan. 12, 1935, to Jan. 11, 1936

	Number	Estimated expenditures to June 16, 1935	Estimated expenditures to remainder period	Total expenditures for entire period
A. Salaries:				
Chief executive officer	1	$5,000.00	$7,000.00	$12,000
Other executives	22	39,141.67	54,798.33	93,940
Clerical employees	182	120,018.33	168,021.67	288,044
Other employees	9	3,466.67	4,853.33	8,320
Total salaries	214	167,626.67	234,673.33	402,304
B. Office expense:				
Rent		8,790.00	12,558.00	21,528
Office supplies		11,808.33	16,531.67	28,340
Postage		10,375.00	14,525.00	24,900
Telephone and telegraph		6,750.00	9,450.00	16,200
Rental of equipment		2,916.67	4,083.33	7,000
Furniture and equipment		3,800.00	1,200.00	5,000
Miscellaneous		4,497.00	6,297.10	10,795
Total office expense		49,117.90	64,645.10	113,763
C. General expense:				
Cost of labels		91,000.00	127,400.00	218,400
Traveling expense:				
Members of code authority		9,375.00	13,125.00	22,500
Employees		34,541.67	48,358.33	82,900
Legal fees		6,208.33	8,691.67	14,900
Accountants' fees		3,600.00	3,500.00	7,100
Public relations		2,083.33	2,916.67	5,000
Insurance		835.40	1,169.60	2,005
Prison labor activities		833.33	1,166.67	2,000
Total general expense		149,477.06	206,327.94	354,805
Total of all expenditures				870,872
Deduct reimbursement for audits				15,000
Total				855,872
Add provision for—				
Deficit of prior period			35,000.00	
Contingencies			25,000.00	
				60,000
Total estimated expenditures				915,872

SUBCODE AUTHORITIES

Five subcode authorities are being organized to deal exclusively with fair trade practice enforcement. A budget of $5,000 for tentative organization expense for the first year of operation for each of these five subcode authorities has been approved by the advisory board of the Cotton Garment Code Authority.

This sum of $25,000 is to come from the balance of the fund set aside for fair trade practice enforcement, which fund amounted to $180,982.15 on January 12, 1935.

Summary of annual salaries of Cotton Garment Code Authority, Inc., effective Feb. 8, 1935 (all full-time employees)

Department	Number of employees	Amount of annual salaries
1. Compliance:		
A. Headquarters	18	$36,168
B. Industrial	5	10,348
C. Contact	2	5,044
D. Regional offices:		
1. New York	40	78,468
2. Atlanta	8	19,916
3. Baltimore	7	15,184
4. Boston	7	14,872
5. Chicago	10	22,256
6. Cincinnati and Cleveland	12	26,780
7. Dallas	6	11,830
8. Philadelphia	2	4,160
9. St. Louis	11	22,516
10. San Francisco	5	11,700
Total, compliance	134	279,242
2. Statistical:		
A. Analysis	7	11,336
B. Compliance checking	10	13,208
C. Reporting	12	14,118
D. Hollerith	11	12,116
E. Recording	6	6,656
Total, statistical	46	57,434
3. General:		
A. Executive office staff	12	37,132
B. Accounting	5	7,332
C. Central files	2	2,340
D. Mailing and service	8	7,228
E. Labels	7	11,396
Total, general	34	65,628
Total	214	402,304

EXHIBIT A

Detail classification of annual salaries, effective Feb. 8, 1935—(All full-time employees)

1. COMPLIANCE DEPARTMENT

		Annual salaries
A. Headquarters:		
Compliance Director, E. E. Little		$8,400
Assistant director, George S. Kent		5,200
Clerk:		
Paul F. Head	$2,600	
W. L. Nicoll	2,600	
William L. Rivers	1,820	
Robert Tarrell	1,820	
H. Press	1,560	
Betty Prather	1,352	
Albert H. Crane	1,196	
Ethel Schwartz	936	
Vincent J. Carlson	936	
Louis Katona	884	
		15,704
Stenographer:		
Alma Gitelson	1,300	
Corinne Hatch	1,300	
Lillian Spaeth	1,144	
Elizabeth Beall	1,040	
Henrietta Butler	1,040	
Leonora Schattman	1,040	
		6,864
Total		36,168
B. Industrial:		
Director, J. W. Spotten		5,200
Stenographer:		
Janet Hayman	1,820	
Helen F. Budd	1,144	
Susana Phelan	1,144	
Maxine Swan	1,040	
		5,148
Total		10,348
C. Contact:		
Department head, Jacob H. Morris		3,900
Stenographer, Celia H. Kay		1,144
Total		5,044
D. Regional offices:		
D–1. New York:		
Director, H. J. Bauer		6,500
Assistant director, M. Bachenheimer		3,900
Assistants to director:		
C. F. Foster	2,080	
Robert G. Spencer	2,080	
		4,160
Chief field adviser, H. R. Cabot		3,900
Assistant to chief field adviser, W. S. Kirkland		1,560
Office adviser, R. Beyer		1,872
Field advisers:		
V. Shoenberger	2,600	
Harry A. Stern	2,600	
W. L. Steinhardt	2,600	
W. A. Carroll	2,340	
Charles B. Chambers	2,340	
Herbert Meyer	2,340	

Detail classification of annual salaries, effective Feb. 8, 1935—(All full-time employees)—Continued

1. COMPLIANCE DEPARTMENT—continued

		Annual salaries
D. Regional offices—Continued.		
D–1. New York—Continued.		
Field advisers—Continued.		
John J. Riley	$2,340	
Joseph Z. Pierson	2,340	
Dumont C. Brophy	2,080	
W. E. Clark	2,080	
W. J. Crowley, Jr	2,080	
Sidney Bernstein	1,820	
Benjamin B. Bloom	1,820	
Ralph Hauser	1,820	
Myron Levy	1,820	
Henry T. Walsh	1,820	
William J. Williams	1,820	
Myron Bachenheimer	1,560	
Anna L. Easter	1,560	
R. G. Karolgi	1,560	
Winfield Rau	560	
		$42,900
Stenotypists:		
Lillian Vanderwall	1,820	
Ada J. Shoemaker	1,560	
		3,380
Stenographers:		
Marie Keak	1,456	
Concetta Di Giulio	1,040	
Estelle Greene	1,040	
Helena O'Driscoll	936	
		4,472
Clerks:		
Robert Gay	1,092	
Eileen M. Casey	1,040	
Catherine Farrell	988	
Lucy Harris	936	
Margaret Harney	884	
Alverna PaPenta	884	
		5,824
Totals		78,468
D–2. Atlanta:		
Director, G. C. Royall		5,200
Field advisers:		
W. W. Crowder	3,120	
J. T. Busbee	2,600	
John Haywood Jones	2,600	
E. L. Warwick	2,600	
R. P. Dieckman	1,820	
		12,740
Stenographer, Jane Lovette		1,040
Typist, Edith W. Wiseman		936
Total		19,916
D–3. Baltimore:		
Director, Joseph M. Atkinson		5,200
Field advisers:		
Bernard J. Nolan	2,080	
Rachael S. Jabine	1,820	
Frederick J. O'Hara	1,820	
George L. Stein	1,820	
		7,540

Detail classification of annual salaries, effective Feb. 8, 1935—(All full-time employees)—Continued

1. COMPLIANCE DEPARTMENT—continued

			Annual salaries
D. Regional offices—Continued.			
D–3. Baltimore—Continued.			
Stenographer, Richard F. Fiske			$1, 300
Typist, Virginia Kaufman			1, 144
Total			15, 184
D–4. Boston:			
Director, Matthew L. Lyons			5, 200
Field advisers:			
Howard Jersild	$2, 600		
J. V. Freeman, Jr	1, 820		
Frank T. Mullaly	1, 820		
		6, 240	
Stenographers:			
Lillian Mullaly	1, 300		
Helen A. Walsh	936		
		2, 236	
Clerk, Edward H. Smythe			1, 196
Total			14, 872
D–5. Chicago:			
Director, Harry Folz			5, 200
Field advisers:			
C. A. Cantrell	3, 900		
A. Abercromby	2, 080		
Willis H. Goodrich	2, 080		
L. C. Hilgendorf	2, 080		
Paul R. Ferbend	1, 820		
Harold E. Hestevold	1, 820		
		13, 780	
Stenographer, Anne E. Robertson			1, 170
Typists:			
Elizabeth Godshaw	1, 170		
Cecelia Brennan	936		
		2, 106	
Total			22, 256
D–6. Cincinnati and Cleveland:			
Director, W. L. Rawlings			6, 500
Assistant director (Cleveland), R. M. O'Hara			3, 120
Field advisors:			
J. L. Crewe, Jr	2, 600		
J. Bumpus	1, 820		
Edward M. Davidson	1, 820		
O. H. Frommeyer	1, 820		
W. G. Shillig	1, 820		
Joseph Carey	1, 560		
		11, 440	
Stenographers:			
Rose Bante	1, 560		
Catherine Clapp	1, 040		
Geraldine O'Horo	1, 040		
		3, 640	
Typists:			
Henrietta M. Troescher	1, 040		
Mildred Sauer	1, 040		
		2, 080	
Total			26, 780

Detail classification of annual salaries, effective Feb. 8, 1945—(All full-time employees)—Continued

1. COMPLIANCE DEPARTMENT—continued

		Annual salaries
D, Regional offices—Continued.		
D–7. Dallas:		
Director, Sylvan Mincer		$3,900
Field advisors:		
John McLaughlin	$2,340	
H. E. Carbyn	1,820	
H. K. Keamey	1,820	
		5,980
Stenographer, J. R. Spurgin		1,040
Typist, Louise McDaniel		910
Total		11,830
D–8. Philadelphia:		
Director, John E. Morrison		3,120
Stenographer, Mary G. Stewart		1,040
Total		4,160
D 9. St. Louis:		
Director, Perry M. Hanson		3,900
Field advisors:		
R. E. Landon	2,600	
Fred F. O'Brien	2,600	
O. V. Patton	2,600	
Claude F. Hall	2,236	
Edward H. Robinson	2,236	
Earle E. Jordan	1,820	
		14,092
Stenographers:		
Marguerite E. Fulton	1,560	
Estelle Turner	1,144	
Edna Flachmeier	1,040	
		3,744
Typist, Rosemary Condon		780
Total		22,516
D–10. San Francisco:		
Director, Fred Pruter		5,200
Field advisor:		
Ed S. Fox	1,820	
Clifford M. King	1,820	
Robert A. Martin	1,820	
		5,460
Stenographer, Francis Priest		1,040
Total		11,700

2. STATISTICAL DEPARTMENT

A. Analysis:		
Department head, Alfred Cahen		3,900
Stenographer:		
Betty R. Lipson	1,404	
Mildred Gerstenfeld	988	
		2,392
Clerk:		
George Hartley	1,560	
Peter Parenty	1,352	
Lucille Scudder	1,092	
I. Orellana	1,040	
		5,044
Total		11,336

Detail classification of annual salaries, effective Feb. 8, 1935—(All full-time employees)—Continued

2. STATISTICAL DEPARTMENT—Continued

		Annual salaries
B. Compliance checking:		
General supervisor, M. O. Gilpin		$3,900
Supervisor, L. B. Spivack		1,508
Clerk:		
T. Durnan	$1,040	
F. Nunn	1,040	
P. T. Reilly	1,040	
J. Viret	1,040	
E. Young	1,040	
Harry Koval	936	
		6,136
Stenographer:		
Goldie Friedman	832	
D. Loewy	832	
		1,664
Total		13,208
C. Reporting:		
Department head, Merle E. Gould		$3,120
Clerk:		
M. Souers	1,352	
A. Weber	1,170	
Frederick Graef	1,040	
Irving Greenberg	936	
Isabelle Kee	936	
Elsie Krumm	936	
Mary C. Noll	936	
S. Tuomi	936	
		8,242
Monroe operator, Eva Adler		936
Typist:		
Rea Kiel	936	
Jeanette Kiel	884	
		1,820
Total		14,118
D. Hollerith:		
Department head, Alice Quinn		2,600
Operator:		
A. Munson	1,144	
A. Abrahams	936	
Rosary Badamo	936	
M. Egert	936	
Lillian Harris	936	
Margaret Jacobsen	936	
Clara Nagy	936	
Catherin Chrystal	936	
Pauline Nitkin	936	
		8,632
Clerk, J. Fero		884
Total		12,116
E. Recording:		
Department head, Ernest McCormick		2,080
Clerk:		
Monica Lymph	936	
Margaret McQuade	936	
Ethel Lehman	884	
		2,756
Stenographer, J. Mills		936
Typist, Florence Levine		884
Total		6,656

Detail classification of annual salaries, effective Feb. 8, 1935—(All full-time employees)—Continued

3. GENERAL

		Annual salaries
A. Executive office staff:		
Executive director, W. C. Morgan		$12,000
Secretary to executive director, Evelyn J. Boesch		3,120
Code secretary, A. B. Dickinson		4,800
Director, shelter workshops, Thomas R. Byrne		5,200
Secretary, labor complaints committee, Gladys Dickason		2,600
Stenographers:		
Victoria Bornemann	$1,560	
Josephine R. Donn	1,560	
Mae Welsing	1,560	
Mary Siggins	1,300	
Helen Guiton	1,196	
Ruth Saul	1,144	
		8,320
Telephone operator, Cecelia Donovan		1,092
Total		37,132
B. Accounting:		
Department head, Theodore Christman		2,600
Bookkeeper, Mr. Reilly		1,560
Stenographer, Pearl Kamm		936
Clerks:		
Gertrude B. Moyes		1,196
Marjorie O'Rourke		1,040
Total		7,332
C. Central files:		
Clerks:		
M. D. Wilson		1,300
Grace L. Rourke		1,040
Total		2,340
D. Mailing and service:		
Department head, Robert A. Mulligan		1,300
Reception clerk, H. Barry		936
Mimeograph operator, Fred Seeber		936
Clerks:		
Arthur Semple	936	
Lucian Fiore	780	
Donald M. Goerg	780	
Albert Semple	780	
James Bishop	780	
		4,056
Total		7,228
E. Label department:		
Department head, Ernest Homer Miller		3,900
Assistant department head, Kermit White		1,560
Clerk, bookkeeping machine, A. R. Argo		1,300
Stenographers:		
Frieda Grund	1,248	
Martha Sheridan	1,196	
		2,444
Shipping clerks:		
A. R. Koval	1,196	
Daniel Smith	1,196	
		2,392
Total		11,596

Detail classification of annual salaries, effective Feb. 8, 1935 (All full-time employees)—Continued

NUMBER OF OFFICES AND LOCATION

(All wholly devoted to code activities)

New York (general), New York (regional), Atlanta, Baltimore, Boston, Chicago, Cincinnati, Cleveland, Dallas, Philadelphia, St. Louis, San Francisco; total, 12.

EXHIBIT B

Legal fees

Contractual, annually	$12,000
Contingent, for traveling and other expenses, annually	2,900
Total	14,900

EXHIBIT C

PROVISIONS LIMITING TRAVELING EXPENSE

A. Travel allowances are made on the following basis:
Railroad fare, $5 per diem while en route, $10 per diem each meeting day.
B. Officials responsible for reviewing and approving expense accounts:
Treasurer, general manager, and secretary.

EXHIBIT D

Functional recapitulation of foregoing expenditures

	Estimated expenditures to June 16, 1935	Estimated expenditures remainder period	Total expenditures for entire period
General administrative functions	$61,348.50	$79,775.50	$141,124
Statistical functions	35,165.00	49,231.00	84,396
Compliance functions	165,917.91	232,285.09	398,203
Label department functions	102,978.75	144,170.25	247,149
Total expenditures by functions	365,410.16	505,461.84	870,872

Balance sheet, Jan. 12, 1935

ASSETS

Cash	$188,317.75	
Accounts receivable $17,451.43		
Less reserve 12,064.13		
	5,387.30	
Inventories: Labels and stickers	5,649.03	
Total current assets		$199,354.08
Cash held in escrow (see contra):		
Restitution of pay-roll violations	47,437.40	
Col. R. B. Paddock	10,416.67	
		57,854.07
Furniture and equipment	23,721.33	
Less portion charged to expense	19,871.89	
		3,849.44
Unexpended expense advances		8,924.90
Deferred charges:		
Stationery, printing, and office supplies	1,939.60	
Postage	97.71	
Prepaid rent	968.63	
		3,005.94
Total		272,988.43

Balance sheet, Jan. 12, 1935—Continued

LIABILITIES AND DEFICIT

Accounts payable	$58, 688. 76	
Balance due to minor codes for enforcement of fair-trade practice	180, 982. 15	
Code members' credit balances	12, 211. 70	
Accrued expense:		
Salaries	$200. 00	
Rent	90. 12	
	290. 12	
Total current liabilities		$252, 172. 73
Cash held in escrow (see contra):		
Restitution of pay-roll violations	47, 437. 40	
Col. R. B. Paddock	10, 416. 67	
		57, 854. 07
Deficit		37, 038. 37
Total		272, 988. 43

Interim statement of income and expenditures, for the period from Nov. 17, 1933, to Jan. 12, 1935

(Exclusive of subcode authorities for enforcement of fair trade practice)

Income:		
Labels sold	$926, 579. 66	
Less portion applicable to subcode authorities for enforcement of fair-trade practice	260, 944. 70	
		$665, 634. 96
Stock identification stickers sold		23, 620. 97
Pay-roll assessments (two-tenths of 1 percent)		90, 418. 19
Sale of codes		320. 31
Total income		779, 994. 43
Expenditures:		
A. Salaries: Chief executives, other executives, clerical employees, other employees [1]		361, 836. 88
B. Office expense:		
Rent	$15, 589. 91	
Office supplies	28, 531. 17	
Postage	23, 733. 55	
Telephone and telegraph	19, 162. 95	
Rental of equipment	6, 826. 39	
Furniture and equipment	18, 771. 10	
Office alterations	3, 329. 40	
Miscellaneous	18, 186. 10	
Total office expense		134, 130. 57
C. General expense:		
Cost of labels and stickers	167, 874. 78	
Traveling: Member code authority, employees [1]	107, 029. 55	
Legal fees	23, 637. 57	
Accounting fees	14, 001. 61	
Public relations	5, 296. 46	
Insurance	1, 728. 77	
Prison labor activities	5, 181. 85	
Total general expense		324, 750. 59
Total of all expenditures		820, 718. 04

[1] Allocation desired is not readily obtainable. It was thought preferable to submit totals as shown rather than further delay presentation of budget. If information is absolutely essential can be furnished within 2 weeks of request.

Interim statement of income and expenditures, for the period from Nov. 17, 1933, to Jan. 12, 1935—Continued

Deduct reimbursement for audits	$15,750.77
Total	804,967.27
Excess of expenditures over income	24,972.84
Add reserve for doubtful accounts receivable	12,065.53
Deficit for period	37,038.37

Reconciliation of cash surplus or deficit as applied to the new budgetary period

Cash balance as of Jan. 12, 1935		$188,317.75
Less accounts payable		251,882.61
Net deficit		63,564.86
Estimated receipts to end of current budget period		906,000.00
Accounts receivable	$17,451.43	
Less reserve	12,064.13	
		5,387.30
		911,387.30
Net available cash for new period		847,822.24

AUTHENTICATION

I, Stanley A. Sweet, chairman of the Cotton Garment Code Authority, hereby solemnly declare that the items contained in the foregoing budget are proper and correct and that the proposed expenditures and assessments were duly approved by the code authority at its session held in New York City, N. Y., on Wednesday, February 13, 1935, as per certified copy of minutes attached.

Dated February 19, 1935.

STANLEY A. SWEET.

CERTIFIED COPY OF MINUTES

Extract from minutes of the meeting of the advisory committee held at the office of the Cotton Garment Code Authority, 40 Worth Street, New York, N.Y., on February 13,19135.

It was moved, seconded, and carried that the tentative budget as submitted by the auditor today and amounting to $915,872 including cost of labels is hereby ordered to be submitted to N. R. A.

I hereby certify the above to be a correct copy of an extract from the foregoing minutes.

W. C. MORGAN, *Secretary.*

ORDER REMOVING CERTAIN MEMBERS OF CODE AUTHORITY OF THE COTTON GARMENT INDUSTRY AND PROVIDING TEMPORARY ADMINISTRATION FOR SAID CODE

Whereas it has been made to appear to the satisfaction of the N. I. R. B. that it is unable to expect from members and alternate members of the Code Authority of the Cotton Garment Industry proper and satisfactory performance of the governmental duties and obligations of their respective offices, because of the situation which now exists, in the industry and in the administrative and representative agencies thereof, particularly that arising out of the conflicting responsibilities imposed upon some of such members and alternate members by reason of their current addditional positions as officers or directors or both of the International Association of Garment Manufacturers, and

Whereas such situation has resulted in a condition which manifestly prevents the proper discharge of the duties of the code authority, and

Whereas it appears to the satisfaction of the N. I. R. B. that the order hereinafter set forth is necessary and will tend to effectuate the policies of title I of the N. I. R. A.,

Now, therefore, pursuant to authority vested in it by Executive Order No. 6859, by the Code of the Cotton Garment Industry, and otherwise, the N. I. R. B. does order as follows:

1. That all members and alternate members of the Code Authority of the Cotton Garment Industry who occupy positions as officers or directors or both of the International Association of Garment Manufacturers be and they are hereby removed from their respective positions as members or alternate members of said code authority;

2. That the code authority of said industry, and its successors, hereinafter named, separate and segregate forthwith all of its property, interests, and affairs from those of said International Association of Garment Manufacturers and continue such separation and segregation at all times hereafter;

3. That pending the election of successors to the members of alternate members of said code authority affected hereby, and the reorganization of said code authority as hereinafter provided, the general N. R. A. code authority, selected pursuant to the provisions of administrative order no. X-84 dated September 7, 1934, shall assume all of the rights, interests, duties, and obligations of said code authority, and shall handle and perform the same in compliance with said code and the law until the further order of this board.

4. That the members of said industry shall proceed forthwith to select members and alternate members of the code authority to fill the vacancies created hereby, which selection shall be made in full conformity with the provision of said code, and which persons shall in no event, at the time of such election, be officers or directors of said International Association of Garment Manufacturers; such members and alternates shall assume their respective offices only upon approval of this board, whereupon said code authority shall be again organized and vested with its proper powers, interests, duties, and obligations.

Mr. FISHEL. That, Mr. Chairman, is all we have to say.

Senator LA FOLLETTE. We have several communications which have been submitted by the National Recovery Administration and the National Retail Code Authority in response to requests by various Senators, and others concerned, which specific information may be incorporated into this record at this point.

(Said communications are as follows:)

NATIONAL RETAIL CODE AUTHORITY, INC.,
Washington, D. C., April 12, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee, Senate Office Building,
Washington, D. C.

MY DEAR SENATOR HARRISON: There is herewith enclosed a resolution passed today by the National Retail Code Authority, Inc., advocating the continuance of emergency legislation for a period not to exceed 2 years, of title I of the National Industrial Recovery Act, subject to changes which may be recommended by the constituent trade associations.

Very truly yours,

NATIONAL RETAIL CODE AUTHORITY, INC.,
(Signed) RICHARD M. NEUSTADT,
Managing Director.

RESOLUTION PASSED BY THE NATIONAL RETAIL CODE AUTHORITY, INC., APRIL 12, 1935

Whereas, the Senate Committee on Finance has under consideration the extension of the National Industrial Recovery Act; and

Whereas, it would appear desirable that there be made available to the committee all possible facts procurable from informed sources: Therefore be it

Resolved, That the National Retail Code Authority, Inc., the body recognized as truly representative of the retail trade governed by the Code of Fair Competition for the Retail Trade (code 60, art. X, sec. 2), favors the continuance of emergency legislation for a period not to exceed 2 years, for self-government of trade and industry under self-determined codes, subject to changes which may be recommended by the constituent trade associations; the vote on this resolution being as follows:

(For, 7 votes)

National Association of Retail Clothiers and Furnishers.
National Retail Dry Goods Association.
National Retail Furniture Association.
National Council of Shoe Retailers.
National Shoe Retailers Association.
Limited Price Variety Stores Association.
National Association of Music Merchants and Mail Order Association of America.

(Opposed, 1 vote)

National Retail Hardware Association.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 9, 1935.

HON. PAT HARRISON,
Chairman Senate Committee on Finance,
Senate Office Building, Washington, D. C

MY DEAR SENATOR HARRISON: There is available to the members of the committee further information in connection with the operation of the National Industrial Recovery Act. This material, which is now in the hands of the clerk of the committee, should prove useful to the members of the committee. I would appreciate it if you would officially advise the members of the committee that this information is available by reading the attached list into the record.

Sincerely yours,

(Signed) BLACKWELL SMITH,
Acting General Counsel.

MATERIAL CONCERNING N. R. A.

The clerk of the Finance Committee has available for distribution to members of the committee a number of memoranda not previously mentioned in the record, containing information relative to the operation of the National Industrial Recovery Act. The following is a list of such memoranda:

1. Fertilizer manufacturing industry, examples of benefits under the codes.
2. Limitations on President's authority in S. 2445 and H. R. 7121.
3. Source of provisions in S. 2445 and H. R. 7121.
4. Narrow fabrics industry, letter concerning operation of the N. I. R. A. in narrow fabrics industry.
5. Memorandum of law concerning the power of Congress to pass preventive legislation.
6. Quotations from cases in the United States Supreme Court and elsewhere relevant to scope of Federal action under the commerce clause.
7. Trucking industry, examples of benefits of N. R. A.
8. Statement of procedure followed by N. R. A. in the promulgation and approval of codes of fair competition.
9. Report on code authority salaries.
10. N. R. A. handling of code expenditures and contributions.
11. Corporate securities.
12. Trend of wholesale prices, 1929-35, chart.
13. Increase in manufacturing employment and pay rolls.
14. Production and capacity control provisions of the codes. (Approved prior to Dec. 1, 1934.)
15. State of purposes, organization, and administration of the compliance division of N. R. A.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 11, 1935.

HON. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR: For your information I am transmitting herewith a copy of a letter which I wrote to Senator King today furnishing him with a copy of our report to the President on Executive Order 6787. This report was subsequently

released for publication and I enclose a copy of the release; and I should add that I transmitted with it to Senator King one of our office copies of the study of the Research and Planning Division on which the report was based.

Sincerely yours,

DONALD R. RICHBERG,
Chairman National Industrial Recovery Board.

APRIL 11, 1935.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

DEAR SENATOR KING: On the President's return we transmitted to him promptly our report concerning the effects of Executive Order 6767 with the statement that we desired to release this as soon as it had been received by the President. I have just been so notified and I am sending you herewith a copy of that report, dated April 8, 1935. It is my understanding that you have requested also that the study made by the Research and Planning Division upon which our report was based should be transmitted to you also for your information. We have only a few copies of this since you will see from looking at it that it is voluminous and contains a large number of tables and other material which it would be expensive to reproduce. We would, therefore, appreciate it if you would be kind enough to return this copy after it has served your purpose.

This study is in two volumes, the study itself and a volume of appendixes and is transmitted to you exactly as prepared and presented to the board under date of February 1, 1935.

Sincerely yours,

DONALD R. RICHBERG,
Chairman National Industrial Recovery Board.

REPORT OF THE NATIONAL INDUSTRIAL RECOVERY BOARD OF THE EFFECTS OF EXECUTIVE ORDER NO. 6767 UPON THE MAINTENANCE OF STANDARDS OF FAIR COMPETITION IN SALES TO PUBLIC AND TO PRIVATE CUSTOMERS

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 8, 1935.

The PRESIDENT,
The White House, Washington, D. C.

SIR: This report is submitted pursuant to paragraph 3 of Executive Order No. 6767, dated June 29, 1934, permitting the quotation of prices to governmental agencies of not more than 15 percent below the bidder's filed prices. The order provided that the Administrator of Industrial Recovery should make a study of the effects of the order upon the maintenance of standards of fair competition in sales to public and private customers and report to you thereon.

You will remember that the Administrator caused price hearings to be held on January 9 and 10, followed by public hearings from February 27 to March 2, 1934. At these hearings charges of price uniformity and excessive price advances were made by certain purchasing representatives of city, State, and Federal Governments and certain quasi-public institutions. It was alleged that there had been a substantial increase in the number of uniform bids, called "tie-bids", which were alleged to indicate agreement among the bidders. In addition, the peculiar circumstances of governmental purchasing agents, due to legal requirements as to the lowest responsible bidder, as compared with the ordinary purchaser were emphasized. Many of the charges attributed the difficulties to the open price filing provisions of codes.

In an effort to meet the situation, Administrative Order No. X-48 and Executive Order No. 6767 were issued. Administrative Order X-48 gave persons submitting bids to governmental agencies certain exemptions from compliance with code provisions governing the making of quotations, and put governmental agencies in the most favorable buyer classification. Executive Order No. 6767, pursuant to which the National Industrial Recovery Board now makes this report, allowed bidders to governmental agencies to quote prices not more than 15 percent below their prices filed under open price provisions in codes.

Subsequent to the issuance of the order and pursuant to the order the National Recovery Administration had the Research and Planning Division make a study of the effects of the order.

Method of preparation of the study.—The Research and Planning Division sought the answer to a number of questions, including the effect of the Executive order on public purchases; on the number of tie bids, the number of tie low bids

(uniform low bids), and on prices. It was not possible to get really complete information because of the unusual character of the data required. A certain amount of information was secured, however, through the use of questionnaires, field trips to governmental purchasing offices of the Treasury Department, Navy Department, State of Maryland, Commonwealth of Pennsylvania, and city purchasing offices of Boston and Philadelphia, and other available sources.

Limitations of the study.—The Board is of the opinion that the study cannot be used as a basis for broad conclusions as to the effect of code provisions on prices and, indeed, such was not the purpose of the study. It may be questioned whether the study reflects with any degree of finality the effects of Executive Order 6767. It is pertinent to raise the question whether or not all public purchasers have had the same experience as those in the small sample here covered. The study states that an answer to this question was sought but not obtained. Little evidence has been compiled with respect to the number of bidders on each item, which information would indicate the extent of competition in a particular industry.

Furthermore, prices bid were not available in sufficient quantity for satisfactory analysis and as the study states tie bids with increased prices and tie bids with decreased prices do not mean the same thing. Under the order, price changes effective as to governmental purchases might be made either by granting the governmental purchaser a discount below the filed prices or by changing the prices already on file. Consideration of the price level is clearly pertinent to any question of the maintenance of standards of fair competition and to the effects of the order upon the maintenance of such standards.

Furthermore, the study does not indicate whether the bidders involved in the bid openings for which data were available were manufacturers or distributors, although an effort was made to secure this information. Obviously, uniform bidding by distributors cannot be attributed, without further analysis, to the pricing practices of manufacturers. Therefore, compilations in the study made on the basis of industry products may be misleading unless this fact is taken into consideration.

It should be noted that only those industries to which tie-bids were most common at the Treasury and Navy Departments were selected for study. Since the cases selected were those in which tie-bids were most common, this study cannot properly be used as an indication of the extent to which tie-bids exist or do not exist generally in industry, although it can be used as some indication of the trend of the number of tie-bids.

Tie-bids.—The sixty-nine industries selected were divided into five classes, based upon the extent of their uniformity in bids, although the small number of items reported on as to some industries make the information inconclusive in such instances.

Class I contains 9 industries which show a very high uniformity in bids since Executive Order No. 6767 was issued.

Class II contains 10 industries showing a moderately high uniformity or increasing uniformity.

Class III contains 18 industries which show an intermediate uniformity in bidding, with Executive Order No. 6767 having no effect.

Class IV contains 18 industries in which Executive Order No. 6767 possibly was effective in bringing about bid diversity.

Class V contains 14 industries in which tie-bids were infrequent.

While it is tie low bids that create a problem for governmental purchasing agencies, it is nevertheless true that such bids may indicate the closest kind of competition for governmental business, a competition which may only be resolved from the viewpoint of the purchasing agent by consideration of standards of quality and service. The study indicates definitely that tie-bids were widely prevalent prior to the codes. Moreover, in numerous industries the percentage of tie low bids prior to the codes was strikingly high. The codes did not create the purchasing agent's problem. Seemingly, the problem was intensified during the code period, although this was not the case with respect to the products of many industries; and, at least to some degree, the intensification may well have been due to the general stabilization of prices at the end of a long period of acute price changes subsequent to 1929. It is pertinent to note as to class IV industries, which showed a strong trend toward tie low bids during the code period, that subsequent to order 6767 this trend was sharply reversed. This situation raises doubt that there was collusion in the class IV industries.

The outstanding impression which is gathered from the analysis of the material examined is that there was no uniformity in trend of tie bids subsequent to the issuance of Executive Order No. 6767. This lack of uniformity of trend exists as between different governmental agencies purchasing from the same industry. For instance, the low bids on paper were tied on 100 percent of the cases selected from the Treasury, and not at all at Philadelphia. There are numerous other examples of extreme differences between the percentages of tie bids in a particular industry when submitted to different governmental agencies.

Executive Order No. 6767 appears to have had no great effect upon tie bids in one director or another. It appears that the discount permitted by the order has actually been used in relatively few of the industries covered in the study and that there is only an inference that it has affected tie bidding in certain cases. While in some industries there is a decrease in the number of tie bids after the issuance of the order, yet in others there has been an increase. Out of a total of 85 sets of contracts studied, all relating to purchases of the Procurement Division of the Treasury and the Bureau of Supplies and Accounts of the Navy, there is little trend either toward increase or decrease. Some 41 showed an increase in the amount of tie bids after the order was issued, 10 showed little or no change, while 34 showed a decline. On the other hand, considering the period covered by codes, a count by industries studied shows that the percentage of tie low bids has decreased subsequent to the issuance of the order in 31 industries, is the same in 15, and has increased in only 21.

The experience under any particular code and under the Executive order indicates that factors other than the order or the code provisions were operative—factors which vary from industry to industry in accordance with the individual price and production technologies and the other ways of doing business common in the industry or trade. On the whole they are factors that have been in operation for a long time and center around the possibility of free and open competitive markets. Where the firms are few in number, where the product is manufactured according to precise specifications, where the industry is well organized and where information is widely disseminated, tie-bids are more likely to occur. On the other hand, where purchasing agents are alert and aggressive and where the Government purchases amount to a substantial proportion of the total output of the industry, the number of tie-bids will tend to be somewhat small.

Prices to public purchasers.—As has been pointed out, the evidence as to prices bid is extremely fragmentary and insufficient for any generalization. The conclusion that Executive Order No. 6767 has had any effect on prices can neither be sustained nor disproved on the basis of the material examined. In the opinion of the majority of the 102 purchasing agents who replied to the questionnaires, the order has not had any substantial effect on prices.

Maintenance of standards of fair competition to private purchasers and others.—The order appears not to have involved any special benefit or losses to private purchasers, nor indeed was it designated to do so.

From the point of view of members of industry, it should also be noted that there is little evidence that the order has had much effect in promoting destructive price cutting, suspension of open price provisions, or sales below cost. Apparently, it has not affected the general market.

Future treatment. If it is a sound conclusion that tie-bids are not greatly affected by code provisions or by Executive Order 6767 but are mainly due to other factors which have existed for some time, it seems that National Recovery Administration action on individual situations, based on its policies, is the best method of treatment.

The National Recovery Administration has sought and is seeking to promote such self-government by industry of business practices in the market places as would make possible socially beneficial price flexibility. National Recovery Administration policy, as expressed in office memorandum no. 228 of June 7, 1934, is not only to avoid price fixing but also to prevent destructive price cutting. 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.

The early days of the National Recovery Administration resulted in many experiments in the new legislative field of price provisions. Out of the experience of that period principles have been formulated and will continue to be formulated which indicate the extent to which industry should be permitted to go in regard to price provisions. Should the Congress renew the National Industrial

Recovery Act for a further period of time such principles so far as consistent with the new legislation will be put into effect in all codes. If price provisions in codes have had any part in permitting the making of tie-bids, the Board believes that incorporation of such principles in codes, as they are revised under new legislation, will effectively meet the situation to the extent that code provisions may affect it.

Respectfully submitted.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By DONALD R. RICHBERG, *Acting Chairman.*

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 13, 1935.

Hon. PAT HARRISON,
Chairman Senate Committee on Finance,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: In accordance with the request of Senator Gore made at the hearing on April 11, 1935, and the practice we have been following in connection with the transmittal of information requested by members of the committee, I am annexing hereto for Senator Gore's information a list of the industries and trades in which the code authorities have assumed a corporate form of organization.

Very truly yours,

BLACKWELL SMITH,
Acting General Counsel.

LIST OF INDUSTRIES WHOSE CODE AUTHORITIES ARE INCORPORATED

Retail lumber.
Retail trade (the National Retail Code Authority and 42 local retail code authorities).
Cotton garment.
Tile contracting.
Roofing and sheet-metal contracting.
Insulation contractors.
Heating, piping, and air conditioning.
Marble contracting
Luggage and fancy leather goods.
Retail jewelry.
Painting, paperhanging, and decorating.
Elevator manufacturing
Cement-gun contractors.
Building granite.
Construction.

Senator LA FOLLETTE. The hearing will be recessed until 10 o'clock Monday morning.

(Whereupon, at 12:45 p. m., the hearing was recessed until 10 a. m. Monday, Apr. 15, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

MONDAY, APRIL 15, 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 William H. King, presiding.

Present: Senators King, George, Barkley, Connally, Clark, Black, Gerry, Couzens, Metcalf, and Hastings.

Senator KING. The committee will be in order.

The Chair will read the following into the record:

Code Authority of the Industrial Oil Burning Equipment Manufacturing Industry, 7 East Forty-fourth Street, New York City.

MARCH 23, 1935.

Hon. WM. H. KING,
Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SIR: If you have received from any source letters on stationery bearing the above imprint of the code authority of our industry, please note that such letters, if any, have been sent without the knowledge and without the authority of the code authority of this industry.

It is recognized that some slight advantages have accrued to the industry through the fair trade practice requirements of our code, and particularly through the fact that our code exempted us from the requirements of the so-called "Oil Burner Code", which is the code covering the domestic oil-burner industry.

On the other hand, the disadvantages of the National Recovery Administration have very far outweighed any small advantages we may have obtained. National Recovery Administration has increased our costs and curtailed our market, and we have no desire to see the requirements of this act continued.

The members of this code authority are unanimously opposed to the continuance of the National Recovery Act beyond June 15, 1935.

Respectfully yours,

E. H. PEABODY,
Chairman, Code Authority.

I will read into the record also, letter from the Alcor Manufacturing Co. of Chicago, Ill., dated April 8, 1935:

Hon. WILLIAM H. KING,
Senate Finance Committee, Washington, D. C.

DEAR SIR: We are taking the liberty of presenting our views on Senate bill No. S. 2445, designed to reenact, amend, and extend the National Industrial Recovery Act.

We believe that the past history of the National Recovery Administration has proved that it failed to help the small business industry, such as ours is, nor has it helped our employees. It may have helped the large industries which have a monopoly on business in general.

The proposed new act would only be a continuance of practically all the objectionable features of the present act, and it has many additional provisions which would virtually place business, employer, and employee under a dictatorship,

and a consequent surrender of constitutional rights. It will also add an additiona expense on us which we are not able to carry at this time.

We believe, for the above reasons that the present act should be allowed to expire on June 16, 1935, and that the proposed new act be voted out. We sincerely hope that our objections will be taken into consideration when the bill is brought up for a vote.

Respectfully yours,

ALCOR MANUFACTURING CO.,
Per K. J. NIELSEN, *President.*

Another letter, from the Advance Envelope Co. of Atlanta, Ga., dated April 1, 1935:

Hon. WM. H. KING,
United States Senator, Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR: Reference is made to the concerted effort on the part of the Envelope Manufacturers' Association, to have members bombard the National Congress, with letters and telegrams, approving the tactics of the industry by extending the present National Industrial Recovery Administration code beyond June 1, 1935.

The present code has not in any way been of benefit to our company, but is seeming to help out the larger companies, in squeezing out the small business, and allowing no new companies to get a start.

We heartily approve the hour and wage regulation of the National Recovery Administration, and if consistent, we will appreciate your support of the new National Industrial Recovery Administration set-up governing the hours and wages of labor, but eliminating any price fixing whatsoever.

Respectfully yours,

ADVANCE ENVELOPE CO.,
H. F. ZOTTI, *Owner.*

I desire also to place into the record an editorial from the American Wool and Cotton Reporter, as follows:

EDITORIAL

The National Recovery Administration has been more harmful to southern manufacturers, this because the South did have an advantage in hours and wages and in lack of labor domination. And we suppose that the acceptance of the National Recovery Administration by a great many of the eastern manufacturers was because they felt in advance that the "new deal" would hamstring the South for the benefit of New England and the older manufacturing centers. Our objection to the whole business is not because of sectional differences but because all of these policing policies should be left pretty much to States individually, if not carried to the ultimate and left to individual manufacturers and individual operatives themselves. Mrs. Rogers, our able Congresswoman, is hot for national legislation equalizing hours and wages, and so forth. But her father, Franklin Nourse, made his fortune as a mill agent in New England. Their hours were 54 and higher; their wages were lower in his time than were paid in the South prior to the National Recovery Administration. And her father-in-law, Jacob Rogers, the multimillionaire of Lowell, made his tremendous fortune by the operation of cotton mills, long hours, low wages, with the usual proportion of women and minors as operatives.

It seems to us that the backward States—backward industrially—ought to be given the same advantages of building up business that were previously and all of Europe. [Sic]. It is just like an individual. If a man is willing to work 12 hours a day, we don't believe that any law should prevent him from doing it solely to satisfy a lot of more effete people who only want to work 6 hours.

An interesting thing about this whole National Recovery Administration business, at least so far as the codes and the institutes are concerned is that a lot of southern cotton manufacturers were responsible for it in the first place. It was a few southern men who were responsible for the institute and the Cotton Code and the acceptance of the thesis that cooperation and limitation of production and standardization of hours, wages, etc., would be beneficial.

CONFUSION WORSE CONFOUNDED

All this regimentation leads only to confusion. We shorten hours to increase employment and we raise costs so we have to give the cotton farmers a process tax on their cotton so that they can pay the higher costs; and when we give them a process tax they try to raise more cotton, so we have to plough under every third row, and the farmer beats that by using more fertilizer and the fertilizer goes up in price, so he has to raise an agricultural product of greater value, so he raises potatoes, and this raises the deuce with the State of Maine potato farmer; so the Government has to buy the Aroostook County potato surplus off the market; there is not enough of potato culls to make a starch crop, so starch goes up and we begin to import Dutch and Japanese starch, and that hurts the Aroostook County starch factories; so we put a tariff onto imported starch and in doing all of these things we increase the employees on the Federal Government pay rolls in Washington from 100,000 to 900,000 people; so our taxes go up and nobody can afford to pay their taxes, so the banks foreclose on the properties; and there we are and where are we?

I desire to place into the record also a very important letter from the Pharis Tire & Rubber Co. of Newark, Ohio, dated April 9, 1935:

Hon. WILLIAM H. KING,
Senate Office Building, Washington, D. C.

DEAR SENATOR KING: On behalf of my company, the Pharis Tire & Rubber Co. of Newark, Ohio, a manufacturer of rubber tires, I oppose the Harrison bill for National Recovery Administration extension since this new bill is worse than the old act. With mere words they reclothe National Recovery Administration for another 2 years of bureaucratic control and price fixing.

My company at Newark is the result of more than 20 years of typical American growth, starting, as it were, from scratch.

We always kept before us a very simple objective: to build as good tires as any other manufacturer and to sell them at the lowest possible cost consistent with a low but decent profit.

We felt that there would always be two classes of tire manufacturers in this country, indeed, in many manufacturing businesses. The one class believe in size and volume, publicity and high-powered salesmanship and often result from promotions and consolidations, with big charges for financing, with large salaries for executives and with heavy selling expenses, and sometimes with a high cost of production due to the purchase or consolidation of plants that were probably somewhat outmoded when taken over.

Further, this class spend large sums in advertising. To illustrate, it appears that within some 8 or 10 years, the Goodyear Tire & Rubber Co. spent more than $70,000,000 for advertising, during which time our little company probably spent no more than a half million dollars. Of course, we do not criticize the Goodyear nor are we envious of its good fortune and high standing. We are simply showing some of the basic characteristics of that class.

But on the other hand, along with other small companies in various industries, we relied, as I have said, on the production of first-class goods and the sale thereof at the lowest possible prices consistent with a profit.

In our company we had no promotion costs. Every dollar of capital charge realized 100 cents. Our executive salaries were kept down. We kept our dividends within limit so as to be able to finance our growth from the inside rather than from the outside. We relied on quality and prices to advertise us. And we succeeded along those lines. The best proof is that during the whole of the depression, until the National Recovery Administration began to grip us, we made decent profits, while many other tire manufacturers were losing money. The fact that we continually made money shows that we did not sell below our honest costs of production and of distribution.

All of this shows that there are two classes with entirely different but honest methods, and that what helps one may ruin the other.

Then the National Recovery Administration came along, with its tyranny and bureaucratic control. With others we successfully fought allocation and production control and distribution, and for a time defeated price fixing. But finally, under the pretext of an emergency, which, if it had any reality, had existed for 10 or more years, price fixing was established, with ruinous results to our company. We kept fighting it and finally succeeded in having it revoked, but only after we had been so sorely hurt that it will take time to regain what was once honestly our own.

You can see the problem. If the big tire manufacturer, with his great consumer publicity, with his great amount of advertising, with his advertisements in every newspaper and magazine, with his billboards always before you, with his great superstations and free service welcoming you and with his tires on the output of new automobiles, can force the little fellow up to his prices, the little fellow will lose his business and the big fellow will gain it.

It requires no argument to show that, if prices be the same, or if the differential be unfairly small, the prospective purchaser of a tire will naturally seek those who have national and even world-wide fame. It requires quality and price for the small manufacturer to attract the average consumer.

We started and have maintained our business on the theory that there are many tire purchasers in this country who are not seeking service but are demanding quality and value, willing to buy and to carry and to do their own servicing. We were justified. We did successfully attract those people.

It is surely as unfair for the big fellow to try to bring our prices up to his prices as it would be for us to try to bring his prices down to our prices.

Price fixing was really hurtful to the whole business, for it created a consumer strike, founded upon a belief that the tire manufacturer is getting more than he ought to receive for his tire even when he may be selling it below cost. Indeed, the people of this country are tired of price fixing and do not propose to stand for the principle even though they may not for the moment be losing any money because of it.

Moreover, the codes have never been enforced. I have had great opportunities to check many of the codes and know the results. Even when price fixing was begun in our own industry, our attorney, Mr. James M. Butler, of Columbus, and I checked the prices of tires in Columbus day after day and found that even those who were most insistent upon price fixing were not observing those prices.

We have obeyed not only the National Industrial Recovery Act, but also our code. We have played the game squarely. We have never done it with joy but we have done it upon the rather common assurance that the emergencies were great, that we should all stand shoulder to shoulder for a little time and that, at the worst, the codes would terminate in June of this year.

We have attended all the meetings and hearings and have voiced our sentiments everywhere. We were in a position to do that because we were in no sense evaders or chiselers. We had been successful before National Recovery Administration and the code, and the code with its price fixing and its petty regulations were slowly ruining us.

We lived somewhat on the assurance that presently the Supreme Court would decide all the legal and constitutional questions. But it became obvious that the Government was running away from such a test, which was confirmed a few days ago when the *Belcher case*, ready for argument in the Supreme Court, with a decision no doubt before the Court adjourned in June, was dismissed upon the Government's flimsy excuse that it was not a representative case.

If I read rightly the testimony in the hearings of the Senate Finance Committee on the National Recovery Administration, it was generally conceded that National Recovery Administration must be radically changed, that it may include only interstate commerce, that it must no longer meddle with intrastate commerce, that price fixing and production and distribution control must be eliminated, and that the antitrust laws must be fully restored.

But apparently much of this was mere pretense, for when Senator Harrison introduced the new bill the other day, which many people think was prepared by Mr. Richberg, it was seen that, instead of any abandonment, any loosening of control, or any surrender of power, the purpose is to strengthen National Recovery Administration's hold upon industry and to make it possible for the President and his nominees to control every industry in the country, if the President be willing to make some flimsy finding that such control is necessary.

There is a recitation that the antitrust laws shall be restored and enforced; however, with the usual "but" or "if", and when one finishes the reading, he finds that instead of restoring the antitrust laws or of even keeping them on the plane where they now are, with some possible enforcement, they may be shorn of all power by some small finding made by the President.

But we might be willing even to be ruined, to be dominated, to be regimented, if Congress would only fully order it, would only do its own legislating, reach its own conclusions and register its own will, instead of unlawfully delegating the legislative power to the President and his nominee and to the code authorities. If Congress fully legislated, the rules of the game would be known and all would be treated alike. But when the real legislative power is surrendered to the

President and to the code authorities, the rules may be altered from day to day, often without reason, sometimes with design, usually with serious results. Is it any wonder that all business and all manufacturing halt and hesitate?

If the Congress think it for the benefit of the country, our company has never opposed minimum wages, maximum hours, collective bargaining for labor, destruction of child labor and of the sweatshops. But, if those reforms are to come and to remain, let Congress plainly decree them, fully and plainly fix the terms and conditions connected therewith, remove them from the hands of designing or incompetent persons and from the political maneuvering of code authorities, so that there may be no favorites.

As far as our company is concerned, we have never asked, nor do we now ask, for the privilege of selling below our reasonable costs. We naturally desire to make some profit but we cannot make profit while our competitors or the bureaucrats more or less manage our business. The fact that we have kept the faith, the fact that we made some profit during the depression, the fact that we did not then sell below our costs and a decent profit, are surely proof enough that we can be trusted to do the same thing again.

This country has never witnessed more racketeering than has been connected with some of the industries and especially with some of the service industries. How these things escape the indignation of the Congress and of the President is more than we can understand. We think that if Congress would only fix a few simple rules and conditions and enforce against all, give business a bit of a chance, remove it from the fears of daily changes and rebuke the bureaucrats, business would soon be permanently on the upgrade.

We do not believe in regimentation nor in the bureaucratic control of industries, but, if such control is to be fastened upon industry, as has been done in some of the old countries, let it be done by the Congress and let business have at least the satisfaction of knowing that the rules of the game are clearly settled and that no one can change them, or persuade another to change them, for his own private advantage or benefit.

If I seem to have written too earnestly, please overlook it. I do regard the moment as crucial. Unless National Recovery Administration can now be thoroughly reorganized, unless the bureaucrats and the code authorities may now be made to know their places, we are facing a more complete control than we have yet experienced.

Believe me,

Most sincerely yours,

CARL PHARIS,
General Manager of the Pharis Tire & Rubber Co.

Senator KING. I have received scores of letters protesting against the continuation of the codes, but I shall not encumber the record with them.

The first witness this morning is Mr. Leon Johnson, of Shreveport, La.

TESTIMONY OF LEON JOHNSON, SHREVEPORT, LA.

(Having first been duly sworn, testified as follows:)

Senator KING. Your name is Leon Johnson, and you reside at Shreveport, La.?

Mr. JOHNSON. Yes, sir.

Senator KING. Whom do you represent, Mr. Johnson?

Mr. JOHNSON. I represent myself.

Senator KING. How much time do you want? Our time is limited.

Mr. JOHNSON. I would like to have time to read this statement which I have prepared since I came to Washington. It will take about 20 minutes.

Senator KING. Read rapidly and compress if you can.

Senator CONNALLY. What industry do you represent?

Mr. JOHNSON. Retail grocer.

Senator CONNALLY. A chain or a single shop?

Mr. JOHNSON. Independent.

Senator KING. Proceed, Mr. Johnson.

Mr. JOHNSON. Gentlemen, I have come before your honorable body to point out the destructive and unprofitable results of the operation of my two grocery food stores since the National Recovery Act was put into effect, and to point out, as I see it, the fallacy of the continuance by the Government of the National Recovery Act insofar as it affects trade and commerce in purely intrastate business.

On October 30, 1933, the N. R. A. code for the retail trade went into effect. I immediately called together all my employees and explained as best I could the principles and provisions of the N. R. A. code as it applied to our business, but in reading the provisions, especially the labor provisions, it was so detailed and technical that I realized it would be hard for me to properly digest and understand it all thoroughly, but I gathered one general thought—that the Government was interested primarily and principally in seeing that the provisions for hours and wages were adhered to. This was practiced in my business as near as was possible and practicable. As regarding salaries, we were already paying, in every instance, higher wages than were prescribed by the Recovery Act, except in a few instances for porters and Negro women cooks. We immediately made this adjustment.

To my very great surprise, about 3 months ago a young man appeared in my office informing me he was from the legal department of the N. R. A., from the office in New Orleans, and informed me he had some very serious charges against me. I told him I would be glad to hear all about it, so he proceeded to read two complaints filed by my employees—one of which stated that he was a helper in the bakery department and that he had been working longer hours than prescribed by the code. The other complaint was filed by a Negro woman, who stated that she was only receiving $10 per week and that the prescribed wage was $12 per week. I immediately called in my bookkeeper and store manager, and, after making an investigation of these complaints, found that the helper in the bakery department was one whom we had fired a few months previously for stealing, and we reinstated him at the pitiful pleading of his mother, who admitted his theft, but stated she would see that he did not commit this crime again if I would only let him return to work. In checking over his hours, we found he had not worked the hours he stated and, in fact, did not work all the hours he was supposed to have worked under the regulation act. In the case of the Negro woman—she told an outright lie. She had been approached by some "Bolshevik E. R. A. worker", who had been sent to check my store by the N. R. A. authorities. She thought by telling this lie she would be able to obtain back pay.

The young man from the legal department of the N. R. A. in New Orleans readily realized, after quite a lengthy conversation, that both the complaints were more or less blackmail and ignorance on the part of the ones making them. But in the course of the conversation, he asked me the direct question—if I was living up to all the provisions of the code for the retail trade in each and every detail. I told him chances were that I was not. That I was adhering to hours and wages as explained above, but that I had not memorized the long document as sent out. So he took the copy of the labor provisions, which I had

in my possession, and went through it paragraph by paragraph. He asked me how much time my employees took off for their noon rest period. I informed him that my male employees had 1 hour and my girl employees had 2 hours off. He called my attention to act 5, section 6, which states that no employee can take longer than 1 hour for a rest period. I explained to him that it was mutually agreed upon between myself and girl employees that they receive this 2-hour period instead of 1 hour, because some of them lived across town and it would be impossible for them to call a taxicab, go home to lumch, eat and return again in 1 hour. I called his attention to article 4, section 1, where it provides that employees may bargain collectively or organize for the purpose of collective bargaining for their mutual aid or protection, but overruled me on this point, and was very unreasonable. He admitted that my employees were way above the average, and after reviewing my pay rolls stated to me that I was paying higher salaries than any concern he had investigated, but still he insisted that technically "law is law." He contended that the extra hour the girls took off for their noon rest period was my loss, and that I had to pay them for an extra hour. To me that was so absurd and ridiculous, I flatly refused because I had listened to every speech the President had made during the planning and organization of the N. R. A., and in every instance he emphasized that he wanted to help small business and see that no hardships were worked on them, and stated, he would necessarily make mistakes, but that he stood ready to correct them.

Senator KING. Were any of the ladies complaining when you gave them the 2 hours which you asked for?

Mr. JOHNSON. No, sir. He did not know about this; he found this out after he came to investigate the other charge which was dismissed.

Senator KING. And if you had given them only 1 hour, they would have had to hire a taxicab and go across town to go home and get their lunch?

Mr. JOHNSON. Yes, sir; and they could not get back.

Nothing I could say stopped this young man from dwelling on this technical point. It seemed to be another chapter in his life. However, he proposed to settle with me on this extra hour on a reasonable basis, letting me take out my own ticket regarding these hours, if I would settle without having to go through with a trial before our local board at Shreveport, La. This I flatly refused, telling him that I did not owe the Government 1 cent, neither did I owe my employees for overtime. I also explained to him, that with the exception of two or three Socialistic, Bolshevistic persons that would creep into any man's organization, that my employees would not accept a check for back pay because they knew that I did not owe it and that I always dealt fairly and squarely with them, keeping all of them on the pay roll during the depression and paying living wages. A trial was set before the local board and the case of the baker and the Negro woman came up, which was the cause of the investigation, and it proved to be a joke, but this Government agent dwelt long and hard on the technical provisions of article 5, section 6, which provided that no employee should have a rest period longer than 1 hour consecutively.

Senator KING. Who was that gentleman?

Mr. JOHNSON. Mr. L. S. Morrison. I refer to him further down.

Senator KING. Does he still hold that position?

Mr. JOHNSON. Yes, sir.

Senator KING. Who are the members of your local board?

Mr. JOHNSON. Mr. Samuel Mason, chairman, Mr. Welch and Mr. John E. Howard.

Senator KING. Who appointed them?

Mr. JOHNSON. Mr. Howard was appointed from some place to represent labor. The second man, Mr. Welch, was appointed by the chamber of commerce, and the two together selected the third man.

On April 1, 1935, I received a letter from this N. R. A. field adjustor Mr. L. S. Morrison, stating that the Shreveport adjustment board had made recommendations in accordance with the Government's wishes, and that he had compiled the figures covering the hours of pay in question, which totaled $6,643.45, together with a report from the Shreveport adjustment board, all of which is hereto attached. I wish to call your particular attention to this report. The Government agent admitted that no employee had actually worked more than an average of 8 hours a day, or 48 hours a week, which are the regulated hours. He also admitted that it was mutually agreed between myself and girl employees that they take this extra hour, which was for their best interest, for, as you gentlemen know, the weather in the South is very hot in the summer, and for health and happiness sake it is much better for the girls to have 2 hours instead of 1, in order that they may lie down for a little rest after their meals. You will, also, note that in this board's finding it was their opinion that there was considerable merit in the special arrangement made between myself and the girl employees whereby they should have this additional rest, and in finding me guilty they specified technically so.

There is not a grocery concern in the United States that can operate successfully and profitably under the code as it is now written. The details of successfully operating a retail business of today are so related and contingent upon the particular location served, that it is humanly impossible to lay down inflexible rules, even though they apply to all alike in the same business without working grave injustice in the majority of cases. For instance, in my particular class of grocery business, we are serving the better class of trade, which demands intelligent and efficient services, and service at the time they want it. We are operating large departmentized food stores and have to pay and are glad to pay, wages commensurate with services rendered. In other words, we are "between the devil and the deep blue sea"—on one side we have the gigantic chain stores operating mechanical stores, as far as service is concerned. Naturally, their buying power is greater than ours. For instance, yesterday on the way to this city, I read an advertisement from a large grocery chain store advertising flour direct from our own mills, in order to eliminate all the middleman's profit. On the other hand, we have the smaller type stores, such as the "one-horse" grocery store, where man and wife operate same and live upstairs; the Italian stores, which do the same thing. These type stores do not employ people, thereby eliminating salaries. Neither type store contribute but very little in taxes to charity and to the upbuilding of the community in which they serve in general. I am attaching hereto an operating sheet, showing my cost of operating for last year as against the average

chain-store operating expense, as compiled by the Harvard Bureau of Research, and in addition to these advantages as mentioned above, they have added advantages in that they manufacture a great many products that they sell.

Another very serious clause in the grocery code is the minimum mark-up clause. In most businesses or industries the gross mark-up is 25 to 40 percent. In other words, it is based on the gross margin for the concerns to make a profit under the code regulations based on operating cost in the past. But, with the grocery price set-up, we are only given a minimum mark-up of 6-percent gross above invoice price. I mean we cannot sell an item for less than 6 percent above what it cost. This has been very destructive in that it has caused most grocery concerns to mark down to the 6 percent with the idea of meeting or beating competition.

Senator BLACK. Excuse me just a moment. May I ask you a question there, because I am very much interested in that particular point. The retail grocers for a number of years, have been trying to get a bill through Congress which would prohibit selling groceries under cost, and they have created quite a little sentiment over the country on it. Do I understand that from your experience as a retail grocer, you are opposed to any such law or any such regulation?

Mr. JOHNSON. Yes, sir; I am opposed to any kind of price legislation. For instance, as I explain here, when the Government said we cannot sell a grocery item below 6 percent of cost, then that has had a tendency to make all of the grocery stores sell down to 6 percent. Then that destroys my initiative and my ability to that of my competitor in merchandising and prevents better merchandising if I have the ability to do so. In other words, I would like to take an item and figure that that item is a strong drawing card and sell that item from anywhere from a thousand percent below cost to a thousand percent above, generally speaking.

Senator BLACK. Are you familiar with the Capper-Kelly Law?

Mr. JOHNSON. I am not familiar with it.

Senator BLACK. As I recall, it was the Capper-Kelly Law which——

Mr. JOHNSON (interposing). I explain myself further down here. I am in favor of the Government if they so desire, regulating prices providing they make the mark-up commensurate with the cost of doing business plus a profit.

Senator BLACK. I had this morning, and I imagine every other Senator had, a paper giving a detailed vote by the retail grocers on a questionnaire sent out, which showed that 55 percent of them favored the continuation of the code as I recall it, and 65 percent favored the price-fixing clause to which you have referred.

Mr. JOHNSON. On what mark-up?

Senator BLACK. The mark-up as provided in the code. Let me state it this way: One of the chief complaints which I have had from all independent retail grocers, and I imagine that other Senators have had the same experience, as against chain stores, has been that the chain store will sell below cost on a certain article with the idea of making that back on something else.

Mr. JOHNSON. The independent has the same privilege.

Senator BLACK. He has the same privilege?

Mr. JOHNSON. Yes.

Senator BLACK. Then you prefer leaving it open to the chain stores and the independents?

Mr. JOHNSON. I favor leaving the price fixing out. I am an independent merchant——

Senator BLACK (interposing). How long have you been a merchant?

Mr. JOHNSON. I have been a merchant 15 years.

Senator BLACK. You have always favored that plan?

Mr. JOHNSON. Yes, sir. I am against price fixing.

Senator BLACK. You believe you can get as much advantage from that system as the chain store?

Mr. JOHNSON. I think I can outmerchandise any chain store on earth where their headquarters are in New York and I am sitting in my own locality and meeting the situations as they are there.

Senator BLACK. One of the complaints is they have an increased ability to buy goods cheaply and place the independent at a disadvantage.

Mr. JOHNSON. It does place them at a disadvantage, and my thought there is to curb the operations to some extent of the chain stores. Put a Federal tax on them assessed on so many units as they have.

Senator BLACK. That would be the same somewhat as price fixing, if the Government attempted to restrict them in any way.

Mr. JOHNSON. In other words, I have in mind a certain grocery store chain in the United States which are worth nearly a billion dollars, and they operate in every State in the United States. If the Government wanted to regulate that sort of thing, if they would curb their expansion program—in other words, if they were not in my city, then we independents could handle the situation there and make money and employ people properly.

Senator BLACK. All right.

Mr. JOHNSON. It cost me last year 21.16 percent to do business and for the first time in my life I lost money. The principal reason was the 6-percent mark-up clause as authorized in the code, which demoralized prices. If the Government is going to fix a price that our goods are to be sold for, then it certainly should be commensurate with the cost of doing business, plus a reasonable profit. Speaking for myself—I would love to see this clause done away with entirely, because it destroys my initiative as a merchant and my ability to outmerchandise my competitors, if I am willing to put forth the hours and the effort. I worked hard and faithfully last year, trying to do my part to help this country recover, but lost money for the first time in my life, as stated above, and I am going to close one of my food stores on the 27th of this month, which naturally will mean discharging a group of employees, who, in most instances, have done their best. I am forced to do this in order not to go broke, and for your information, so that you will not say that I am not a competent merchant, wish to say that I started in the city of Shreveport, La., in a meat market in the rear of a chain store, 10 years ago, when I said 15 years ago, that was something else. My career in Shreveport is 10 years. I now own and operate the two largest food stores in our city, and I am the largest individually home-owned institution. I have seen hundreds of grocery stores, both individual and chain, open and close during this period of time.

When the N. R. A. first went into effect, everybody was enthused

and willing to do their part in helping the President in his program for recovery. Individuals were enthused and would not trade in the stores that did not display the "eagle", but today I find most individuals against the N. R. A., and in nearly every instance they state to me that it has only doubled their cost of living. From the employees standpoint I think they are doomed, when their salaries and their hours of work are regulated. This has a tendency to destroy their morale, lessen their ability, and destroy their initiative, which cannot make anything more or less of them but somebody working so many hours a day for so much pay the balance of their lives. I find my own organization, with the exception of possibly 2 or 3, out of the 75 total people we work, that they are terribly dissatisfied with the N. R. A. A great many of them have college educations and are ambitious and want to work longer hours, if necessary for the best interest of our business, realizing that if my business prospers that they always help reap the harvest in increased salaries. Another thing I wish to mention is that in the South, Negroes are put on a parity with white girls and white boys under the regulations of the code. Negroes in the South are uneducated, do not contribute to society or charity, or help in any way toward the betterment of the community in which they live. This expense falls on the white people. I recall an instance last year of about 125 Negroes and poor white men passing in front of one of my stores with sticks on their shoulders, going down the street to sweep leaves out of a ditch that the next wind would blow back, and if the leaves had stayed in the ditch it would not have hurt. By actual check, when most of these N. R. A. workers received their pay checks they bought their groceries from the national chain stores and their overalls from the J. C. Penney Co.

Senator BLACK. Those people who went down to rake the leaves, it might not have hurt to have had the leaves unraked, but it might have been better than to have 250 people doing nothing. You are not objecting to trying to take care of them.

Mr. JOHNSON. No, sir. I am heartily in accord with the Government's program now to do away with the dole and put these people to work profitably.

Senator BLACK. You mean that you prefer profitable work?

Mr. JOHNSON. Rather than a dole.

Senator BLACK. Something that contributes to the wealth of the Nation—something constructive?

Mr. JOHNSON. Yes.

Senator BLACK. But the stores and the grocery stores got most of the money, whether it was the chain or some other kind, they got most of the money that these people spent?

Mr. JOHNSON. Yes, sir; all of the money was spent.

Senator BLACK. So it did not injure the stores of that town?

Mr. JOHNSON. Maybe that was a little prejudice on my part. I might say since I have been hurt as I mentioned, that probably I am maybe a little bit prejudiced. I hope I am not.

I do not believe it was, or is, the intention of the President to have N. R. A. officials delve in and meddle with the successful business men's business to such minute technical details resulting in unmeasurable detriment, especially in view of the fact that in my business higher wages are being paid and all employees happy and satisfied.

I would like to further state that there is no group of men on God's green earth that can sit in Washington and make up a set of rules and regulations in details a mile long to apply to every man's business alike throughout the United States where working conditions, competition, and other factors enter into and make it necessary that a man conducting a business must run that business according to his best ideas and judgment for its success. It is, therefore, my opinion that the mental hazard, worry, and agony of not knowing what is coming next is retarding business at a terrific rate of speed and that capital had rather stay locked up in a locked box than take a chance on being lost in operating unprofitably.

Senator BLACK. Capital was taking a chance in 1931, before the N. R. A. came along. It did not have much of a chance to run profitably in 1931, did it?

Mr. JOHNSON. At that time it was not being so regulated. In other words, when you built a building, you felt like you knew what you were going to get for it.

Senator BLACK. No buildings were being put up, were they, in 1931 and 1932?

Mr. JOHNSON. There were some being built.

Senator BLACK. Where were they built in 1932? I came all the way from Birmingham to Washington through the country, and I looked along the way and did not even see one residence going up.

Mr. JOHNSON. I am speaking for my own case. I managed to get along until last year.

Senator BLACK. I understand that you are raising a question that what we need is to let everything alone. We tried that under Hoover, and Harding and Coolidge.

Mr. JOHNSON. I made a lot of money then; not a lot, but all I have got.

Senator BLACK. Some other people made some money, but what happened at the end of 1929? How was your business in 1929?

Mr. JOHNSON. It was in a boom. At the peak.

Senator BLACK. How were you in 1930?

Mr. JOHNSON. Tapering off a little.

Senator BLACK. What kind of confidence did you and the people have the day the banks all closed?

Mr. JOHNSON. We felt like the climax had been reached.

Senator BLACK. You felt like the climax had been reached. But as a matter of fact, you realize, do you not, that it was immediately following the days when they let business completely alone that we had the worst crash in all of our history?

Mr. JOHNSON. Well, my thought is——

Senator BLACK (interposing). I agree with some of the things you say.

Mr. JOHNSON. I do not think the Government should regulate a one-horse business. I do think that interstate commerce and large businesses, they probably have to regulate them.

Senator BLACK. They ought to regulate the chain stores?

Mr. JOHNSON. Not necessarily the chain stores. I can compete with them. I have done it, but in other words, I am working boys and girls that I have gone to school with, and if I make a dollar, they are going to get a part of it, and some of the big organizations, as has been brought out, and that is possibly the reason for the Government

regulating this when industry, those people as has been brought out, in the East are working women and children up East in a shirt factory for 30 cents a day while they were yachting through the Isle of Capri or some place up on the Hudson River. They do not come into personal contact with the people they are working, and they do not have the heart or the consideration for them.

My thought is for the small business man, the small business man, purely intrastate and within the State and the cities and the municipalities.

It will be a great day for this Nation when organized labor and the authorities in Washington realize and understand that capital is not going to work without a profit. It is further my thought that a "naked and starved nation" can not get well asking for shorter hours and higher pay. I started my business career when I was very young, working as a clerk in a grocery store, and had I not been allowed the privilege of using my initiative and ability, and had I not felt the responsibility and been willing to work longer hours, when necessary for the promotion of the company I was working for, I could not have succeeded. Many days I worked 18 hours a day, but in the end I was well paid for it, and at the end of the year I could command the salary I expected. Had I been working under present-day conditions, I feel certain I would be on the Government relief rolls.

Right in my own city of Shreveport, La., the farmers are allowed to farm only a portion of their land. Almost within the city limits one certain grain and elevator company have imported, for the past 6 months, the corn they grind for meal from Argentina. Would it not be best to farm this land and put more people to work, grow this corn at home, and possibly export a little corn, rather than import it?

The recovery program, as I see it, is helping two classes of people, who are far in the minority and destroying the happy middle class, who are the backbone of this Nation, business, and industry. The first class I mentioned is the unemployed class, who in many instances never have worked and never will work——

Senator BLACK (interposing). What percentage would you say of the 10 or 12 million out of a job, never have worked and never would work?

Mr. JOHNSON. That might be stretched a little bit. As I stated, I had to work this up in the room last night after I got here.

Senator BLACK. I just want to get your idea of how many never have worked and never will work. There are about 15 million that we know are wholly out of a job.

Mr. JOHNSON. I did not know that there were that many unemployed.

Senator BLACK. The figures showed that. The figures now vary to anywhere from 10 to 12 or 13 million. Are we to understand that the majority of those never worked and do not want to work?

Mr. JOHNSON. Maybe I could write that a little differently if I had the time and it would not sound quite as drastic as I put it.

Senator BLACK. Do you know of any unemployed in Shreveport who have been unemployed, that would go to work if they could get a job?

Mr. JOHNSON. Who would work?

Senator BLACK. Yes.

Mr. JOHNSON. The thought I have in mind is a general thought.

Senator BLACK. Do you know any in Shreveport that have been out of a job that you believe would work if they could get one?

Mr. JOHNSON. I know lots of them; yes.

Senator BLACK. Did you see a lot of them walking around there in 1929, 1930, 1931, and 1932 with frayed collars and worn-out clothes that looked to you like they were in bad shape, that you knew had worked and wanted to work?

Mr. JOHNSON. We have had a lot of loafers always.

Senator BLACK. I am not talking about loafers. Am I to understand that you think that everybody out of a job is a loafer?

Mr. JOHNSON. No, sir.

Senator BLACK. Did you see anybody down there, do you know anybody that has been without a job, that you think is a decent enough man that he would work if he could get a job?

Mr. JOHNSON. I know a lot of people would like to have jobs.

Senator BLACK. A lot of them?

Mr. JOHNSON. Yes, sir.

Senator BLACK. Then you do not mean to say by that that you think that most of those who have been out of a job——

Mr. JOHNSON (interrupting). Maybe that is not properly worded, because it covers, the way that reads there, covers everybody that is unemployed. I do not mean it that way.

Senator BLACK. You did not mean, of course, to leave the impression that you thought the reason was because they were worthless?

Mr. JOHNSON. No, sir. That covers everybody, the way that reads there—it more or less covers all of the unemployed.

Senator BLACK. Then you do favor whatever is necessary to be done, while you disagree as to the methods, to employ people in useful work.

Mr. JOHNSON. Absolutely. To employ people constructively. I certainly do. I see that I said here, "In many instances they have never worked."

The second class is a class of national manufacturers and industries, who are able to profit by the code in that they are a few in number and able to agree and put their prices high enough to warrant a profitable return, regardless of wages or hours. But, in the cases of thousands of smaller businesses, this cannot be done. Personally, I am employing more people in 2 grocery stores than some of the chain stores do in 8 or 10 stores together. I am paying a higher wage than the code prescribes and operated last year at a loss trying to comply with drastic rules and regulations. It is my hope that the Grocery Code will be modified or done away with entirely, rather than made more strenuous.

Another reason I am against the N. R. A. is because it is somewhat like the prohibition law. Prohibition did not prohibit, but created a lot of bootleggers who reaped tremendous profits from the sale of illegal liquor. The N. R. A. codes have created many lawbreakers, the best evaders reaping most of the profits. Those abiding by the code therefore are paying for their honesty and loyalty in the loss of profits.

Since the provisions of the code are so unpopular, they are therefore unenforceable, and any law which is not enforceable and applied to everyone with the same degree of enforcement, is unfair and injurious to the country and violates the American principle of equality and justice to all alike.

As mentioned once above, many employees are against hours and wage provisions of the code, because these provisions have tendencies to bring all services down to the minimum and take away their initiative, putting them in a position where they can see nothing ahead but a little remuneration for a little effort on their part—the ambitious and industrious will be held back by the ones who believe in getting by with a minimum of effort in a minimum period of time at a minimum basis of pay.

The logical development in any code of fair competition, particularly for the retail trade, is the eventual elimination of free competition, initiative, resourcefulness, and the placing in lieu thereof a group of robots, with the result that the public suffers with higher prices, poorer services, and buying qualities. One of the most profitable and outstanding principles of the small businesses is individuality and personal service. These two fundamentals have helped a great many small concerns to successfully compete with the larger chain stores, but under the code regulations these elements are being driven out of small business, which will inevitably result in the Nation's business being completely monopolized by the larger businesses. I wish to mention again that the hours and wages are not the most objectionable features of the code, but rather the imposition of having the added burden of trying to make business fit the rules and regulations down to the most minute details of law drafted by the composite minds of men who know nothing whatsoever about retail business or the working conditions. I want to make my position clear to the Government that I did not make this trip to Washington for the sole purpose of contending and finding fault, but I felt it my duty, first for self-preservation, and second for the best interest of my country, to give you some facts in the case as having been experienced, personally, in conducting my business, which is representative of small businesses individually owned.

When I received a wire from Congressman Sandlin that he had arranged for me to appear before the Senate committee I only had a few hours' time in which to prepare my statement. During this time I telephoned several wholesale and retail concerns dealing in food, that I was going to Washington to appear before the N. R. A. Senate committee and asked them to write their views regarding N. R. A. activities. Letters are hereto attached from several concerns in our city for your consideration.

I assure you it is my desire to cooperate with the Government in any plan for recovery, unless is destroys my business and my life earnings.

Senator BLACK. How much was your total business last year?

Mr. JOHNSON. I think about $480,000.

Senator BLACK. What was it the year before?

Mr. JOHNSON. It was less than that.

Senator BLACK. How much less?

Mr. JOHNSON. I do not remember. I do not recall how much it was.

Senator BLACK. What is your best recollection?

Mr. JOHNSON. My business last year was, I would say, about 20 percent over the year before.

Senator BLACK. What was it the year before that?

Mr. JOHNSON. I do not remember the year before that. I will say

that my business now is worse than it was the same time a year ago. My business dropped in January, February, and March.

Senator BLACK. And last year it was 20 percent more than it was in 1933?

Mr. JOHNSON. It was not the increased volume, it was the increase in prices.

Senator BLACK. You believe it was wholly because of the increased prices?

Mr. JOHNSON. Yes, sir.

Senator BLACK. What was it in 1933 as compared with 1932?

Mr. JOHNSON. I do not remember that off-hand.

Senator BLACK. Can you send us a record of your business each year from 1929 to 1934, inclusive?

Mr. JOHNSON. Yes, sir.

Senator BLACK. The total amount.

Mr. JOHNSON. Yes, sir.

Senator BLACK. You are running the same number of stores?

Mr. JOHNSON. The same number of stores, except that I had a liquor department last year which ran it up I imagine $75,000 or $80,000. I added a liquor department in one store.

Senator BLACK. And as I understand you, your stores are in the part of the city where the people are worth the most?

Mr. JOHNSON. The best class of trade.

Senator BLACK. The richest people in town?

Mr. JOHNSON. Yes.

Senator BLACK. And your business did not go down in comparison to the business in the poor communities in Shreveport?

Mr. JOHNSON. My business did not go down as much as some of the business did in the smaller communities, but I will say this, to help you with your point there, that these E. R. A. workers have spent—those that swept the leaves that flew back, the smaller merchants profited considerably by that, where I did not, because those people were not trading with me. It did help the smaller merchants, the little chain stores.

I wish to file the following letters in my testimony, which I mentioned in my statement:

Leon Johnson, grocery, market, bakery, delicatessen, Shreveport, La.

	Leon Johnson's operating expense for the year 1934	Average chain operating expenses as compiled by the Howard Bureau of Research
	Percent	*Percent*
Pay roll	10.6	8.9
Rent	2.7	2.3
Advertising	2.7	.65
Depreciation	1.1	.6
Supplies	1.5	.7
Phone, light, heat, water power, and refrigerator	1.2	.75
Repairs and maintenance	.6	.1
Professional services	.15	.05
Insurance	.3	.25
Taxes	.7	.2
Freight, drayage, and trucking	1.13	.4
Other expenses	.2	.95
Total expenses	21.68	16.7

In addition to these advantageous figures the national chain stores' buying powers gets an additional advantage over these figures.

DAIRYLAND,
Shreveport, La., April 12, 1935.

MR. LEON JOHNSON,
Shreveport, La.

DEAR MR. JOHNSON: I was informed by Mr. Harry Booth, local attorney, that you were going before the Senate committee in Washington in regard to the feasibility of working under the National Recovery Administration code. I would like to take this opportunity of setting forth a few facts pertaining to the way it works in regard to the milk and ice-cream factories, and the burden it has caused both men and the company where it was tried to be worked.

1. When it was first put into effect, we operated 100 percent on the National Recovery Administration code without paying but very few minimum wages, in fact, practically every one of our 54 employees were well paid over the minimum wage, and on some instances did not work the maximum amount of hours. During the time that this was operated, we were compelled to work an 8-hour shift on our vaults, which you know is very impracticable, because going in and out of refrigerated vaults not only puts a hardship on the men that are checking these vaults, but also puts a hardship on the company, in that it takes more fuel and electrical current to refrigerate these vaults because of the refrigeration that is lost in opening the doors.

2. The next fact that I would like to bring out is that where we had quite a few of our employees that were well satisfied with their working arrangement, one or two were not satisfied, and were continually causing the other employees to have to do more work and keeping them in an unsettled state of mind, thus handicapping all work to quite an extent. After making a thorough analyzation of our problem, I talked to the field man here in the city for the National Recovery Administration Department, and told him that there were certain jobs here at the plant that it was practically impossible to continue working according to the National Recovery Administration set-up. At that time he told me there had been another ice cream company in the city that worked according to the code for about 60 or 90 days, and at the end of this time, came to him, not only in oral conversation, but in writing, and stated that it was impossible for him to stay in business and continue on this set-up, therefore he was discontinuing same effective that date, and to my certain knowledge this company did same, and I would like to point out, making it very unfair for companies that tried to work it to a certain degree of regularity. I also stated to this field man at the time I talked to him that our salaries were well above the scale set up by the National Recovery Administration Department, and that we did not dock men when they were sick or when they wanted to be off for a few days pleasure trip, and that if I continued to try to work the National Recovery Administration schedule, I would have to start docking when the man was sick, also when the man was off for pleasure, and that I would come back to my plant and tell my men that owing to the fact that we were going to live up to the letter of the National Recovery Administration code, that from now on they would not be paid when they were off on account of sickness and that they would not be paid when they were off for a few days' pleasure trip.

This Representative at that time told me that he did not think that was necessary as it might be better to continue along the same line that we had been working. I stated to him that if that was the way he looked at it that I would be glad to come back and take down my "blue eagle" which I had at that time, thus causing a more contented bunch of employees to work with, and thus enabling my company to put out a better product with these employees than we had done heretofore.

I hope that I have pointed out these facts with an unbiased opinion. I merely want to show just how it had worked in a plant that is a combination ice-cream and milk plant, which gives a certain degree of service for 25 hours during the day.

Yours very truly,

SOUTHWEST DAIRY PRODUCTS CO.,
CECIL W. WATSON, *Manager.*

K. C. S. WHOLESALE DRUG CO.,
Shreveport, La., April 12, 1935.

The Honorable LEON JOHNSON,
President Leon Johnson Store, City.

DEAR FRIEND: After our telephone conversation, you stating that you were going to Washington, D. C., to appear before the National Recovery Administration Board for a hearing, I thought that I would take the liberty of writing you my views on the National Recovery Administration and its workings.

I have been in the drug business for the past 25 years, owning and operating retail and wholesale drug stores in Louisiana, Texas, and Florida. In all my 25 years of business, I have paid my employees at least from 10 to 25 percent better wages than they were receiving for similar work in other stores. I am at present employing about 37 people, their wages and hours conforming to the National Recovery Administration code board wages. I do not feel that I should cut the wages of my help; I much prefer to close my doors and retire from business, as in my estimation the National Recovery Administration and its workings have raised the cost of living of the working people 50 to 100 percent, groceries being especially high and rent rising all the time. I am unable to see where the National Recovery Administration has helped anyone.

I am an independent operator, both retail and wholesale, operating under 4 or 5 different codes. These dues, taxes, extra help and foolish regulations of my business by the code, has kept me from earning any better than a 2 percent on my volume of business. I can only see that I am staying in business for the sole benefit of keeping my employees working, helping them to pay for their homes and feeding their children. I, personally, could easily make from 4 to 6 percent on my capital invested in other lines.

We are being continually harassed by the big interests; and by the big interests, I mean big manufacturers having connection with other drug trades—similar to Liggett's and Walgreen and Owl Drug Chains—whereby they are giving much better discounts, free goods, advertisement allowances, clerk's P. M.'s and any other subterfuge that they can use to put an independent operator like myself out of the drug business, thereby eliminating the last line of their competition. They pay their druggists from $18 to $20 per week. We pay ours a living wage from $35 to $50 per week, including managers.

I have at several times taken this discrimination up with the manufacturers selling chain interests and refusing to sell me, even in carload lots, cash on the barrel head, as we have plenty of cash to purchase merchandise with; but daily we are refused by certain manufacturers because we do not belong to certain organizations, buying clubs, or because we are too stiff competitors to some of our chain-store interests in this city.

If present conditions are not remedied by doing away with the National Recovery Administration, and letting business run its own-being built upon fair competition and fair trade practices, I can only predict that the working public will be slaves to certain big interests, in these United States, that are acting like octopuses, grabbing and holding and destroying the individual business men, compelling him to retire and have his children work for $10 per week.

Yours very truly,

K. C. S. WHOLESALE & RETAIL DRUG CO.,
L. J. BAUMAN, *President.*

KALMBACH-BURCKETT CO., INC.,
Shreveport, La., April 11, 1935.

MR. LEON JOHNSON,
Shreveport, La.

DEAR LEON: On previous occasions I have talked to you at length as to the merits and demerits of the National Recovery Administration. You are aware of the fact that several weeks ago we were hi-jacked by this outfit. When I say "hi-jacked", I really mean hi-jacked.

I will endeavor to outline to you how this all came about:

For several years we have employed a night watchman on part time basis at our plant on Dalzell Street. His duties were to watch our plant only on the outside, and for the prevention of fire, there being several other industries in this neighborhood for whom he performed the same duties. It was customary that we prorate his wages. Our portion of this expense amounted to $9 per week. What the other plants paid I am not in a position to say, nor did I ever attempt to ascertain, feeling sure that their part was equal to, or more than ours.

This job has been held by 5 or 6 different parties, and in each case they accepted the job on the same basis as their predecessor, that is watching all plants in the vicinity, and receiving their pay from each establishment. When the last man took the job, he was aware of the duties of the night-watching job, as he had substituted on several occasions.

Bright and early one morning, a letter arrived from the National Recovery Administration headquarters at Shreveport, advising us that we had violated the rules and regulations of the code with reference to hours and wages governing

the job of night watching. This almost floored us, as we were under the impression we were abiding by all the rules.

I made a visit to Mr. Hickman, the managing director I believe, explaining our position to him. After a long and thorough discussion, I thought I had made our position clear to him. He lead me to believe that our contention was right and that the complaint would be canceled or dropped. Now, about 3 or 4 weeks later, a youngster about 21 or 22 years old blew into the office late one afternoon and raised "hell" with me. His attitude was that we were a bunch of crooks, and had abused and robbed our night watchmen. I stood as much of his abuse as I thought necessary, then I proceeded to give him a nice "cussing out", after which he changed his tune and behaved himself more like a youngster of his age should have, going out on his first job.

He demanded of us that we go back to the date of the signing of the Mixed Feed Manufacturers Code, and pay this man the difference between $9 per week and $14 per week as prescribed by the code. Also that we pay this man time and one-half for all overtime, claiming we had worked the man 77 hours per week, and that the code called for only 56 hours per week. I flatly refused to comply with this demand. After much discussion, I was unable to convince him that we were within our rights. Finally, we decided to go before the Board, composed of three gentlemen here in Shreveport, and let them make a decision in our case.

Well, if you have ever played cards or shot dice with a bunch of crooks, you knew the cards were stacked against you before you even started. As far as the board, you are well aware of the attitude taken by these gentlemen of the board.

To make a long story short, I paid, or rather agreed to pay this man on the basis of the National Recovery Administration demand, but not until after having been advised by my attorney that it would be cheaper to be "hi-jacked" by the National Recovery Administration than to fight it out in the courts.

Now, Leon, I think the National Recovery Administration, or at least the present set-up is the most unjust, unfair, and the most damnable insult to the intelligence of the business men of the United States that I have ever heard of, and unless something is done to prevent this bunch of hi-jackers from destroying the principles of the country, all of us little fellows will wind up like the poor farmers are out in the section of the country where the sand storms are raging today, and that is on the relief rolls.

This firm has been in business in Shreveport and doing business in the surrounding territory since 1906, and during all these 29 years we have always endeavored to take care of our employees, and treat them fairly and justly.

During the period of the depression, we have kept our organization together, not discharging anyone, even though we could have operated with half the force. Our employees have been with us from 1 to 29 years, and as far as I know are well satisfied with the treatment dealt out by us.

Now, Leon, in my opinion if this country ever expects to come out of this depression, the gang up there in Washington will have to divorce themselves from unionized labor and the bunch of foreigners who do not want to work or want anyone else to work, and the sooner they realize this in Washington, and allow industry to go back on the old basis, that is handling their own problems, the sooner prosperity will return.

Hoping that your trip to Washington will be beneficial, as well as a pleasant one, I am

Yours very truly,

W. C. KALMBACH.

THE HICKS CO., LTD.,
Shreveport, La., April 11, 1935.

Mr. LEON JOHNSON,
Shreveport, La.

DEAR MR. JOHNSON: I am very glad to learn that you are going to appear before a board in Washington with reference to complaints arising under the regulations of the National Recovery Administration. I feel that it will be helpful to the board to have a man, who is familiar with the difficulties of providing pay rolls for "small" businesses appear, and I am taking the liberty of writing you about some experiences I have had, in the hope that some of the facts contained in this letter can be presented to the proper authorities.

In June 1934 we were notified that a complaint had been filed against us, and were directed to submit a sworn statement showing our pay roll and hours, which we did. This statement showed certain violations as to hours, which we

immediately corrected, and which violations had occurred without the knowledge of the management, and with no intention to violate the regulations. In all cases our rate of pay was higher than the code minimum, and the finding showed violation only as to hours.

Based on our pay roll we were required to pay 11 employees about $500, and we made this payment, in spite of the fact that these employees stated that they had no complaint against the company, and would have preferred to continue working on the basis they were working, knowing that the company was carrying life insurance for their families, and knowing that we paid full time when they were sick.

We opposed the payment of this overtime on the following grounds:

1. That the business had been fair to its employees in every respect.
2. Were paying more than the code minimum.
3. Were paying full time when employees were sick.
4. Were carrying free for their benefit life insurance.
5. In an emergency we had always come to the financial assistance of our employees without hesitation.
6. Were carrying a surplus organization.

We pointed out, also, the fact, that we had in August of 1933 voluntarily increased our pay roll about $700 per month, and that we had been responsible for the organization and operation of several small industries in our city that had contributed to some extent to at least maintaining employment, and to some extent increasing employment.

All of these facts were presented to the local adjustor, the local board, the office of the administrator in New Orleans, the labor compliance officer in New Orleans and the State board, and we know of no instance where the board question arose as to this company having been fair to its employees. It was shown that we were paying more than the minimum; that we were caring for our employees when they were sick; that we had maintained the maximum organization during the depression and that we were providing our people with insurance free of charge.

We do not criticize in any respect the officials or boards, who passed on our case, for the reason that their actions were apparently limited to decide whether or not we had technically violated the law. We were unable to get before any organization or individual, who seemed to have the authority to pass upon the question as to whether or not we had treated our employees fairly, and that it would be better for us to continue in the future as we had for the past 60 years, by taking care of our people in good times and in bad times.

I feel that to have the situation continue as it has been going on, will result in a more selfish attitude on the part of the employer. The tendency is to feel that if the National Recovery Administration is going to take an arbitrary, technical attitude, the employer might as well do the same; pay in all cases the minimum; get along with as few employees as possible, and feel no responsibility to them, except when they are working. This is not the attitude that employers should take, but I believe that it is the attitude many are being forced into by National Recovery Administration enforcement.

I think we need in every State a board of intelligent people, who will have the authority to decide the question as to whether or not an employer is fair to the people working for him, and whether that employer has done, and is doing, his part to contribute to the pay roll of his community. I do not believe the National Recovery Administration can fairly and successfully be administered under the present plan. I think this Board ought to have full power to decide the question, and further that it should be empowered and instructed to make an employer, who is a chiseler and unfair to his employees, toe the mark. In the same way I think this Board should have authority to protect the fair employer against riduculous and technical complaints.

Yours very truly,

(Signed) J. H. BROWN, *President.*

THE FRANK GROCERY CO., WHOLESALE,
Shreveport, La., April 11, 1935.

MR. LEON JOHNSON,
Shreveport, La.

DEAR SIR: : As we understand that you are to have the privilege of testifying before the Senate Finance Committee in connection with that committee's consideration of the National Industrial Recovery Act, we wish to express our humble opinion that the operation of this law has oppressed the small independent merchants throughout the country and has further assisted the large national corpo-

rate chain organizations in tightening their monopolistic grip on the trade of the entire country, most particularly in our line of business.

As you know, we have been operating here for a period of 15 years and have always employed a large number of people. We are also more or less affiliated with and are in close touch with all of the independent merchants throughout this section of the country, and are most vitally interested in the welfare and success of the independent merchants because the existence of our company depends entirely on the success of the independent merchants.

We cite for instance, one local company which in 1933 was operating 11 retail stores in this city and deriving a small net profit from their operations. After being forced to comply with the requirements of the National Industrial Recovery Act that company's operations immediately showed heavy losses each month, and after operating in compliance with that law for a few months it became necessary for them to discontinue 3 of their 11 stores to avoid sustaining such losses that they would have been forced out of business. In closing these three stores a number of people were immediately thrown out of employment, and the final result of that company's operations under the National Industrial Recovery Act was that they actually had less people employed early in 1934 than they had before that act became effective.

We have noted that the large corporate chain systems have taken great interest in the National Industrial Recovery Administration. Locally they seem to have found in this a weapon with which they could kill their smaller local competitors, and they have apparently done everything possible to accomplish this purpose.

Insofar as enforcement of the labor provisions of the act are concerned, we have found that a premium has been placed on dishonesty and disloyalty on the part employees. We have had no difficulty with our own employees and our company has had no experience in this respect, but we do know of numerous cases of employees who had been discharged by various companies for dishonesty, inefficiency, or other such causes, immediately through a spirit of revenge filing complaints with the compliance officers against their former employers, making affidavits to statements which could not be substantiated but having these statements sworn to by two other disgruntled ex-employees of the same company, and in such cases these employers have been unmercifully harassed by the compliance officers.

Our company has always tried to pay employees living wages. Prior to the effective date of the National Industrial Recovery Act we were paying our ordinary labor, or those employees who draw the least pay from us, the exact rate of pay that was specified as the minimum for our industry, and in our particular case it was not necessary for us to increase the pay of even the lowest in order to comply. We also, throughout the depression, undertook to continue our employees on the pay roll, notwithstanding the fact that this made it necessary for us to carry several employees for a period of several years when we were not justified in doing so, and notwithstanding the fact that during that time we were sustaining heavy losses in our business.

From our observation and experience so far, we are of the opinion that the National Industrial Recovery Act oppresses the small independent business and favors big national companies and chain-store organizations, who are fast getting a monopoly on the business of the Nation in many lines of business.

It is our hope that his act, at least in its present form, will not be continued, and that, furthermore, even if continued, it will not be applied to such lines of business as ours.

Yours very truly,

FRANK GROCERY CO., INC.,
By R. L. BRABSTON, *Treasurer.*

STATEMENT OF IRVING C. FOX, WASHINGTON, D. C., REPRESENTING NATIONAL RETAIL DRY GOODS ASSOCIATION

(The witness was first duly sworn by the chairman and testified as follows:)

Senator GEORGE (acting chairman). How much time do you desire, Mr. Fox?

Mr. FOX. About 20 minutes, I should say.

Senator GEORGE. We are not making very much progress. We will ask you to be as brief as you can. You represent the National Retail Dry Goods Association?

Mr. FOX. I represent the National Retail Dry Goods Association.

Senator GEORGE. All right; you may proceed.

Mr. FOX. Our membership distributes a volume of consumers' goods of about $4,000,000,000 annually, and are located in practically every State in the Union.

At a recent convention of our association, a resolution was adopted approving the extension of the National Industrial Recovery Act during the period of the depression, which we consider still exists, but for no longer than a period of 2 years, with certain modifications.

We have a feeling that the full benefit of the National Industrial Recovery Act was not realized because of the propensities, almost obsession, of the administration of the N. R. A. for price fixing. We feel that the devices for fixing prices and the maintenance of high prices have been a wall in the progress of restoration of volume of business to provide employment for those who have been unemployed.

I have a chart here which we have prepared, showing the direct relation of high prices to volume, which I desire to submit for the record.

(The chart referred to is on file with the committee.)

Senator COUZENS. Do you mind an interruption?

Mr. FOX. Not at all.

Senator COUZENS. May I ask you if you have had any difficulty with the multiplicity of codes in retailing?

Mr. FOX. We have had difficulty; yes. Those difficulties, we hope, are gradually being eliminated by administrative action. We have had difficulty with respect to assessments, with respect to the attempt of industries to impose their provisions to assess retailers on account of operations which are necessary to the conduct of their business, incidental to the sale of merchandise.

Senator COUZENS. How many codes have your retailers had to subscribe to, do you know?

Mr. FOX. A great deal depends upon the organization itself; but there has been, as far as our members are concerned—some of them have been obliged to operate under six or seven codes. A few under a greater number of codes.

Senator COUZENS. Would that apply to the large department stores too?

Mr. FOX. That applies to the large department stores particularly.

Senator COUZENS. Do I understand you to testify that they have to subscribe to six or seven codes and to the maintenance of six or seven codes?

Mr. FOX. They do.

Senator COUZENS. And some more than that and some less?

Mr. FOX. Some more and some less, depending on the size of the organization.

Senator COUZENS. Do you justify that?

Mr. FOX. No; we do not.

Senator CLARK. There was a gentleman in my office the other day who stated that he was under nine different codes in various items constituting only 11 percent of his business. Do you know whether

or not that is an abnormal case or a fairly common practice, even in the hardware business?

Mr. Fox. That is a common practice, particularly with these various industries who are attempting to impose these assessments on retailers where they are permitted to do so. The little hardware man has had a problem with regard to that, because the construction industry insists upon assessing the hardware dealer and other retailers for the services which a technical man or a handy man might render incidental to the general business that he has always done. It is an unjust and unreasonable thing and should not be permitted.

Senator CLARK. They enforce collection of these charges or threaten to take the Blue Eagle away.

Mr. Fox. They enforce them in many ways. Many ways are even more radical than that.

Senator BARKLEY. Let me ask you as a practical man, where a store is a store of an omnium gatherum of everything manufactured by different groups and different industries, how can you have codes set up for those branches of the industry without having a storekeeper handling all of these products under the different codes by manufacturers of all of these things? What is the remedy for it?

Mr. Fox. The control of the fair trade competitive practices in retailing is not so objectionable, because there is some justification and necessity for it. The abuse is in the activities incidental to retailing itself. If a retailer sells jewelry as well as other commodities, and he sells groceries, there is no reason why he should not observe the competitive practices in those retail codes. There is every reason why he should not be assessed for the support of their code authorities, why he should be assessed simply on his main line of business, because there ought to be a certain number of members in any industry to support the code authority without attempting to collect from every member of industry who might do some part of that business.

Senator BARKLEY. Aside from the assessment matter, which I can understand and which complicates the situation, it would be impossible to have a code just applying to the department store, for instance, or the hardware store, or any store that handles a variety of things made by different industries. It would be impossible just to have him all under one code, would it not?

Mr. Fox. Yes; it would be for competitive reasons; and there is not, as I say, any particular objection to operating under the fair-trade practices of codes if any retailer does a substantial business under various codes. We have never objected to the department store being under the same trade practice of the Drug Code or the Jewelry Code if we have a jewelry department or a drug department; but we do say that if a small retailer incidentally sells a little jewelry, he should not be bothered or harassed. It is a matter of degree.

Senator BARKLEY. It is largely a matter of administration, is it not?

Mr. Fox. It is largely a matter of administration.

Senator BARKLEY. You cannot set up all of those metes and bounds in the law.

Mr. Fox. No; but I think the law can and should state that it sets up a single assessment.

Senator CLARK. The overwhelming majority of your members are engaged solely and purely in intrastate business, are they not?

Mr. Fox. That depends on the final decision as to what is and what is not intrastate business.

Senator CLARK. Most of your members sell a very small proportion of their goods across the State lines, do they not?

Mr. FOX. It depends upon their location.

Senator CLARK. I understand if they happen to be located in a city right close to a State line, they might sell certain things by mail across a State line.

Mr. FOX. And by delivery.

Senator CLARK. But the overwhelming majority of you members are engaged solely within the limits of a State and are conducting business solely within the limits of the State; are they not?

Mr. FOX. I should say so.

Senator COUZENS. And in spite of that, you desire renewal of the code?

Mr. FOX. We do. We feel that the administration of the National Recovery Act has gone far afield in the purposes of the act and the intention of Congress. We find among codes miniature Capper-Kelly bills. Fortunately, not many of them were approved; some of them were. We find vestal bills incorporated in codes for the elimination of style piracy; and this in emergency legislation is for one purpose only, and that is to promote more business and more employment. These things of necessity do just the opposite.

Senator BLACK. You mean that you are against the Capper-Kelly bill?

Mr. FOX. We are against the Capper-Kelly bill and always have been.

Senator BLACK. You are against that provision of the code which fixes a minimum price?

Mr. FOX. No; we are not. The Capper-Kelly bill was a resale price maintenance bill rather than a limitation of minimum price. We feel that the act itself or the amendment to the act does not control price fixing but leaves it just as wide open as it always has been. Price fixing has been direct and indirect. The indirect methods of price fixing through price-listing provisions and open-price associations are more dangerous than the direct price fixing.

Senator BARKLEY. What would you do about a situation where under the codes wages have been increased and hours have been reduced so that the cost of the manufacturer is greater than it would otherwise be? Would you eliminate all floors as they call it, or all provisions against selling below cost?

Mr. FOX. We would not. Our proposal is to amend the present act so that it shall read:

That such code or codes are not calculated to promote or sanction the creation or maintenance of a monopoly or monopolistic practices destructive of fair competition; and are not calculated to eliminate or oppress small enterprises, or to discriminate against them; and are not calculated to promote or sanction devices for fixing prices such as all price listing provisions, standardization of or elimination of cash and quantity discounts, classification of customers, and any and all fixed differentials for such classifications; or regulation of delivery charges, or the fixing of resale prices by manufacturers or wholesalers or distributors; and are not calculated to control or limit production or distribution excepting production or distribution of natural resources; and nothing in said code is designed to or does suspend any of the provisions of the antitrust laws of the United States excepting to such an extent as to permit devices for controlling prices in a proved emergency to prevent predatory price cutting and to permit establishing of "loss limitation" provisions without profit content.

Senator CLARK. That makes it discretionary with the Administrator, does it not?

Mr. FOX. No, sir; it does not, because you limit the right of the Administrator to fix minimum prices in proved emergencies which have no profit content; in other words, which are at cost, and we do not believe that at this time anybody should be permitted to sell below cost, and we do believe that predatory price cutting at this time should be limited at any rate to a floor such as in the retail code which fixed a minimum price at the net invoice cost plus 10 percent.

Senator CLARK. When you say "practices which are calculated to create monopoly", who is to determine whether they are calculated to create monopoly or not?

Mr. FOX. I go on to specify them.

Senator CLARK. But the Administrator is to do the calculating, and General Johnson insisted that price fixing did not tend toward monopoly, and if the Administrator took that view, under the language employed here of the practices calculated to create monopoly, he could sanction such prices as Pittsburgh-plus and such other things.

Mr. FOX. If you specifically exclude the provisions in codes of such elements as I have listed here, there would be very little chance of doing it. These are the devices by which it is done.

Senator CLARK. In my opinion it would be as discretionary with the Administrator as it is now.

Mr. FOX. I doubt it.

Senator CLARK. In other words, you have written a stump speech instead of a law.

Mr. FOX. No; I doubt it very much, because it specifically prohibits these devices which have been used for price fixing. When you say that in an emergency, a minimum price may be fixed without profit content, that means the cost of production, and that is not price fixing.

Senator BLACK. Why should we not add to that, if we adopt that feature, why should we not say that if they have a floor, they should also have a ceiling. Fix both a minimum and a maximum price, or should we leave the sky as the limit without any ceiling over the floor?

Mr. FOX. I think the consumer takes care of the sky.

Senator BLACK. How can he if you fix a price at all?

Mr. FOX. The consumer won't pay for merchandise, and it is quite apparent from the trend of events that the consumer won't pay for merchandise if it is too high, if it is beyond his reach.

Senator BLACK. Some of it he has to have anyhow.

Mr. FOX. Unless he must have it.

Senator BLACK. I am referring to the things you are talking about that he has to have; some of them he has to have, doesn't he?

Mr. FOX. To a certain degree, yes; eventually he has to have most of them.

Senator BARKLEY. Have you a prepared statement there?

Mr. FOX. I have proposals for amendment or modification of the present amendment.

If you will look at the situation that the Government places itself in when it indulges in permission to fix prices, you will find that it is working at cross purposes with itself. The Federal Housing Administration, for example, is doing everything possible to induce people to build. The little home owner is asked to build, and yet if you look at the report issued by the Research and Planning Division of N. R. A.

you will find that the weighted average of 20 building materials is as high as they were in 1927 or 1928 and 1929; even higher.

What is the inducement to build? A man whose income has been depleted is asked to pay prices for materials that are as high as or higher than they were before the depression.

We ask that the discount provisions be eliminated from codes and code provisions and credit provisions. The Government is anxious to help the smaller merchant and smaller manufacturer in his financial situation and in his credit conditions, and yet we find the contraction of credit by fixed credit terms in codes. We think all of that is wrong, that it should be left absolutely open.

If a manufacturer or a wholesaler can afford to extend credit to its customers, he should be permitted to do so and it should not be made illegal for him to extend credit.

The argument is used that the big merchant is against these provisions because it is advantageous to him in his so-called "hard buying operations." That is not true. The large merchant has a habit of taking care of himself. The complaint against these limitations of credits and discounts comes from the small merchant. The manufacturer has no choice, he cannot extend credit and he cannot extend his discount period, it is illegal for him to do it. If the small man cannot pay his bill, there is nothing for him to do except to lose the discount. Formerly a manufacturer could say to a customer that he has been doing business with for 20 years, "All right, send me a post-dated check." Now he cannot do it; it is illegal.

You see, all of these things have restricted the fulfillment of the possibilities of the Recovery Act. I think the act itself was a good piece of law, but the restrictions that immediately were hedged around it, we think, militated against its full and complete success.

Senator KING. Do you agree there should be quantity discounts?

Mr. FOX. We believe that there should be quantity discounts allowed where they are available to all under like terms and conditions. We do not believe that codes, as a few codes have, should have classification of customers. Classification usually consists of mail-order houses, chain stores, department stores, and other retailers. In some instances with the discounts fixed, differentials fixed in favor of the larger organizations, and we say that is all wrong, it should not be permitted in codes. Why they were ever approved in codes, we cannot see and we find manufacturers operating under them. Surely there is no argument in favor of a thing like that and yet we find them going into codes.

We do feel that the administration of N. R. A. should be a little more careful about what they do. Here is a proposal on today in a code standards of health and employment, in which N. R. A. is now going to go into the regulations for the buildings in which industry is engaged, the standards of construction. I do not believe the legal division of the N. R. A. has given a thought to what this is going to do to existing laws and to existing mortgages.

Senator KING. Is that a new proposition?

Mr. FOX. That is a new proposition, evidently; one I have not seen before, at any rate. The number of outlets, the number of elevators, fire stairs. The N. R. A. going into these things. I say they are going far afield.

Senator BARKLEY. What is that document from which you are reading?

Mr. Fox. This is a notice of opportunity to be heard in one trade for which the standards have been approved.

Senator BLACK. What trade?

Mr. Fox. This one happens to be the optical retail trade.

Senator BARKLEY. And they regulate elevators?

Mr. Fox. Yes, fire doors, exit doors. A building of more than two stories in height shall be provided with at least two exits. This will affect many leases. I do not think the N. R. A. has even given a thought to that; mortgages are affected by this.

Senator CLARK. What would a man do if the Optical Retail Code, for instance, required one type of elevator, and the Jewelry Code required a different type of elevator, and the dry goods Retail Code required a different type of elevator, and a man happened to be engaged in all of those businesses right in the same building.

Mr. Fox. I wonder. You would have to ask the N. R. A.

Senator BARKLEY. Does that cover the retail or the manufacturing end of it?

Mr. Fox. The optical retail trade, approved standards for safety and health.

Senator KING. Does it prescribe the diet of the employees?

Mr. Fox. No, it does not. That is one thing they missed.

Senator BARKLEY. I suppose it goes on the theory that anybody that needs optical treatment needs as many elevators and fire escapes as possible.

Mr. Fox. I imagine so. I am just pointing that out to show some of the things they do are a little bit beyond their province. They are not careful enough about these things. Industry comes down and says "We want this", and they give it to them. It is things of that kind that militated against the complete success of N. R. A.

Senator BLACK. Is not the only answer to that to limit the power of the N. R. A.?

Mr. Fox. Yes, by the law itself.

Senator BLACK. That is what you favor?

Mr. Fox. That is what I favor, and I have here our complete suggestions on a modification of the proposed amendment, which I will not take the time to read, but will submit for the record.

Senator BARKLEY. Have you read the bill that has been introduced as a basis?

Mr. Fox. Yes, sir; and that is what I am referring to. We are proposing modification to that bill. To make it an emergency act in the first place instead of extending it for 2 years. To control the extent to which administration may approve provisions in codes with regard to price fixing, credit terms and so forth, and to control and limit other activities of the N. R. A.

I will submit this to the record.

(The same is as follows:)

BRIEF FILED BY THE NATIONAL RETAIL DRY GOODS ASSOCIATION, THROUGH ITS COMMITTEE APPOINTED TO CONSIDER THE NATIONAL INDUSTRIAL RECOVERY ACT FOR 1935, OF WHICH FRED LAZARUS, OF COLUMBUS, OHIO, IS CHAIRMAN

This committee was appointed in order to formulate a program to effectuate a resolution adopted by the association, in convention assembled on January 15, 1935, as follows:

Whereas it is the opinion of the National Retail Dry Goods Association that the interests of the consumer, employment, industry, and trade are better served

by voluntry self-regulation of industry and trade than by inflexible legislation on trade practices and employment conditions; and

Whereas it is apparent that during the present emergency some form of continued regulation is essential:

Resolved, That emergency legislation providing for a continuance of the general principles incorporated in title I of the National Industrial Recovery Act should be urged upon the Seventy-fourth Congress.

The committee recommends to the Congress of the United States that the present National Industrial Recovery Act, amended as hereinafter suggested, be continued.

There is now before the Committee on Finance, Senate bill S. 2445, introduced by Senator Harrison, which is entitled "A bill to amend title I of the National Industrial Recovery Act."

It is the opinion of this committee that modification of this proposed amendment is essential in order to eliminate certain dangerous trends developed under the National Recovery Administration which have prevented the realization of the full benefits possible under the National Industrial Recovery Act, and that the proposed amendment to that act will not effect the changes necessary to continue the National Recovery Administration along such sound lines as will in fact accomplish the primary purposes of the National Industrial Recovery Act itself, namely, to increase employment, establish fair wages, and restore purchasing power to the people.

We therefore recommend the following modifications to bill S. 2445:

1. That section 1 (d) of the amendment be modified as follows:

"(d) This title shall cease to be in effect and any agencies established hereunder shall ceast to exist at the expiration of two years after the date of enactment of this Act, or sooner, if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by section 1 (a) has ended."

The time element of the expiration date is fixed as of June 16, 1937, regardless of whether or not an emergency continues to exist, whereas the old act gives the President the right to revoke the provisions of the act in the event that he determines that the emergency no longer exists. This right should continue for obvious reasons.

2. That section 3 (a), paragraphs 1 to 6, be eliminated from the proposed amendment to the act and in the place and stead of section 3 (a), paragraphs 1 to 6, there be substituted the following proposed section 3 (a), paragraphs 1 and 2:

"SEC. 3. (a) 1. Upon the application to the President by one or more trade or industrial associations or groups, the President is authorized and directed to 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 association 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 calculated to promote or sanction the creation or maintenance of a monopoly or monopolistic practices destructive to fair competition; and are not calculated to eliminate or oppress small enterprises, or to discriminate against them; and are not calculated to promote or sanction devices for fixing prices such as all price-listing provisions, standardization of or elimination of cash and quantity discounts, classification of customers, and any and all fixed differentials for such classifications; or regulation of delivery charges, or the fixing of resale prices by manufacturers or wholesalers or distributors; and are not calculated to control or limit production or distribution, excepting production or distribution of natural resources; and (3) that nothing in said codes is designed to or does suspend any of the provisions of the antitrust laws of the United States excepting to such an extent as to permit devices for controlling prices in a proved emergency to prevent predatory price cutting and to permit establishing of 'loss limitation' provisions without profit content: *Provided*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.

SEC. 3. (a) 2. That fair-trade practices proposed for approval in codes of fair competition which are not specifically prohibited by section 3 (a) 1 of this amendment shall be submitted to interested parties engaged in further steps in the economic processes of such industry or trade prior to public hearing thereon and an attempt made to arrive at an agreement on such proposed fair-trade practices between proponents thereof and the interested parties, in accordance with regulations approved by a governmental agency designated for this purpose."

The National Retail Dry Goods Association, ever since the inception of codes of fair competition, has vigorously opposed any and all price-fixing devices of any kind whatsoever. It has, however, advocated such "loss-limitation" provisions, without profit content, which will limit predatory price cutting and prevent competitive practices that enable members of any industry from destroying competitors.

Unfortunately, the administration of the National Recovery Act by individuals with diverse opinions on this subject has led to devices being approved in codes which have, in effect, completely nullified the antitrust laws. By means of such devices certain industries have fixed prices and selling terms so that their members can operate profitably on a considerably smaller volume of business, thus defeating the very purpose of the Recovery Act and establishing a complete monopoly in the industry.

We believe that the time has arrived when the act itself should make the approval of such provisions in codes impossible, and that, with the exception suggested, the antitrust laws should remain in full force and effect.

Our objections to such code provisions which we recommend be specifically prohibited under 3 (a) are as follows:

A. Price-listing provisions. This device has been a favorite method of accomplishing indirect price fixing. It has been conceded, time and again, by the majority of industries which have incorporated such plans in their codes that it was done solely in the hopes of arriving at a fixed price level and that without such result price-listing provisions would be of no value to them.

The administration first approved price-listing provisions with a waiting period, then decided that the waiting period did result in price fixing and eliminated the waiting period. It is our contention that it is immaterial whether the provisions contain a waiting period before prices become effective or not, since it still provides a means of avoiding the provisions of the antitrust laws. The method devised by the members of industry does not matter—the result is the same.

So much evidence has been presented at public hearings by purchasing agents and buyers, both industrial and governmental, with regard to this price-fixing device that there can be very little question as to the intent, purpose, and result thereof.

B. Standardization of cash discounts. This is a step toward price fixing, because it establishes the principle of joint action by manufacturers to regulate an important element in the price which experience has disclosed results in hidden price increases by a large percentage of the industry standardized, and results in an arbitrary establishment of terms of sale which usually ignore differences in credit risk and other variables in marketing conditions that cannot be standardized equitably for all types of sellers and buyers.

In order to obtain the approval of such standardization of cash discounts, industry used the argument that it was for the protection of the small retailer or the small buyer. Nothing could be more ridiculous. Practically all the complaints with regard to the operation of this provision have come from the small merchant. The large merchant with his cash resources has always sufficient funds to discount his bills on the due date and to earn his discount, but the small merchant often finds himself short of cash and if he requests an extension of time for payment so that he may enjoy his discount, the vendor, even though he desires to do so, is estopped from extending the time by this standardization provision in the code, and the small merchant loses his discount. Formerly it was discretionary with the vendor and he usually accepted a check dated in advance, or extended the time of payment.

This provision has likewise retarded the purpose of the act in that it has compelled many merchants to buy in much smaller quantities, carry much smaller inventories and has generally contracted credit.

C. Provisions preventing quantity and volume discounts and rebates. Any manufacturer should be free to offer quantity discounts as an inducement to obtain orders of such quantities of his product as will permit him to effect savings in his cost of production and distribution. Such discounts and rebates should be open and available to all under similar conditions.

D. Mandatory classification of an industry's customer and any and all fixed differentials for such classifications. Strange thought it may seem, there are several codes which provide for classification of customers and for the establishment of fixed differentials for such classifications, and usually the classification, as far as retailer are concerned consists of (1) chain stores and mail-order houses, (2) department stores, (3) other retailers, with a differential which results in a discrimination in prices as between these various types of distributors regardless of other factors. Any differential in prices or terms should be based solely on such factors as size or order, cost of service, volume of business done with the particular manufacturer and not on any arbitrary classification. Each individual manufacturer should determine solely for himself the value of his own customers.

By means of this type of provision a manufacturer is prohibited from selling to a small merchant at the same price at which he sells to a larger merchant, or to a mail order, or a chain organization. In other words, he is compelled by law to favor the large buyer as against the small buyer, even though he does not desire to do so. We do not believe that any further argument is necessary with regard to eliminating such provisions from codes.

E. Regulation of delivery charges. This device has been used in codes to transfer from the manufacturer to the retailer a factor in cost properly chargeable to the manufacturer, and heretofore borne by him. This has resulted in the removable of a variable in marketing conditions and tends further to enable an industry to establish uniformity of prices and pass on hidden price increase to the consumer.

F. The fixing of resale prices by manufacturers or wholesalers or distributors. A most objectionable form of price fixing is this type which, in effect, permits one no longer holding title to property to dictate the terms at which it shall be disposed of by the owner. It does not take into consideration variations in services and types of retailers, their locations, and differences in operating costs. Carried to a logical conclusion, it will, in effect, make the retailer simply the agent of the price-fixing organization, and take from the retailer control of his own business.

G. Allocation and limitation of production which tend unduly to raise prices. While overproduction may result in unreasonably low prices, at the same time the allocation and limitation of production is a device which can be used to produce a "scarcity level." This results in increasing prices to levels which are unreasonably high and its tendency is to produce monopolistic control even though under Government supervision. It is a dangerous experiment that in our opinion it is far better to permit production to be controlled by the sound business judgment of the producer rather than by governmental agencies.

Recommendation is made for inclusion of a new section 3 (a), paragraph 2.

We suggest the inclusion of paragraph 2 of section 3 (a) for the reason that the majority of fair trade practices control the relatons of buyer and seller. These provisions usually seek to establish uniform contracts, restrict return of merchandise, control cancelation of contracts, limit allowances for advertising and demonstrators, control consignment selling, selling to the ultimate consumer by manufacturers or wholesalers, and other similar problems.

It is quite obvious that since both producer and distributor are vitally interested in such matters and are necessarily parties thereto, that an agreement reached thereon will not only facilitate the work of the administration, but will likewise produce such amicable relations between the parties interested as will result not only in better compliance but likewise in more complete accomplishment of the purposes of the act.

3. That paragraph (f) of section 3 be amended by adding the following words to the first sentence thereof (lines 4 to 7 on p. 11) which now ends with the words "administration of such code" so that the first sentence shall read:

"(f) Any code prescribed or approved under this section may require person subject thereto to make equitable and proportionate contribution to the expenses necessary for the administration of such code, provided, however, that no member of a distributing trade shall be assessed for the administration of a code other than that regulating the principal line of the business in which such member of a distributing trade is engaged."

Distributors of merchandise, particularly retailers, must of necessity perform services which are of a nature governed by the definitions of other codes and yet are incidental to the selling of merchandise and for the accomodation of customers. Attempts to compel these retailers to segregate such activities, maintain separate accounts thereon, and to pay assessments to various code authorities therefor have resulted in much dissatisfaction and hardship and are manifestly unfair. If

a code authority cannot be supported by members of the industry whose main line of work is under such code, then they are not entitled to a code.

A small hardware dealer, for example, in isolated regions particularly, finds it necessary to have a general utility man who is capable of doing plumbing work, electrical work, steamfitting work, etc. Under present regulations he is considerably harassed by code authorities in their attempts to compel him to maintain separate accounts on this work, and to pay assessments thereon. In some instances 9 or 10 code authorities have attempted to collect assessments from 1 small hardware dealer. This should be prohibited in the act itself.

4. That section 3 (c) be amended by eliminating the words "and the examination thereof" in line 7, page 8, and from section 3 (d) the words "and such examination thereof to be made" in line 2, page 10.

The right generally to examine the books and records should not be lightly given. It is undoubtedly a means of oppression and harassment particularly where it may be delegated even to code authorities or their inspectors, and will result in many "snooping" expeditions. Under the present act on a specific complaint a report may be called for. If the Compliance Division determines that there has been a violation of the code, action may be commenced accordingly and in the event of such action the administration has the right to subpena. No further general right of examination should be necessary. To grant it under this proposed amendment is both dangerous and unnecessary.

5. That the proposed amendment to section 7 (a) be modified so that the introductory statement thereto, lines 15, 16, 17, and 18, on page 14 shall read as follows:

"Section 7 (a). Every code of fair competition or agreement approved, prescribed, or entered into, under this title shall contain a provision that: (1) Employees, etc."

It is our opinion that while it is the desire of the administration to permit employees to organize and bargain collectively under certain conditions, that no law should contain the broad statement that certain prerogatives of employees shall be declared and affirmed as "rights of employees" thus tending to indicate that employees have established or inherent rights. This emergency act should not in itself attempt to vest employees with "rights" but instead should go no further than grant permission to them to do certain things during the period of emergency.

6. That section 10 (b) be modified by the addition of the following sentence after the word "title", line 8, page 17:

"He shall, however, not impose any responsibility with regard to any labeling regulations or provisions of any member of the industry or trade other than the members of the trade or industry for which labeling regulation is approved."

There has been a disposition under the code to seek to compel the distributor of merchandise to police the labeling regulations in producers' codes. Since these labeling regulations are approved at the insistence of the industry desiring to utilize labels for purposes of its own, and since these labeling devices are always used as a means of obtaining revenue for the support of the code authority of such industry, and for its activities in enforcing the code, the control of and compliance with these regulations should be solely the responsibility of the industry adopting the same, and no one should be given the right to compel members of another industry in any way to police the enforcement of such provisions.

7. That paragraph (d) of section 12 (p. 22, lines 15 to 23) be amended to read as follows:

"If the violator does not comply with the order on or before the date fixed in such order, the complainant may within 6 months from the date of the order file suit in any State or Federal court of competent jurisdiction for the collection of the damages which such employee deems he is entitled to. Such suits shall proceed in all respects like other civil suits for damages."

The amendment to paragraph (d), section 12, as proposed is undesirable in that the findings of a governmental agency are to be made prima facie evidence of the facts which caused the complaint without setting up in any way, or controlling in any way, the personnel or the rules of procedure, or of evidence which may be presented. It gives to an undisclosed agency certain judicial powers without providing that such agency shall be competent to control properly a presentation of evidence to safeguard the rights of contesting parties.

Most important of all, it may operate to prevent the constitutional right of a defendant to have the facts in the case passed upon by a jury of his peers.

STATEMENT OF A. P. HAAKE, CHICAGO, ILL., MANAGING DIRECTOR FOR THE NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS

(The witness was first duly sworn by the chairman and testified as follows:)

Senator GEORGE (acting chairman). State your business and your connection and for whom you appear here.

Mr. HAAKE. I am managing director for the National Association of Furniture Manufacturers with headquarters in Chicago, Ill. We have a membership of approximately 700 members who represent approximately 65 to 70 percent of the business done in the section of the country that our association covers.

Senator COUZENS. Does that include Grand Rapids?

Mr. HAAKE. Yes, sir.

Senator KING. Is that the same association for which Mr. Irwin appeared, who is a member of the code authority and is a large manufacturer?

Mr. HAAKE. Mr. Irwin is a member of our board of directors. I do not know that he appeared for the association.

Senator KING. He appeared here and testified for your association, as I understood.

Mr. HAAKE. I understood he appeared for the committee against fixing prices and control of production.

Senator KING. He went further than that, but we won't argue.

Mr. HAAKE. At any rate, he is a member of our board of directors.

Senator GEORGE. How much time would you require?

Mr. HAAKE. I will limit myself as you desire. I will limit myself to 15 minutes. I have not prepared a written statement and I am bringing out a few pertinent facts.

Senator GEORGE. We will appreciate it if you will be as brief as you can in dealing with the subject. There are a number of witnesses to testify.

Mr. HAAKE. The furniture industry as a whole would prefer to see the N. R. A. discontinued, not because it is not in sympathy with the purposes of N. R. A., but because it has come to the conclusion that the N. R. A. and codes are futile, that it is not possible to accomplish the purposes and the ends through the machinery and the methods that have been set up or that may be set up. Therein, there is no criticism of the personnel of the men in the N. R. A. organization. We recognize that there are many able and earnest and honest men in that organization.

It is a recognition of the fact that probably it requires nothing less than omniscience, to say nothing of omnipotence on the part of any administrator to have sufficient understanding of the various industries and their interrelationships in order to take the place of the more or less automatic control of industry, to replace that with a deliberate planning that means that some individual has got to sit down and determine specifically what things may and may not be done. The net effect has been that there has been probably more mischief created, more disturbance, than there has been benefit. Even a Philadelphia lawyer could not have followed our code, which we believe was one of the best in its application to the industry. No one could anticipate the situations that would arise when the actual application of the provisions was begun.

There is just one provision in the entire code which we think should be continued for all industry, and that is the provision for minimum wages. We think that actually the presence of minimum wages has operated as a floor below which wages could not be cut, with the codes, and below which they undoubtedly would have been cut had there been no codes.

We are keenly appreciative of the fact that the moment we have minimum wages, those wages should not be left merely to a bargaining process between labor and industry. The whole process of setting up codes was primarily a bargaining process which was not nearly as much concerned with the wisdom of any one action, but on the part of labor or its representatives consisted of trying to get the wages as high as possible, the hours as low as possible, and on the part of industry in trying to make as good a bargain as possible with as little interference and restriction as possible. There was not a conscious and cooperative effort on both sides to work out the problem as such. It was a bargaining process in which, I am frank to admit, labor taught industry something about bargaining.

The provisions with respect to hours were undoubtedly earnestly meant, and there are still a good many people undoubtedly who feel that even such a piece of legislation as the Black bill with its perfectly splendid motive could do nothing more than simply spread the work. In order to have effective the restriction on hours such as our business, suggested in the new bill, between let us say 30 and 40 or whatever the figures might finally be, such a provision would be utterly impracticable unless one first found some way of controlling all of the factors that influence a business and an industry.

For instance, in the furniture industry, one could talk about the regularization and the balancing of production and distribution or production and consumption. We were told from time to time that if we were intelligent managers, we would not need more than 40 hours, because the furniture manufacturer with real intelligence would anticipate what people were going to buy, and he would make it in the season when it was not being sold, and that when people came along and wanted to buy it, he would have what they wanted. All that he had to do was either to know what they were going to buy or see to it that they bought what he made.

That was seriously proposed as the reason for not allowing us sufficiently flexible hours, and while I do not want to be facetious, honestly the only way that one could control that sort of thing would be to control the weather, the time of moving, the house cleaning habits of women. You might control the weather, but I would not suggest trying to control the house-cleaning habits of women; and yet it would require a control of factors such as this to make it possible for the manufacturer to absolutely regularize his production and his distribution.

Therefore probably the most mischievous—and we did not anticipate it as such—but probably the most mischievous feature of our code has been the restriction on hours. We simply require a greater flexibility than even the present code permits.

The wage situation, if I may turn to that for a moment, is such that where there are a number of codes with different minimum wages set up as the result of bargaining, there is produced a situation wherein certain industries have advantages over others. And that

brings about a new situation. For example, in furniture. There are people who make lumber. The Lumber Code from the point of view of people who want to pay low wages, was more fortunate than was the Furniture Code. It secured a lower minimum wage. The machinery that is in a lumber plant for sawing off of lumber is identical with that in a furniture plant, and it is not difficult for a lumber manufacturer to introduce additional machinery, and in consequence a number of lumber manufacturers and manufacturers of so-called "dimension stock" which is wood cut to length and width and thickness, found it to their advantage to go into the furniture business, and so instead of being content to manufacture simple dimension stock, lumber cut to size, width, length, and thickness, they began manufacturing actual furniture parts so that anyone could buy these parts, which would consist of this side of the chair [indicating], the back, the stretcher, the seat and so on, could take all of those parts and put them together with a hammer and paint them and he would have a chair. Mrs. Jones could even buy one of those from a retail store and she could make her own furniture.

The lumber people insisted that that was not furniture, that that was lumber. We insisted that it was furniture. And the problem would not have been there if the two had had the same minimum wage. With the lower minimum wage, the lumber manufacturer could sell that at a price that would make the competition more than unfair and difficult for the furniture manufacturer.

We began in December 1933 to try to settle that, and I have made for your interest, and it may be of some value to you, a list of the various acts in connection with this controversy, which I think might become a part of the record, and I offer it as such.

Senator KING. Showing the procedure when you tried to get that matter adjusted?

Mr. HAAKE. Yes. These are the various steps that were taken, and it is one of the prettiest pieces of evidence that could be produced as to many questions that arise under N. R. A., due again, if you please, not to human factors, but because of the complexity of the things, and it means that many of these intricate questions will not be settled when Gabriel blows his horn for breakfast.

Senator KING. It is not settled yet?

Mr. HAAKE. No.

Senator KING. How long have you been working on it?

Mr. HAAKE. We are still working on it. The last was "You fellows ought to be able to get your heads together and act like sensible human beings." We did, but they did not. They will be quite as eloquent in this belief that they did but we did not. We were told, "If you don't get together there will be a hearing." We welcomed the opportunity, but the hearing has been postponed.

Senator KING. The contention is made that one of the virtues of the N. R. A. is that you can very quickly settle any controversy between employers and employees and between conflicting interests in the industry. This does not demonstrate the accuracy of that statement.

Mr. HAAKE. Unless one is prepared to admit that 14 months is rapid action. I am inclined not to think so.

(The statement offered by the witness is as follows:)

CHRONOLOGY: FURNITURE PARTS VS. DIMENSION STOCK

(Total 51 entries, 24 marked "*" for emphasis)

CONFLICT OF CODE JURISDICTION BETWEEN THE LUMBER CODE AUTHORITY (L. C. A.) AND THE FURNITURE CODE AUTHORITY (F. C. A.)

1933

Fall: At precode conference Lumber Code Authority asked that definition make clear that plywood for sale came under their code, but made no other protest.

*December 11: Furniture Code effective containing careful definition of "parts", because competitive trouble was foreseen:

"The term 'furniture parts made of wood' as used in the first paragraph of this article, means wood parts for furniture where the process of manufacture has advanced so far that the product can be used only in the production of furniture, but not including hardwood dimension stock nor plywood, as defined in the code for the lumber and timber products industry, and for sale as such."

December 18: Date of letter from Lumber Code Authority protesting.

*December 19: Date of letter from Dimension Manufacturers' Association objecting to inclusion of parts.

*December 21: Letter from J. T. Ryan (then acting secretary of Furniture Code Authority) to Barton W. Murray, Deputy Administrator, confirming understanding that definition was suspended, suggesting hearing in February.

1934

* January 9: Brief filed by Furniture Code Authority in general hearing on Lumber Code, showing that suspension would drag down wages, would force furniture manufacturers to close machine rooms, would affect over one-half of the workers and three-fourths of the investment in the industry—again asking hearing if necessary.

January-February: Exchanges of correspondence—claims of Lumber Code Authority over porch and lawn and garden furniture, as well as complete sets of wood parts—warning to National Recovery Administration that unfair competition would endanger compliauce.

February-March: Correspondence and conferences between the code authorities, without conclusion.

February 8: Furniture Code Authority recommended that National Recovery Administration investigate character and quantity of parts and furniture made by lumber mills. None made, reaffirmed desire not to cramp normal development of dimension stock.

* March 30: Notice received by Furniture Code Authority that the dimension stock producers were trying to amend lumber code to include unassembled furniture, previous definition of dimension stock being vague. National Recovery Administration was found to be considering, though they had not acceded to Furniture Code Authority request for hearing. Protest was filed agianst approval of such a definition.

April 6: Furniture Code Authority repeated understanding of dimension stock, as exempted from furniture code, to be blanks sawed to length, width, and thickness.

April 10: Telegram from J. T. Ryan to Barton W. Murray quoting rumor that no stay was ever granted suspending definition of furniture parts and code was in full force.

April 11: Telegram from C. R. Niklason, Deputy Administrator, to J. T. Ryan finding no records of stay—confirming impression of April 10.

April–May: Verbal advices by Messrs. Murray and Niklason that because of above situation it was merely necessary to file complaints of noncompliance against firms making furniture parts at lumber wages. After fruitless efforts to arrange voluntary cooperation, several complaints were so filed. Two or three firms voluntarily complied with Furniture Code or discontinued making complete sets of parts.

April 26: Conference of Furniture Code Authority and Lumber Code Authority representatives in office of deputy for Lumber Code, urging that we assent to a definition of dimension which would include all furniture parts. Furniture deputy not invited. Assistant deputy for dimension stock very partisan.

May 1: Letter from Hardwood Dimension Manufacturers Association stating that Furniture Code definition of parts is and has always been suspended.

*May 15: Agreement by Barton W. Murray at Furniture Code Authority meeting that an automatic stay existed, and setting a hearing for June 5.

*May 23: Letter from Lumber Code Authority to Barton W. Murray withdrawing objection. Hearing canceled, but deputy unwilling to write ruling confirming effectiveness of code.

July 18: Letter from Furniture Code Authority to C. R. Niklason asking either a clear ruling or a public hearing.

June–July: Sundry correspondence in effort to obtain action by Compliance Division on complaints filed.

July 20 (approximate): A compromise proposal talked over with us was warped and rewritten by the deputies in the Lumber Division until it gave the dimension makers more ground than they had preempted. This had almost been signed and issued before the effect of the changes was noted.

July 20: Publication of courteous gesture by Lumber Code Authority declaring 30-cent minimum for employees on a few machines in dimension plants, but not covering about 50 percent of the employees involved. National Recovery Administration legal opinion found it unenforceable in any case.

* July 28: Issuance of Public Notice 9–65 (see exhibit) slipping over the definition requested by the dimension makers and previously denied. This was concealed in an order ostensibly for the purpose of merging small uncoded groups with the lumber and timber products industry.

August 1: Protest against order 9–65 of July 28 by Furniture Code Authority within the required time.

* August 8: Correction made by new Division Administrator in public notice errata sheet. Reprimand or warning rumored to have been issued to the deputies involved.

* August 8: Resolution at code authority meeting giving executive committee power to withdraw code authority efforts to enforce minimum wage if unfair competition of lumber mills not eliminated.

August 9: Visit of committee of Furniture Code Authority to Division Administrator to explain seriousness of situation.

August 15: Memorandum from Division Administrator Murray to Chief of Compliance stating Furniture Code in full effect since June and asking action against lumber mills violating. He offered to exempt them from Furniture Code jurisdiction if they would observe labor provisions.

September 4: Letter from Dimension Manufacturers Association to Canton Wood Products Co. directing that they make their assembled furniture under the Furniture Code, but not covering the parts problem specifically.

* September 11: Reports from Compliance Division that two firms had adjusted their wages in accord with the ruling of August 15. The largest violators however, continued without change, protected by some uncanny force within National Recovery Administration.

* September 14: State Compliance Director for North Carolina unable to act on violation because instructed by Assistant Deputy Wickliffe that chair parts belonged under the Lumber Code.

*September 25: Letter from Barton W. Murray to Furniture Code Authority pointing out that Assistant Deputy Wickliffe had no authority to issue a ruling contrary to that of his superior officer.

*September 26: Statement by Mr. Wickliffe that he did not consider Mr. Murray's decision correct, and removal of the Lumber Code from that division made it possible to carry the matter beyond Mr. Murray as an interdivisional problem.

*October 9: Furniture Code transferred from Mr. Murray to another division.

*October (approximately): Lumber Code transferred to Division Administrator Ellis. Deputy administrators for lumber shortly after drafted for new chief's signature an order approving the broad dimension stock definition which had three times previously been denied. Furniture Code Authority again registered protest by telephone. (Dates not in our file. Requested from National Recovery Administration but not received.)

November 7: Letter from Furniture Code Authority to National Recovery Administration giving notice that unless decision has been made by November 20 steps will be made looking toward lower wage rates in furniture plant machine rooms.

November 8: Conference in Colonel Brady's office, attended by representatives of both codes. Dimension stock makers again requested to include all woodworking at Lumber Code wages. National Recovery Administration proposal for 30 cent

rate on certain workers covered only about two-thirds of the trouble and was not acceptable. No provision was made to insure compliance.

* November 20: Letter from Furniture Code Authority to Colonel Brady naming the six dimension firms who were producing most of the furniture, and asking that code jurisdiction rulings be made on the specific cases.

November 22: Amendment submitted in accord with notice of November 7 by Furniture Code Authority to National Recovery Administration proposing lower minimum wages for machine operations necessary to meet the competition.

November–December: Sundry conferences with Colonel Brady regarding the extent and character of the trouble, showing that it centered with five firms.

* Mid-December: Ruling which definitely classified two of the largest violators, and required furniture to be made at furniture wage rates, was waylaid at last moment and never issued. (Dates not in our files.)

* January 7: Conference of interested parties, which had been postponed from dates in November and December. Compromise proposal covering about 90 percent of the wage differential was drafted to be submitted to the respective code authorities by their committees. It was agreed by Colonel Brady that a public hearing would be held unless the dimension producers agreed to the proposal.

* February 9: Furniture Code Authority confirmed willingness to accept the compromise. Lumber Code Authority asked further concessions.

* February 15 (approx.): Furniture Code Authority asked public hearing. Were refused by Colonel Brady, apparently under orders not to air any conflicts while new act was being considered.

February 21: Case was appealed to D. M. Nelson, assistant to the chairman, who ordered immediate investigation and arrangements for a public hearing.

February 28: Dimension manufacturers held convention at Louisville after declining Lumber Code Authority's suggestion that a furniture representative be present. At least one member expressed opinion that small minority seeking unfair advantages were putting remainder in an awkward position.

* March–April: Field trip by Maj. J. Marshall Mayes, and notice issued for hearing on April 15 on code conflict.

Early April: Letters from several dimension makers to Furniture Code Authority in response to notice of hearing, indicating sympathy with fairness of furniture industry position.

* April 9: Hearing canceled on ground that precarious state of Lumber Code made official representation impossible.

* April 12: Letter from Furniture Code Authority to National Recovery Administration showing how dimension mills are now free of all labor restrictions because of break-down of Lumber Code, thus aggravating the unfair competition. Public hearing again requested, to determine code jurisdiction.

Senator BLACK. As I understand it, your objection is to the flexibility in the minimum wage. Is that correct?

Mr. HAAKE. We would prefer to see a minimum wage, Senator, that would not be arrived at merely by bargaining but that would also equalize competition in competitive industries. What difference does it make if I am a furniture employee or a lumber employee, or whether I work in a grocery store or in a dry-goods store, or what-not; minimum means that it takes a certain amount of food to keep me alive, shelter, and so forth; and when we are not going beyond minimum wage and not dealing, if you please, with a question of subsistence, we might just as well have the same minimum wage for all of the workers, certainly in associated industries.

Senator BLACK. Then you object to a flexibility in the minimum wage?

Mr. HAAKE. That is right; and we would even go so far as to propose this——

Senator BLACK (interposing). I want to be sure that I understand you. I understand also that one of the reasons is that it is not fair to one industry to pay one minimum wage and have to compete with other industries that have to pay a different minimum wage?

Mr. HAAKE. That is also correct; yes, sir.

Senator BLACK. Because there is a competition with reference to those wages?

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

Senator BLACK. Then may I ask you, forgetting for the moment that you are against any hour law, why does not exactly the same argument refer to a competition in hours?

Mr. HAAKE. I think, Senator, you could answer that better than I could.

Senator BLACK. I think I have answered it. As I understand it, your objection to the wage idea is that if you have a different wage for different industries, then the competition with reference to wages is not fair?

Mr. HAAKE. That is right.

Senator BLACK. Between industries?

Mr. HAAKE. That is right.

Senator BLACK. If you have different hours fixed by law for different industries, is the competition fair between industries?

Mr. HAAKE. It can be; yes, sir.

Senator BLACK. It can be in hours but not in wages?

Mr. HAAKE. Yes, sir.

Senator BLACK. Is it not true that the reason you object to it in wages—one of the reasons—is that the place where they get the highest minimum wages is where the best workmen would want to go?

Mr. HAAKE. Precisely.

Senator BLACK. Is it not also true that the place where they could get the lowest hours with the same wages—would that not take the best workmen to the place where they could get the lowest hours?

Mr. HAAKE. When you say "wages", do you mean wages or wage rates?

Senator BLACK. I mean wage rates—what they are getting.

Mr. HAAKE. If the wage rate is the same, the larger number of hours simply means higher pay. I do not follow your point there.

Senator BLACK. Let us assume that you have a minimum wage of $10 a week for every industry in the Nation. That would be lower than a lot of us would like to see, but suppose we had that. And you had some of them working for that $10 minimum wage on 12 hours and some of them on 6. Which industry would have the advantage in getting employees?

Mr. HAAKE. The one that offered the lower hours, of course.

Senator BLACK. Then is it not true that the same argument identically that you apply and give as a reason for a standard minimum wage would likewise apply to a standard working hour so far as the industries are concerned?

Mr. HAAKE. No, sir; it does not, if you will pardon me.

Senator BLACK. It does not?

Mr. HAAKE. No, sir; it does not; and for this reason, that the way you are speaking of a wage, minimum wage, you are speaking of a minimum wage rate.

Senator BLACK. Certainly.

Mr. HAAKE. And you are dealing only with one group of workers at the bottom. The moment that you legislate hours, you are dealing with all workers, and you are affecting not a part of the cost of

production but are affecting the operation of the entire plant, which is very different.

Senator BLACK. We are affecting cost of production in both, are we not?

Mr. HAAKE. Yes; but to a different extent.

Senator BLACK. It is just simply a question of degree. But it is true—is it not?—and you are bound to admit, that if you have hours in 5 local plants in a town that has only 5, and one of them has a 6-hour day and one of them an 8-hour day and one of them a 10-hour day and one of them a 12-hour day, that the one that has the 6-hour day is likely to get the most employees of the best type.

Mr. HAAKE. If it is in business, certainly; but the chances are that it will go out of business.

Senator BLACK. We are assuming that they are in business. There are five of them, they are in a town, and they have different hours. We will say the hours are 6, 8, 10, 12, and 14. Would it be fair to the company that had the 14-hour maximum to put it in competition with those that had 6 hours?

Mr. HAAKE. I would love that kind of competition.

Senator BLACK. You would like that?

Mr. HAAKE. Yes.

Senator BLACK. And you would like to work yours 14 hours and have to hire them when somebody else is giving only 6?

Mr. HAAKE. Yes.

Senator BLACK. And pay them as much as he did?

Mr. HAAKE. Yes; because I will stay in business and the 6-hour fellow is going to get out.

Senator BLACK. Then that is not fair to business as whole, is it?

Mr. HAAKE. No; it is not fair.

Senator BLACK. Then is it fair to have some industries working some hours and others working other hours?

Mr. HAAKE. Senator, there are many things that are not fair, if you will pardon me. It does not seem to me fair that there should be dust storms, for example, in the westerly part of the country. It is not; but what are you going to do about it?

Senator BLACK. It would seem to me that it is very easy if you admit it is unfair and unjust. Is it fair and just to have a law fixing hours, one number of hours for this industry in the same town, this number of hours for another industry in the same town, and a different number of hours for a different industry in the same town? Is it fair and just as a law?

Mr. HAAKE. I do not think that would be just; no.

Senator BLACK. That is what is done under the codes.

Mr. HAAKE. Yes.

Senator BLACK. You do not think it is for the best interests of business?

Mr. HAAKE. No.

Senator BLACK. Or for the country?

Mr. HAAKE. No.

Senator BLACK. Then if there is going to be any reduction in hour fixing, do you not think it should be uniform?

Mr. HAAKE. I would say if there is to be any fixation of hours, that the Black bill would be better than the fixation of hours given in an N. R. A. code.

Senator BLACK. What you oppose is the fixing of hours at all?

Mr. HAAKE. That is right.

Senator BLACK. I agree with you to that extent.

Mr. HAAKE. I was at the moment at the point that I put this in evidence as an illustration of the necessity for having minimum wages as simple as possible.

The Senator raised the point that I must not let go. There is apparently a conflict; in other words, I apparently stand for having a simple one-minimum wage which would be at a subsistence level, and then almost in the same breath I point out that we must recognize competitive conditions, and I think that is perfectly logical; in other words, there are always forces which conflict, and any action that follows is always a resultant of a group of forces. This draws it this way [indicating]; and this, the other [indicating]; somewhere between the operating of those two principles, the resultant would operate. We suggest that if this new act were to be passed that there be written into section 7 the following provision:

Provided, That where industries or processes are directly competitive, the same minimum wage scales for unskilled labor shall apply in all of the competing units in the same territory.

Senator GEORGE. Do you mean wage rate?

Mr. HAAKE. The wage rate; yes, sir. And I presume I would have to mean also a minimum wage in terms of 10 or 12 or whatever dollars it would be.

Senator KING. You are not in favor of price fixing or any of the devices which might contribute to the fixation of prices?

Mr. HAAKE. Senator, I think that industry—let us be quite frank about it—industry generally would love price fixing if it were not futile. The opposition that one finds to price fixing is, in my judgment—and I speak for my own judgment only—the most eloquent evidence that we are convinced that it won't work. It is absolutely futile and makes a tremendous amount of mischief.

Senator KING. They had it in the seventeenth century and in the sixteenth century, and wherever there were dictators and kings, and feudal barons, did they not?

Mr. HAAKE. They tried it time and time again. The mercantile system was built up around it.

Senator KING. It did not work?

Mr. HAAKE. It did not work.

Senator KING. And it brought poverty?

Mr. HAAKE. Yes, sir.

Senator KING. It did not promote the general welfare?

Mr. HAAKE. That was what I meant by—perhaps I was a little overearnest in speaking of it to Senator Black—when I mentioned the dust storms. That is due, primarily, Senator, to a basic human element; and I think one of the basic things in legislation is that we sometimes get away from human beings as they are. We assume a kind of being exists whose existence is necessary to the law, but the being does not exist. The plain fact is that when there is not enough business to go around, men will do whatever that is necessary to get what they think is their share of the business, and no law on the face of the earth is going to stop them.

Senator KING. Is it your opinion that the present N. R. A. Act, as it has been administered, has contributed to monopoly or monop-

olistic prices to the injury of the smaller man and to the advancement and betterment of the large manufacturers, such as the Steel Corporation, or the Cement Co., or many of the larger industries?

Mr. HAAKE. I cannot speak with any authority outside of our own industry, Senator, but in our industry I do not think it has operated to the harm of the small manufacturer. If anyone has been injured, it has probably been the large manufacturer, and that for this reason: that the smaller manufacturer has thumbed his nose more frequently at the code than the larger manufacturer has done so. In other words, the larger manufacturer has been more or less on the spot. He could not successfully refuse to observe a code. We could watch him and see him. The smaller manufacturer almost to a man—that is not true—but the smaller manufacturer to a much larger extent than the large manufacturer did not live up to the code. If the small manufacturer had observed the code, I am frank to say to you that he would have suffered.

Senator KING. Proceed.

Senator GEORGE. You think on the whole the code has not done your industry any substantial good?

Mr. HAAKE. That, again, is extremely difficult to say, because we cannot do what the chemist does. The chemist can take a set of conditions and make an experiment and then reproduce the same conditions and change the one factor he wants to test. We cannot do that. If we could reproduce the conditions of 1933 or 1934 and then change only that one factor, we would know. As it is, we can only guess more or less intelligently.

My guess is, my own judgment is, and it is not very much more than a guess, that it has not substantially aided the industry. It has helped to some extent because to some it has provided a floor for minimum wages. We know right well that if it had not been for the code wages, we would have continued a good deal lower than they were. In several parts of the country they had gone as low as 5 cents an hour, 50 cents a day. There are no such wages now. I am afraid there might be if it had not been for the code. I must concede that the code has done that for the industry.

Senator KING. You are speaking of conditions during the depression and not prior to 1929?

Mr. HAAKE. Exactly.

Senator HASTINGS. They were pretty low before that, were they not, in some places?

Mr. HAAKE. The furniture industry has never been a high-wage industry on the average. Prior to 1929—and I am afraid I cannot give you the exact figures, I will recall as best I can—prior to 1929, our average wages probably averaged between 30 and 35 cents. In 1933, just before the Industrial Recovery Act was passed, those wages were averaging in one section of the country, the Southeast, approximately 20 cents. I may be several cents off. They were averaging the rest of the country—that would be west of the Mississippi and north of the Ohio—about 26 cents, and in that average were some men who were getting as high as 75 and 80. There were some who were getting as low as 5 cents per hour.

Senator HASTINGS. I remember in Indiana, a company that was engaged in building kitchen furniture were complaining of conditions 3 or 4 years ago, I think, and said that there were places in the country,

and my recollection is that it was in the South, where they were employing children to put some kind of lacquer on furniture they made, and paying them something like 5 cents an hour, and that was one of the conditions that this particular person was complaining about, while in that place they paid their people who did the same kind of work 30 cents an hour, and I was wondering if that condition did not exist some 3 or 4 years ago?

Mr. HAAKE. It may have; I have no personal knowledge of it. I have been in probably, well, over a thousand furniture factories, in the plants, and I will say to you frankly that I have never seen a child using a spraying machine, on any occasion, covering the period from 1928 to the present. I would not say that it was not the case, because I do not know; I would simply say that I have never seen it.

Senator KING. Proceed.

Mr. HAAKE. We are opposed to any effort to regiment production. At the outset we thought it might be an excellent thing, and there again, Senator, we must recognize a human trait. I have heard it said again and again that what this industry needs is a dictator, and when the National Recovery Act was passed, I have no doubt in thousands and thousands of business men there was a feeling of relief, because they felt that now somebody is going to make the other fellow behave. It had been said to me time and time again, "If you knew your job, you would make yourself a dictator of the furniture industry." I still have a sense of humor and did not take it seriously, but what lay back of that suggestion was this: The man who wanted something of that sort to happen would like to have seen somebody in the industry make everybody behave in accordance with his standards so that he could do as he pleased and get away with it, and the dictator would have an extremely interesting time when he began to follow some one course of action and found that someone wanted something else.

So that while we hoped that that relief would come, we found again it was not feasible, because the thing they wanted was some way of preventing the other fellow from getting so much business that I could not get as much as I would like. The fellow that was more energetic, more ambitious and a better merchandiser—some way of adjusting ought to be arranged to keep him from doing that. So we tried to set up restrictions of one kind or another. Perhaps there should be; I am not prepared to say that there should not be. But I have extreme doubts as to the ability of any human being to have the necessary understanding and ability to set up those restrictions and even beyond that, to make them work.

I am not a very intelligent person but I can lick any code that any man ever drafted if I want to, if I depart from the standards of living which I presently subscribe to, and I have no doubt that if I faced an extreme necessity of doing so, I might even depart from those; I don't know. The test has not been sufficiently severe yet, but I can sympathize with a lot of men who face the possibility of going out of business along with observing a code, if on the other hand by violating a code they can go on in business. I think even some of the members of the Senate might take the second choice.

I think, Senator, that is all I have to bring out unless you have some further questions.

There is one thing I must put in the record, if I may, and that is that the operation of the N. R. A. during the years through 1934 has resulted in a decrease in the annual income of the workers in the furniture industry, which, combined with a general rise in prices, leaves the worker in the furniture industry worse off after the operation of the N. R. A. than he was prior to it.

Senator KING. You would not subscribe to a statement which I think was made by one of the witnesses that wages have been increased during 1934?

Mr. HAAKE. The wage rates. Their earnings have not.

Senator KING. Thank you very much. Mr. M. J. Pessin.

TESTIMONY OF M. J. PESSIN, NEW YORK, N. Y., MANAGING EDITOR OF THE DAILY FOOD NEWS

(Having been first duly sworn, testified as follows:)

Senator KING. State your business, please?

Mr. PESSIN. Managing editor of the Daily Food News, which is a retail grocer's newspaper, published in New York City.

Senator KING. Do you know Mr. Charles Ackerman?

Mr. PESSIN. Yes, sir. Mr. Chairman, I would like before I proceed to——

Senator KING (interposing). How much time do you want? We have four or five other witnesses here. Make it 10 minutes if you can.

Mr. PESSIN. I would like to make a statement which has been made by the first witness this morning regarding price fixing in the Food and Grocery Code.

Senator KING. Speak a little louder, please.

Mr. PESSIN. I would like to correct a statement which was made by the first witness this morning regarding price fixing in the Food and Grocery Code. We have no price-fixing provision in our code, but we do have a minimum mark-up of 6 percent above cost. The price that the consumer pays for the food product in a store is not regulated or fixed by the code. There are other factors which regulate the price such as agricultural conditions, commodity market exchanges, and so forth.

I also want to say for the record that the code for the grocery trade has not been imposed by the National Industrial Recovery Board. It came from the industry itself, from the independent merchant who wanted protection against the price-cutting practices of the large chains and cut-rate markets.

Senator KING. Are you speaking for New York or for the whole country?

Mr. PESSIN. I am speaking for New York.

The Code of Fair Competition for the Retail Food and Grocery Trade has been the lifesaver of close to 300,000 independent retail grocers in the country.

Large corporate interests, backed by Wall Street money, have been attacking the independent merchants and driving them to the wall, with the object of acquiring control over the food distribution business of the country.

Their work was making such headway, that under Senate Resolution 224, Seventieth Congress, first session, the Federal Trade Commission was directed to make an inquiry into the chain-store system

of marketing and distribution and the consolidation of such chain stores into the development of monopolistic organizations.

In carrying on their plan, not only were the independent and small food merchants being driven out of the business or reduced to poverty, but labor and agriculture were made to pay a heavy price, in low wages and very low prices for agricultural commodities which pass to the consumers through the grocery store.

Loss-leader selling was the common practice of these chains, and as the system developed, other vicious practices came into the field—the results of which brought chaos into the business of food distribution. Following the example of the chains, other factors such as the large or giant markets, came into the field. The "giants" or cut-rate markets operated on the principle that when they will drive the smaller retailers out of business, they will be able to buy whatever stock he has from the auctioneers at from 10 to 25 cents on the dollar. As more and more food products were placed on the auction block, with more food being sold below cost, the price of agricultural products kept declining and as a result, at the end of 1932 the entire food industry, from agriculture to processing, manufacturing and distribution was at or near bankruptcy and at the mercy of the price wreckers, exploiters of labor and agriculture.

When the code of fair competition abolished all these vicious practices, when food merchants were prohibited from selling below cost, it made it possible for the small neighborhood independent retail grocer to stay in business, pay labor a living wage, and the fall of agricultural commodities has been checked.

For this reason the independent retail grocers ask for the extension of the N. R. A. and the code, in order that they may not only share in the recovery program, but also help reestablish this country to a position of economic security.

The consumer is benefiting from the fair-trade provisions of the code in a very substantial way. Price cutting inevitably leads to misrepresentation, dishonest merchandising, short weights and measures, and now when these have been outlawed, the public is getting a square deal, because the merchant does not have to overcharge more on one item to make up the loss on others.

When a man buys a product—say a certain brand of coffee—at 27 cents a pound, and offers it for sale at 23 cents, taking a clear loss of 4 cents a pound, superficially the consumer is getting a bargain, but the merchant has to pay for the merchandise, pay his help, rent, light, and other overhead items.

If this is done by a chain store, the object is very clear and definite—to drive out other merchants in the immediate vicinity. If an independent store operator did that, and it was done prior to the enactment of the code, he did it because he had to follow others, but in doing so, he had to cover the loss in some way.

Senator KING. I find in this paper which I understand you edit—it is published in the Jewish language as well as in English. It has been forwarded to the committee.

Mr. PESSIN. It is published in two languages, Jewish and English.

Senator KING. I notice retail food prices are 35 percent higher.

Mr. PESSIN. Right.

Senator KING. And the paper this morning indicates still higher prices and that buyers' strikes have taken place.

Mr. PESSIN. Senator, that has not been as a result of the code operation. For instance, at the present moment, on April 1, the total stock of butter in the warehouses of the country was about 5,000,000 pounds, compared to 17,000,000 pounds last year. The retail food merchant has nothing to do with it.

Senator KING. I find that in your paper, which has been sent to the committee, it is urged that all retailers should write immediately to the committee on their own letterhead.

Mr. PESSIN. Right.

Senator KING. That was your article, was it?

Mr. PESSIN. Yes, sir.

Senator KING. I mentioned Mr. Charles Ackerman, general secretary of the organization of United Independent Retail Grocers and Food Dealers Association of the State of New York, and he was here and he was very much opposed to the code, and he has written a letter to the committee enclosing this little leaflet of yours, a paper as you call it, which you circulate among the retail grocers of New York, and he states [reading]:

> My reason for bringing it to your attention is the feeling that you, as a member of the Senate Finance Committee before which I testified on Monday, April 8, as to the activities of the job holders, particularly in this city, who are interested in the collection of assessments and are guided by a strong combination beginning with the National Food and Grocery Distributors Code Authority and down to the local code authorities, may find the article of interest. The job-holding gentlemen above referred to did not appear to like my disclosing of the true facts, and in order to discredit my testimony, which they apparently fear may endanger their jobs, and in order to save themselves, they are making false statements in regard to my appearance before the committee and are seeking to mislead the trade.

He was, when he testified, the secretary of that organization?

Mr. PESSIN. Charles Ackerman has an organization with a very indefinite and unknown number of members.

Senator KING. The United Independent Retail Grocers and Food Dealers Association of the State of New York—that is a different organization from yours?

Mr. PESSIN. I have no organization.

Senator KING. For whom are you speaking?

Mr. PESSIN. I do not represent any one organization. There are a number of retail grocer trade associations in New York, and at a conference of these retail grocery trade associations, I was asked to come down here.

Senator KING. Then there are several organizations of retail grocers?

Mr. PESSIN. Yes, sir. And as far as Ackerman is concerned, I might enlighten you that he is against the code because he could not be a member of the code authority or use the code to drive members into his organization.

Senator KING. Are you a member of the code authority?

Mr. PESSIN. Yes, sir.

Senator BLACK. Dou you have any public job?

Mr. PESSIN. No, sir.

Senator KING. What was your business before you were publishing this little paper?

Mr. PESSIN. Newspaper and advertising. I have been in the neswpaper business since 1919.

Senator KING. Is this a regular issue?

Mr. PESSIN. Published three times a week, and has been in existence for over 12 years.

If the small merchant employed a clerk, he could not pay that clerk more than seven or eight dollars per week for 14 or 16 hours a day work.

When bills became due, he could only pay part of it and as a result he was always behind, always struggling and uncertain about the next day and whether he will remain in business.

Because of the protection the small merchant received against the unscrupulous price cutters, because of the fact that he no longer has to sell a number of items below cost and juggle prices on other items to make up losses, because of higher wages paid to the employees, and because of the indirect improvement it has brought to agriculture the N. R. A. Code of Fair Competition in the Retail Food and Grocery Trade should not only be extended, but it should be so organized that its provisons be enforced to a greater degree.

The independent retail grocers of the country, want a code because it has benefited the entire industry and individual small merchants.

Senator HASTINGS. Are all of those associations in favor of the code?

Mr. PESSIN. Yes sir.

Senator HASTINGS. How many associations are there?

Mr. PESSIN. We had a meeting in New York for the various different grocery trade associations on March 12 in connection with a city ordinance, and we had 21 different local trade associations represented.

Senator HASTINGS. Twenty-one?

Mr. PESSIN. There are sectional associations for the Greater City of New York.

Senator HASTINGS. And they were unanimous?

Mr. PESSIN. Yes, sir.

Senator KING. Thank you very much.

Mr. PESSIN. May I add something? The question comes up very often as to the retail grocer, between interstate and intrastate. To my mind he is engaged in interstate commerce when he sells peaches from Delaware, spinach from Florida, oranges from California, peas from Indiana. He does not sell a single article which is manufactured by himself or in his immediate vicinity. It comes from all over the country, and he is the distributor, and whether directly or indirectly he is doing an interstate commerce business of helping interstate commerce.

Senator HASTINGS. Do you know anyone that is not engaged in interstate commerce from your point of view? From your point of view all commerce is interstate within the Constitution?

Mr. PESSIN. To a certain degree; yes, sir. The shoe man, for instance——

Senator HASTINGS. Is it to a degree that Congress can control it? That is what I am interested in.

Mr. PESSIN. I think Congress can do a whole lot to stabilize business as far as competitive basis is concerned for the benefit of the public as well as for the benefit of the producer.

Senator HASTINGS. Is it your position that the Constitution applies to all commerce so far as the control that Congress may have over commerce whether it is interstate or whether it is not interstate.

Mr. PESSIN. The Constitution I presume applies to all business and all commerce.

Senator KING. I suppose your view would be that if a barber should shave Senator Hastings over in New York, the barber is engaged in interstate commerce because Senator Hastings is from Delaware?

Mr. PESSIN. He renders a service; he does not sell a commodity.

Senator HASTINGS. He does use things that have been subject to interstate commerce?

Mr. PESSIN. I do not see where the barber would enter into the interstate commerce business.

Mr. KING. You do not claim to be a lawyer or an interpreter of the Constitution?

Mr. PESSIN. No, sir.

Senator KING. I have here a letter addressed to the clerk of the committee from Mr. Francis M. Curlee, counsel, giving the result of a telegraphic poll of the National Industrial Recovery Association of Clothing Manufacturers relating to the National Industrial Recovery Act, and I desire to place it into the record.

WASHINGTON, D. C., *March 30, 1935.*

Mr. FELTON M. JOHNSTON,
Clerk Committee on Finance,
United States Senate, Washington, D. C.

DEAR SIR: Pursuant to the request of the committee, I took a telegraphic poll of the membership of the Industrial Recovery Association of Clothing Manufacturers.

On March 26, 1935, I sent telegrams (73 in number) reading as follows:

"I request that you wire me Mayflower Hotel, Washington, D. C., your attitude toward continuance of National Recovery Administration by sending me the following telegram: 'I am for continuing the National Recovery Administration', or by sending me the following telegram: 'I am against continuing the National Recovery Administration.'"

Five replied as follows: "I am (or we are) for continuing the National Recovery Administration."

Twenty-five replied: "I am (or we are) against continuing the National Recovery Administration."

Fourteen replied in varying language which makes it impossible to tabulate them. Exact copies are as follows:

1. "I am in favor of continuing National Recovery Administration provided present influences and discrimination as affecting our industry are removed. Personally believe minimum wage, maximum hours, and abolishment child labor should be continued but if we are to be constantly subjected to harassments and intimidations of the past then I am opposed to any continuation whatsoever. The welfare of a business that has been established for half a century and the employment of 1,200 people is constantly placed in jeopardy by the willful attitude of a handful of selfish people."

2. "In favor of National Recovery Administration principles but opposed to certain sections and present method of enforcement."

3. "In favor National Recovery Administration governing maximum hours, minimum pay, but not in favor of the provisions of Men's Clothing Code Authority."

4. "We favor continuance of National Recovery Administration with modifications."

5. "We favor continuance of National Recovery Administration with modifications."

6. "We favor continuance of National Recovery Administration with modifications."

7. "Re. tel. personally do not favor continuance of National Recovery Administration as believe too great an opportunity for abuse of power as well as being impracticable, but believe national laws for abolishing child labor and establishing minimum wages and maximum hours in industry meritorious."

8. "I am against continuing the National Recovery Administration unless codes contain only minimum-wage and maximum-hour provision."

9. "We are against continuing the National Recovery Administration under existing conditions."
10. "We are against continuance of the National Recovery Administration because of the malicious administration of the Clothing Code by mob rule of those in control who make and break their own laws in accordance with their whims."
11. "We are against continuing the National Recovery Administration under present set-up."
12. "We are against continuance of National Recovery Administration due to manner in which code has been administered."
13. "We are against continuing National Recovery Administration in present form."
14. "Reference your telegram March 26, because of pending litigation we are advised by our counsel not to express ourselves on this question at this time."

Twenty-nine did not reply. Of these, I can identify 14 as firms that are now involved in critical issues with the Clothing Code Authority or with one or more of the governmental enforcement agencies. Others have been so involved.

I am turning the original file of telegrams over to Mr. Horton of the staff of technical advisers of the committee.

Yours truly,

FRANCIS M. CURLEE,
Industrial Recovery Association of Clothing Manufacturers.

Senator KING. We will adjourn now until 2 o'clock this afternoon to reconvene in the District of Columbia Committee room in the Capitol.

(Whereupon, at 11:55 a. m., recess is taken as noted.)

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.)

Senator KING (acting chairman). The committee will be in order. Mr. John F. Evans?

(No response.)

Senator KING. Mr. Leslie C. Smith.

STATEMENT OF LESLIE C. SMITH, REPRESENTING THE NATIONAL ASSOCIATION OF ICE INDUSTRIES; CODE AUTHORITY FOR ICE INDUSTRY, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

Senator KING. Do I have the findings here of the Federal Trade Commission (addressing Mr. Whiteley)?

Mr. SMITH. I can give them to you.

Senator KING. State your name and your business and whom you represent.

Mr. SMITH. My name is Leslie C. Smith; I am executive secretary of the National Association of Ice Industries, of Chicago. I represent that national organization, composed of all branches of the ice industry, covering the entire United States. I have membership in every State.

The ice industry itself is composed of 55,000 distinct operating units. The national association represents 69 percent of that body numerically, and 83 percent of the volume of business done in the ice industry.

The industry has an investment of in excess——

Senator KING (interrupting). How much time do you want, Mr. Witness?

Mr. SMITH. Twenty minutes at the most, sir.

Senator KING. We have five or six witnesses to be heard this afternoon.

Mr. SMITH. Very well. I will make it very brief.

Senator KING. All right.

Mr. SMITH. The industry has an investment in excess of a billion dollars, on which the turn-over is a quarter of a billion dollars a year. In other words, it requires an average of 4 years to turn over the capital investment in this industry.

It employs 176,000 people directly, and fully as many or even more than that number are members of the industry as independent distributors of the product. With their families that means that there are at least 550,000 people of our population in this country who are dependent upon the ice industry for a livelihood.

Seventy-two percent of the membership in the ice industry sell less than 10,000 tons of ice a year. In other words, it is an industry composed in the major part of small units, because they extend, as you know, to every town, every village, every hamlet in the country.

It has been my work in this field for 18 consecutive years to travel among these men constantly. In the last few years I have traveled over 100,000 miles and have met these men in their groupings and in their conferences of the unit groups, and there are 44 distinct unit organizations affiliated with the national body.

Senator KING. How long has the national body been organized?

Mr. SMITH. The national body has been organized since 1917.

Senator KING. And who are the principal units in it?

Mr. SMITH. The principal units?

Senator KING. Yes.

Mr. SMITH. You mean from sizes?

Senator KING. And from sizes.

Mr. SMITH. There are many. The City Ice & Fuel Co., of Cleveland, is perhaps the largest.

Senator KING. That is the largest? I beg your pardon.

Mr. SMITH. That is the largest, the City Ice & Fuel Co., of Cleveland. The American Ice Co., of New York, Philadelphia, Baltimore, Washington, and Boston is one; New England Services Co., of the six New England States; the Atlantic Ice & Coal Co., of Atlanta, Ga., with its headquarters there, covering seven States, I believe; Union Ice Co., of California, operating some 72 properties within that State; the American Service Co., with headquarters in Kansas City, operating in 13 States, and having 97 plants. Those are some of the outstanding ones.

Senator KING. Why would those very large corporations to which you have referred extend their operations outside of the States in which the corporations exist?

Mr. SMITH. Many of them were organized as mergers of smaller properties, very many of them.

Senator KING. Some of these big companies are the result of the absorption of smaller ones?

Mr. SMITH. That is true in some instances. That is not true in all instances.

Senator KING. There is a gravitational force under which small units are being absorbed by the large units the same as in the steel industry?

Mr. SMITH. That is not at all true of the current time, and that has not been true since 1928.

Senator KING. 1928?

Mr. SMITH. Yes. There was a tide of merging beginning in 1926 and extending through 1928, since which time there has been practically no activity.

Senator KING. What proportion of the total output of the United States of ice is produced by say 8 or 10 of those large corporations, the largest companies which are the result of consolidations and absorptions?

Mr. SMITH. The 10 largest companies put together probably would sell 10,000,000 tons. The output last year was 40,000,000 tons. That would mean 25 percent.

Senator KING. Have you found that there has been a reduction in the production of ice by reason of the refrigerators?

Mr. SMITH. Very markedly. The production in 1931 was close to 65,000,000. In 1932 it had dropped 23.6 percent. In 1933 it dropped another 11 percent, or nearly 35 percent in 2 years. The relative sale of mechanical units has increased from 40,000 perhaps 8 years ago to their own figures 1,315,000 units last year.

Senator KING. Are there not a large number of individuals who were making on their farms and in and about their homes quantities of ice sufficient for their immediate needs and possibly for a few of their men and neighbors?

Mr. SMITH. That is true only in the cold regions where there is an opportunity for natural ice. That is not true, of course, covering the entire country, because the making of ice is mechanical and entirely a manufacturing process.

The proportion of natural ice last year to the sale of manufactured ice, the total of which was close to 40,000,000, was 1,870,000 tons last year, so it is rather a negligible quantity after all.

Senator KING. Proceed.

Mr. SMITH. In my trips among these people I know, I think as well as any other one man, their attitude, their thinking, I know their limitations perhaps, and what they are seeking to do. I also am strongly impressed with the fact that as an industry, they are preponderantly behind the N. R. A. movement and preponderantly in favor of their code. This is evidenced by a conference held here just a month ago, in which there were 96 delegates sent by 44 of these units, chosen of their own volition, and sent here to review a year's experience or a year and a half's experience under the code.

At the conclusion of that conference, 3 days of intensified work, they passed a resolution unanimously endorsing N. R. A. and unanimously in support of the Code of Fair Competition for the Ice Industry in practically its present form.

The ice industry has grown tremendously. In 1904 there were only 68,000 tons of daily capacity. In 1934 there were 367,240 tons of daily capacity. And yet with that increase constantly taking place in productive capacity, the decline in the sale of the product or in the business in the market has been 35 percent in 2 years.

Senator KING. Is it not a fact that a large number of persons made application to the Ice Code for permission to set up little plants?

Mr. SMITH. First of all, permit me to correct the thought on that. The Ice Code Authority has no jurisdiction whatsoever over the

granting of a permit for the creation of a plant. That is in the hands of the Administrator of N. R. A. entirely.

Senator KING. I refer to the N. R. A. I find here that Mr. Richberg reported that there were a large number of applications filed for permission to manufacture.

Mr. SMITH. There have been exactly 350 applications, 51 of which only have been denied. The others have been granted.

Senator KING. Are you sure of that?

Mr. SMITH. Those are the figures on tabulation in the code authority and I think I have the support of the administration or the deputy administrator for those figures.

Senator KING. There have been quite a number denied?

Mr. SMITH. Fifty-one out of three hundred and fifty.

Senator KING. Yes, sir. They denied the application of the man in Florida?

Mr. SMITH. He did not make application. The man in Florida, after the law was passed bought his machinery and built his plant in defiance of the law.

Senator KING. He was prosecuted because he did not get permission?

Mr. SMITH. He was prosecuted for violating the law, and the prosecution was brought by the N. R. A.

Senator KING. He did not get permission and was prosecuted; is that not a fact?

Mr. SMITH. Prosecuted to what extent? He was investigated.

Senator KING. Do you not know what prosecution means?

Mr. SMITH. Yes; I think I do. The code authority of the ice industry did not prosecute him. It was done by the N. R. A. through the Federal Trade Commssion.

Senator KING. You are connected with the City Ice & Fuel Co., are you not?

Mr. SMITH. I am not.

Senator KING. Do you have any connection whatever with it?

Mr. SMITH. None whatever so far as my occupation or business is concerned.

Senator KING. Is that part of the organization you represent?

Mr. SMITH. It is. They are members of my organization. They have one vote in my organization just the same as a man who has a 5-ton plant and belongs.

Senator KING. Their net profits in 1933 were $3,852,390.

Mr. SMITH. May I remind you that the City Ice & Fuel Co. handles in excess of 1,000,000 tons of coal, and has three or four breweries, and they have the largest individual cold-storage holdings in America. They have a very thoroughly diversified business.

Senator KING. They had assets amounting to $8,000,000 and net profits of nearly $4,000,000 in 1933 approximately.

Mr. SMITH. Well, this rapid decline in sales of ice first brought the industry under the economic conditions of recent years, brought the industry into a very serious state. In other words, there was not one out of every 50 of them, of which I have any knowledge, and I know most all of them, who were making any money. They were in a serious condition.

Therefore, when the National Industrial Recovery Act was passed by Congress, this industry was called together and asked if it wanted

to participate. The invitations were general. They were not confined to membership of any organization. In conference its first action was taken by a group composed of 104 men who met in a 3-day session in Chicago in June of 1933. Thirty-four of that 104 had never belonged to the national organization, although that body did call the meeting as the representative body of the industry.

The need was certainly striking. The code was written——

Senator KING (interrupting). By whom?

Mr. SMITH. Written by the industry in consultation. It was rewritten six times in consultation with the authorities of the N. R. A.

Senator KING. Who were the principal factors, if I may use that term, in the drafting of the code?

Mr. SMITH. If you please, it was done by a committee of 21 men.

Senator KING. Who were they? I won't ask their names. Were they representatives of these 10 or 12 large companies?

Mr. SMITH. Some of them were, yes. The preponderant number of them represented small units.

Senator KING. There is an Ice Code, I suppose.

Mr. SMITH. Yes, sir.

Senator KING. Does it have a code organization?

Mr. SMITH. Yes, sir.

Senator KING. Who is the president?

Mr. SMITH. The chairman of the code organization is Mr. Mont Taylor, of Texas.

Senator KING. What is his salary?

Mr. SMITH. His salary is $10,000. He devotes his entire time to it.

Senator KING. How many secretaries are there?

Mr. SMITH. There is only one executive secretary.

Senator KING. Who is he?

Mr. SMITH. I; with a salary of $3,000.

Senator KING. Is that your entire salary?

Mr. SMITH. No. That is for part-time service under the code authority.

Senator KING. Do you belong to the multiple service, these representatives of several other corporations?

Mr. SMITH. Other industries, you mean?

Senator KING. Other industries.

Mr. SMITH. No.

Senator KING. Or units within this industry?

Mr. SMITH. I am absolutely within the ice industry for those who make and sell ice.

Senator KING. How many of those organizations do you represent?

Mr. SMITH. None.

Senator KING. You stated it was part time. What is the rest of your time devoted to?

Mr. SMITH. Well, secretary of the national association, the trade association.

Senator KING. I see.

Mr. SMITH. My headquarters are in Chicago.

Senator KING. And what do you get from that trade association?

Mr. SMITH. I draw $12,000 a year from the trade association.

Senator KING. And $3,000 from the code authority?

Mr. SMITH. Yes.

Senator KING. Who levies the assessment from the ice manufacturers?

Mr. SMITH. The assessment is levied under the executive order which permits code authorites to levy assessments. The assessment is listed by N. R. A., not by the code authority.

Senator KING. Is it not a fact that this code authority fixes it, and then they transmit it to the N. R. A., and in some instances it meets the O. K. and others it has not been acted upon as yet?

Mr. SMITH. That is quite true. It has to be done as an estimate, of course.

Senator KING. What is the amount, the estimate sent up by your code authority?

Mr. SMITH. $232,000.

Senator KING. For 1 year?

Mr. SMITH. For 1 year to administer this in every State, 55,000 units.

Senator KING. Two hundred and how many thousand?

Mr. SMITH. $232,000.

Senator KING. $232,000. And how many assessments have been levied to date?

Mr. SMITH. How many?

Senator KING. Yes.

Mr. SMITH. Just the one for the year.

Senator KING. Just the one for this year, 1934?

Mr. SMITH. For the year ending April 30 of this year.

Senator KING. For the year. This $230,000-odd, who gets all that sum?

Mr. SMITH. Fifty percent of it goes to the code authority for the paying of the expenses of the code authority, the operation of its offices, paying assessment of 10 regional field men, or advisers, regional advisers, territorially arranged.

Senator KING. Who are they—I do not ask their names, but are they members of the code authority or local code authorities?

Mr. SMITH. They are field representatives of the code authority. They are approved by the Administrator.

Senator KING. And I suppose they are engaged in the ice business?

Mr. SMITH. Yes.

Senator KING. And have their own salaries and their own business?

Mr. SMITH. They have their own business; I know nothing about their own salaries.

Senator KING. What do they get as field representatives?

Mr. SMITH. Nothing; they are paid no salary.

Senator KING. What is their authority?

Mr. SMITH. Their authority?

Senator KING. Yes.

Mr. SMITH. Merely as ex-officio members of the various committees of arbitration and appeal within their territorial districts. Each of the unit groups has a committee arbitration and appeal. It is an arbitration committee. All of those within the territorial district come under what is known as a regional adviser, who is merely an agent for the code authority, and his work is supervisory in the sense

of a counsel advisory arbitrator entirely. He has no final decision upon any case.

Senator KING. Are you familiar with the Purity Ice Co.?

Mr. SMITH. Yes, sir.

Senator KING. Which came before the Federal Trade Commission?

Mr. SMITH. Yes, sir.

Senator KING. Were you a party to the initiation of that suit?

Mr. SMITH. No, sir. That suit was initiated by N. R. A., not by us.

Senator KING. That was for the purpose of preventing the applicant from manufacturing ice, was it not?

Mr. SMITH. Well, it was because the man was in violation of a Federal law.

Senator KING. He wanted to manufacture ice?

Mr. SMITH. Yes, sir.

Senator KING. And the N. R. A. tried to restrain him here before the Federal Trade Commission?

Mr. SMITH. Until he had obtained a certificate as the law requires.

Senator KING. Oh, yes; and it went before the Federal Trade Commission and they dismissed the suit?

Mr. SMITH. They decided that the man—that that particular operation was not in interstate commerce.

Senator KING. They dismissed the suit under the complaint?

Mr. SMITH. So far as jurisdiction was concerned.

Senator KING. They dismissed the complaint, did they not?

Mr. SMITH. So far as jurisdiction was concerned.

Senator KING. Did they dismiss the complaint or still maintain jurisdiction?

Mr. SMITH. So far as I know they are through with it.

Senator KING. They dismissed it. Why could you not answer that frankly?

Mr. SMITH. I did not quite get the term. I am not a lawyer.

Senator KING. You do not know what dismissal of an action means?

Mr. SMITH. Yes, sir.

Senator KING. All right. You may proceed.

Mr. SMITH. When the code was drawn and improved, the code implied or involved very marked considerations upon the ice industry, so much is that true that in the year 1934, as opposed to 1933, the 1 year under the code and the 1 year prior to code operation, that the number of employees added to the ice industry for the same amount of business has increased 14.4 percent, or nearly 25,000 men. The pay rolls in the ice industry have increased 14.21 percent, or $26,461,000 and the hourly rate of pay for all employees in the ice industry has been increased 18½ percent under the code, as opposed to the year just preceding it.

Senator KING. What was it in 1929 and 1928, the weekly or annual wages per employee?

Mr. SMITH. Well, the annual wages in 1928 were practically proportionate to the volume of business or to the stand-by charge, as they were in 1933.

Senator KING. They were larger, were they not, per man and per week and per year than in 1932?

Mr. SMITH. To the best of my knowledge, Senator, they were not. There has been very little, if any, actual decrease in wages, but there were fewer men employed, that I shall grant you, but in the rates of

wages paid—and I speak now merely from my own conviction—I have no figures to justify it——

Senator KING (interrupting). All right.

Mr. SMITH (continuing). But I know there has been very little change in the wage rates of employees in the ice industry.

Senator KING. When you say "wage rate", do you mean per day, per hour, or per year?

Mr. SMITH. I mean per whatever basis of payment, per week or per day.

Senator KING. Were not the actual earnings in 1926, 1927, 1928, and 1929 larger than they were in 1933?

Mr. SMITH. Oh, yes.

Senator KING. And 1934?

Mr. SMITH. Yes; emphatically.

Senator KING. All right. Proceed.

Mr. SMITH. On the acceptance of these impositions it cost the industry, as I said, $26,461,000 in pay roll and it added 25,000 people to its employment. In exchange for that, there were certain things issued, stated, and granted by N. R. A., announced by the President himself, in the form of trade-practice divisions, or trade-practice provisions, and those trade-practice provisions were accepted by this industry, who met the imposition of wages and hours practically without protest, and have proceeded to operate under them until today at least 99 percent of this industry is operating under this code and is perfectly satisfied with its code. It is strongly in favor of its continuance.

It has been charged repeatedly here that this industry has fostered, and that the code of this industry has fostered, monopolies, and oppressed small enterprises. If, please, sir, nothing could be further from the truth. The fact is that 72 percent of all this vast army of operators are confined in small territories, most of them without competition, and the very protection granted under the code keeps them from being imposed upon by having their investment jeopardized by an influx of plants built for nuisance value to force the buying of the property by the already operating unit. We have had no complaints whatsoever anywhere in our national organization as a trade group or before any of our code work indicating that there was the slightest imposition in the line of depressing small enterprises under our operation of the code.

Now this industry, of course, with that tremendous decline in its business added very materially to its overproduction. The industry is perfectly used to overproduction. The load factor of this industry back in 1925 was only 47.4 percent of productive possible output. Now, in these later years, that has decreased to approximately 38 percent.

May I ask you to consider this, that in the decline of load factor, that is quantity sold as related to its possibility of production, in the decline of that the fixed charges remain practically stationary?

An ice plant must operate 365 days a year, 7 days a week, 24 hours a day. It cannot be stopped and started. Its very processing demands that sort of thing. Therefore, when a plant is operating at 50-percent capacity the amount of operating force, the overhead of that plant, barring possibly power and to a very limited degree some labor, remains just the same as when it is operating at full capacity, every bit. So that in your overproduction, from which

grew the clause in the Ice Code demanding that certificates be obtained showing necessity and convenience, before additional productive capacity could be thrown into a market already overproduced, that discretion, let me insist again, contrary to the testimony given before this committee, does not lie with the code authority or any agency with this industy, but it lies exclusively with the Government. That control is absolutely necessary. A new plant in a flooded market adds nothing whatever to any feature of benefit. It is an investment drawn in. It does not sell more ice. It only divides up the market and causes cut prices in the market which is already here existing.

In 1933 there were 34 percent of the productive capacity in August, if you please, the peak of the season, in 1933, of the metropolitan markets of this country, covering all phases of it, and all sections of the territory were closed down in August because there was no sale for the product, and yet into those markets there was built in those 2 years 118 additional plants, with a productive capacity of 887,400 tons per day, when there was 34 percent of the productive capacity already closed in the peak season. It does not reduce the price to the consumer. A new plant going into a territory merely gets its trade by proselyting, by stealing customers from already existing plants at a lesser price.

Remember, ice is a perfectly standard product. It is not trademarked. The production from one plant is identical with that of another. In distinction nothing in the wide world takes so much capacity for refrigerating. It is the same every place. The quality of the ice even by its own process of freezing is far purer than the water out of which it is made, by that very process. Our water is invariably treated by that process no matter how pure the health conditions, supervised, superintended, examined under all the different conditions in an ice plant; and, therefore, these new plants are built by people who have become known to us for the major part as men who simply go in and build a plant for its nuisance value, knowing they can hurt all the investment in that market until they are given either contracts for a fair proportion of their outputs, or, better still, as they see it, if they are bought outright to save the stupendous loss, because a very few cents cut in the price of ice will influence a customer without any other compensation whatsoever.

Remember, when the price of ice is cut by one person it is either met or almost invariably in retaliation is still further reduced. That process brings about price wars, which have cost this industry close to $30,000,000 a year for 15 years or longer, utter price wars caused by the invasion of just that type of thing, adding more where nothing is needed. And the price invariably after being cut after this new plant has secured its portion, or at least a satisfactory amount of the business, almost invariably they are the petitioners to have the prices restored or put up. And these losses must be retrieved by the consumer. This tremendous overproduction has kept the price during recent years from coming down gradually, because this new plant must be supported and the old one must be supported; an ice plant is long-lived and cannot be shifted into something else. It cannot be made into something else and moved across the street, or put in some other capacity. It stays there as an ice plant. If I am forced to sell mine at a sacrifice it merely gives him that much more advantage and he goes right on operating it as an ice plant. In none of these price

wars as I recall now was there an actual closing up of one single, solitary ice plant as the result of a price war. Those are the conditions that exist in the ice industry. It is a strictly seasonal product. It does two and a fraction percent of its business in February and does 17 percent of it in July.

There has also been brought here a protest on the part of a certain witness who claimed that the object of this code and the action of its code authority, first its charging that they had denied him an application, which I assure you is not possible under the law or under the code, but charging further that the whole intent was to throttle invention. May I remind you that that gentleman has a patented process that has been on the market for 7 years. To my knowledge only four plants have been erected in that 7 years. He has simply a patented way of reproducing a flake or a small curled cake of ice, which is identical in all its performance with crushed ice in any form. He has the opportunity as anyone else has who has any portion of an existing cake plant to have a portion of it removed and his process put in without adding anything to any other part. The reason he has not been able to make any more progress with it is that it is bulky and very awkward, and there are those who are very much against it. That has been his prerogative, and he has had an opportunity to sell anyone in the ice industry. I have even gone so far as to put his process on two different occasions before my national organization as something new, something which they might use. I have shown him every courtesy and have done everything to help in that direction we might do.

I want to remind you also in conclusion that the code authority of the ice industry is made up of 1 man from San Francisco, 1 from New York, 1 from Ohio, 1 from Atlanta, and 1 from Texas, and 2 of these are operating individually owned small units.

The chairman of the code authority is not a member of the national association and has nothing to do with its operation or its business. He holds no position in it. He operates in a town of 3,000 people a 40-ton ice plant, and he is the chairman, and during the interim of board meetings he is the executive head of the code authority. It is not dominated by large interests. It is controlled entirely by this independent man, operated under his guidance and his direction, and he is not even a member of my organization.

Senator KING. The chair will put into the record the order of dismissal and the opinion of the Federal Trade Commission in the matter of the Purity Ice Co., Docket No. 2203.

(The document referred to is as follows:)

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

AT A REGULAR SESSION OF THE FEDERAL TRADE COMMISSION, HELD AT ITS OFFICE IN THE CITY OF WASHINGTON, D. C., ON THE FIFTH DAY OF APRIL 1935

Docket No. 2203—Order of dismissal

In the matter of Purity Ice Co., Inc., a corporation, et al.

Commissioners: Ewin L. Davis, Chairman, Charles H. March, William A. Ayres, Garland S. Ferguson, Jr.

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of the respondent, the testimony taken in support of the allegations of complaint and in opposition thereto, and the briefs and oral

arguments of counsel for the Commission, and the relator and for the respondent, and the Commission being now fully advised in the premises;

It is ordered that the complaint herein be, and the same is, dismissed upon the ground that the transactions complained of are not in or affecting interstate commerce.

By the Commission.

OTIS B. JOHNSON, *Secretary*.

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

Docket No. 2203

In the matter of Purity Ice Co., Inc., a corporation, et al.

OPINION

The complaint in this case charges the Purity Ice Co., a corporation, and Felice Ferlise, individually and as president of the said company, with the violation of certain provisions of the Code of Fair Competition for the Ice Industry. Complaint was issued upon the relation of the National Recovery Administration, and counsel for that administration and for the Ice Code Authority were permitted to intervene and to prosecute the complaint.

The complaint alleges that respondents violated the code in question by failing to apply for or to secure from the Administrator for Industrial Recovery a certificate of public convenience and necessity as required by the provisions of article XI.[1]

That article provides that any individual, firm, corporation, or partnership, or other form of enterprise, desiring to establish additional ice production, storage, or tonnage in any given territory must first establish to the satisfaction of the Administrator that the public necessity and convenience require such additional ice-making capacity, storage, or production.

Under the provisions of section 3 (b) [2] of the National Industrial Recovery Act, after the President has approved a code, the provisions of such code become the standards of fair competition for the trade or industry or subdivision thereof involved. Any violation of such standards in any transaction, in or affecting interstate or foreign commerce, is made an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended.

Respondents admit that they established a plant or factory for the manufacture of ice at Lakeland, Fla., subsequent to the approval of the Code of Fair Competition for the Ice Industry without securing or attempting to secure a certificate of public convenience and necessity as required under article XI of said code. They deny, however, that they have at any time been engaged in any transaction in or affecting interstate or foreign commerce. Other defenses are raised by respondents which will be stated hereinafter.

The record shows that the code for the ice industry was approved by the President on October 3, 1933, and became effective October 16, 1933; that early in 1934 the respondents established a plant for the manufacture of ice at Lakeland, Fla., with a capacity of about 15 tons per day and an actual sale of approximately 10 tons daily, and proceeded to sell the ice manufactured in that plant in the city of Lakeland and the territory immediately surrounding said city. The respondent company employed 14 persons. At the time that

[1] 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. The ice manufactured from any plant that was not in actual operation on Sept. 8, 1933, shall not be sold to any purchaser for a period of 12 months from the date subsequent to Sept. 8, 1933, upon which the operation of such plant may be initiated or resume, at prices lower than the lowest corresponding prices in good faith published, as required by this code, in a schedule or schedules governing prices to such purchasers; providing and excepting that this provision will not apply to the sale of ice manufactured by the following:

"(a) Plants installed upon authority, of a certificate of necessity and convenience duly issued by the administrator; or

"(b) Plants temporarily shut down for repairs for a period not in excess of 12 months prior to Sept. 8, 1933; or

"(c) Plants that were owned or whose output was controlled by companies or operations that were on Sept. 8, 1933, in good faith engaged in the business of selling ice to the general trade in the market in which the ice from such plants is proposed to be sold, such plants being on Sept. 8, 1933, out of operation because of the intent in good faith to further the economic conduct of the business of such company or operation."

[2] "After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such act, as amended."

this plant was established, there was in operation in that area one other ice plant, with a daily productive capacity of about 375 tons. This latter plant was operated by the Federal Ice Refrigerating Co., a subsidiary of the City Ice & Fuel Co. The latter company is the largest ice manufacturing concern in the United States, owns and operates approximately 18 plants in the State of Florida, and has some 26 subsidiaries or branches throughout the United States and Canada. The Federal Ice Refrigerating Co. did not ship or cause to be transported any ice outside the State of Florida and the ice which it supplied for refrigeration of cars, and trucks was sold and delivered to such cars and trucks in the city of Lakeland or vicinity.

The record fails to disclose a single instance where the respondents sold or shipped ice outside the State of Florida. All of their manufacturing operations were carried on in the city of Lakeland, and all of their sales were restricted to that city or its immediate vicinity. Consequently, the respondents were not engaged in interstate commerce.

Under the National Industrial Recovery Act, the jurisdiction of the commission over unfair methods of competition is extended to transactions "in or affecting interstate or foreign commerce." Do respondents' transactions as disclosed by the record affect interstate commerce?

In support of the allegations of the complaint it is contended that the ice manufacturers in the Lakeland competitive area are engaged in business affecting interstate commerce in that they supply ice at Lakeland or vicinity for the refrigeration of cars and trucks which transport perishable commodities from Lakeland and vicinity to other States, and also in that they supply in Lakeland ice for the refrigeration of food stuffs imported into Lakeland and vicinity from outside the State of Florida. It is further contended that in view of the relation between ice and transportation of perishables the mere construction of an ice plant affects interstate commerce. It is to be noted that aside from a single sale and delivery in Lakeland of ice to a truck engaged in transporting perishable vegetables from Florida to the District of Columbia, and sundry sales of ice to grocerymen in Lakeland for the purpose of refrigerating meats which had been shipped into Florida from other States, there is no evidence to show that any of the ice sold by the respondents had the slightest effect whatsoever upon interstate commerce. Did the sale and delivery of ice to the truck in Lakeland and the sale and delivery of ice to the grocers in Lakeland affect interstate commerce so as to confer authority upon the Commission to proceed under section 3 (b) of the National Industrial Recovery Act?

The question whether intrastate transactions so affect interstate commerce as to come within the purview of Federal regulatory authority under the Commerce Clause has come before the Supreme Court most frequently in litigation arising under the antitrust law, although other Federal legislation has called for judicial determination of this question. Following *Hopkins* v. *United States* (171 U. S. 578, 592), which declared "there must be some direct and immediate effect upon interstate commerce", the holding in *Swift & Co.* v. *United States* (196 U. S. 375, 397), that the effect of the restraint upon interstate commerce was "not accidental, secondary, remote, or merely probable"; and the declaration in *Hammer* v. *Dagenhart* (247 U. S. 251, 272), that "the mere fact that they were intended for interstate commerce transportation does not make their production subject to Federal control under the Commerce Clause", there developed a line of cases squarely controlling the instant proceeding.

In *United Mine Workers* v. *Coronado* (259 U. S. 344), a civil suit under the Sherman Act, the court in determining whether the conspiracy involved was in restraint of interstate commerce, declared that while coal mining is not interstate commerce, and the power of Congress does not extend to its regulation as such, nevertheless if the practices in connection with coal mining are likely to obstruct, restrain, or burden interstate commerce it is within the power of Congress to subject them to restraint, but that the practices themselves not being of an interstate character, "the intent to injure, obstruct, or restrain interstate commerce must appear as an obvious consequence" of the acts.

In *United Leather Workers* v. *Herkert* (265 U. S. 457), also a civil action under the Sherman Law, the court held that prevention by means of a strike, of manufacture of goods destined for interstate commerce was not an interference with such commerce, stating at page 471:

"* * * the mere reduction in the supply of an article to be shipped in interstate commerce, by illegal or tortious prevention of its manufacture, is ordinarily an indirect and remote obstruction to that commerce."

Industrial Association v. *United States* (268 U. S. 64), presented a case under the Sherman Act of a combination of builders and dealers restricting the purchase

of building materials used in San Francisco to products made by open shops. This necessarily raised the question of the effect on interstate commerce in products sold and shipped to San Francisco in such commerce. Referring to the alleged restraint upon the purchase of interstate products, the Court stated (at p. 80):

"The effect upon, and interference with, interstate trade, if any, were clearly incidental, indirect, and remote—precisely such an interference as this Court dealt with in *United Mine Workers* v. *Coronado* (259 U. S. 344) and *United Leather Workers* v. *Herkert* (265 U. S. 457)."

and further, the Court stated (at p. 82):

"The alleged conspiracy and the acts here complained of, spent their intended and direct force upon a local situation—for building is as essentially local as mining, manufacturing, or growing crops, and if, by a resulting diminution of the commercial demand, interstate trade was curtailed either generally or in specific instances, that was a fortuitous consequences so remote and indirect as plainly to cause it to fall outside the reach of the Sherman Act."

Levering v. *Morrin* (289 U. S. 103), involved a conspiracy to suppress local building operations solely for the purpose of compelling employment of union labor. The Court held that it could not be adjudged a conspiracy to restrain interstate commerce merely because, incidentally, by checking the local use of building materials it would curtail the sale and shipment of those materials in interstate commerce. The Court stated (at p. 107):

"Prevention of the local use was in no sense a means adopted to effect such a restraint. It is this exclusively local aim, and not the fortuitous and incidental effect upon interstate commerce, which gives character to the conspiracy."

In the light of these decisions the facts of the instant case diclose a very apparent weakness and remoteness in any effect they may have upon interstate commerce. Of the ice business, the Supreme Court has stated (*New State Ice Co.* v. *Liebmann*, (285 U. S. 262, 279)):

"We are not able to see anything peculiar in the business here in question which distinguishes it from ordinary manufacture and production."

The further contention of the relator to the effect that supplying ice for refrigeration of foodstuffs imported into the State of Florida constitutes interstate commerce, is disposed of by the following principle of law laid down in the case of *Industrial Ass'n* v. *United States, supra*, in which the Court (at p. 78) held:

"It is true, however, that plaster in large measure produced in other States and shipped into California was on the list; but the evidence is that the permit requirement was confined to such plaster as previously had been brought into the State and commingled with the common mass of local property, and in respect of which, therefore, the interstate movement and the interstate commercial status had ended."

Since the transactions of respondents, as to which complaint has been made, were not in interstate or foreign commerce and did not substantially or directly affect said commerce, the Commission has no authority to issue a cease and desist order against them, and the complaint must be dismissed.

This is not to say that power does not exist under the National Industrial Recovery Act and under the Federal Trade Commission Act to take all necessary measures, including control of transactions wholly intrastate in character, whenever indispensable to protect or foster interstate commerce. This principle is not applicable here. The facts show no burden, restraint, or effect upon interstate commerce.

Respondents further contend that the National Industrial Recovery Act is unconstitutional; that the refusal of a certificate of public convenience and necessity would, in the instant case, permit a monopoly in violation of section 3 (a) of the National Industrial Recovery Act; and that article XI of the Code of Fair Competition for the Ice Industry violates both the fifth and tenth amendments to the Constitution. These contentions need not be considered since the Commission has decided that it lacks authority in the matter for the reason that the transactions complained of are not "in or affecting" interstate commerce.

The complaint must, therefore, be dismissed.

By the Commission.

EWIN L. DAVIS, *Chairman*

APRIL 5, 1935.

Senator KING. Mr. Platt B. Walker, of Minneapolis, Minn.? Is Mr. Walker here?

(No response.)

TESTIMONY OF STEVEN F. VOORHEES, NEW YORK, N. Y., REPRESENTING THE CONSTRUCTION LEAGUE OF THE UNITED STATES; CONSTRUCTION CODE AUTHORITY

(The witness after having been first duly sworn, testified as follows:)

Senator KING. State your name, residence, and whom you represent.

Mr. VOORHEES. Steven F. Voorhees, New York; I am an architect and I am representing the Construction Code Authority, of which I am chairman.

I am also speaking for Col. John P. Hogan, who is chairman of the Construction League of the United States, so in answer to your request I will speak for both, if that is agreeable.

Senator KING. Chairman of what code authority?

Mr. VOORHEES. Construction Code Authority.

Senator KING. Buildings?

Mr. VOORHEES. All kinds of construction.

Senator KING. Who elected you?

Mr. VOORHEES. I was elected by the Construction Code Authority, which was made up of the representatives of some 29 trade or professional associations in the construction industry.

Senator KING. How much time do you want, Mr. Witness?

Mr. VOORHEES. I think I can do it in 10 minutes if I can shoot along.

Senator KING. All right.

Mr. VOORHEES. The Construction Code Authority is made up of appointees from the following trade associations in accordance with the terms of the code:

The Construction League of the United States; the general contractors' division, representing the Associated General Contractors of America; the International Society of Master Painters & Decorators, Inc., representing the painting, paperhanger, and decorative division; National Elevator Manufacturing Industry, representing the elevator manufacturing division; Cement Gun Contractors Association, representing the cement gun contracting division; National Electrical Contractors Association, representing the electrical contracting division; Roofing and Sheet Metal Industries Conference, representing the roofing and sheet-metal contracting division; Mason Contractors Association of the United States and Canada, representing the mason contractors' division; Tile & Mantel Contractors Association of America, representing title contracting division; National Association of Master Plumbers of the United States, representing the plumbing contracting division; National Kalamein Association, representing the kalamein division; National Wood Flooring Contractors Association, representing the wood floor contracting division; National Resilient Flooring Association, representing the resilient flooring contracting division; Asbestos Contractors National Association, representing the insulation contracting division; the National Terrazzo & Mosaic Association, representing the terrazzo and mosaic contracting division; Heating, Piping & Air Conditioning Contractors National Association, representing heating, piping, and air-conditioning contractors' division; National Association of Marble Dealers, representing the marble contracting division; International Association of Contracting Plasterers, representing the plastering and lathing contracting division; National Stone Setting Contractors Association,

representing the stone setting contractors' division; National Building Granite Quarries Association, representing the building granite division; Construction News Service Association, representing the construction news service division; and the Cork Insulation Contractors National Association, representing the cork insulation division.

In addition to which the following associations are also official sponsors of the code; American Institute of Architects, American Society of Civil Engineers, American Road Builders Association, National Association of Metal Furring and Lathing Contractors, National Association of Building Trade Employers, National Association of Builders Exchanges, and American Construction Council.

Senator KING. How many codes are there represented?

Mr. VOORHEES. There is one code divided into divisions, sir.

Senator KING. No; are there not codes for various of those units?

Mr. VOORHEES. It is one code with various divisions. Each division has a chapter, which covers the special conditions surrounding the relations in that particular division. And one chapter, chapter no. 1, is general for the entire industry—that is to say, for instance, the general contractors' code would consist of chapter 1, the general conditions, and chapter 2, which happens to be their division chapter, which covers special conditions applying only to general contractors, and the same throughout.

Senator KING. There was a witness on the stand a few days ago, who is also a code authority member, and he challenged attention to the fact that in the little organizations which he represented the same vendor of commodities would be under a dozen codes, most of which are in the building codes, or come within the categories just mentioned by you.

Mr. VOORHEES. I do not know what the code was.

Senator KING. The plumber's code, as I remember it; no, he was a hardware dealer, and he came in 10 or 15 or 20 codes

Mr. VOORHEES. This code has chiefly to do with installation, Senator, and not to do with manufacturing. There are two or three exceptions to that rule, but it is chiefly to do with the installation in the building or in the structure.

Senator KING. You do not build the houses?

Mr. VOORHEES. That is under this code.

Senator KING. Under this code?

Mr. VOORHEES. Yes, sir. That is what I mean by installation, design, and construction, those two functions.

Senator KING. There is a separate code for cement, is there not?

Mr. VOORHEES. For cement manufacture; yes.

Senator KING. And for bricks?

Mr. VOORHEES. That is true; entirely separate.

Senator KING. And for furniture and lumber?

Mr. VOORHEES. Yes; that is right.

Senator KING. And for iron sheeting?

Mr. VOORHEES. Yes, sir.

Senator KING. Separate codes?

Mr. VOORHEES. Entirely independent of this code, and has nothing to do with it.

Senator KING. You mentioned sheet roofing, did you not?

Mr. VOORHEES. That is in the application to the building.

Senator KING. But there is a code for that?

Mr. VOORHEES. That is part of this code, sir.

Senator KING. Sheet roofing?

Mr. VOORHEES. Yes, sir; roofing and sheet metal we call it.

Senator KING. Would the steel plates come under that code?

Mr. VOORHEES. No, sir. It is the installation; construction is the word we use, design and construction of buildings and other types of structures, such as highway, dams, railroads, and so on, and so on. The definition of the code is the design and construction of structures such as building structures, and these other structures, both highways and the so-called "heavy engineering structures."

Senator KING. I was shown a draft 2 or 3 days ago prepared by one of the Federal agencies which showed that the organizations under your code, if I understand your code, clearly show a substantially uniform line of costs from 1927, 1928, 1929, right on down; now, whereas in other commodities the costs are less, and the inference was and the statement by the representative of one of the departments was that the heavy industries, so-called, were not reducing their costs. For instance, a manufacturer of engines, cars, and so on, that the costs were substantially the same and were maintained, as is contended, and I expressed my opinion there was a sort of a monopolistic control of those industries. Do you care to comment upon that?

Mr. VOORHES. So far as the construction industry is concerned, and I am professionally on the buying end of the market as an architect, I am taking bids on work, we are buying for bids at the present day and they are far under the bids that we were taking; I am speaking now on buildings in 1929.

Senator KING. Are not brick about 25 or 30 percent higher than they were 3 years ago in 1933?

Mr. VOORHEES. I am sorry I cannot answer that question, but if you will take ——

Senator KING (interposing). And lumber, is not that 40 to 60 percent higher, or was here a few months ago, than it was in 1933, and even higher than it was in 1929?

Mr. VOORHEES. I cannot answer those questions. Those industries are not under our code for one thing, and, secondly, the price the architect or owner knows is the whole price that comes in for his house. For example, that takes those into account; namely, I have had to professionally make an examination of the costs of buildings of certain types in New York since beginning around 1919, and buildings we had designed, so I knew what they were, and the cost follows very closely the Federal Reserve curves if you know what that curve, of course, is. There is no particular reason for that, but that is a fact and that is materially under 1926 in certain phases.

Senator KING. I am interfering with your statement. If you care to proceed it is all right.

Mr. VOORHEES. I want to say that the code authority is made up of representatives appointed by these various divisions I have read, and I was elected by them. You may question why they should elect an architect, but they were so unwise as to do that.

At a meeting of the code authority on March 8, a resolution——

Senator KING (interposing). What year?

Mr. VOORHEES. This year, 1935; a resolution was passed urging the extension of the act for 2 years. We sent a copy, an official copy, of that resolution to the committee.

Senator KING. March 12?

Mr. VOORHEES. Dated March 12. The meeting was held on March 8.

Senator KING. I notice here from this resolution that you recommended changes?

Mr. VOORHEES. Some suggested changes, and I have a few others that I would like to put in at the end of my testimony, if I may.

Senator KING. The principle of the resolution as I read it is that it is the sense of the Contruction Code Authority, Inc.—it is incorporated, isn't it?

Mr. VOORHEES. Yes, sir.

Senator KING (reading).

That the National Industrial Recovery act, with proper changes, be extended for a period of at least two years after June 15, 1935.

Further,

That the act contain a provision granting immunity from civil or criminal liability to code authorities.

Would that mean grant immunity from antitrust prosecution or violation of the antitrust laws?

Mr. VOORHEES. Not if they are within the scope of their authority.

Senator KING. Have you read this new bill that has been offered? You have, have you not?

Mr. VOORHEES. I beg your pardon?

Senator KING. Have you read this new bill?

Mr. VOORHEES. This S. 2445?

Senator KING. Yes.

Mr. VOORHEES. Yes, sir.

Senator KING. Did your organization construe that as to absolve you from responsibility for violation of that act, the Sherman Act, rather?

Mr. VOORHEES. The organization did not have time to consider the bill.

Senator KING. You want any immunity from civil and criminal liability to code authorities. Did you mean by that likewise to representatives of the Government?

Mr. VOORHEES. You mean who are members of the code authority, or generally? You see there are three Government members.

Senator KING. The law-enforcing agencies of the Government.

Mr. VOORHEES. We did not go beyond the code authority, sir.

Senator KING. I see.

Mr. VOORHEES. The purpose of that was we incorporated so that we could persuade men that they could serve without being subjected to unfair ethics.

Senator KING. In the courts?

Mr. VOORHEES. In the court; yes, sir.

Senator KING. And the next resolution is—

That the act be changed to substitute appropriate enforcement of the code of fair competition other than by criminal action in the courts.

That was a clear expression, was it not, of the desire that you should be immune from criminal prosecution under the antitrust act?

Mr. VOORHEES. No sir. That had to do with our belief that violators of the code could be more readily dealt with if necessary, to——

Senator KING (interposing). All right, proceed. You said you wanted to submit some further recommendations?

Mr. VOORHEES. Yes, sir.

Senator KING. Do you care to read them?

Mr. VOORHEES. Do you want them now or shall I read them?

Senator KING. Just as you wish. You may submit them to the secretary.

Mr. VOORHEES. I just have a few; and it will not take me very long to read them.

The Construction League of the United States is an organization of trade associations, not individual members, but trade associations, and I am speaking for them. Also, they asked for appearance for Colonel Hogan, who is chairman, and who is here, and if it is agreeable I will try and serve both parties.

Senator KING. Go ahead.

Mr. VOORHEES. Again, I think it is perfectly clear, but I would like to emphasize the fact that the code has to do with design and construction of buildings and not with manufacture of construction materials. That is entirely outside of this code, with two exceptions, one is the elevator manufacturers were put under this code and the entire process from manufacture to installation, and the same with building granite.

Senator KING. And it has been kept under your code?

Mr. VOORHEES. Yes, sir. That is both manufacturing work and installation. That is one of the exceptions.

Now the industry in 1929—I think these are understatements—had something like 3 million employees directly, and 150,000 employer units, with an estimated volume of business of about $10,000,000,000.

Senator KING. It would be then substantially the same in 1928 and 1927?

Mr. VOORHEES. Somewhere in that same order. Not today; today it is probably 25 percent of that. It reaches into every village and hamlet of the country. Some of the men on the code authority think it is the last resort of the small business man, because there is no restriction on a man coming into the construction industry or in going out.

In our code we have no production features, and no requirement as to who do the work.

Senator KING. You do not favor price-fixing, do you?

Mr. VOORHEES. No, sir. And I think it ought to be in fairness said, so far as our own product is concerned, it would be almost impossible. You know how building prices are determined. The contractor takes estimates, a whole group of specialists. Those are added together. The final cost comes out of that sort of competition. I know no way in which you could set up prices, price-fixing, that would be effective.

Also, there is the price for large purchases, I mean from the construction material manufacturer, so there is none in it.

We have a warning against doing work for less than cost, but I suppose anyone can give such a warning.

Senator KING. Did you have open prices?

Mr. VOORHEES. These chapters have an open-price filing, but it is the exception again. In the bidding practices, the bidder is invited and required to submit their bids to a depository for the purpose of checking their bids to see whether they adhere to them.

Those bids are made available to bidders, but only to the bidders, and there is no open price in the full sense of the word.

Senator KING. Those persons intending to bid have to submit their prices?

Mr. VOORHEES. No, sir; after they have bid. They file their bids simultaneously with a depository, to check so that we can see whether they have adhered to the code, so that having placed a bid they shall not have a chance to go ahead and chisel.

Senator KING. Proceed.

Mr. VOORHEES. But those are not submitted in advance, to any bureau. They go in simultaneously with the closing of the bids.

Now, the benefits that we believe are in the future, and which are somewhat evident at the present time are, first, the unification and integration of this industry, which is so large and widespread.

And, in the second place, throughout the industry, having some definition which we believe very greatly will improve labor relations and will improve employer relations. We have in article III of the code what will prove a charter for very fine industrial relations in the industry.

One provides for the making of agreements to cover specific areas, and a specific type of construction work, by mutual understanding between representatives of the groups of employers and employees.

And the other one is a national construction planning and adjustment board, which is composed equally of employer and employee representatives, with an impartial chairman appointed as the president. We are hoping that through the operations of that board we will be able to reduce the jurisdictional disputes, which have been the plague in the construction industry, particularly in building construction, where there is such a high specialization.

A plan has been well advanced, and when the building trades department has settled some of its internal difficulties, which have been very pressing in recent months, I am very hopeful that that will be put into effect. That is one of the possibilities of being able to unite in activities, joint activities.

So far as the employers are concerned, the matter of setting up fair trade practices for bidding, when competitive bids are asked for, it will be not only to the advantage of the employers, but to all concerned, because a man who takes a construction job at less than cost, has got to chisel, in the first place on quality and in the second place on labor. That is the only way they can come out.

Senator KING. Some manufacturers, I assume, judging from our limited knowledge of human nature, are satisfied with a smaller profit than some other organizations.

Mr. VOORHEES. You are speaking of manufacturers, sir? Just get what happens in our industry. Every job has a new assembly of elements. It is rare that you have the same general contractor, the same architect, and the same special contractor, such as plumbing and plastering contractors on the same job.

On every job, practically, they are assembled for each job, and then again reassembled, a different group, for another job.

You see, we do not have a fixed group, any more than you have the same mechanic going through continuously. There is not a carry-out through.

Now, the competition in the industry, it being free and open competition, makes it so that the members of our industry are satisfied at the present time to break even. You see, there is not enough opportunity—that is what I am getting at—on the competitive situation, such as where we have to face prices and can acquire a large profit.

Senator KING. Would you say that was true with the plumber's organization?

Mr. VOORHEES. I would say so. I know of no plumbers who are well-to-do.

Senator KING. Or with those manufacturers of plumbers' materials? Is it true, that is manufacturing.

Mr. VOORHEES. That is outside.

Senator KING. Nevertheless, your organization is dependent upon the plumbers' supplies, in your buildings, is it not?

Mr. VOORHEES. That is true.

Senator KING. You would be interested, of course, in obtaining as low prices as you can, on commodities which you purchase?

Mr. VOORHEES. Yes, sir; very definitely so.

Senator KING. You think that would present among manufacturers of plumbing materials combinations, or attempted monopolies of the prices, or of the output, monopolistic control of the prices, or monopolistic control of the output?

Mr. VOORHEES. I think that is a temptation that always exists, everywhere.

And, I am inclined to think from what I know, that it is not very successful. Somebody breaks out whenever that action is attempted.

Shall I cover some of the further matters, or shall I leave them here? They are very brief.

Senator KING. Just as you wish.

Mr. VOORHEES. You have referred to the matter of the liability of the code authority, so I will pass that over.

We are suggesting, under section 2(c), the definition of "truly representative", that that be clarified, so far as we are concerned, by limiting truly representative to those who are regularly engaged in the industry. In our industry a man may come in and do a little work and then disappear. We want some further definition of that sort.

Then we would like to see some provision under the enforcement section 12 that would permit a code authority to take the case of a code violation directly to the United States district attorney, in the place where the alleged infraction of the code occurred, so as to provide for a very prompt determination.

Senator KING. For criminal prosecution?

Mr. VOORHEES. We would prefer that they were not criminal prosecutions, but whatever the enforcement of the law may become; that is, I am talking for decentralization of the provision.

Senator KING. That is to say, you are not in favor of making those who are interested in the industry the judge and jury of alleged violators of the code.

Mr. VOORHEES. When those interested in the industry have exhausted the powers of persuasion—I mean honest powers of persuasion and nothing else—then I think they are out except as complainants, if you will. No, sir; I certainly do not think that would be well.

Senator KING. Do you believe that in being a part of your organization you must have that insignia in order to be considered in good standing and be competent to bid on contracts of the Government, or municipalities, or States?

Mr. VOORHEES. Our code has not provided for that provision of the "blue eagle." Under the P. W. A. operations, as you know, the certificates of compliance are required.

The last suggestion we would like to make is it shall be added in section 7—I think it is (b)—a paragraph which provides for collective bargaining by representatives of employers and employees selected by a majority of those voting at an election when all employers and employees affected have been given an opportunity to vote.

Back of that, if I may just explain a moment, we provide for these area agreements. For example, the first one was in the mason contracting division in the city of New York. That was five counties of New York City, and set wages, hours, and conditions of employment. The question that we would like to provide for is a proper determination of what constitutes the truly representative; that is, it seems to us that not trade associations and not unions should be delegated with that unless they can properly show it. In other words, in an industry of our sort we think another situation might be well set up to take care of it.

Senator KING. Would you favor the policy and laws to compel the policy to be enforced that the majority may coerce or compel the minority to accept the decisions of the rest?

Mr. VOORHEES. It seems to us that that is a general provision we are all under in all political actions. If we have the opportunity to vote and are in the minority, we carry on even though we are in the minority.

Senator KING. If a majority should support a policy affecting the independence of individuals socially or religiously do you think the majority should govern, or if a majority insists on voting the Republican ticket, would you insist that the minority also do the same?

Mr. VOORHEES. I would limit it to actual provisions of the code. Being a Republican I would resent that; I like to vote Democratic occasionally.

May I leave these papers with the secretary?

Senator KING. Yes, sir.

(The papers referred to will be filed with the committee.)

Senator KING. Mr. Q. Forrest Walker.

(The following letter was subsequently submitted by Mr. Voorhees.)

CONSTRUCTION CODE AUTHORITY, INC.,
Washington, D. C., April 15, 1935.

SENATE FINANCE COMMITTEE,
Senate Office Building,
Washington, D. C.

(Attention of Hon. Pat Harrison, chairman.)

SIRS: The Construction Code Authority feels it necessary, so that the Senate Finance Committee may be advised, to answer on behalf of the construction industry the statement of the National Association of Real Estate Boards regarding the application of the National Recovery Act, and particularly the attack made by this group on the Construction Industry Code.

The National Association of Real Estate Boards sponsored a Code for Land Development and Home Building which is still pending approval in the National Recovery Administration. This proposed code is composed of certain functions of recognized industries, viz., real-estate operations as applicable to distribution

and sales; construction as it applies to building dwellings for sale or rent; and banking as it applies to transactions in mortgages. It is the uniting of these functions of other industries used primarily to further a selling plan that forms the basis of their claims to the standing of a trade or industry as required under the terms of the National Industrial Recovery Act.

Home building is one of the major features of the building branch of the construction industry. The proponents of the proposed Code for Land Development and Home Building claim that from one-third to one-half of the single-family dwellings are constructed by realtors. It is our opinion that less than 25 percent of the homes annually built in the United States are built by the proponents of the proposed code. By far the greater number of homes are built by members of the construction industry.

Speculative home building has been one of the greatest disturbing factors in the construction industry, not only from a labor standpoint but from a value standpoint. It is largely due to this speculative feature that the various Federal Home Loan Corporations had to be created in order that Americans could still own their homes and not lose all their life's savings which they had previously invested.

It has been found essential to public welfare to divorce banks from agencies selling securities. It should be equally desirable to divorce building from those selling mortgages thereon. Many speculative builders have derived an unfair profit in the 3-year financing and refinancing of mortgages. To overcome the repetition of these 3-year commissions the Federal Government has deemed it necessary itself to grant a 15-year amortization plan. When a family builds a home of its own it is careful to see that the house is built in accordance with its needs and requirements. When a house is built by a speculative builder who does not know who will purchase or live in it, the individual pride of ownership is absent. It is the recognized function of the construction industry to construct homes as required. It is the function of the real-estate operator or broker to sell this structure as and when completed. The builder or contractor is a producer; a realtor is generally a distributor.

The construction industry offers no bar nor does it prevent anyone from operating under the Construction Code so long as the uniform rules of conduct are observed. There appears no logical reason for separating the construction of houses and the preparation of land therefor from the construction industry. The proposed Code of the Land Developers and Home Builders would disrupt all elements of the construction industry including planners, contractors, material dealers, and labor.

The objections to the Construction Code as contained in the statement to the Senate Finance Committee by the National Association of Real Estate Boards present no particular problem nor work any undue hardship.

The question as to whether development of land or construction of homes is or is not interstate commerce is amply covered in the proposed bill S. 2445 extending the National Industrial Recovery Act.

Regarding the claim that is made that "the Construction Code seeks by definition to control activities not commercial in character" we wish to advise the committee that certain exemptions from the Construction Code have been granted to farmers and others; however, no exemptions have been granted which permit a speculative builder to build homes on a different basis from that on which the larger majority of homes are built.

Referring to the allegation that "construction is not an industry", we wish to advise that construction is not only an industry but, in importance, is second only to agriculture and is codified as an industry in its entirety, not as a component part of any other industry, which is entirely in accordance with the National Industrial Recovery Act. No stronger indication can be given that construction is an industry than the fact that the Congress of the United States in the passage of the Work Relief Act has used construction as a basis for work relief and recovery. It has always been recognized that construction is an industry. The primary importance of the code lies not in establishing construction as an industry but in bringing about its integration and coordination.

The National Association of Real Estate Boards asserts that "the Code Authority of the Construction Code is not representative." The reason they express is that the business of land development and home building is not represented. Your attention is invited to the fact that a member of that group serves as a member of a divisional code authority of the Construction Code. Further, under the provisions of the Construction Code, if this group qualifies

with sufficient representation to become a chapter of the code, a representative is a" .tically seated on the Construction Code Authority and becomes a member with full privileges. As set forth above, at least 75 percent of the homes built in this country are constructed by contractors who are members of the construction industry as codified. The National Association of Real Estate Boards represents less than 25 percent of home building of the country, but as such attempts to dominate the field of home construction.

It is alleged that "the Construction Code levies forced contributions on those not represented in the code authority." We fail to understand on what this point is based as to our best knowledge this group has contributed nothing to the cost of administration of the Construction Code. The National Industrial Recovery Act contemplates that the expenses of administration of the codes be borne by the members of the industry. All regulations of the Construction Code regarding contributions to the support of code administration are entirely in accordance with the act and with the regulations of the National Recovery Administration covering such matters.

It is alleged that "the Construction Code is impractical because it cannot be administered." The Construction Industry Code represents the integration of the industry and is a charter of fair trade practice and regulations for the government of this industry in its entirety. It consists of the basic code, known as "Chapter I", which covers general rules and regulations for the government of the industry and the rules governing the relations between employers and employees. In addition to this basic code, each division of the industry has a separate chapter which includes rules necessary to the particular problems of its branch. Progress in administering this code has been more successful then has been contemplated in the integration and coordination of so great an industry. We have pioneered in the field of employer-employee relations in the provision for area agreements and in the establishment of the National Construction Planning and Adjustment Board on which industry and labor have equal representation.

Contention is made that "the Construction Code is decreasing employment." The allegation that the Construction Code is responsible for any decrease in employment is unfounded. In fact, the code has increased employment and cannot in any way be held responsible for any decrease in home construction or employment.

It is further contended that "the Construction Code has increased the cost of construction." This cannot be substantiated as the Construction Code nor any of its chapters provide for any price fixing or production control. The only possible justification for making the charge that the Construction Code has increased construction costs is that this code has eliminated the sweating of labor by establishing a 40-hour maximum week and a 40-cent minimum hourly wage.

With respect to the allegation that the Construction Code is averse to public interest because the effects of the Home Loan Bank, the Home Owners' Loan Corporation, and the National Housing Act have been nullified by price increases thus placing home ownership out of range of the average citizen, your attention is respectfully directed to the fact that the Construction Code does not embrace materials, therefore, any price increase with respect to materials must be chargeable to some factor other than the Construction Code. May we again repeat that the Construction Code has increased cost only by the establishment of a 40-hour week and a 40 cents an hour minimum wage. It is respectfully presented that this increase is infinitesimal when compared with the average cost that the prospective home buyer is called upon to pay in the purchase of a home from a speculative builder governed by no code, particularly with reference to the original cost of the land and the price at which it is included in the final sale. Likewise, in the actual building of the structure the opportunity of using the cheapest material and workmanship that it is possible to secure exists, and lastly, the finance charges including a possible resale of existing mortgages at a discount which is all part of the price the buyer pays for the home.

In conclusion, this attack upon the Construction Code can only be construed as an attempt by a minority group to exclude itself from all rules and regulations of the National Recovery Administration so that it may proceed without interference with the above-outlined practices, to the detriment of the consumer.

Respectfully submitted,

S. F. VOORHEES,
Chairman Construction Code Authority, Inc.

STATEMENT OF Q. FORREST WALKER, ECONOMIST OF R. H. MACY & CO., INC., NEW YORK, N. Y.

(The witness was first duly sworn by the chairman and testified as follows:)

Senator KING. Give your name and address, please, to the reporter.

Mr. WALKER. Q. Forrest Walker, economist for R. H. Macy & Co., Inc., New York City.

Mr. Chairman and ladies and gentlemen, I do not propose to take up a great deal of your time. I wish to read a brief statement and outline our position on this particular bill.

Senator KING. You represent R. H. Macy & Co.?

Mr. WALKER. I represent R. H. Macy & Co., Inc., a department store.

Senator KING. A department store of New York. They have a store outside of New York?

Mr. WALKER. L. Bamberger & Co., of Newark, N. J., a large department store, and we have financial interests in two other smaller stores, one, the Davison Paxon Co. in Atlanta, Ga., and the LaSalle & Koch Co. at Toledo, Ohio.

We appear today to present a brief statement in opposition to the extension of N. R. A., any extension of N. R. A. which will sanction direct or indirect price fixing and monopolistic practices by industrial groups acting in concert under the so-called "codes of fair competition." We believe that for the duration of the emergency, there are sound reasons for the continuation of the labor provisions of the present statute, but the continuation of the so-called "fair-trade practice" provisions as incorporated in most codes is contrary to the public interest and should be promptly abandoned.

The broad theory of the National Industrial Recovery Act is based on the idea that a new and wholly salutary economic system can be constructed on the principles of benign cooperation under codes. Slowly we are beginning to realize that when individual groups meet to solve their economic problems, they are not dominated by broad social purposes. Only in the ideal state will the natural and human objectives of controlling the price-making process for selfish ends ever be absent. It is axiomatic that the worst possible substitute for competition is the enlightened self-interest of the industrial or trade group. Now in its practical meaning, monopoly is not limited to a single enterprise or to a small group; it can often be more potent when exercised by a combination of dominant enterprises under the mask of a code of fair competition. Beyond question, Mr. Chairman, no single piece of legislation has done more to foster monopoly and monopolistic practices. In this legislation we have outstripped Germany in the promotion of cartels.

It is our opinion that we cannot wisely grant such broad powers to industrial groups without setting up government machinery to direct and control their activities in the public interest. Manifestly, it is impossible for government to provide protection against the abuse of power over the entire industrial front. We cannot provide regulatory control of all industry from powder puffs to iron and steel and still maintain economic liberty under a democratic form of government. Therefore, the only effective public protection against the evils of monopolistic practices under codes is the prompt restoration of the antitrust laws.

There is no opportunity here to outline and explain the manifold ramifications of price fixing in nearly all codes. Perhaps mere incidental comment on the use of the open-price association as a means of price control may be helpful.

As originally conceived some years ago, the open price association simply contemplated the filing of prices received in past transactions with a central authority for the purpose of affording a guide to the actual prices at which the bulk of production had moved in a past period. The purpose was not to suppress competition but to afford a basis for the continuance of more intelligent competition. In the *Maple Flooring Manufacturers Association case* (268 U. S. 586), the United States Supreme Court handed down a decision which was a forward-looking recognition of its lawful purpose. The court set forth the guiding principle of lawful trade cooperation as follows:

> We decide only that trade associations or combinations of persons or corporations which openly and fairly gather and disseminate information as to the cost of their product, the volume of production, the actual price which the product has brought in past transactions, the stocks of merchandise on hand, the approximate cost of transportation from the principal point of shipment to the points of consumption, as did these defendants, and who as they did, meet and discuss such information and statistics without however reaching or attempting to reach any agreement or any concerted action with respect to prices or production or restraining competition, do not thereby engage in unlawful restraint of commerce.

There has been complete failure in N. R. A. to recognize the limits of this decision. In neither the administrative order of June 9, 1934, nor any subsequent action which has come to our attention, has there been any effort to restrict the filing of prices to prices received in past transactions. It is true that the worst features of the waiting period have been eliminated with respect to codes approved since June 9, 1934, and also with respect to those in which open-price provisions were pending prior to that date, but in the most important codes already in force on June 9, 1934, the waiting period has been retained. In their present form, with or without waiting periods, the open-price associations serve no main lawful purpose. They permit filing of present and future prices and are not limited to past prices. They constitute an approved device under which business men today feel that they are at complete liberty to enter into price-fixing agreements, express or implied, with full immunity from our basic laws against restraint of trade. It requires an exceedingly naive and simple faith in human nature to believe that the filing of present and future prices does not lead to wholly unwarranted restraints clearly contrary to the express language of N. I. R. A. against the promotion of monopolistic practices.

If there was ever any doubt about the price-fixing character of open-price associations as incorporated in approved codes, that doubt was removed by the administrative order of June 29, 1934, relative to bids on public contracts. This order was made necessary to meet the condition caused by uniform bids on public contracts. When the law requires that a bid be awarded to lowest responsible bidder, it is impossible to solve the riddle when all bids are alike. Under this order, members of an industry were permitted to depart from their posted prices by not more than 15 percent when bidding on public contracts. If after investigation, it was found that the order caused destructive price cutting, the tolerance was to be limited to 5 percent. As originally interpreted, the lower prices were to be

made available to all buyers; but later interpretation seems to have denied this advantage to all except governmental buyers. It is apparently considered good business to allow the taxpayers to benefit by Government purchases at lower prices, but to extend the principle to private contracts when conditions of purchase are the same or very similar, is apparently considered bad economics.

Under the Book Code and the Tobacco Code, permission has been granted to publishers and manufacturers to control resale prices. Under the Retail Drug Code, the price-making process has, in effect, been vested in the drug manufacturer. Quite apart from the well-known economic absurdity of such price control, we have been unable to discover any provision of the National Industrial Recovery Act which would authorize such complete abandonment of competition in distribution.

Senator KING. What do you mean exactly by that, "competition in distribution"?

Mr. WALKER. If everyone sells at the same price, at retail, there is no competition in retail distribution. Resale price maintenance always has been held illegal by the highest courts. Its economic merits and defects have been exhaustively argued before congressional committees and during the past 30 years Congress has always refused to enact legislation permitting this practice.

Under some 30 codes we have permitted industries to disregard their fixed prices when selling abroad. We have sanctioned mechanisms to boost prices for the domestic consumer and at the same time have permitted complete freedom to sell at any price in foreign markets.

It is a proven fact that during this depression the industries whose prices have been made most flexible have suffered the least diminution of production and employment. If we are to aid recovery, we must facilitate free and open competition and let prices adjust themselves naturally to existing levels of demand. When prices are rasied by price-fixing devices and monopolistic practices, we arbitrarily curtail the amount of goods which the public can buy. Reduced consumption means lowered production. Lowered production means less employment and mounting relief rolls. Beyond all question of doubt, our codes with their direct and indirect price-fixing controls have become one of the most powerful forces retarding economic recovery.

For this all-important reason, even if there were not others, the new act should be limited to labor provisions solely. Such provisions are the only ones of a true emergency character which require the present attention of Congress. The time will come no doubt when the beneficial features of the trade practice conferences of the Federal Trade Commission can be embodied in trade association legislation along lines which properly safeguard the public interest. Such permanent legislation requires the fullest possible public discussion. It has no emergency character and can well await further progress toward recovery.

Now, Mr. Chairman, in view of the fact that a full presentation of the price-fixing devices in codes would take days and tax the strength of the committee as well as the witness, I want to request permission to incorporate in the record my address of June 9, 1935, against price fixing at the time of the public hearing of the N. R. A., if you have no objection.

Senator KING. There is no objection and it may be inserted in the record.

(The address referred to is as follows:)

THE CASE AGAINST PRICE FIXING UNDER CODES

Address by Q. Forrest Walker, Economist of R. H. Macy & Co., Inc., at public hearing on price fixing before the National Industrial Recovery Board, at Washington, D. C., on January 9, 1935

This is the most important public hearing ever held under the National Industrial Recovery Act, because it deals with the basic principles of the competitive system. Economic liberty rests on the right of private contract, and the essence of all private contracts is the price. We have long recognized the necessity for abridgment of the right of private contract in the railroad and public-utility fields, because these industries naturally are vested with monopolistic characteristics. Both Federal and State Governments have intervened in our economic life to set up certain minimum labor and public-health standards. It has also been our public policy to protect freedom of contract in industry and trade from impairment and possible destruction by monopoly. Prior to this act the essential aim of government has been to preserve and enlarge individual opportunity and to stimulate private initiative by promoting price freedom.

INDIVIDUAL AGAINST GROUP SELF-INTEREST

The competitive system is not wholly perfect, but it is the only economic system consonant with the spirit of democratic institutions. Under the National Industrial Recovery Act we have sought to improve, and possibly to supplant, this system by a new economy, based on the theory of benign cooperation. This theory is not new, for it has been tried again and again by all commercial peoples. Economic history is replete with the records of its failure. Economic institutions can be torn down and rebuilt, but there is no possibility of reconstructing human nature. We are beginning to understand that when individual groups gather to plan their economic salvation, they are rarely dominated by a broad social purpose. The natural and thoroughly human objective is to control and regulate the price-making process for the benefit of the group rather than the general public. If we cannot trust the self-interest of the individual in price making, the worst possible substitute is the enlightened self-interest of the industrial or trade group.

CODES FOSTER MONOPOLY

Our codes are chiefly charters for the elimination rather than the improvement of competition. We have wandered far from the original purpose of eliminating unfair competition based on starvation wages, unduly long hours, and child labor. The prime objective of the so-called "business statesmanship", which urged relaxation of our antitrust laws, has been to limit, abridge, and circumscribe price freedom or private contract by nearly every direct and indirect restraint which human ingenuity could devise. Beyond question, our codes tend to foster monopoly and monopolistic practices, and they harass and oppress small enterprise through the economic tyranny of trade majorities. We have largely removed the price-making process from the "Collective wisdom, error, judgment, and mistakes of a free market", and we have placed upon government the impossible task of protective intervention at the crucial points of competition on a million business fronts. If we persist in price fixing, our benign cooperation must be displaced ultimately by a malign paternalism which will arbitrate the economic destiny of all private enterprise.

FREE-BORN AMERICAN ENTERPRISE

It is probably not a mere coincidence that the decline in industrial production in 1934 closely followed the practical completion of codification. The plain fact is that our codes have become complicated mechanisms for artificial, arbitrary, and capricious price controls. They have increased price disparities and set up in the business structure a new series of stresses and strains which threaten economic equilibrium. They shackle industry and trade at a time when credit is superabundant and when deferred demand for the products of industry, due to the depression, is at the highest peak in our business history. They have raised

prices, retarded physical production, and delayed improvement in employment conditions. We may well paraphrase Rousseau and say: "American enterprise was born free under our Constitution; and everywhere it is in chains."

THE BARE, CRUEL FACTS

It is reported that a recent analysis of the 677 codes and supplements now in effect shows that 51 prohibit "destructive price cutting", 96 provide for minimum prices in emergencies only, 12 give power to the code authorities to establish minimum prices with cost restrictions, and 352 prohibit selling below cost. In at least 137 codes we find open-price associations. Many codes restrict production and several limit new investment in the industry. Scores of others restrict selling terms and otherwise raise prices and costs. When the historian of the future examines these charters of price slavery, he may conclude that the chief objective of American business in 1933 and 1934 was to make profits by selling below costs. He may marvel at the strange spectacle of the country which gave mass production to the world seeking to freeze its costs at the low production levels of this depression. Perhaps he will write another chapter to show once again how a great commercial nation has tried the futile experiment of attempting to solve its problems by regulation and control of prices—the symbols but not the causes of economic maladjustments.

THE SIMPLE FUNDAMENTALS

Since the main purpose of this hearing is to discuss basic principles, it may be helpful to consider price fixing in its broadest aspects and then proceed with analysis of particular price restraints. In all of our price-fixing experimentation under these codes, we have largely ignored the simple fundamentals of competitive price making. The economist defines price as exchange value expressed in terms of money. In other words, it is the monetary expression of the meeting point of supply and demand. We may of course change the monetary yardstick, but that action does not solve the fundamental problem. We should know that unless we can control the supply of and the demand for goods and services, all efforts to fix and control prices are grave economic blunders. This is not esoteric dogma, unless the plain truth is esoteric. More than a century ago, Pelatiah Webster, in his Political Essays, said:

"It is not possible to form a limitation of prices which shall be just and therefore the whole scheme necessarily implies injustice * * * It is not more absurd to limit the precise height to which a ship shall be fixed at a wharf, where the tide is constantly ebbing and flowing. A great force will be required to keep the ship from rising or falling with the tide, and a mighty little use to pay for the trouble; besides the probability of more severe damage which the ship must incur by the application of the necessary force. * * *"

REVIVING THE TRUST AND POOL ERA

Under many of these codes we have attempted to harness the economic tides by a wide variety of production controls. We place limitations upon machine-hours, the number of shifts, the installation of new equipment, assign quotas, fix basing points, and otherwise restrict production by all of the time-worn monopolistic devices which flourished in the trust and pool era prior to the Sherman Act. We have raised prices by these methods, but we have also choked the demand which we cannot control. These devices are doomed to economic failure because they can operate only to foster special privilege, destroy initiative and the opportunity for private profit. We cannot safely grant such power to code groups, because, in effect, it is the grant of power to control prices. Our so-called "business statesmanship" has created a system which, if not promptly abandoned, must ultimately compel complete governmental control of private business.

PRICE FIXING IS A PROP

One of the chief objectives of our code makers has been to prohibit "destructive price cutting." It is important to understand the precise meaning of this term. We may dismiss from consideration all price cutting undertaken with the intent and effect of fostering or promoting monopoly. Adequate legal means have always existed to prevent this practice. Clearly, this is not the kind of price cutting which the code makers have had in mind. Close examination of code hearings shows that this term chiefly connotes the objections of particular groups within an industry to the prices of other groups. We have built up a

strange economic doctrine to the effect that a competitive price lower than that of the dominant group within an industry is necessarily an unfair price. We have sought to remove the normal hazards of business competition and substitute a price-fixing prop. Under several codes price-fixing devices have been adopted which effectively prevent or retard the building of increased volume by lower prices. Our codes operate to raise instead of to lower unit costs.

WHEN IS AN "EMERGENCY"?

In 96 codes price fixing is to be invoked only in emergency cases. The plea of emergency is the perennial demand of the high-cost producer and the price fixer. In several industries which have been granted emergency-price protection, the alleged emergency is a chronic condition. In itself, it is not the peculiar product of this depression. If there was ever a time when governmental policy should be directed to avoid the dangers of artificial price disparities, it is in the early stages of recovery from a great depression. Nascent demand is never more easily destroyed than when it is hemmed in by price barriers.

We have never hitherto supported the doctrine that internal trade can be promoted by setting up the counterpart of protective tariffs in each branch of domestic industry and trade. The most specious plea advanced for emergency price protection is that it is needed to meet the code minimum wage requirements. If A and B pay the same wages, neither A nor B needs special price protection because the increase in labor costs, if properly enforced, applies to the whole industry. If they represent the marginal fringe of industry and cannot exist without price protection, it is not sound public policy to support such groups. There is no reason why an entire industry should be hamstrung to protect its marginal fringe from the cost burdens of the low minimum wages of the codes.

THE GENTLE ART OF PROTEST

We should not overlook the special activities of code groups in the gentle art or promoting an emergency. Recently we received a letter from one code authority asking us to send a telegram to Washington urging that the industry be granted price fixing. The letter very helpfully stated just how our telegram should read, but it also cautioned us not to follow the exact wording because that might create suspicion of collusion. Some months ago, after an official statement against price fixing, it was reported that a deluge of protests reached Washington. This is a perfectly natural result for the price fixers are the best organized of all industrial or trade groups. Within an industry, the opposition of certain groups to price fixing must often be carefully concealed for fear of antagonizing important groups. The consuming public, except perhaps State purchasing agencies, is altogether too unorganized and inarticulate to give effective support to the restoration of price freedom.

ARBITRARY AND CAPRICIOUS COSTS

In nearly half of our codes we prohibit sale below costs. There are wide variations in the determination of these costs. Some codes stipulate that the minimum prices shall be "fair and reasonable." Others set the minimums at the "lowest reasonable cost of production," the cost of the "lowest cost representative firm" and the "weighted average cost." All of these average or typical costs are inherently arbitrary and capricious. We know that many efficient and favorably located plants have costs below the averages. When we establish such "floor levels" we give the low-cost firms great financial advantage and we perpetuate in the marginal groups production activities which sooner or later intensify the competitive problems of the industry. Recent suspension of this price-fixing plan in the lumber industry is a belated but wholly encouraging recognition of the fallacy of such plans.

THE COST-FINDING RIDDLE

In the majority of the manufacturing codes the minimum price for competitive purposes is the manufacturer's individual cost. In general, these costs are to be determined by uniform and standard methods of accounting, approved by independent accountants, or the code authority itself, and subject in each case to the final approval of the Administrator. In manufacturing there is usually little difficulty in ascertaining raw material and direct labor costs, but the determination of a proper basis for computing overhead costs is an intricate and

difficult problem. In cost formulas some allowance for overhead is usually mandatory and if the Recovery Administration is to approve these costing methods, it is required to give its sanction to arbitrary and uniform percentages or allowances for this important item in costs. Fortunately, few of these standard systems have been approved by the Recovery Administration. We may illustrate the price-fixing dangers in such formulas from the standard cost methods recently approved for one industry.

UNCLE SAM AS "COST ACCOUNTANT"

The details of this formula have been printed in a booklet which was circulated to the industry. In giving examples of the determination of costs, a 50 percent allowance for overhead costs is used, although the fixed minimum allowance for overhead is set at 33⅓ percent. At page 2 of the original draft, we find this statement:

"Any concern actually able to produce their product at a cost less than 33⅓ percent above the total cost of raw materials and direct labor will be compensated through the additional margin of profit between cost and selling prices."

At page 2 of the final release, there is this comment:

"However, no percentage shall be used less than 33⅓ percent even though the actual budget figures would suggest a lower percentage figure."

The booklet does state, however, that the low cost manufacturer may obtain relief if he is willing to submit his figures to an agency of the code authority and prove that he can properly figure a lower overhead cost. Obviously, there is no encouragement for him to take this course of action when the code authority is composed of his principal trade competitors. We can, of course, eliminate much ignorant and stupid pricing by more intelligent costing; but there is grave danger in uniform costing which requires a fixed minimum addition for overhead costs. The onus of fixing the overhead allowance, or a substantial part of the final price, is placed directly upon a governmental agency. Morever, the uniform percentage must inevitably be an arbitrary and perhaps capricious allowance which substantially usurps the right of private contract, even though cumbersome processes of administrative relief are provided.

CONSTANT OR VARIABLE COSTS?

The fundamental defect of all cost restrictions, however, lies in the complete failure to recognize differential and residual costs and joint costs. In less technical language we may say that certain costs in manufacturing are relatively constant regardless of the volume of business done, and other costs vary directly with volume. We describe joint costs as those costs incurred in connection with production of byproducts. We cannot here discuss the refinements of cost accounting, but we can illustrate the broad significance of constant and variable costs. Certain costs are fixed or constant, such as real-property taxes, depreciation, part of maintenance, etc. Other costs, such as material and direct labor costs vary with the volume of output. Within a single industrial group, there are wide variations in these two kinds of costs and in the single company producing several articles there are also wide differences. The plant constructed in a period of high commodity prices has a heavier dollar depreciation burden than one constructed at low costs. Property taxes are often high in one locality and low in another. Similarly, dollar depreciation of equipment varies from plant to plant. It is a fundamental error to extend a cost restriction beyond the cost of materials and direct labor, because every dollar of income over and above these direct costs contributes to the reduction of overhead costs. For the most part, all cost restrictions, if enforced, constitute crude and absurd restraints upon competitive industry. They are the playthings of impractical theorists and far more dangerous to the public interest than the natural intuitions of business men.

WHAT DOES THE FIRST CAR COST?

We have given scant consideration to the practical implications of these cost restrictions. Unit costs are functions of production. The first automobiles which come off the assembly line could not be sold if the minimum price were fixed at the instant cost of production. The producer never knows whether the price asked will repay cost until he knows the number of units he can make and sell. If he has overestimated demand, every single car may be sold below its true cost for several months, perhaps years, before he builds a production volume which will show a profit. If a manufacturer wants to sell below his costs during a slack season, to

keep his plant organization intact, he is violating his code. Again, if he wants to cut below total cost to stimulate demand in the hope of getting enough additional volume to achieve a final profit on his entire output, he has been guilty of a code violation. As it has been said, "It is often less costly to produce and sell at a loss than not to produce and sell at all."

"A ROSE BY ANY OTHER NAME"

Generally, these cost restrictions constitute the rankest kind of economic quackery. They operate to kill initiative and prevent adjustment of price to existing demand. They are the product of emotional strain and half-baked ideas of the economic nature and significance of industrial costs. We need not bandy words in an effort to differentiate this kind of price fixing from other types. We may attempt to sanctify it with euphonious names of one kind or another, but the fact remains that underneath it is insidious price fixing.

1,500,000 MUTUAL SPIES

One would be perversely blind not to recognize that violation of these provisions has been widespread, that no effective machinery has been or can be set up by the Government, and that no effective machinery has been or can be set up by anybody to detect and punish violators. In the retail trade, this is especially true. It is impossible without an enormous and costly organization to police the 1,500,000 retailers throughout the United States. Nor can trade policing be substituted for impartial but impossible Government enforcement. Merchants should not be put to spy upon each other. Such a system breeds ill will, animosity, and favoritism. Local code authorities cannot, by the nature of their composition, be impartial or be permitted to determine who should or should not be prosecuted for violation.

At the first public hearing on the Retail Code, we stated:

Trade "lynch law" administered by competitors, may be substituted for the present procedure of fair and orderly investigation by an impartial and responsible public body.

Experience has amply justified that warning. Nor can these price-fixing provisions, particularly in the retail trade, be policed by manufacturers. In the drug trade, where this is done to some extent, it enables the organized manufacturers to coerce small retailers into obeying their price-fixing mandates with the alternative of prosecution or immunity in the hands of the manufacturers.

REMEMBER PROHIBITION?

The whole system breeds oppression, hypocrisy, evasion, trade feuds, and a trade-feudal system, and above all, that contempt for law which inevitably follows widespread nonenforcement. Moreover, if these price-fixing provisions could or should ever be enforced, we would have to build many more penal institutions to house the code violators.

AS TO CASH DISCOUNTS

Price fixing in manufacturing codes has not been limited to the establishment of floor levels, or minimum prices. In scores of codes we have fixed arbitrary cash discounts, and in many instances we have reduced discounts which have been accepted practice for many years prior to this depression. There has been general failure to recognize that so-called "cash discounts" are not merely compensation for prompt payment of invoices, but rather a method of pricing. We need not repeat the arguments we have made so often in code hearings. Even if we concede there have been abuses, there is no known method of setting uniform discounts which does not result either in hidden price increase or in wholly unjustified encroachment upon the right of private contract. We can build a dam across the stream of bargaining, but the water inevitably rushes over or around or seeps through.

"OPEN COVENANTS" TO FIX PRICES

Perhaps the most dangerous of all price-fixing devices in manufacturing codes is the open price association, now incorporated in approximately 137 codes. We outlined our objections to this form of price fixing in some detail at the group II hearing last March. Since that time there have been minor changes which have met some of our objections, but they have not materially altered the price-fixing

character of these open price associations. The administrative order of June 9, 1934, has not been extended to cover open-price associations incorporated in prior codes. In a large number of industries, the waiting-period device is still retained, and prices of all vendors are filed with the code authority and not with a disinterested third party. There has been complete failure to observe the guiding principles set forth by the Supreme Court in the *Maple Flooring Manufacturers' Association case* (268 U. S. 586). We have not limited the filing of prices to past transactions, but we have made the open price association the method for promoting collusion on present and future prices. We have permitted this method in a wide range of industries where its use can foster only monopolistic practices. It should be promptly stricken from all codes and only reinstated when properly circumscribed to prevent unlawful use. The need for this change is apparent to all purchasing agents because never before has there been such striking uniformity of prices for important commodities.

RETAIL PRICE-FIXING SCHEMES

We may now turn to a consideration of price-fixing devices in the more important retail codes. In the general retail code the bottom limit of competition is net invoice cost or market, whichever is lower, plus 10 percent to partially cover labor costs. In the Retail Drug Code, it is fixed at the manufacturer's wholesale list price in dozen lots. In cigarettes we find a cost-plus basis and in cigar retailing, the manufacturer's list price. In the book-selling trade, the principle of resale price maintenance is approved. In retail lumber, coal, groceries, and automotive vehicles there are various price restraints on competition. At this hearing, we may discuss only some of the basic principles of price fixing found in these codes.

"ONE MAN'S MEAT"

Inconsistently, the most ardent retail supporters of the loss limitation section in the general retail code are bitterly opposed to all forms of price fixing in manufacturing codes. The purpose of article VIII of the retail code is to eliminate the use of loss leaders. No greater tempest in the distribution teapot was ever brewed than this contest over loss leaders. It is difficult to get any common agreement as to the accepted meaning of the term. It may mean the sale of an article below net invoice cost, below net invoice cost plus the average cost of doing business in the trade, or below net invoice cost plus the average selling costs of the individual retailer. These conflicting viewpoints are very delicately reconciled in the retail code in this language:

"In order to prevent unfair competition against local merchants, the use of the so-called 'loss leader' is hereby declared to be an unfair trade practice. These 'loss leaders' are articles often sold below cost to the merchant for the purpose of attracting trade. This practice results, of course, either in efforts by the merchant to make up the loss by charging more than a reasonable profit on other articles, or else in driving the small merchant with little capital out of legitimate business. It works back against the producer of raw materials on farms and in industry and against the labor so employed."

In subdivision 1 of the same section, it is stipulated that the selling price should include an allowance for the actual wages of store labor and this allowance has been fixed at 10 percent. Subdivision 2 practically denies this so-called "protection" to retail establishments in small communities which are not a part of a larger trading area.

A THEORETICAL AND PRACTICAL IMPOSSIBILITY

Seldom indeed has so much economic sophistry been packed into a single code provision. Every intelligent merchant knows that very little merchandise, except in normal clearances, is sold below net invoice cost. This fact is confirmed by every comprehensive official and private investigation. It is, of course, true that a very large amount of merchandise is sold below net invoice cost plus the average cost of retailing and a still larger amount is sold below net invoice cost plus the selling costs of the smallest retail units. We have said that price fixing is a theoretical and practical impossibility in manufacturing when supply and demand cannot be controlled. Similarly, in retailing, there is no method of controlling the excessive multiplicity of selling outlets, nor of regulating retail competition by control of price. It is futile policy to attempt to remove thousands of inefficient retail units from the normal inescapable hazards of competition.

PRICE FIXING HITS THE "INNOCENT BYSTANDER"

Moreover, it should be noted that although the claimed and sole purpose of the minimum price provisions as stated in the quoted preamble is to eliminate the so-called "leader", nowhere defined, the price prohibition is in fact directed against every one of the hundreds of thousands of articles dealt with in the retail trade, whether trade marked or not, branded or otherwise, comparable or non-comparable with other merchandise, and wholly without regard to whether or not, under any possible definition, the goods could be regarded as a "loss leader."

An undefined evil is set up with respect to one type of merchandise in order to accomplish a different object, i. e., price restriction on every item in practically every merchant's stock without regard to the basic principles of his operation or his customers' needs.

A PREMIUM FOR STUPIDITY

When we set up a legal minimum, we remove the economic penalties of direct loss for engaging in ignorant and stupid price competition. We place a premium upon merchandising stupidity. Retailers are tempted to seek trade by advertising that their prices are the lowest permitted by the retail code.

DISCRIMINATION AGAINST LOW-COST STORE

Statistics prove and nobody can fairly deny that a cash-and-carry store rendering a limited service can do business at less cost and afford to sell goods cheaper than a credit and delivery store or one which gives more service.

The high-cost operator under the code can select certain articles in his stock and advertise them at the code minimum, with the assurance that the low-cost operator cannot offer the goods at a lesser price which should reflect the normal and proper differential between the cheaper and more expensive methods of operation. This enables the high-cost operator to give the false impression that he can and does sell his merchandise generally, plus his added service, at as cheap a price as the low-cost competitor.

CODE ACTUALLY MULTIPLIES "PRICE LEADERS"

Minimum price fixing has thus created a new form of unfair trade practice by the creation of deceptive "stop-loss leaders." The efficient and economic low-cost operator has been deprived of the right to protect himself from the false impression thus created. Before the code, by the application of the natural price corrective based on the inherent differential in cost of operation, such uneconomic price raids ended quickly. Now, exploitation by the high-cost operator at the expense of his competitor and, ultimately, the public, is encouraged and this form of uneconomic warfare is waged on a wider front and over a longer period. There is no social good in subsidizing the competition of the marginal fringes of retailing.

LOSS IS ITS OWN BEST MEDICINE

The sale of merchandise below net invoice cost is not fundamentally different from expenditure of an equivalent amount for advertising. If a merchant spends too much for advertising, or if he sells too much merchandise below cost, he suffers the normal economic penalities of such action. If either form of advertising is productive of additional volume in sufficient amount, it permits lower prices for the aggregate of the merchant's stock. In both retailing and manufacturing, the sale of particular articles at or below cost is wholly economic if the final results are commensurate with the expenditure. When a legal minimum is set and enforced, it causes many articles which formerly bore profitable margins to be sold at the minimum price; and in the last analysis we have simply shifted the incidence of the advertising expenditure. There is no final net gain to either the small or large retailer. Some men are born merchants; others become merchants; and the remainder cannot be made merchants by legislation or by code.

OVERCHARGING FORECASTS BUSINESS FAILURE

The statement that sale of particular merchandise below cost results in overcharging on other merchandise is a rank misrepresentation of the elemental facts of merchandising. It assumes not only an extremely gullible public, but it ignores the nature of competition in retailing. The aim of every true merchant is to find the price levels which will move the maximum quantity of goods at the greatest aggregate profit. There is no quicker road to business failure than to

ignore competition and overcharge the customer. It would be just as rational to claim that when style changes cause the disposition of a stock at a loss, the retailer overcharges his customers on the popular and fast moving items. This wholly untenable theory has no recognition in manufacturing and it is not recognized by any intelligent retailer. It has been the stock "argument" of price fixers for more than a generation.

ALL RETAIL MERCHANTS KNOW

All retail services, like manufacturing production, are produced under conditions of constant, variable, and joint costs. When we fix the limit of retail competition at net invoice cost plus 10 percent, or at any other arbitrary and uniform percentage, we are setting up legal barriers to the operation of these costs. Few retail organizations have developed their costing to the point which permits mathematical application of the principle of differential costs. Most real merchants have only an intuitive knowledge of the subject. But we all know that a substantial part of retail profit is obtained by sale of large quantities of merchandise at prices which permit only a slight margin above the cost of goods and direct selling expenses. On this basis there are hundreds of individual articles which can be sold advantageously at less than cost plus 10 percent. In a strictly cash retail business, most of these costs are lower than in a credit business and the limitation constitutes a direct discrimination against the cash method of retail operation. There is no economic wisdom in denying any retailer the right to determine his own prices in any lawful way which may increase his profits. This provision in the retail code is price fixing of exactly the same nature found in the cost restrictions of the manufacturing codes.

PUBLIC SERVED BY LOW "JOINT COSTS"

The theory of joint costs is applicable to all multiproduct retailing. It would not be considered sound practice to prohibit the manufacturer who produces byproducts from selling these byproducts at lower prices than the competing manufacturer who produces the same articles as his principal product. We have never accepted the principle that the integrated producer is to be denied the right to sell all parts of his output at whatever price his differential and joint costs may permit or may make necessary. We have never protected the single product manufacturer from the competition of the multiproduct manufacturer, except in the case of unreasonable restraints under the antitrust laws. The primary objective of economic policy hitherto has been to set up no barriers to the reduction of costs and prices in order to promote greater consumption, more production, and more employment.

TAIL WAGS DOG

In our distribution codes we have denied this basic principle. We have set up special price protection in the Retail Tobacco Code, when only about 20 percent of the tobacco products are sold in stores which are exclusively tobacco stores. In the trade-book field, only about 30 percent of the output is sold by the exclusive bookstore. In the drug field, a substantial part of the retail sales are made by units other than drug stores. We have attempted to prohibit the application of differential and joint costs in multiproduct retailing in order to protect the highest cost segments of the retail trade. In the Book Code and in the Tobacco Code we have accepted the principle that the tail must wag the dog, and the general public must pay the bill.

IN DRUG STORES FOR INSTANCE

We spend the taxpayer's money to study the facts of distribution and when we draw distributors' codes we proceed to ignore the facts and set up systems to extract unnecessary additional sums from his pocketbook. The retail drug trade survey is a case in point, although part of the expense was financed by the industry. The typical drug store is a multiproduct retail establishment. According to the St. Louis survey, only 12.2 percent of the volume of selected stores was obtained from sale of packaged medicines, 3.2 percent from hospital supplies, 5.4 percent from sundries, 8.5 percent from toiletries. Over 26 percent of the business was from very profitable fountain trade and about 19 percent from tobacco departments which are distinctly profitable. The package-medicine department, which is one of the focal points of code price fixing, was found to be very profitable, although many individual items were sold at very low prices. The toiletries de-

partment was in the "red" for the stores as a group but some stores showed a small net profit. In drug store operation, the profitable departments carry the unprofitable departments. In this trade we fix the bottom limit of retail competition at the manufacturer's dozen-lot price and many manufacturers had no dozen-lot price before this code. Simply stated, the policy means that it is deemed unsound to let any profitable department bear the expense of advertising incurred in the low-margin departments. The plea for price fixing was based on the allegation that the retail drug trade was threatened with extinction by competition of loss leaders. Yet the undisputed facts show that no branch of the retail trade has a lower business mortality rate.

A GOOD SMOKE, A GOOD BOOK

The typical book and tobacco stores for which price protection has been established are not the multiproduct stores, but bookstores sell a minor part of the trade books and tobacco stores sell a still lesser part of the tobacco products. In books, only a few titles have ever been subjected to severe price competition and there has always been opportunity to obtain profits of substantial amount on a wide range of titles. Many outside factors such as the radio and the movies have been responsible for most of the troubles of this trade. In tobacco products, we have an infinite variety of retail outlets, such as drug stores, news stands, hotels, restaurants, etc. Their joint costs and differential costs are such that they have always been able to make satisfactory profits by selling at lower prices than the exclusive tobacco store.

MANUFACTURER COERCES RETAILER

But the cardinal error of policy has been the grant of power to manufacturers to fix retail prices. In the drug and cosmetic trade, manufacturers have sought to fix and control retail prices. The dozen-lot provision gives them power to alter at will the basic prices. Since thousands of drug and cosmetic articles are bought in greater than dozen lots by most drug stores, we have given effective control of price to the manufacturer. In the Book and Tobacco Codes we have sanctioned systems of resale price maintenance. At the group II hearings last March we presented the bare outlines of the argument against this form of economic stupidity. It may again be useful to summarize very briefly from that statement.

RESALE PRICE FIXING ILLEGAL

Resale price-fixing agreements have been held consistently by our highest court to be either unlawful restraints upon common law rights of alienation or unlawful restraints of trade under statutory law. Powerful lobbies of price-fixing manufacturers have sought unsuccessfully for over a generation to obtain legalization of this method of price fixing by Congress, and each attempt has been a flat failure. The only important retail proponents have been the booksellers and the retail druggists, and the latter have been largely the mouthpiece of the manufacturer. Farmers, consumers, and organized labor and intelligent retailers everywhere have opposed this method of making the retailer a vending machine for the manufacturer.

UNIFORM PRICE UNFAIR TO CONSUMER

There are many powerful economic arguments against resale price fixing but our present purpose will be served best by emphasizing only one. Resale price fixing assumes that the manufacturer can fix fair uniform prices for all retailers who handle his product. No manufacturer knows true retail costs of selling particular items, nor has he any way of determining what percentage of profit is fair and reasonable. No uniform price can be a fair price because the costs of selling at retail are largely lost in the intricate maze of differential and joint costs and cannot be determined except by detailed analysis of each case.

SELLING COSTS VARY WIDELY

Retail selling costs differ widely in small areas because of differing types of retail outlets such as department stores, grocery stores, drug stores, specialty stores, gift stores, etc., because of differences in types of service rendered such

as cash and carry, cash and delivery, credit and delivery and full and limited service to the customer; because of wide variations in rapidity of turnover; and because of the infinite differences in managerial ability. Any uniform price denies the principle of differential and joint costs in distribution and inevitably it is fixed at the level satisfactory to the full-service and highest cost distributors.

SUBSIDIZING HIGH RETAIL COSTS

It constitutes a subsidy to high cost retailing and freezes prices at levels which immeasurably delay progress toward cheaper and better methods of distribution. Price fixing in the Tobacco Code prevents greater production and works back eventually to the grower of tobacco leaf. In the book trade it makes the reading of new books practically, prohibitive to great masses of people and it penalizes authorship by reducing sales and royalties. We have subsidized culture by making it too expensive for the common people.

SUMMARY

The road to price freedom

In conclusion, we may appropriately summarize our basic objection to all forms of price fixing found in these codes of strangled competition.

We have reached a point in our business recovery where price fixing constitutes an insuperable barrier to continued recovery.

Neither industry nor trade can make any notable progress half-shackled and half-free.

We cannot remove the leavening forces of competition without some adequate substitute.

That substitute is neither economic combinations under codes which foster monopoly and monopolistic practices nor is it progressive encroachment of government upon the right of private contract.

Prices are merely the symbols but not the causes of economic maladjustments.

If we cannot control supply and demand, we cannot achieve economic control of prices.

Our price controls have thrown the economic system out of balance.

They are intended to, and actually do, raise prices, even when imperfectly enforced.

Partial enforcement causes gross unfairness.

Increased prices reduce consumption which, in turn, reduces physical production and employment, and the alleviation of unemployment was the main objective of this act.

Price fixing ignores and denies the fundamental laws of joint, differential, and residual costs.

It stifles individual initiative and engulfs private enterprise in a morass of doubts and fears.

Our economic wealth was created by the application of time-tested principles of political and economic liberty.

To preserve it from the insidious forces of destruction, we need to turn at once to price freedom in both production and distribution.

Senator KING. I would like to ask a question. I have read your address, and I think it properly should go in the record. You examined, as I recall from that address, as well as from your testimony today, many of the codes?

Mr. WALKER. Yes, sir.

Senator KING. That have been promulgated?

Mr. WALKER. Over 300 codes of the manufacturers from whom we buy; we are directly affected by those codes.

Senator KING. You have examined those?

Mr. WALKER. Yes, sir; and many others besides.

Senator KING. Many others. To what extent did you find in the codes the following practices: open prices?

Mr. WALKER. About 137 codes. That is the last count I made. It is rather difficult to keep up to date on those things. The last count I made I believe showed 137 codes that had the open-price

associations. I think, Mr. Henderson, the research director of the N. R. A., published the complete story at the time of the last hearing. That is the document [indicating].

Senator KING. You have seen this document [indicating]?

Mr. WALKER. Yes, sir. I am not sure that he gives all the open-price associations there. I compiled my list by counting the number in one trade service.

Senator KING. Just pardon me one moment. He states that 560 of the 677 codes. I am reading from part 3, page 101, have some sort of provisions relating to minimum prices and cost methods, and then analyzes others and breaks down that generalization.

Mr. WALKER. Yes, sir. That does not give the exact number of open-price associations as such. I think my figures are substantially accurate. Before the general order was issued that I mentioned a few moments ago, there were 68 codes approved with waiting periods varying all the way from 48 hours to 10 days. I am not up to the minute on what has happened since that time with respect to the other codes, but my best guess is about 137.

Senator KING. Do you regard selling below cost as being a proper inhibition in the code? He states, as I see here, 403 of the codes of the 677 codes have provisions prohibiting it.

Mr. WALKER. Mr. Chairman, the first question you have got to answer on a prohibition of that kind is what is cost. And in the 37—I think it is 37 and odd—approved accounting systems, approved by N. R. A., we have attempted to define the determination of cost. And there is never any real difficulty in ascertaining the direct cost of labor and the direct cost of raw materials. The difficulty always comes in the estimation of overhead costs, because no one knows what his overhead costs are going to be until he knows how much he can produce and how much he can sell. But in many of these codes under standard and approved accounting systems, approved by officials of the N. R. A., we have definite stipulation regarding the amount of overhead which may be included; specifically the Builders' Supply Code, I believe, is one of them. In the Paint and Varnish Code—I may not have the correct technical title—raw materials are to be priced on the basis of reproduction values. In other words, if I buy linseed oil at 6 cents and the current price is 10, or whatever it might be, in figuring my cost, if I am a paint manufacturer, I am required to take that current replacement value. That provision I think has been incorporated in several other codes. In the graphic arts industry we have gone much further.

This week I received a pamphlet of perhaps 100 pages, with types of every kind of engraving done in the United States, and with the suggested prices which should be charged for every one; also prices for quantity; and accompanied by a letter from the code authority saying that if this schedule was enforced it would have a wonderful effect upon the industry in the community.

Senator KING. One of the witnesses before us, speaking about the graphic arts, called attention to the fact that there was difficulty in determining the basis of cost accounting, and they reprimanded him and brought him before the compliance organization because he did not include the proper figures for obsolescence and for the cost of the plant which he purchased. Do you regard that as one of the questions that needs consideration in legislation?

Mr. WALKER. That is another one of the things that requires, sir, an arbitrary judgment. I do not believe that any individual can sit down and determine for an entire group as complicated as that industry what the proper charge might be.

I might add that suggested prices given out by this authority, whether you do your printing in San Francisco or in New Orleans, or New York City, all of these suggested prices are said to include an element of fair profit, whatever that might be. It does not make it clear just what the profit is, but I suppose somebody in the industry might have a fairly good idea what the profit might be.

Senator KING. Is there anything else you care to say?

Mr. WALKER. I believe that covers it. The main argument is in the brief.

Senator KING. Are there any other witnesses present?

(No response.)

The committee will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 3:30 p. m., a recess was taken until tomorrow, Tuesday, Apr. 16, 1935, at 10 a. m.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

TUESDAY, APRIL 16, 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 (chairman), King, George, Costigan, Gerry, Guffey, Couzens, Keyes, La Follette, and Capper.

The CHAIRMAN. The committee will be in order. Is Mr. Harriman present?

(No response.)

Senator GEORGE. Mr. Chairman, before you call the witness, I have here some letters that I wish to enter in the record because I have not called these manufacturers from Georgia. Most of them are from the State.

I wish to put into the record a statement by the president of the Southern Brighton Mills, manufacturers of cotton and special fabrics, of Shannon, Ga., and Atlanta, Ga., protesting against the continuance of the N. R. A.

APRIL 12, 1935.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: Some days ago I forwarded to Senator Pat Harrison, as Chairman of the Senate Finance Committee, a copy of a letter which I had addressed to Mr. George A. Sloan, chairman of the Consumers Goods Industries Committee, with respect to a resolution which had been passed by that committee and which had been transmitted to the Senate Finance Committee. I desire also to place a copy of this letter in your hands, as a member of the Senate Finance Committee, and I respectfully request that you endeavor to have this letter made a part of the record in connection with the investigation of the National Recovery Administration which is now being conducted by the Senate Finance Committee.

Very truly yours,

JULIAN K. MORRISON, *President.*

APRIL 3, 1935.

Mr. GEORGE A. SLOAN,
Chairman Cotton Textile Code Authority, New York.

DEAR MR. SLOAN: I have for acknowledgment your letter of April 1 requesting an expression of my approval or disapproval of the resolution recently adopted by the Consumers Goods Industries Committee, in connection with the matter of the extension of the National Industrial Recovery Act for a period of 2 years. To give my approval to such a resolution would be entirely inconsistent with the views which I have held since the inception of the Recovery Act. I have been one of those who from the very outset, and quite aside from a feeling of doubt as to its constitutionality, have felt that the legislation was unsound and unworkable and would wholly fail to correct the evils from which we were, and are, suffering.

The present sad state of affairs in this country would seem adequately to prove that these doubts were not without foundation.

Certainly it cannot be argued that conditions in our own textile industry have tended toward improvement under the bureaucratic control which has been applied under the provisions of the code of fair competition which was approved by the National Recovery Administration for this industry. No man even casually acquainted with the facts can argue that our present state is not infinitely worse than that which existed before the adoption of the code for this industry. As I expressed it to a member of the code authority to whom I wrote just the other day, it seems to me that we have sold our birthright for a "mess of pottage"—but that the "pottage" has not been delivered.

The net result to this industry of the operation of the Cotton Textile Code has been a Nation-wide textile strike which cost the industry hundreds of thousands of dollars at a time when it could least afford it; a restriction in the demand for our products by reason of the excessively high cost of production resulting in prohibitive prices, which has meant the virtual elimination of the marginal consumer; and it has further made us the victims of a virtual flood of imports from our foreign competitors, who, being entirely free of the restrictions which are imposed upon us, are able to so far undersell us that the hope of being able to compete is nonexistent. Furthermore, our export markets have all but disappeared and it seems entirely improbable that such feeble attempts as may be made through the medium of reciprocal trade agreements with foreign countries will serve even partially to help us recover these markets which seem irrevocably lost.

I do not challenge the statement made in paragraph 1 of the resolution to the effect that abolishment of the codes now would create another downward spiral of deflation and financial chaos, because I think that is entirely likely, but I do believe that sooner or later we must pay the price of this costly experiment. Nor do I challenge the statement that this step would temporarily check recovery and perhaps temporarily disrupt confidence; ultimately, however, I believe that the abolishment of the National Recovery Administration would tend to restore confidence and thereby bring about a recovery which, in my opinion has been seriously retarded during the past 2 years. However, I do challenge the statement that industry, labor, and the public have adjusted themselves to the codes. Certainly present conditions in the cotton textile industry would not indicate a very high degree of adjustment.

Furthermore, I challenge the statement in paragraph 2 (a) of the resolution to the effect that the provisions of codes relating to hours and wages, the abolishment of child labor, and other unfair conditions have been enormously beneficial to labor. As to the matter of child labor, no reasonable individual can doubt that the abolition of such child labor as existed prior to the National Recovery Act has resulted in great social good. It has been definitely proven, however, that a virtual political mountain has been created out of an existing molehill. The elimination of such child labor as existed in industry would have been easy of accomplishment by other means than the enactment of the National Recovery Act. As to the provisions of the code relating to hours and wages, however, and their beneficial effect to labor, all existing records seem to prove conclusively that the condition of unemployment which existed in the country prior to the enactment of the National Recovery Act has not been improved, and certainly it cannot be maintained that the purchasing power of the wage-earning classes in this country has been increased. It is, of course, true that the hourly wages paid in industry have been enormously increased, but this has not resulted in any universal increase in weekly earnings. I contend that rather than having been enormously benefited, the condition of labor has actually been damaged by National Recovery Act. Of what benefit is it to the wage earner to have his hours of labor drastically reduced and his wages per hour tremendously increased if he is not permitted to work the full allotted time? Furthermore, of what advantage is it to him to receive a greatly increased hourly wage if his weekly earnings, as compared to pre-National Recovery Act conditions, cannot be maintained or even increased? The fact is that real wages being paid in industry in this country today have suffered a very sharp decline under the National Recovery Act. Through enormous increases in the cost of the necessities of life and those essentials which go into the workingman's budget, a tremendous reduction in his purchasing power has been very effectively accomplished.

I do not, however, challenge the propriety of the minimum wage. In theory the provision is to be greatly desired, since only through some such means does it seem possible to control the unscrupulous employer, who has in the past given no indication of conscience in his dealings with his employees. From a practical standpoint, however, the establishment of minimum wages in industry would

seem to be open to grave question. The theory that labor is a commodity and is directly controlled by the supply of and demand for it—has never been disproven.

As to paragraph 2 (b) of the resolution, I seriously challenge the efficacy of any provision by which industry will ever be given the right effectively to control its production and check, or eliminate, competitive practices, both of which would be necessary to make possible the supporting of the burdens entailed in other restrictive provisions of the average code of fair competition. Under the bureaucratic system of control which has been established under this act, it has been virtually impossible to obtain the relief which has been proven to be necessary in the matter of these restrictive measures. It is the history of any bureaucratic form of government that its powers increase rather than diminish as time goes on, and it would therefore be reasonable to expect that it would become increasingly difficult to obtain the cooperation from these bureaucratic sources which would seem to be necessary if industry is to obtain the full benefit of the so-called "partnership" into which it has entered with the Government.

As a clear example of the above I cite the failure of the Code Authority of the Cotton Textile Industry to press a petition for a reduction in production presented to it by the print cloth group at a meeting of the code authority held in the forepart of December 1934. The reasons given by the code authority for its unwillingness to present such a request to the National Industrial Recovery Board, and to press for its allowance were, among others, that the time was not then propitious for such a request; that Congress was about to convene on January 3, that it would have before it such measures as the Wagner labor disputes bill and the Black 30-hour bill. Furthermore, that it was generally known that the administration was pressing for a 36-hour week maximum, and that by and large, on the grounds of a "political expediency" it did not seem wise to press such a request at that particular time. It was argued before the code authority, however, that this section of the industry was in dire need of some restriction of production; that stocks were beginning to pile up; that production was far in excess of current demand; and that the price structure was already beginning to reflect this condition. It was argued that "political expediency" or not, this industry was being gradually bled to death and that we had much better take the consequences of such a movement no matter what they might be, than to suffer a slow death by strangulation. Notwithstanding these arguments the code authority did not believe the request should be presented, and it was not done. The result of that failure on the part of the code authority to act on a specific recommendation of a given group within the industry has been that the price on 64/60 print cloths declined from 6¾ and 6⅞ cents per yard to 6 cents per yard in the face of alarming weekly increases in the stocks of goods, and the industry was finally forced to demand that corrective measures be adopted notwithstanding the fact that "political expediency" was more pronounced at the time the request was finally made than it was at the time it was first proposed.

Instead of being about to convene, Congress is actually in session, and the Wagner labor disputes bill together with the Black bill are still matters which are currently and actively before the House. Again, therefore, we have been guilty of locking the stable door after the horse has been stolen, and the result of the curtailment which has finally been ordered will in all probability serve only to freeze the price of print cloths at the ruinous levels to which they have dropped, through the failure of the bureaucratic system under which industry is being forced to operate under the National Recovery Act.

It is my well-considered opinion that no means have yet been—or will be—discovered by which the simple, fundamental, and immutable laws of supply and demand and the survival of the fittest can be circumvented. To my way of thinking that man is much more courageous who is willing to admit his mistakes and his errors in judgment and who is willing to accept the consequences, whatever they may be, than is that man who realizing that he has made an error, nevertheless persists in trying to salvage something out of a bad bargain. No one can doubt that chaotic conditions will in all probability follow abandonment of the present scheme but it would seem wiser to accept the chaos, even though in some instances—perhaps even in many instances—the consequences would be fatal, than to continue our attempts to work out a fallacious policy which can only lead us to an eventual condition which in all probability will be far worse than that condition which might temporarily exist immediately after we had determined finally to retrace our steps along a path which has been leading us up a blind alley.

Very truly yours,

JULIAN K. MORRISON, *President.*

Senator GEORGE. I wish to file for the record a letter from Mr. John M. Gunn, of the Peerless Basket Co., of Cuthbert, Ga., a small town and a small enterprise, specifically pointing out the impossibilities of operation under the National Recovery Act so far as his line of business is concerned.

FEBRUARY 21, 1935.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: Knowing that you are vitally interested in all phases of business in the South and the facts controlling labor conditions, we beg to submit the following vital information.

Under the National Recovery Act plan, our basket-manufacturing operations come under the Lumber and Timber Products Code, administered by Standard Container Manufacturers' Association, an old organization whose members are the manufacturers of fruit and vegetable crates, boxes, and baskets, in Alabama, Florida, and Georgia. In the beginning, the men who finance and operate the 60 individual mills had confidence both in the plans and in each other and the percentage of code compliance was high. Having had unfortunate experience after an honest effort to make it succeed has destroyed so much of that confidence, necessary for success, that the future success of it or any other similar plan is doubtful to many of us who were hopeful in the beginning.

There are a number of reasons for this break-down of confidence, but the following, quoted from a personal letter from the manager of this association to the National Industrial Recovery Board, gives the most important ones:

"The manufacturers have but one outlet for sales, the grower and shipper of fruits and vegetables who are subject to the hazards of flood and drought, extremes of heat and cold, disease and insect depredations. No more packages can be sold at any price than shippers may employ profitably in marketing their produce.

"These cumulative losses have fallen very largely upon the package manufacturers, through low prices for their goods and inability to make collection of accounts. In addition, the industry has suffered from excessive taxation on its reserve timber supply.

"* * * Packages were sold far below the out-of-pocket cost and with some resumption of manufacturing, the buyers who are generally organized, and buy cooperatively, refuse to recognize justification of our minimum wage of 23 cents an hour as a proper element of cost when they employ common labor at 10 cents. * * *

"* * * Figuring the 1934 product at approved minimum (cost-protection) prices, it has been ascertained that 20 representative manufacturers suffered an aggregate loss of $280,000" (not including some of the larger units).

The interest of the present employed laborers as well as those whom all of us hope to see employed soon will not be served by regulations which cause bankruptcy to their employers. There may be instances where laborers have been oppressed but during the past 18 months there has been such oppression brought to thousands of small employers in the South as to result in their near annihilation. Theoretically, the small operator was to be given protection, but he was not.

Monopolies were not to be permitted, but the trade associations are dominated by the big operators who have written into many of the codes, provisions which give them every advantage and which, if continued, will eliminate their smaller competitors.

Theoretically, we were to limit each employee to 40 hours per week and when more productive hours were needed we were to get additional laborers from the available unemployed. The unemployed in nearly every community have proven to be so unprofitable as to become practically impossible for the small employer.

Theoretically, chiseling was to be stopped, actually countless numbers of men whose business ethics were above reproach have been forced, for their own self-preservation, to resort to new and worse methods of chiseling than were formerly practiced.

Since the greatest number of workers among your constituents are employed by the smaller operators, we are sure that you will consider these facts seriously before casting your vote for blanket continuation of the N. I. R. A.

Yours very truly,

PEERLESS BASKET CO.,
By JNO. M. GUNN.

P. S. Our 1934 experience is covered in the figure quoted on page 2. We employ 50 to 150 local laborers and one year more like 1934 will bankrupt us. We need help.

JNO. M. GUNN.

Senator GEORGE. I wish also to offer for this record a most informative letter from Mr. Schwob of the Standard Tailoring Co., manufacturers and merchants of Columbus, Ga., detailing the actual everyday practice of assessments and efforts of adjustment by his business with the N. R. A.

APRIL 8, 1935.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: You will recall that I conferred with you in Washington on April 2, at which time I stated I was opposed to the extension of the National Industrial Recovery Act. You requested me to write you a letter setting forth the difficulties I had experienced under the administration of the act in connection with my particular business, and my reasons for opposing its extension. This letter is in response to your request.

I am a manufacturer of men's clothing, namely, men's suits, including wash suits, and single pants. My manufacturing plant is located at Columbus, Ga. I operate a number of retail stores in various cities in the South, in which I sell products manufactured exclusively by me. I also do a tailor-to-the-trade business, which is making and selling clothes to individual order. I am the sole owner of the businesses, and conduct my manufacturing business under the name of Standard Tailoring Co. and my retail business under the name of The Schwob Co. Both of these are trade names.

My manufacturing plant is far distant from the centralized clothing markets. These big clothing markets are located principally in Chicago, Rochester, Philadelphia, and New York. I employ in my manufacturing plant normally about 200 workers. There is no reservoir of labor in this community skilled in the manufacture of clothes. My employees are obtained from the local community, but have to be trained over a long period of time before they become useful workers. About 85 percent of them are women. My workers are not discharged during the peak and dull season, but are given continuous employment throughout the year. So far as the State of Georgia is concerned the business of manufacturing clothes is an infant industry.

I am subject to the Code of Fair Competition for the Men's Clothing Industry. The code authority administering this code is controlled by the large manufacturers in the centralized markets. The plants of these large manufacturers are highly unionized by the Amalgamated Clothing Workers of America, a labor union affiliated with the American Federation of Labor. This union and the big manufacturers dominate and control a large majority on the code authority. My manufacturing business is comparatively a small one. It is not unionized by the Amalgamated. I, in common with a number of other smaller manufacturers, and particularly those whose shops have not been unionized by the Amalgamated, believe the code authority is administering this code solely in the interest of the big manufacturers and the Amalgamated and to the serious detriment, if not the destruction, of the smaller manufacturers, particularly those not affiliated with the Amalgamated.

Furthermore, the Amalgamated, through the code authority and otherwise, has harrassed and sought to coerce into affiliation with it those now operating open shops. I wish to give you a few experiences that I have had.

Last April the code authority sent an investigator here to investigate my records to determine whether I was living up to the letter of the code. This investigation was made while I was absent in New York. Upon my return I found he has presented himself at my office and had been given full access to my records and full cooperation by my subordinates. I learned that his attitude was very obnoxious and that his conduct was more like a burly policeman than that of a Federal investigator. The Clothing Code provides a minimum wage of 37 cents per hour and a maximum of 36 hours work per week. I know I was living up to these provisions. This investigator mingled with my workers, talked with them openly, and told them I was a "chiseler." His conduct was that of an agitator rather than that of an investigator. As further evidence of this fact he stood by while the pay envelops were being banded to my employees

and when they received their pay and thanked the cashier he stated openly to them as follows:

"You should not thank them for giving you your pay but they should thank you for working for them."

Again, he snatched from the hands of the workers some of the pay envelops, tore them open, and stated to them that he wanted to see that they were not being chiseled. Furthermore, he openly stated, in the presence of some of my employees, that his investigation would result in my having to pay out thousands of dollars. He openly stated to outsiders that I was a chiseler. This man was very arrogant at all times. The name of this man was Robertson. It was a violation of the law for him to damage my business as he did by any such open criticism. Any information he may have obtained was supposed not to have been divulged to the workers or to the public, but was for the confidential information of the code authority.

Upon my return from New York and being apprised of the matter, I immediately went back to New York and complained to Mr. Bell, executive director of the code authority, of the conduct of the investigator. What, if anything, was done about the matter I do not know. At this time I asked Mr. Bell to furnish me with a report of this investigator, as I desired to know what, if any, complaint of violations were made against me. Mr. Bell stated he would furnish the report to me within a few days. He further told me to go ahead and operate upon the same basis I had been operating until I received further notice from him. In June following I received a report from Mr. Bell of alleged violations of sections of the code applying to the pressers, to the effect that in some cases I was paying a lower wage than the code provided. This complaint was adjusted. I was under the impression that the complaint in regard to the pressers was all that the investigator had made. However, on December 7 following, I received an alleged deficiency bill amounting to approximately $10,000, involving alleged violations of other wage provisions of the code. This deficiency bill arrived after I had manufactured and sold clothes through a period extending over 8 months and during the fall peak season, notwithstanding I had been told by Mr. Bell in April to continue operating on the same basis I was then running. In view of the direction given me by Mr. Bell it was an act of oppression and duplicity on the part of the code authority to permit me to purchase materials, manufacture my products, and sell them through the peak season and then to demand of me payment of this alleged deficiency. If the code authority had any complaint to make it should have been made promptly so that I might have had knowledge of the alleged deficiencies while I was purchasing, manufacturing, and selling during the period named.

Last fall the Amalgamated Clothing Workers of America attempted to unionize my plant. A small minority of the employees joined the Amalgamated. An overwhelming majority of my employees preferred to, and did, form an organization of their own. On December 22, last, the Amalgamated filed with the Atlanta Regional Labor Board a complaint charging me with violating section 7 (a) of the National Industrial Recovery Act. The specific charges were that one employee had been discharged because she was an official of the local union of the Amalgamated and that the management of my company had interfered with union activities of the workers and had discriminated against the Amalgamated and coerced the workers into forming a company union. I deny that I am guilty of any of these charges.

One point I wish to make here is that the code authority's charge of deficiency under certain wage provisions of the code and the charges by the Amalgamated of violating section 7 (a) of the code were apparently timed together and filed against me in the month of December.

Furthermore, on January 7, 1935, the Amalgamated amended its complaint filed with the Atlanta Regional Labor Board by charging violations of certain wage provisions of the code and by requesting the regional labor board to take proper action to secure compliance. In other words, the amendment to the complaint of the Amalgamated involved the exact deficiencies which had been sent to me by the code authority on December 7. Subsequently, the Amalgamated's charge of alleged violation of the wage provisions of the code were referred to the State compliance division of the National Recovery Administration at Atlanta.

Mr. H. Blumberg is vice president of the Amalgamated, and is also on the clothing code authority. Mr. Blumberg was in Columbus on two occasions when the Amalgamated was trying to organize my plant. The alleged deficiencies were based upon the report of the investigator of the code authority above referred to. Since Mr. Blumberg was a member of the code authority, he had access to the

information regarding these alleged deficiencies and undoubtedly in his capacity as an official of the Amalgamated furnished this information as a basis of the amendment to the charges against me before the regional labor board. I know of no other way that the Amalgamated could have obtained this information. I, of course, deny liability of any such deficiencies, but the point I am making here is that if the code authority furnishes information which it has obtained to Mr. Blumberg so that he can use the same in a dispute between me and the Amalgamated, then the code authority is nothing more than an agency of oppression. If Mr. Blumberg takes the confidential information which he obtains as a member of the code authority and uses this information in his capacity as an official of the Amalgamated to harass an employer, then such a situation is intolerable.

In connection with these deficiency charges I wish to call your attention to the fact that they were made originally by the code authority and later by the Amalgamated before the regional labor board and the State compliance division. Thus I was faced with these deficiency charges before three separate Federal agencies at the same time. I might add, however, that the regional labor board refused to take jurisdiction of these deficiency charges.

The point I wish to emphasize here is that apparently the Amalgamated, through its representatives on the code authority, obtained information regarding the alleged deficiencies and used it to harrass me in my controversy with the Amalgamated. The code authority must either approve or at least wink at such practice. As stated above, Mr. Blumberg is vice president of the Amalgamated and is a member of the code authority. No member of the code authority should occupy a triple position of administrator, judge, and prosecutor. Such a situation appears utterly ridiculous, not to speak of unfairness and of the unamericanism involved.

I might add here that Mr. Sidney Hillman, president of the Amalgamated, is a member of the National Recovery Board.

I wish to state some further experiences I had with Mr. Blumberg. Mr. Blumberg made two visits to Columbus last fall, one in October and one in November. I conferred with him on several occasions. I knew that in addition to being vice president of the Amalgamated Union he was also a member of the Men's Clothing Code Authority. When he was in Columbus last fall I had not received the bill of alleged deficiencies from the code authority. I asked Mr. Blumberg whether the report of the investigator who examined my books for the code authority in April showed any deficiencies. To this inquiry Mr. Blumberg replied in substance as follows:

"If you will sign a collective-bargaining agreement with the Amalgamated you can forget about any deficiencies."

This suggestion on the part of Mr. Blumberg was promptly declined by me. This suggestion, to my mind, had only one implication, namely, that Mr. Blumberg, by reason of his position on the code authority, could secure for me immunity from alleged deficiencies claimed to be due under wage provisions of the code, if any, provided I would sign a collective-bargaining agreement with the Amalgamated. The further implication was that if I did not sign up with the Amalgamated I might expect trouble. As a matter of fact Mr. Blumberg went further and stated that if I signed up with the Amalgamated the piece rates then in force in my plant would not be disturbed. I would not purchase immunity by any such dealings.

As stated above, a large majority of my workers preferred to, and did, form an organization of their own. This organization contained in its membership a large majority of all my workers. They demanded that I recognize them as the collective bargaining agency. This I finally did. When Mr. Blumberg found this out he requested that I sign a collective bargaining agreement with the Amalgamated to apply only to my workers who were members of the Amalgamated. The Amalgamated workers constituted a very small minority. I was advised by counsel that I was required, for the purpose of collective bargaining, to recognize the majority group as the collective bargaining agency for all the workers. For this reason, I declined to sign with the Amalgamated.

After I declined to sign with the Amalgamated, Mr. Blumberg stated the sole issue between me and the Amalgamated was organized labor versus company union; that the Amalgamated and its affiliates in the American Federation of Labor fought company unions wherever they reared their heads; and that I would regret within a short time my refusal to sign with the Amalgamated. Mr. Blumberg then informed me of the methods at his command, and intimated that he and his organization would use all these methods against me.

As a result the Amalgamated workers, about 25 or 30, struck on November 10, last, and have been out on strike since. Their places were promptly filled. The

Amalgamated and its affiliates have circularized in this city and others, where I have stores, propaganda to the effect that I am unfair to organized labor. They have put my product on the "unfair" list and "don't patronize" list of organized labor.

They have attempted in many ways to coerce my employees who are not members of the Amalgamated. They have even gone so far as to attempt to get local taxicab companies not to haul these employees to work. They have picketed my places of business.

Since my refusal to sign with the Amalgamated under the circumstances stated, the code authority and the Amalgamated have concurrently pursued me with charges before various agencies set up under the National Industrial Recovery Act. Although I deny that I am guilty, yet if I am finally found guilty by these various agencies, they will publicize me as a violator of the law by removing the "blue eagle" and denying me the use of National Recovery Administation labels, even though I may subsequently appeal to the courts and be found not guilty.

There is no authority in the act for granting or denying the use of "blue eagles" and National Recovery Administration labels. The granting and denial of the use of such insignia is an unwarranted scheme to impose an economic boycott upon an employer for alleged violations of the code even though he may be innocent.

As above stated, I do a tailor-to-the-trade business. Under the code a tailor-to-the-trade is allowed to work his employees 40 hours a week during the peak season for a period of several weeks, provided request is made. Last year I requested such permission, but was denied the privilege, on the ground that my business consisted of only 40 percent tailor-to-the-trade, notwithstanding that during the peak season such part of my business amounted to approximately 80 percent of the total. My workers were demanding that I permit them to work the 40 hours a week in order that they might be able to make more money. The denial of the request resulted in loss of pay to my workers, loss of current and future business to me, and inability of the customers to get their clothes made to order locally.

The particular business which I lost as a result of the denial of the request naturally went to the big manufacturers in the clothing centers, where there is an abundance of labor supply which they employ in peak season and lay off in dull season. This is not possible in smaller communities, for the reason there is no surplus experienced help available. It is necessary in communities like this to give our workers continuous employment to keep our organization intact.

I will not relate any further experiences I have had under the National Industrial Recovery Act, but wish to point out that the Clothing Code and its administration tends to create a monopoly of the clothing industry in the big manufacturers in the large centers, principally Chicago, Rochester, Philadelphia, and New York. This monopolistic tendency has been brought about by a failure on the part of the big manufacturers who wrote the code and by the same group who administer the code to recognize the following factors:

(*a*) The production of men's clothing for the most part is in the highly industrialized centers of Chicago, New York, Rochester, and Philadelphia. A small part of men's clothing is produced in other widely scattered communities, including Columbus, Ga.

(*b*) Producers in the centralized markets possess many economic advantages over producers in the outlying sections of the industry. For example: They have a large reservoir of trained and skilled labor to draw upon. They are able to await demand and then in the dull season they are able to lay off their workers, with the assurance that they will have an abundant supply of skilled labor to draw upon during the busy seasons.

(*c*) The conditions referred to in the preceding paragraph do not exist in the outlying communities, such as Columbus, Ga. In this and other remote sections manufacturers must train their labor and give them continuous employment in order to hold them. The effect is that manufacturers in the remoter areas are engaged in manufacturing clothes long in advance and in anticipation of an unknown demand.

(*d*) Productivity per man-hour is larger in the industrial centers than in remoter sections. This is due to the fact that in the centralized areas there is a background of training incident to the industry extending over a long period of years; whereas in the remoter areas the industry is comparatively new and there is no such background of training and experience.

(*e*) Apprentices have to be paid the minimum wage under the code from the time they are employed, notwithstanding utter want of prior experience. The big manufacturers are not bothered by this question of apprentices, for the reason

that their plants are in centers where there is a large amount of unemployed labor skilled in making clothes. The paying of apprentices under the wage provisions of the code is an added burden of expense to manufacturers in the remoter section where there is no reservoir of trained labor to draw upon.

(*f*) There is a wide difference between the two groups in the character of the product, the methods of production, the machinery used, etc.

(*g*) In the centralized areas manufacturers are close to the supply of raw materials. They can get these supplies delivered for a mere trucking charge. They do not have to travel or maintain agencies in the markets in order to purchase raw material. The reverse is true of manufacturers in the outlying sections. These latter manufacturers are put to additional expense of going to or maintaining purchasing agents in the markets, and in addition thereto have to pay heavy freight charges to get their raw materials delivered.

(*h*) In the centralized areas population is congested. Manufacturers in these sections have many thousands of customers right at their door. This condition does not exist in the South, where the customers of manufacturers are scattered over a wide section.

(*i*) The prevailing wage scale in the various communities where manufacturers conduct their business varies widely. The wages in any community should be somewhat commensurate with the prevailing wage scale.

In my opinion the Clothing Code and its administration by the code authority will ultimately result in a monopoly by the big manufacturers in the North, and will centralize the clothing-manufacturing business in a few large cities in the North. This means the destruction of the industry in the South, including my business in Georgia.

Furthermore, it is my opinion that the code authority, which is controlled by the big manufacturers and the Amalgamated Union, is administering the code selfishly for the benefit of the big manufacturers and for the Amalgamated, to the detriment of the smaller manufacturers and those not affiliated with the Amalgamated.

The Amalgamated seems to think that the National Industrial Recovery Act is a mandate to the clothing industry that the industry shall recognize no labor organization other than itself. The Amalgamated is undoubtedly seeking to extend its control over the entire industry, and apparently is working in conjunction with and with the aid of the code authority.

I believe that no law along the lines of the present National Industrial Recovery Act can be enacted or administered fairly or justly to the various elements of any large industry such as the clothing industry It has resulted in confusion and, in many cases, chaos.

For the above reasons I believe that the National Industrial Recovery Act should not be extended but should be scrapped in its entirety.

I thank you for giving me an opportunity to express my views.

Yours very truly,

S. SCHWOB.

P. S.—I am mailing this letter to you from New York.

Senator GEORGE. I wish to offer a letter from the manager of the Villa Rica Hosiery Mills, of Villa Rica, Ga., a small enterprise, protesting against continuance of the N. R. A. on any terms.

APRIL 10, 1935.

Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

DEAR SENATOR: We hesitate to add ours to the babel of voices that must come to you now in regard to the extension of the National Recovery Act and the various codes, however, self-preservation prompts us to write you briefly.

We have cooperated from the start in trying to live up to our code. It has and is proving a burden under which we cannot much longer operate. We could write at length and in detail, but, while there is a possibility that some good has resulted, we are convinced that its continuance will result in the early demise of the smaller units of the industry, particularly those of the South. There is no need to remind you that we are penalized by a long and expensive freight haul to the primary markets, as well as by the fact that this distance prevents close contact with the customer. We have surrendered the only weapon we ever had in competing with the North and East, that of lower labor costs, and it only remains for us to close up shop and quit unless we are given relief.

We are an old-established plant, operating continuously for over 20 years, now employ 225 people, and beg the right to exist, carry on our business in our own way and to the best interests of our stockholders and employees.

We thank you for your consideration, and will be glad to give you further and detailed information should you desire.

Very truly yours,

VILLA RICA HOSIERY MILLS,
H. G. COLEERS, *Manager*.

Senator GEORGE. And I wish to offer for this record a letter from T. J. Aycock, Sr., of the Vita-Foods, Inc., of Jacksonville, Fla. I know Mr. Aycock personally, as I know the writers of the other letters that I have offered in evidence. This letter sets forth facts which Mr. Aycock states, Mr. Aycock being very reputable, capable, and competent, makes it impossible for him to conduct this enterprise which he and his sons established at Jacksonville, Fla.

APRIL 8, 1935.

Hon. WALTER F. GEORGE,
United States Senator,
Washington, D. C.

MY DEAR SENATOR: I know you are getting an earful these days on the National Recovery Act hearings, though I know you will be interested in a few facts I would like to present to you with reference to the administration of the Mayonnaise Code.

After graduating from Babson Institute in 1930 and Yale College in 1931, my son spent a year in the North trying to get a position with some of the larger companies. This he was unable to do. In 1932 he organized Vita-Foods, Inc., a small produce manufacturing company here in Jacksonville. This company made some progress. It started out with 10 or 12 employees during the first year of existence.

The mayonnaise industry was coded on March 21, 1934. The code was secured through the work of the old mayonnaise institute, which was dominated by Best Foods, Inc., and Kraft-Phenix Cheese Co., manufacturers of advertised brands, and has since been dominated and run by this same crowd.

Vita-Foods, Inc., began cooperating with the code authority with the intention of sticking to the code. My son was appointed chairman of this district organization.

On July 7, 1934, the code authority advised that an emergency existed in the industry; the emergency being caused by Best-Foods, Inc., slashing prices. By reason of this emergency, it was ordered by the code authority that prices be put in effect, which placed advertised brands at 13.4 percent higher than the unadvertised brands.

On July 23, 16 days after the first prices were put into effect by the code authority, this same authority raised the prices on unadvertised brands to a point where the advertised brands were only 8.7 percent higher than unadvertised brands. They stated that their reason for raising the prices of unadvertised brands was on account of increasing prices of oil. As the advertised brands claimed to put more oil in their products than the unadvertised brands, it is quite obvious that increases should have been made in both advertised and unadvertised brands.

The Industry Code No. 349 prescribes the manner in which mayonnaise and salad dressing must be made, and the size containers that it must be put in. In other words; the code authority, dominated by the advertised brands, furnish the yardstick by which the little manufacturer must do business, and then proceeds, through its huge advertising funds, to gobble up the business, and let the little manufacturer dry up.

When the first containers were adopted by the code, the price of oil was approximately 6½ cents per pound. Oil has advanced practically 100 percent since the first containers were adopted. Therefore, the prices at which mayonnaise and salad dressing can be sold in the prescribed containers do not fit the pocketbook of the people, and for this reason and for the further fact that Vita-Foods' unadvertised brands were being offered to the wholesalers within 8 percent of the advertised brands, and by the retailers to the consumer at a less differential, the volume of business of Vita-Foods decreased from 12 to 15 thousand dollars per month to 5 to 7 thousand dollars per month. This loss in volume caused an

actual loss in operation that reached a point where Vita-Foods, Inc., must either quit operating under the code rules or shut up shop.

After the first of this year, this company decided to quit operating under the code, and so advised the code authority. It commenced putting up containers that the public wanted and suited the public pocketbook, and its volume of sales immediately increased to where it could stay in business, and its number of employees increased from 14 to 33.

The code authority, through its regular channels, has started the ball rolling by which they expect to prosecute this company for violation of the code.

In order to further conform to the consumer's demand, this company put on the market Ye Olde Style Dressing, copy of which label I am enclosing, and which product, on account of its label, does not come under the provision of the code, and which is not prepared by the code yardstick. This product immediately met favor by the consumer and is being ordered and reordered in large volume—as volume is computed by small concerns. In the short time of 30 days, consumers in six Southern States have sent in repeat orders for this Ye Olde Style Dressing.

The code authority immediately proposed an amendment to the Mayonnaise Code, as per notice of hearing no. 662–A, copy of which I am enclosing to you.

You will note that they proposed to amend article 8, by the addition of a new section to be known as "section 4," which intended to bring under the code Ye Olde Style Dressing that we are producing, and would be making the production and sale of this dressing a violation of the code.

You will also note that the code authority proposed to amend article 10, making it compulsory to file prices to retailers as well as prices to wholesalers, and to further require that the wholesalers enter into a contract with the manufacturers by which the wholesalers do not sell the products they buy from the manufacturers at a less price than the filed prices. This, if adopted and made a law, as you can readily see, will mean a drastic curtailment of mayonnaise and salad dressing that is sold by the wholesaler; and instead of 69 percent of the products being sold direct to the retailers, in a short while the sales by the big companies direct to the retailers will be of such a volume as to practically eliminate all the small manufacturers and wholesalers.

There never should have been a Mayonnaise Code, if its administration is to be conducted in the selfish interest of the big producers as has characterized the present administration of the present code. Less than 10 percent of the cost of producing mayonnaise and salad dressing is direct labor; and this code, which I understand was prepared and put through by former employees of the big concerns which produce advertised brands, has been used by them to strangle competition.

I am not filing any brief protesting against any of these amendments at the notice of hearing which will be held before the Deputy Administrator in Washington, for the reason that I know it would be useless for a small manufacturer to protest; though, if you and your friends, with the power that you have, can block this scheme to strangle the wholesaler and independent manufacturer of mayonnaise and salad dressing, it will be appreciated by your friends in the South, and I am sure by the American people.

With highest regards, I beg to remain

Yours very truly,

T. J. AYCOCK, SR.

SCHEDULE A. PROPOSED AMENDMENT TO MAYONNAISE INDUSTRY

Amend article 2, section 1 (c) by substituting a new subsection (c) to read as follows:

"The terms "mayonnaise industry" and "industry" mean the manufacture and sale by the manufacturer of mayonnaise, salad dressing, French dressing, Thousand Island dressing, tartar sauce, Russian dressing, and all other products, the basic ingredients of which are the same as contained in the products above enumerated, and which are used for the same purpose and such related branches or subdivisions as may from time to time be included under the provisions of this code by the President of the United States, after such notice and hearing as he may prescribe.

"That article II be further amended by deleting entirely subsection (d) thereof and renumbering the remaining subsections of this article."

Amend article VIII by the addition of a new section to be known as "section 4", which is as follows:

"No member of the industry shall sell or offer to sell any product of the industry not conforming to the standard for mayonnaise or salad dressing, irrespective

of the manner of labeling such product, or whether or not the same shall be labeled by the use of either of such names, if the product itself shall be designed to, or in fact shall resemble in appearance or consistency mayonnaise or salad dressing conforming to such standards, or if the same shall contain such ingredients or shall for other reasons be such that it may reasonably be considered to be deceptive to consumer purchasers."

Amend article X, section 1, subsection (a) to read as follows:

"Each member of the industry shall file with such confidential and disinterested agency as may be designated by the code authority, or if none, then with such an agent designated by the National Industrial Recovery Board, at its office, within 10 days after the effective date of this code, schedules tabulating such member's list prices to retailers for all products of the mayonnaise industry sold by him and all discounts, delivery charges, if any, and terms of sale of any kind based upon such list prices for all sales by such member of the industry including sales to wholesalers and retailers. The said agency shall make such schedules available to buyers as well as sellers without interpretation or comment. Revised schedules of prices, discounts, terms, and conditions of sale may be filed from time to time thereafter with said the agency by any member of the industry to become effective immediately upon receipt thereof by said agent, provided however that any other member of the industry may file revisions of his price schedules and discounts, terms and conditions of sale, which may become effective on the date when the revised price list or revised terms and conditions of sale first filed shall become effective. All schedules must conform to the provisions of this code and all sales made by each member of the industry shall be at the prices and discounts then on file as effective by such member of the industry with the said agency, except as provided in the last paragraph of section 3 of this article."

Amend article X by inserting a new section to be known as "section 7", to read as follows:

"SEC. 7. (a) Inasmuch as approximately 69 percent of the products of the industry is sold by members of the industry direct to retailers and the remainder is sold to nonmembers for the purpose of resale to retailers, therefore in order to further carry out and safeguard the principles of open-price competition, any sale of the products of the industry to a trade buyer other than a retailer shall be made by the member under a contract wherein such trade buyer shall agree either to resell such products in strict accordance with the current price list filed with the code authority by the member selling such trade buyer or to resell in strict accordance with his own price list which shall have been filed with the code authority by such trade buyer in accordance with and following the procedure provided for members of the industry in sections 1 and 2 of this article X.

"(b) Said contract shall further provide that said trade buyer shall not make or permit to be made any direct or indirect price concession to retailers; said term 'direct or indirect price concession' means any variation from the current price list governing the sales of such trade buyer and then on file with the Code Authority, whether by means of a rebate, brokerage, refund, credit concession, allowance, payment, special service, free deal, gift or any other means whatsoever.

"(c) The members of the industry shall, within 30 days after the effective date of the amendment incorporating this section 7 of article X into the code of fair competition for this industry, complete the placing under contract as above provided all trade buyers affected by the provisions of this section."

Amend the Code of Fair Competition for the Mayonnaise Industry by adding a new article thereto to be known as "article XII, damages", to read as follows:

"Recognizing that the violation by a member of any provision of this code will disrupt the normal course of fair competition in the industry and cause serious damage to others, and that it will be impossible accurately to determine the amount of such damages, it is hereby provided that those members of the industry who desire to do so may enter into an agreement among themselves embodying the following provisions:

"SECTION 1. Each member violating any of the provisions of the code shall pay to the treasurer of the Code Authority, as an individual and not as treasurer, in trust, as and for liquidated damages upon determination of violation by the Administrator or by the trade practice complaints committee of the Code Authority, the amounts as set forth below.

"(a) For the violation of any wage provision, an amount equal to the difference between the wages which have been paid and the wages which would have been paid if the member had complied with the applicable provisions of the code;

"(b) For the violation of any hour provision, an amount equal to the wages payable for the overtime at the regular rate payable for the overtime at the regular rate payable under the terms of the code, to the employee or employees who worked overtime;

"(c) For the violation of any labor provision of the code other than an hour or wage provision, $100;

"(d) For the violation of any provision of the code (other than a labor provision), $100; and if the Administrator or the trade practice complaints committee has determined that such a violation has occurred, and the violation continues, $100 shall be paid for every day the violation occurs after said determination.

"SEC. 2. The amount to be assessed as liquidated damages under section 1, subsections (a) and (b) shall be determined by the Administrator or the trade-practice complaints committee.

"SEC. 3. All amounts so paid to or collected by the treasurer of the Code Authority, under the provisions of this article, shall be applied by him as follows: First, if the violation shall have been of a labor provision of the code, equitable distribution of all damages paid therefor shall be made among all employees directly affected by such violations; second, if the violation shall have been of a code provision other than a labor provision, the damages arising therefrom shall be utilized to defray proper expenses of the administration of this article and the balance, if any, remaining in the hands of the treasurer shall be distributed equally semiannually among members of the industry who assented hereto and who have not been determined to have been guilty of a violation of a code provision during the preceding semiannual period.

"Sec. 4. Assent to this article by any member shall be evidenced by a signed statement signifying assent, filed with the Code Authority. Failure to assent to this article shall not deprive any member of any right or privilege under the code. By so assenting, each member agrees with every other member and the treasurer, individually.

"(1) That violation of a code provision shall breach this agreement and shall render the violator liable for the payment of liquidated damages as herein provided;

"(2) All rights and causes of action arising hereunder, are assigned to the treasurer, individually and in trust; and

"(3) That the treasurer, as such assignee and as attorney-in-fact for each assenting member, may take all proper legal action concerning damage found due hereunder.

"SEC. 5. The Code Authority may waive liability for payment of liquidated damages for any violation it finds has been innocently made and resulting in no material injury.

"SEC. 6. The treasurer of the Code Authority, as an individual, and not as treasurer, by accepting office, accepts the trust established by this contract and becomes an assenting party to this contract by filing his acceptance with the Code Authority and agreed to perform the duties of trustee hereunder until his successor in office shall have been appointed.

"SEC. 7. Nothing contained herein shall be construed or applied to (*a*) deprive any person of any right or right of action arising out of this code, or (*b*) relieve any member of the industry from any contractural or legal obligation arising out of this code or of the act or otherwise; nor shall violation of this agreement by an assenting member be deemed a violation of the code, so as to subject the violator to any consequence arising under section 3 (*b*), section 3 (*c*), or section 3 (*f*) of the National Industrial Recovery Act, nor to any criminal prosecution of any kind.

"SEC. 8. When the majority of the members who have assented to this article in any particular trade area petition the Code Authority that they be relieved from the effect of their consent to this article, the Code Authority shall thereupon cancel the effect of this article on all the members in that trade area, and this article shall not be effective upon the members in such trade area, regardless of any prior consent hereto.

"The existing article XII of the code be renumbered to read 'Article XIII, Modifications', and that the remaining articles of the code be renumbered to read 'Article XIV, Monopolies, etc.', 'Article XV, Price Increases', and 'Article XVI, General'."

Senator GEORGE. I wish to offer a letter from Mr. Walter Estes, of the Estes-Wolcott Co., Inc., of Rex, Ga., manufacturers of porch swings and porch rockers, and so forth, pointing out the objections

to the bill now before the committee or the extension of the National Recovery Act as it now stands.

APRIL 11, 1935.

Senator WALTER GEORGE,
Washington, D. C.

DEAR SENATOR GEORGE: I have just read a copy of bill S. 2445, to amend title I of the National Industrial Recovery Act, introduced by Mr. Harrison. I cannot refrain from writing to you this protest and to urge your efforts to prevent the enactment of such a law.

It is impossible for me to find words to express the weight of my conviction as to the harm and danger involved in this proposal. The original National Industrial Recovery Act was a "noble experiment" that had possibilities of good, but was so incapably administered by the delegation of authority to such hopelessly incompetent appointees, that the result has been doubtful if not positively negative.

The broader authority given to these incompetents by this new proposal will so completely tie the hands of industry that no one will want to go into business and everyone will get out, if and when he can. There will be no incentive to expand or invest in business. The hope of financial reward from investment and effort has been and is now rather far-fetched, due to the depression and taxes. If industry is to be tied, bound, and shackled by inexperienced and unpractical theorists there can certainly be no pleasure in business, then why invest, or even carry on?

I will have to admit that the proposed bill is not altogether digested with one reading, but enough to see the danger.

Section 6 (f) provides for assessments for administration of codes.

Section 12 (b) provides penalties for violation and due to the fact that so many contingencies arise that cannot be anticipated, slight violations cannot be avoided, especially in small industries.

Section 12 (d) is a perfect set-up for persecution by unscrupulous attorneys and disgruntled employees.

These are a few samples of trouble makers that occurred to me on first reading. The original bill was bad enough that it should be allowed to die a natural death on June 16, or at most retain only the best of it. It has been burdensome enough to those who have tried honestly to live up to it. The thought of having so much more power given to the type of administrators with which we have had to deal is positively discouraging.

I believe this is a general sentiment and I hope you will use all the power at your command to prevent the enactment of this proposed bill.

Yours very truly,

WALTER ESTES.

Senator GEORGE. There are three out of the State letters that I wish particularly to put into the record because they shed light upon the actual everyday operations of National Recovery Administration, and Mr. Chairman, after all, that is the test.

The CHAIRMAN. Very well. All of those will be in the record.

APRIL 8, 1935.

Hon. WALTER F. GEORGE,
Senate Finance Committee, Washington, D. C.

HONORABLE SIR: From all appearances the Industrial Recovery Act is in process of rejuvenation as Government higher-ups unquestionably feel that it is a worthwhile move.

As a small manufacturer, employing between 15 and 50 men, depending upon seasonal demands, we feel it our duty to express to you our views on this subject. There are possibly several hundred manufacturers in our particular industry of our same size, who from my contacts with them have the same feelings. While these several hundred smaller manufacturers are in the minority from the standpoint of dollars and cents investment and also volume of business done, we would like for you to keep in mind that our industry is no different than hundreds or rather thousands of other industries and that all these industries coupled together are unquestionably allied together, for we have all either benefited or suffered alike.

We admit that the Industrial Recovery Act was a necessary step and undoubtedly one that will eventually be the basis for some kind of permanent, industrial and social legislation. In its present form, however, it has worked hardships on both employer and employee.

With the exception of child labor, hours, wages, the National Industrial Recovery Act as applied to the battery industry has been a more perfect failure than the Government experienced with dirigibles.

We have innumerable restrictions and specifications as to quality, guarantees, terms, selling below cost, and other common sense rules written into our particular code, the same as all other codes had. The result has been that specifications have not been lived up to; guarantees do seem to be a little bit more uniform than they were; terms are whatever the seller can get, the same as they were before; consignment, prohibited by our code, is more prevalent than ever in the form of subterfuge.

The result of our code, as the writer sees, has been that out of fundamentally honest people there has developed a pack of liars and chiselers.

From a common-sense standpoint, you as a successful man surely realize that we as a small manufacturer cannot possibly compete on the same terms and same bases, when we are up against large organizations with high-salaried departmentized officials, who with the national advertising and expensive radio programs create a public acceptance that we must overcome to sell our product.

All we can do is express our opinion to you as our representative; and that is, that should the National Industrial Recovery Act continue in force for a much longer time, especially under its present form, you will see the elimination of all smaller manufacturers and I believe small merchants as well. The result will be as a boomerang defeating its own purpose. The codes were written for the little fellow, but don't forget the big man representing big industries prepared these codes and while he did not have a selfish motive in doing so, it was only human nature that the big man protect himself.

We ask you in all fairness to America's backbone (small American business) please do not let this measure continue any longer than possible as a law. It is as unpopular as the Volstead Act and therefore just about as successfully enforced. We, who travel and get into various sections, realize that there is still lots of bootlegging going on and it is not all confined to the "whiskey racket."

We thank you for your attention in reading this long letter and can assure you that we appreciate the time given. Anything that you can do in your course of public duty to further and better the chaotic condition that exists today will be appreciated.

Let's forget all codes except the blanket code, as all any of us care about is child labor, hours, and wages. Why have codes and with them the terribly heavy expense of supporting them to see that everyone does everything alike, when all any of us are interested in, is to see that each of us gets a fair living wage.

Most sincerely and respectfully yours,

RED CAP BATTERY CORPORATION,
H. DANIEL SABEL, *President.*

MARLBORO, N. H., *March 7, 1935.*

Senator GEORGE,
Senate Building, Washington, D. C.

DEAR MR. GEORGE: The writer has just read an Associated Press dispatch which outlines your recent comments in regard to the National Recovery Administration. Although not a resident of Georgia, we want to take this opportunity to congratulate you on your courage to openly state that the National Recovery Administration should be discontinued.

Possibly you would be interested in the views of a small manufacturer. We employ 25 to 30.

We should like to see the National Industrial Recovery Act completely eliminated and its two good features incorporated in Federal law, if this is legally possible.

We are for the minimum wage; in the toy industry it is 30 cents per hour; that feature is excellent as it prevents some unscrupulous employers from taking advantage of their employees in times of depression.

The elimination of child labor is also obviously excellent and should be incorporated in Federal law.

We believe, however, that the above two features are the only two good points of National Industrial Recovery Act which should be permanently retained. For the small industries like our own, the 40-hour week limitation is a hardship. We are not large enough but what the extra costs of running a night shift coupled with the fact that we do not have business enough to warrant running a night

shift except for a very short season, make it impossible for us. We have never overworked our employees. However, when our fall toy season is at its peak, we would like to be able to employ our regular employees more than 40 hours—even up to 50 hours at regular rate of pay—and they would all be glad to earn that extra money. There are many other features that make the 40-hour-week limitation a hardship to the small industry which we cannot go into here.

We believe that you will readily appreciate that we are not too bad a concern to work for when we tell you that we have employees who have been with us for periods of 8, 12, 16, and 25 years. We give this information in order that you may more readily appreciate that we treat our employees decently. And no doubt this is true of the great majority of employers. The unscrupulous employers are a small minority just as criminals are a small minority of society. It seems unfortunate that the employer with good and honest intent should be penalized because of a few unscrupulous employers.

We understand that there are bills being presented which would reduce the 40-hour week to 30 hours. Such a bill would necessarily reduce the weekly pay of employees. We could not afford to increase our employees pay 33⅓ percent so that they could earn in 30 hours what they now earn in 40 hours. In addition, it would be impossible for us to turn out enough business, during our toy season from July to December, on one 30-hour shift to make our expenses.

Our opinions are entirely free from partisan policies. We have tried to express our sincere beliefs based on sound economics and our hectic experiences of the last few years.

We hope that you may be successful in having more Senators have the courage of their convictions so that our country may sooner recover from this depression.

Cordially yours,

WHITNEY BROS CO.,
ROLAND A. WHITNEY.

MARCH 16, 1935.

The Hon. WALTER F. GEORGE,
United States Senate, Washington, D. C.

MY DEAR MR. SENATOR: In connection with the study your committee is making of the effects of the National Industrial Recovery Act upon small business concerns, I take the liberty of directing your attention to the attached article, The Men the Codemakers Forgot.

As author of this article, permit me to say that I have always approved, and still approve, the fundamental purposes of code making and have served to the best of my ability in endeavoring to make the plan work in the retail field.

I acted as a trade advisor for the Administration in the formulation of the Retail Code, as chairman of the Distribution and Service Trades Committee appointed by General Johnson, am a member of the Industrial Advisory Board, and have been chairman of the National Retail Code Authority, Inc., since its formal organization.

It must be apparent that I could not have fulfilled these obligations had I been anti-N. R. A. Nor can any implied criticism contained in the article be charged to political partisanship since I have never voted any but the Democratic ticket in any national election.

Nevertheless, I am firmly convinced of the practical impossibility of applying a multitude of codes to small business establishments and there does not appear to be any way to reduce the number to a single code. While that might be accomplished for the retail field, the activities of retailers, as the article shows, carry them into functions which are not classed as retailing.

The inevitable result is confusion and resentment and, based upon Nation-wide contacts with retailers, I am convinced that the movement is politically harmful to the administration.

Yours very truly,

RIVERS PETERSON,
Editor Hardware Retailer.

(The article, "The Men the Codemakers Forgot," will be found at the conclusion of Mr. Peterson's previous testimony.)

Senator GEORGE. I also wish to put into this record statements from Mr. Henry McD. Tichenor, the president of the Walton Cotton Mill Co., of Monroe, Ga., protesting against the extension of National Recovery Act upon the conditions outlined in the present bill.

MARCH 7, 1935.

Senator WALTER F. GEORGE,
Washington, D. C.

DEAR SENATOR GEORGE: We were glad to note in today's Constitution that you had given a statement to the press favoring a revision of the National Recovery Act so as to retain only voluntary codes fixing wages and maximum hours of work.

We believe that such a change would go further to promote recovery than anything that has been suggested in recent months. The capital goods industry will not make any forward strides until business confidence is restored and we believe that there are many concerns ready to make necessary changes just as soon as the objectionable features of the present laws are a thing of the past. We believe that the most vicious feature of the recent legislation has been section 7-A of the National Recovery Act, for this has caused more friction in industry than any legislation within the writer's memory.

Our own plant has been in a constant turmoil on account of the union issue. There have been examples in our plant of fathers who would not speak to their own sons and vice versa. Apparently the question is not one which every man must decide for himself. Our hands have been intimidated by every known means from the threats of losing their jobs to personal violence, in an effort to organize them 100 percent. Under the law the management of the mill has been unable to do anything to correct the situation though we feel that 8 or 10 men are entirely responsible for the unhealthy situation.

The cost of operation has been increased, due to this lack of cooperation in the mill and the friendly feeling which has always existed between the management and the help has been largely dissipated through the efforts of paid agitators who make a life's work of stirring up trouble. We do not wish to leave the impression that we intend to discharge our union help in case this law is changed. We are very proud of the class of our operatives who have been held up as an example for many of the mills in our locality. We are sure, however, that if we are allowed to discharge any agitators, and they know this, that the root of the trouble will be solved.

We have in mind improvements which will total more than $100,000, but which are being held up by the one reason that section 7 (a) has created such an unhealthy condition that we are unwilling to go ahead with such a large expenditure. We also know that many of the plants which are in a much worse physical condition than our own are liquidating their properties in preference to making the expenditures necessary to put them in a modern condition.

Let us repeat, therefore, that we appreciate the stand you have taken. We also most earnestly request that your support will not be given to any substitution which in its effect will be similar to section 7 (a).

Respectfully yours,

WALTON COTTON MILL CO.,
By HENRY MCD. TICHENOR, *President.*

Senator GEORGE. I also wish to put into the record a letter from Mr. Ernest L. Rhodes, one of the largest millinery manufacturers in the Southeast, the company being Ernest L. Rhodes Co. of Atlanta, Ga., in which he specifically points out the inequalities of the industry in the South under the code provisions, and also specifically the budget for this particular industry for 1935, which is stated in an attached exhibit as $259,136.71. In part this letter of Mr. Rhodes deals with the burden of the assessment upon the smaller industries of the country.

MARCH 7, 1935.

Senator WALTER F. GEORGE,
United States Senate, Washington, D. C.

MY DEAR SENATOR: It was certainly a pleasure to read in the Constitution this morning that you felt that there would be some very radical changes in the set-up of the National Recovery Administration. Let us hope and pray so, for I do not feel that the set-up of many codes that I have looked over has increased the consumption of labor at all, and especially where the codes are set up such as the Millinery Code, and where there is classification of labor, which is Approved Code No. 151, Amendment 2, Registry No. 228-03.

It makes it doubly hard upon a corporation with classification of labor, as some departments become dull and you try to take care of your people to shift them from one department to the other and this code forbids it, and many others, and with many inspectors or detectives constantly checking and rechecking, and I believe that the National Recovery Administration would bring greater success if it were put upon a basis of a maximum of hours, minimum of wages, and let Government through some of its many now existing bureaus, as we have an oversurplus of them today, take charge of the issuing of labels, and only allow the houses meeting those requirements upon inspection to be issued these labels, and then appeal to the general public only to buy merchandise carrying the National Recovery Administration labels.

It would certainly reduce the tremendous cost that comes under the 600 codes that have been passed. And likewise about 450 of them have received anywhere from 1 to 3 amendments on the original.

Take the millinery budget, which I am herewith attaching—they ask an expense budget of $259,000 for 5½ months. If you will note in this budget the chairman of it is to receive at the rate of $20,000 per annum (more than Senators receive), the executive secretary $10,000, the auditor or confidential agent $10,000, and so on all the way down the line. And also you will note that they charge us $5 for labels that cost $1.05 for hats sold from $7.50 to $48 per dozen, and when we make better hats than $4 each they charge us $20 per thousand for the same label. Now, if you can call that anything but profiteering, I don't know.

Now, the reason that I say that there is less labor employed is, because a certain percentage of the people we have to pay $17.50 per week to a trimmer, whether she makes it or not, and consequently we keep the work stacked right up behind her so that she must make the code, and if she can't make it, if business is good, she is let out. Also, with the subnormal workers, there is so much red tape over it, and then you are required to pay them $10.50 per week for 35 hours, and consequently in our trimming department I don't think we have hardly a subnormal worker, as a year ago we were using about 10 or 12 who had many infirmities, and they were happy to come in and be associated with the younger people, even though they made only $1.50 a day, when the worker next to her made her $3 and $4.

So I judge that we will have a more simple National Recovery Administration.

And I sometimes wonder (of course it would be a great political question) whether we should draw a distinction between the white and the colored, as you know from your own experience how much work you get out of a colored man or a colored woman in comparison to the white on the same job.

Yours very truly,

ERNEST L. RHODES CO.,
ERNEST L. RHODES, *President.*

P. S.—If you will note on the last page of "general information" you will find that the number of established assessments is 1,375 and taking those established as a whole, with a budget of over $260,000 for 5½ months it cost them an average of $189 for each plant, which on a yearly basis would cost them over $400 per year per plant, and roughly speaking for 5½ months it cost $8.50 per employee for their inspection.

Yours very truly,

E. L. RHODES.

NATIONAL RECOVERY ADMINISTRATION,
February 15, 1935.

(Registry No. 228/03—Approved Code No. 151)

SUPPLEMENT TO NOTICE OF OPPORTUNITY TO BE HEARD

(Administrative Order No. 151-37)

MILLINERY INDUSTRY

(Code Authority Budget and Basis of Contribution)

Fourth line of first paragraph reads:
"* * * said Budget is $259,136.71."

Application has been made by the code authority to increase the sum by the addition of $1,000 representing an allowance of $500 each for the office of the Deputy in Philadelphia, Pa., and for the proposed office of the Deputy in the New Jersey area.

Fourth line of first paragraph should therefore read:
"* * * said Budget is $260,136.71."

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

BURTON E. OPPENHEIM,
Acting 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.

NATIONAL RECOVERY ADMINISTRATION,
February 7, 1935.

(Registry No. 228/03—Approved Code No. 151)

NOTICE OF OPPORTUNITY TO BE HEARD

(Administrative Order No. 151-37)

MILLINERY INDUSTRY

(Code Authority Budget and Basis of Contribution)

The Code Authority for the Millinery Industry has made application for the approval of its budget and basis of contribution by members of the industry to the expense of administering the code for the period from January 1, 1935, to June 15, 1935. The total amount of said budget is $259,136.71.

The basis of contribution is as follows: Sale of labels to the members of the industry.

Copies of said budget and basis of contribution are attached hereto and hereby made a part thereof. Additional copies are available at the office of the National Recovery Administration, room 3016, Department of Commerce Building, Washington, D. C., and at the office of the code authority at 469 Fifth Avenue, New York City.

Notice is hereby given that any criticisms of, objections to, or suggestions concerning said budget and/or basis of contribution must be submitted to Acting Deputy Administrator Burton E. Oppenheim, room 3016, Department of Commerce Building, Washington, D. C., prior to Thursday, February 28, 1935, and that said budget and basis of contribution may be approved in the form now submitted and/or in such form, substance, wording and/or scope as they may be amended and/or amplified on the basis of criticisms, objections, or suggestions submitted, and supporting facts received, pursuant to this notice, or other information or consideration 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 criticism, objection, or suggestion. All matter submitted will be given due consideration and the National Industrial Recovery Board will act only after consulting with such of its advisers as it may deem appropriate.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By W. A. HARRIMAN, *Administrative Officer.*

BURTON E. OPPENHEIM,
Acting 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.

CODE AUTHORITY OF THE MILLINERY INDUSTRY

469 FIFTH AVENUE, NEW YORK CITY

Estimated Budget for Period Beginning January 1, 1935, and Ending June 15, 1935 (5½ Months) as Temporarily Approved by the Administration (Effective date of Code, Dec. 26, 1933. Effective date of Amended Code, Nov. 19, 1934)

BASIS OF ASSESSMENT

A—Labels sold to members of industry manufacturing hats sold at $7.50 per dozen or less.

B—Labels sold to members of industry manufacturing hats sold from $7.51 per dozen to $48 per dozen.

C—Labels sold to members of industry manufacturing hats sold in excess of $48.01 per dozen.

Estimated income

Label	Estimated number of labels	Charge per thousand	Cost per thousand	Estimated net income
A	23,870,000	$3.50	$1.05	$58,481.50
B	32,081,500	5.00	1.05	126,721.93
C	852,500	20.00	1.05	16,154.87
Total	56,804,000	261,002.50		201,358.30

Summary

Salaries	$40,517.58
Office expense, New York	16,156.28
General expense	19,990.90
Compliance, New York	68,434.67
Special millinery board	9,450.85
10 regional officers	44,492.23
Total	199,492.51
Actual cost of labels	59,644.20
Total	259,136.71
Salaries:	
Director and chairman ($20,000 per annum)	9,166.69
Executive secretary ($10,000 per annum)	4,588.35
Auditor, confidential agent ($10,000 per annum), supervisor of regional offices	4,588.35
Director of publicity	2,750.00
Bookkeeper, assistant bookkeeper, filing clerk, billing clerk	2,359.50
4 stenographers, telephone operator, office boy, porter, information clerk	5,124.19
11 employees in label department	6,149.00
9 statistical clerks	5,791.50
Total	40,517.58
Office expense, New York:	
Rent	3,666.69
Water and light	550.00
Telephone and telegrams	3,437.50
Office equipment	916.64
Stationery, printing, and supplies	5,041.69
Postage	2,245.82
Towels and cleaning supplies	297.94
Total	16,156.28
General expense:	
Advertising (general)	2,294.18
Traveling expense	2,979.18
Legal fees (attorney retaining)	4,588.35
Insurance	458.32
Meeting expense, including traveling of code authority members	5,500.00
Packing materials	343.75
Parcel post, expressage, and car fares	1,077.12
Miscellaneous	2,750.00
Total	19,990.90

Summary—Continued

Actual cost of labels	$59,644.20
Compliance, New York:	
Salaries:	
21 inspectors	22,284.19
18 investigators (auditors)	14,419.18
3 adjustors	5,958.32
3 special investigators	3,455.82
6 stenographers	3,527.32
1 record clerk	953.32
1 assistant attorney	1,549.19
11 analyzation clerks	8,055.68
2 correspondents (trade practice)	2,383.32
2 investigators (trade practice)	2,145.00
2 stenographers (trade practice)	953.32
Total	65,684.37
Traveling and carfares	2,750.00
Total	68,434.67
Special millinery board:	
Members of board	2,979.19
Secretary of board	1,191.69
Stenographer	476.69
Investigator	953.32
Rent and electricity	550.00
Postage	275.00
Stationery and printing	458.32
Traveling:	
Members of board	1,145.82
Employees	1,145.82
Telephone and telegrams	275.00
Total	9,450.85
REGIONAL OFFICES	
Chicago:	
Deputy director	2,750.00
1 stenographer	6,672.32
Rent	550.00
Telephone and telegrams	165.00
Fares	275.00
Postage	183.32
Miscellaneous	229.19
Total	10,825.83
St. Louis:	
Deputy director	2,291.69
3 inspectors	2,145.00
Stenographer	476.69
Rent	467.50
Telephone and telegrams	165.00
Fares	458.32
Postage	137.50
Miscellaneous	137.50
Total	6,279.20
Cleveland:	
Deputy director	1,604.20
Inspector:	
Cleveland	595.82
Buffalo and Detroit	595.82
Stenographer	238.32

Summary—Continued

REGIONAL OFFICES—continued

Cleveland—Continued.	
Rent	$137.50
Telephone and telegrams	91.70
Fares	229.19
Postage	91.70
Miscellaneous	91.70
Total	3,675.95
Philadelphia:	
Deputy director	687.50
2 inspectors	1,549.19
Stenographer	429.00
Rent	137.50
Telephone and telegrams	165.00
Fares	275.00
Postage	91.70
Miscellaneous	91.70
Total	3,426.59
New Jersey:	
Deputy director	916.70
2 inspectors	1,658.32
1 auditor	953.38
Stenographer	429.00
Rent	165.00
Telephone and telegrams	137.50
Fare	229.19
Postage	91.70
Miscellaneous	137.50
Total	4,728.29
San Francisco:	
Deputy director	1,650.00
1 inspector	834.19
Stenographer	429.00
Rent	220.00
Telephone and telegrams	275.00
Fares	137.50
Postage	91.70
Miscellaneous	91.70
Total	3,729.09
Los Angeles:	
Deputy director	1,145.85
2 inspectors	1,668.32
Stenographer	412.50
Rent	192.50
Telephone and telegrams	229.19
Fares	412.50
Postage	91.70
Miscellaneous	91.70
Total	4,244.26
New England:	
Deputy director	1,145.85
Inspector	1,237.50
Rent	192.50
Telephone and telegrams	137.50

Summary—Continued

REGIONAL OFFICES—continued

New England—Continued.	
Fares	$229.19
Postage	91.70
Miscellaneous	91.70
Stenographer	412.50
Total	3,538.44
Atlanta:	
Deputy director	1,191.70
Part-time inspector (Birmingham)	229.19
Stenographer	393.25
Rent	165.00
Telephone and telegrams	91.70
Fares	229.19
Postage	68.75
Miscellaneous	68.75
Total	2,437.53
Dallas:	
Inspector	1,145.85
Stenographer	333.69
Rent	165.00
Telephone and telegrams	45.82
Fares	229.19
Postage	68.75
Miscellaneous	68.75
Total	2,057.05
General administrative functions	58,715.04
Compliance functions	185,179.32
Statistical functions	5,791.50
Special millinery-board functions (exemptions and exceptions)	9,450.85
Total	259,136.71

General information

Number of establishments to be assessed	1,373
Number of establishments in industry	1,373
Annual net sales for year 1934	$105,000,000
Number of employees as of Aug. 31, 1934	30,954

Senator GEORGE. I offer also for this record a letter from one manufacturer of men's and boy's pants and work clothing, the Barrow Manufacturing Co. of Winder, Ga. This letter also points out the particular hardships suffered by the industry in the State and in the Southeast to the manufacturers of men's work clothes, and I believe it indicates the number of manufacturing enterprises in this particular category that have been compelled to go out of business.

MARCH 4, 1935.

Senator WALTER F. GEORGE,

United States Senate, Washington, D. C.

DEAR SENATOR GEORGE: I greatly appreciate your recent letter regarding the N. R. A., the renewal of these codes, etc.

We might as well face the issues, Senator, the "new deal" is proving quite a flop. No one doubts the good intentions of our President, and no doubt if he had surrounded himself with men who could be relied upon to carry out his wishes and no more, it would have been some better.

The trouble is, business has no faith in this administration, all the ballyhoo in the world will not shake business away from the beliefs that it is dangerous to do business now. Due to so much changes, regulations, etc., on codes and the National Recovery Administration, business really has not had a chance to step out and do things needed to be done. No one in business could think of expanding or those out of business would be foolish to go into any new business of any kind, when it is coded to death. More people are unemployed today in spite of what they say in Washington than when Mr. Roosevelt went into office. It is true those who are fortunate enough to be employed are faring well due to the short hours and high pay, but that does not help the unemployed. The big mistake the President made was in setting a wage scale based on living conditions in New York City, for the whole country, rural and urban. The result was that industry went about a program of doing away with labor with modern machinery, and today mills and garment manufacturers are producing more goods on these short hours than they did on the long ones because of systematizing their factories and equipping them with modern equipment, without increasing employment a man. Mr. Roosevelt simply overplayed his hand on this high wage scale.

I certainly believe, Senator, it is now time that Congress take a stand in these matters: The peoples' rights are being so flagrantly violated that Georgia is more like Russia we read about than good old Georgia of old, with all these high-stepping code authority detectives stamping in and out of our factory, stopping your operations, and trying to stir up trouble with the employees. It has been the program all the way through, it seems to me, for these northern fellows to stir up trouble with labor down here, when no cause for trouble exists. The North is simply jealous of the South's growth in a manufacturing way, and as the northern men have in hand all code matters, and the National Recovery Administration itself, it has been their purpose and plan all the way to do everything possible to injure the southern manufacturer.

The South is now on the spot—it can go forward or it can be ruined. The whole matter is now in the hands of the southern members of the Congress and Senate. I say, Senator, it is serious, and what happens in Washington during the next 6 months will determine the destiny of the industrial South. I firmly believe that our southern representatives brains are equal to if not superior to those of the northern represeutatives, but the trouble and danger lies in the fact that our southern members are following Mr. Roosevelt too far.

Industrially speaking, Mr. George, the Civil War is being fought all over again, and now is the big chance for the South to win. It will be won or lost forever on the Washington battlefront- -not down in the deep South.

With my highest regards, I am,

Very truly yours,

BARROW MANUFACTURING CO.,
W. H. JENNINGS, *President.*

The CHAIRMAN. I desire to have put in the record a statement by Mr. Kilbourne Johnston as to some of the testimony that has gone in. It will save him from going on the witness stand.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 11, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: On April 1, 1935, at the hearing on National Recovery Administration held before the Committee on Finance, Mr. A. J. Hettinger, a former employee of National Recovery Administration's Research and Planning Division, read into the record (pp. 1855 through 1858 of the transcript of testimony) a statement of Mr. Charles F. Roos, another former employee of National Recovery Administration's Research and Planning Division, which had appeared in the Colorado Springs Telegraph for Friday afternoon, March 15, 1935, and a paragraph of a letter received by Mr. Hettinger from Mr. Roos, in which Roos made a series of untrue statements, implying that National Recovery Administration had been unfavorable to small enterprises and alleging that either Mr. Richberg or I had suppressed the unfavorable data and made public the favorable data. This is not true.

He said:

1. That he "prepared the data which Richberg and General Johnson's son used to answer the reports of the Darrow Board."

This is untrue. None of the data prepared by Mr. Roos was used in answering the reports of the Darrow Board. The research in which he played a part was not complete until after the reports had been made.

2. "These," (the answers to the Darrow Board) "made public only the figures which were favorable to National Recovery Administration."

This is untrue, since none of the figures were used. Mr. Roos' compilation had not even been submitted to me at that time.

3. "To illustrate," (National Recovery Administration's deception), "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 National Recovery Administration, 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."

This statement is untrue on two grounds. First, National Recovery Administration did not make public either statement. Second, Mr. Roos' own figures did not show that in every one of the 16 industries examined declines in net worth occurred during 1933. They showed that declines in net worth occurred only in 9 of the 16 and in only 3 of these 9 cases did small enterprises have the greatest percentage decline.

The statement is deliberately misleading on still other grounds in that Mr. Roos did not mention the fact that his figures also show that the rate of decrease in bankruptcies during the period of National Recovery Administration has never been equaled within the scope of existing records and, furthermore, that fewer enterprises out of every hundred in business became insolvent in 1933 than in any year since 1920. Small enterprises shared proportionately in this rapid decline of bankruptcies and also in the low level of insolvencies which has been maintained to the present time.

4. Mr. Roos further states that the figures and charts drawn up by him "made very favorable impressions on Congressmen, especially on Senator Robinson." None of the figures or charts submitted to me by Roos were ever presented to any Senator or Congressman, or used in any other way.

The standard index of business failures supplied by Dun & Bradstreet has been used several times to indicate the true fact that small enterprises have been saved by National Recovery Administration at a startling rate, but these figures were not compiled by Mr. Roos but were made public by Dun & Bradstreet before the Darrow report. Even these well-known figures however, were not used in General Johnson's and Mr. Richberg's reply to the Darrow report.

5. Mr. Roos further states "I have a suspicion that Johnston" (the undersigned) "showed only the charts favorable to National Recovery Administration, but I do not know."

This is a direct insinuation against my personal honesty and since this innuendo has been made a matter of the highest public record, I urgently request that my reply be made a matter of the same record.

As I have stated above, the charts came too late to be included in the answer to the Darrow board. None of them was shown to either Mr. Richberg or General Johnson, by me. They were submitted to me and kept in my files until they became out of date, when they were discarded for more recent data. The original figures, however, are still in the files of the Planning and Research Division.

Respectfully,

KILBOURNE JOHNSTON, *Assistant Code Administration Director*
(Formerly Aide to the Administrator).

The CHAIRMAN. I also wish to put into the record some information which has been turned over to the committee by Mr. Blackwell Smith, acting general counsel, as requested by Senator Gore.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 15, 1935.

Hon. PAT HARRISON,
Chairman Senate Committee on Finance,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: In accordance with the request of Senator Gore, I am enclosing herewith and making available for the members of the committee a table indicating which codes contain provisions requiring permission of the National Recovery Administration before new plants may be erected or

new equipment installed. The table also indicates the disposition by the National Recovery Administration of applications for such permission.

Very truly yours,

BLACKWELL SMITH,
Acting General Counsel.

The following table indicates the disposition by the National Recovery Administration of applications for permission to erect new plants or install additional equipment under codes which require that such permission be obtained prior to such erection or installation:

Disposition of applications

Name of code	Total received	Granted	Denied	Withdrawn or dropped by applicant	In process
Provisions now in effect:					
Cotton textile	5	4	0	0	1
Silk	0	0	0	0	0
Throwing	4	4	0	0	0
Lace	3	1	0	0	2
Cordage and twine	1	0	0	1	0
Rayon and silk dyeing and finishing	3	3	0	0	0
American glassware	1	1	0	0	0
Pyrotechnic manufacturing	1	0	0	0	0
Ice	[1] 326	143	52	59	72
Refrigerated warehousing	14	4	0	1	9
Crushed stone, sand and gravel and slag	36	27	5	4	0
Structural clay products	5	0	0	4	1
Refractories	5	5	0	0	0
Carbon black	0	0	0	0	0
Provisions which have expired:					
Excelsior	0	0	0	0	0
Candle manufacturing and beeswax and bleachers' refiners	1	1	0	0	0

[1] Not counting 69 applications exempted as not requiring certification.

Under the Iron and Steel Code, the increase of certain types of capacity is prohibited. One manufacturer has recently applied for exemption, which is being investigated.

The CHAIRMAN. I desire to have placed in the record also a statement from Mr. Rosenblatt with reference to testimony that had to do with his particular work.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 12, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: I. Before the Senate Finance Committee, on April 3, Lowell Mason, former general counsel for the National Recovery Review Board, inferred that a provision of the Motion Picture Code, respecting the use of the standard form of licensing contract, is contrary to the decision of the Supreme Court in the *Paramount Famous Lasky Corporation* v. *United States*. This case, which is reported at 282 United States, 30, had enjoined the use of a standard form of contract, which, in the opinion of the Court, was to produce "material and unreasonable restraint of interstate commerce", and which provided for compulsory arbitration in a specified manner, which in itself was also deemed oppressive. The provision in the code appears as article V, division F, parts 1 and 2. Its incorporation into the code was advocated without a dissenting voice by the code-formulating committees in the industry, the contract itself having been negotiated early in 1933 by representatives of all classes and kinds of exhibitors with the distributors in motion pictures. It is a fair and nonoppressive agreement. The provision of the code states that such agreement "shall be the form of license contract to be used by distributors for licensing the exhibi-

tion of motion pictures, unless the parties mutually agree that a different form be used." The only criticism that I have ever heard of this provision of the code is that the provision is not strict enough in compelling the exclusive use of such form of agreement.

With respect to arbitration, the provision of the code as above cited is that arbitration of disputes arising under any exhibition contract shall take place, "if the parties shall agree on arbitration." There is nothing whatsoever mandatory about arbitration, and the optional method provided for is the customary one, in which each side to the controversy appoints its representative. In case of disagreement, the matter is submitted to an impartial umpire.

II. Likewise, before the Senate Finance Committee on April 8, 1935, Abram F. Myers testified. With respect to his statements, I desire to introduce the following:

Reference is made by Myers to the procedure in drafting of the code, the naming of the code committees, and the naming of the code authority.

There is annexed hereto, as exhibit 1 to this statement, the report on the code of the undersigned as Deputy Administrator in charge of the code, such report being made to General Johnson in connection with the presentation of the code to the President for approval. The reports of the advisers upon the code are also annexed as part of exhibit 1. The procedure questioned is fully covered and explained therein.

The review of the draftsmanship of the code as originally presented was done and the code in its final form was prepared by Mr. Rosenblatt, with the assistance of his advisers, and particularly his legal advisers. The innuendoes made with respect to the participation of Mr. Nathan Burkan in the drafting of the code are declared to be unequivocally erroneous. Mr. Burkan had no more to do with the draftmanship of the Motion Picture Code, as approved by the President, than did any of the pages of the Senate.

With respect to the number of theaters in the United States exhibit 2, annexed, is the publication of the Bureau of Foreign and Domestic Commerce, of the Department of Commerce of the United States Government, issued on February 1, 1935, stating the number of theaters in operation at that time to be 10,143. The exact figures may be open to question, but this is the best information on the subject at this time. At the time the code was promulgated there were no statistics available worthy of the name.

In this connection the committee should know that as of March 12, 1935, there were 9,169 written assents received by the code authority from motion-picture exhibitors and that an additional number of 340 exhibitors had taken the benefits conferred by the code, even though not signing the form of assent. Thus, a total of 9,509 exhibitors have either assented to the code or taken its benefits. Of this number, 7,393 are in the status of unaffiliated exhibitors.

Myers' statement that the code was signed in secret is not correct. It was an open secret, since the signature and assents to the code at the time the code was approved by the President on November 27, 1933, represented the overwhelming majority of the exhibitors of the United States. There is annexed hereto, in exhibit 3, a statement of all the assents which accompanied the transmittal of the code to the President.

Myers' statements with respect to the protest of General Johnson and the inclusion in the record of the memorandum of October 31, 1933, do not complete the record. General Johnson, after hearing the protestants personally, turned over all matters in connection with the code to Col. Robert W. Lea, at that time assistant administrator for industry, and Colonel Lea, with an attorney of his own choosing, reviewed the entire matter and reported to General Johnson. As a result, General Johnson issued a statement on November 4, 1933, annexed hereto as exhibit 4, which completely vindicated the acts of Mr. Rosenblatt.

Myers' reference to the interpretation of the Executive order approving the code signed by the President makes no mention of the fact that such interpretation followed a conference at the White House and was at the direction of the President. I may add that every case determined by the code authority has been carefully reviewed by the National Recovery Administration.

Myers' statement with respect to the votes cast by the code authority against the interests of the independent exhibitors, is not supported by the facts, and analysis of such votes shows that from the very first meeting of the code authority held December 20, 1933, up to and including February 28, 1935, the total number of votes cast were 1,091 of which 1,019 were unanimous, and of which 72 were split, and that therefore, of the total votes cast, 93.9 percent were unanimous; that is, by the action of all the members of the code authority, including those designated by Myers, as representative of the independent exhibitors' interests.

The letter presented by Myers from Yamins speaks of a number of subjects which Myers adopts. His statement as to the method of appointment of local boards, while undoubtedly well-intentioned, nevertheless does not disclose that there were over 3,000 nominations received respecting membership on these boards, and that there were actually 372 members appointed by the code authority and that there was unanimous agreement on such appointments by the code authority in 370 cases.

The statement, that practices have occurred tending to avoid strict conformity with the standard form of exhibition contract, makes no reference to the fact that that brief is now before the National Recovery Administration for consideration on the question of whether or not the practices complained of amount to code violation.

The statement made with respect to failure of members of the code authority to attend meetings is misleading. The first meeting of the code authority of the motion-picture industry was held in New York City on December 20, 1933. Up to and including the meeting held on Friday, April 5, 1935, there have been 42 regular meetings, 10 recess sessions, and 1 special meeting, a total of 53 meetings by the code authority in a period of slightly more than 15 months.

These meetings have in almost every instance, lasted the entire day, in addition to which members of the code authority, their permanent and temporary alternates, have devoted much additional time attending committee meetings and appeal hearings.

Forty-six different members of the industry have sat as members, permanent alternates, or temporary alternates of the code authority at the above number of meetings. It must be borne in mind that the widespread supervisory activities frequently called for special advisory service, and the industry has had the benefit of its most expert personnel in attendance at the various meetings.

The statement that the code authority has exclusive power to recommend changes in the code is not correct. Annexed hereto as exhibit 5 is the National Recovery Administration Office Memorandum No. 266, Office Order No. 86, and that portion of the National Recovery Administration Manual, all of which are relevant and disclose that any interested party, including the National Recovery Administration, may propose amendments to any code.

With respect to the form of assents to the code, there is annexed hereto as exhibit 6, a statement issued by General Johnson and Donald Richberg, as counsel, respecting the effect of the form of assent to the Motion Picture Code (which in the form it was signed, was approved by Mr. Rosenblatt, and was in accordance with statements previously made by him to the same effect), as well as the Executive order of the President, No. 6949, as exhibit 7, hereof, respecting the rights of signatories to codes.

The Myers statement that it is impossible for exhibitors to get relief before the code boards, is not borne out by the facts.

Considering exhibitors' problems alone, the code provides three chances to one for relief through local grievance boards which consider fair trade practices only. Relief has been granted to exhibitors in 75 percent of cases tried. Out of 1,020 cases tried by local grievance boards, 771 cases brought relief to exhibitors. In only 24 percent of cases—or in 237 complaints—was relief denied. In 205 of the cases appeal was taken to the code authority as a court of appeals and in 85 percent of the appeals the local board was sustained; in 30 cases, or 15 percent, the local board's decision was reversed.

Until the code was achieved, there was no such thing as relief for clearance and zoning problems generally. The clearance and zoning boards are in operation to pass wholly upon those questions. In the first 289 cases brought to these boards, relief has been granted to 172 exhibitors—59 percent of the complaints filed. Appeals were taken to the code authority in 78 of these cases. Eighteen percent of the appeals heard were reversed and sent back to the zoning boards; judgment was affirmed in 82 percent of the appeals.

III. On April 8, 1935, there also appeared Melvin Albert, who testified.

Most of the statements made by Albert will be found refuted in the above and in the exhibits. One statement made by him particularly stands out. Albert stated that the code provides "that no exhibitor may complain that a distributor has given advantage to a theater operated by a distributor." There is a fair sample of the worth of Albert's testimony. The code provides nothing of the kind and such is not the fact.

The code does provide in article VI, part 2, section 5, that a local grievance board shall not have jurisdiction to hear any complaint based upon the fact that a distributor has licensed the motion pictures distributed by it for exhibition at

its own affiliated theaters. It would indeed be anomolous for a distributor to be deprived of its right to show its own pictures in its own treaters as the law now stands.

With respect to the statements made by Albert concerning the labor provisions of the code, the committee will find in exhibit 3 the signatures of all labor organizations employed in the motion-picture industry to the code, constituting thereby an agreement with the employers in the industry.

Albert's statements respecting motion picture machine operators in New York are unfair, to say the least, considering that the code protects a tremendous number of workers in the industry, estimated at more than 260,000, and of which the annexed enumeration, marked "exhibit 8", is illustrative.

The foregoing is adduced, not by way of complete answer to the unnumerable petty, irrelevant and immaterial matters touched upon by the foregoing witnesses with respect to the Motion Picture Industry Code, but should serve to advise the committee generally of the inaccuracy and inadequacy of the testimony given by such witnesses.

In order that the remarks of all the witnesses with respect to the report of the Darrow Board on the Motion Picture Code be fairly dealt with, there is annexed, as exhibit 9:

(A) The letter of General Johnson to the President, dated May 15, 1934, containing reference to the undersigned.

(B) Comment on the majority report of the Darrow Board by Donald R. Richberg with respect to the Motion Picture Code; and

(C) The answer of the undersigned to the Darrow Report on such code.

I have been advised of the desire of the committee to expedite its hearings, and in conformity with its wishes I am therefore refraining from requesting an opportunity to be heard. In view, however, of the testimony and of the materiality of this reply and of the exhibits annexed, I respectfully request that they be all incorporated into and made a part of the record of proceedings before the committee.

Sincerely,

(Signed) SOL. A. ROSENBLATT,
Division Administrator, Amusements Division N. R. A.

EXHIBIT NO. 1

REPORT TO GENERAL JOHNSON BY DEPUTY ADMINISTRATOR ON THE CODE OF FAIR COMPETITION FOR THE MOTION-PICTURE INDUSTRY AND REPORTS OF THE ADVISERS UPON THE CODE

OCTOBER 26, 1933.

To the National Recovery Administrator:

GENERAL STATEMENT

The code for the motion-picture industry embraces all economic divisions of the industry, and, indeed, all subdivisions thereof. It embraces and considers every step taken by the industry from the production of motion pictures to their distribution and thereafter to their very exhibition in theaters before the public. Every division of this industry is interrelated with and dependent upon the other for its very existence.

Prior to August 8, 1933, your deputy was advised that numerous groups representing those engaged in the motion-picture industry were severally formulating proposed codes of fair competition for this industry. The divergence in views expressed in such activities was so marked, and the complete devotion of each group to its own special interests was so pronounced, and the apparent inability of any group to formulate any code upon which a hearing might be called was so great, that your deputy proceeded with all due dispatch to call a meeting of all the separate groups and divisions of the industry in order that through such representative groups the formulation of a code might go forward.

On August 8, 1933, at the meeting hall of the association of the bar of the city of New York, at New York City, your deputy called together representatives of the several divisions of the industry and named, for the purpose of formulating a code, a committee of producers and a committee of distributors, under Sidney R. Kent, president of the Fox Film Corporation, as coordinator; and a committee of exhibitors, under Charles L. O'Reilly, president of the Theater Owners' Chamber of Commerce, of New York City, as coordinator.

Such committees embraced the following in their membership:

Producers' Committee.—George Bacheller, president Chesterfield Pictures; Phil Goldstone, president, Majestic Pictures; M. H. Hoffman, president Allied Pictures; W. Ray Johnston, president Monogram Pictures, Inc.; B. B. Kahane, president Radio Pictures Inc.; Louis B. Mayer, vice president, Metro-Goldwyn-Mayer Distributing Corporation; J. T. Reed, president, Academy of Motion Picture Arts and Sciences; William Saal, Admiral Pictures; Joseph M. Schenck, president United Artists Corporation; H. M. Warner, president, Warner Bros. Pictures, Inc.; Adolph Zukor, president Paramount Pictures Distributing Corporation; M. H. Aylesworth, president RKO Distributing Corporation; J. Berkowitz, Standard Film Exchange, Inc.; A. C. Bromberg, president A. C. Bromberg Attractions; R. H. Cochrane, vice president Universal Pictures Corporation; Jack Cohn, vice president Columbia Pictures Corporation; H. Gluckman, president Majestic Pictures Corporation; Edward Golden, general sales manager Monogram Pictures, Inc.; Earle W. Hammons, president Educational Film Exchanges, Inc.; George J. Schaefer, general manager, Paramount Pictures Distributing Corporation; Nicholas M. Schenck, president Metro-Goldwyn-Mayer Distributing Corporation Harry H. Thomas, president First Division Pictures, Inc.; Charles W. Trampe, president Midwest Film Co.

Exhibitors' committee.—Harry C. Arthur, president Arthur Theatres Corporation; Jos. Bernhard, Warner Bros. Theatres Circuit; M. E. Comerford, Scranton, Pa.; Sam Dembow, Paramount-Publix Corporation; Harold B. Franklin, Radio-Keith-Orpheum Corporation; John Hamrick, Seattle, Wash.; Harry E. Huffman, Denver, Colo.; Ed Kuykendall, president, Motion Picture Theatre Owners of America; Gus O. Metzger, president Independent Theatre Owners of Southern California; Jack Miller, Exhibitors' Association of Chicago; Abram F. Myers, general counsel Allied States Motion Picture Exhibitors Association; H. M. Richey, secretary Allied States Motion Picture Exhibitors Association; J. C. Ritter, president Allied States Motion Picture Exhibitors Association; Sidney Samuelson, president Allied Theatres of New Jersey; E. A. Schiller, Loew's, Inc.; A. H. Schwartz, Century Circuit; George Skouras, Skouras Bros. Theatres; Fred Wehrenberg, St. Louis, Mo.

Such committees, therefore, comprised in their membership a truly representative industrial group.

It is your deputy's opinion, and it is respectfully submitted, that the foregoing procedure with respect to formulation of a code upon which a public hearing could be called was highly necessary, because there is in the motion-picture industry no trade or industrial association fairly representative of this industry.

The code for the motion-picture industry formulated by such representative industrial group, as aforesaid, was submitted to the Administrator on August 23, 1933, and a hearing was forthwith set with respect to the same for September 12, 1933.

THE PUBLIC HEARING

A public hearing was held commencing on September 12, 1933, and ending on September 14, 1933, in the large auditorium of the United States Chamber of Commerce Building, at Washington, D. C. A list of witnesses is contained in the transcript of record of such public hearing. The names of more than 200 witnesses were called at such pubic hearing.

Upon the public hearing, the following sat with your deputy as advisers:

William P. Farnsworth and Bernice Lotwin, Legal Division.

George A. Renard, Consumers' Advisory Board.

Donald K. Wallace and H. H. Thurlby, Research and Planning Division.

E. N. Hurley, Sr., Industrial Advisory Board.

John P. Frey, Labor Advisory Board.

Representatives of all groups and divisions of the industry were heard. Representatives of persons engaged in other steps of the economic process, whose services and welfare are affected by the Motion Picture Industry Code, were also heard. Reprsentatives of consumers, employees, and others who sought exemptions from the provisions of the code were heard.

The statistical position of the industry was satisfactorily presented. Communications received from interested parties who had not requested to be heard were read into the record.

Upon the hearing, your deputy ruled out of consideration by the Administrator all proposals which in any way sought to modify or interpret the provisions of section 7 (a) of the National Industrial Recovery Act.

Further upon the public hearing, proposals in the codes submitted relating to so-called "poster exchanges," which if accepted by the Administrator would have completely destroyed the business of such poster exchanges, were ruled out of consideration by your deputy.

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Commencing with the evening of September 12, 1933, your deputy on each and every day to and including the date of this report has held conferences with all parties interested in this code.

Your deputy has attempted to relate the provisions in the code so that they will be equally protective of the interests of all groups and parties affected. It is your deputy's opinion that whether the results sought to be achieved thereunder will actually be achieved can be resolved only by the actual operation of the code itself.

The code is designed to safeguard and protect the rights of the minority interested affected by it. It is especially designed to safeguard unaffiliated exhibitors, for whom, for the first time in the history of this industry, a forum has been provided where they may assert applications for relief in situations where presently either no legal remedy exists or the legal remedy presently existing is inadequate. The smallest exhibitor, who has heretofore contended that his grievance never sees the light of day, and that he is unable to direct the same to the attention of the responsible representatives of the industry, has now been afforded every opportunity to do so, and what is more important, to secure speedy and equitable relief.

This code requires constant, careful, and intelligent supervision and enforcement. Its success or failure depends upon such supervision.

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FACTS RELATING TO THE INDUSTRY

The motion-picture industry embraces all activities connected with the production, distribution, and exhibition of motion pictures in theaters.

While this industry produces less than one-half of 1 percent of the total volume of goods manufactured in the United States, it assumes a position of unusual importance because of its far-reaching influence upon social and economic standards and conduct throughout the world. Since approximately 70 percent of the screen time of the world's cinema is in exhibition of American-made films, the importance of this industry cannot be overestimated.

The total investment in all branches of the industry in the United States is estimated at $2,000,000,000, of which investment $95,000,000 is represented by production studios; the balance of the investment is largely in theaters.

Although, according to the 1931 census reports, there were 137 concerns engaged in the production of motion pictures throughout the United States, nevertheless the industry is largely concentrated in California, with a relatively small number of studios, all located in or near Hollywood. This comparatively small number of studios produces over 70 percent of a total output of motion pictures valued at $151,000,000. From the standpoint of plant investment, the studios of the so-called "major producers" represent more than 80 percent of the total investment.

Annual production approximates 650 feature films. Of the estimated production of feature films for the 1933-34 season, the relatively small number of producers, hereinafter called "the major producers", have scheduled for production some 400, or 65 percent, of the 626 features announced for production during the current season. The remaining 35 percent is divided among about 25 other producers, hereinafter called "independent producers." The balance of the number of producing firms engaged in the industry will be found to have contributed their production under a "unit" system which feeds into and becomes part of the productions scheduled by the said major producers.

Similarly, the distribution of motion pictures has been concentrated in a comparatively few large producer-distributor companies. The volume of film distribution accomplished through producers' exchanges in 1929 was 94.67 percent of the total volume of business reported by all exchanges. A marked geographical concentration in the wholesale distribution of motion pictures also exists, 99 percent of the total distribution being done out of 32 key cities in this country.

The total number of motion-picture theaters in 1933 is reported as 19,311, with a total seating capacity of 11,161,193. Of these theaters 15,231 are reported as sound-equipped, and 4,080 silent. From annual admissions to these theaters the industry takes in $1,100,000,000 per annum, at an average daily admission

of 25 cents, and an average daily attendance per theater per show of 226. Of the seating capacity of the theaters, the same is divided approximately equally between producer-distributor controlled theaters, commonly known as "circuit" theaters, and the independent theaters, i. e., those not affiliated through ownership, control, or management, with producer-distributor companies. The scale of theater construction and operation ranges from the small place with one show weekly to the de luxe city theater, and from straight picture entertainment to combined picture, stage and orchestral entertainment.

The concentration of this industry, wherein production, distribution and exhibition are both horizontally and vertically integrated, is tremendously significant in that this corporate ownership in the hands of a comparatively few large companies has created an economic division of the industry between major and independent interests, the economic consequences of which are reflected in all problems of the industry.

The change in fortunes of the larger companies from 1929 to 1933 is significant. The combined figures for net income for seven of the largest companies show a decrease from such income in 1929 of approximately $59,296,100, to a deficit in 1932 of approximately $37,335,127.

The decrease in attendance at motion-picture theaters during such period approximated 35 percent.

During the same period of time, from 1929 to 1933, we find that of 19,311 theaters reported as existing at the end of 1932, 6,064, or 31.5 percent were closed. New theater construction has declined rapidly from $163,559,000 in 1929 to $17,500,000 in 1932.

The decline in profitability of the industry has been attributed to a number of factors, including overexpansion in the direction of seating capacity of theaters, the erection of theaters at a high cost per seat, the effect of the depression upon the demand for entertainment, the general lowering of admission prices, shortsighted and inefficient management of corporate enterprises, and the payment of inordinately large compensation for services.

In your deputy's opinion, an increase in theater attendance, with the maintenance of proper admission prices, would be accompanied by an increase of profits for this industry far greater proportionately than possible in any other industry.

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In the production of motion pictures, the 1931 census reported the number of employees as 14,547, with prevailing hours of labor per week varying from 48 to 54 hours.

In the distribution of motion pictures at the end of 1929, there were 9,342 persons employed in the exchanges, with prevailing hours of labor approximately the same as in production.

In the exhibition of motion pictures, the number of workers employed is estimated to approximate 250,000, with prevailing hours from 23 to 62 per week.

According to estimates furnished your deputy, the increase in the number of employees in this industry, whose employment is attributed to the operation of the proposed code, is estimated to approximate 25,000 persons.

A brief analysis of the code follows:

ARTICLE II. ADMINISTRATION

Administration of this code principally revolves about the code authority provided for. The code authority is named in the code with the assent of the representative groups in the industry whose belief it was and is that were a method of selection provided for, the designees could not commence to function until many months have passed. The actual naming of the members of the code authority was therefore done in order to expedite the administration of the code.

The code authority is fairly representative of the economic divisions of this industry.

Its personnel is constituted of the outstanding representatives of both affiliated and unaffiliated producers, distributors, and exhibitors. The character of its membership and the responsibility attached thereto should, in your deputy's opinion, insure high-minded, fair, just, and impartial administration.

Provision is made for the seating upon the code authority of representatives of classes of employees whose interests may be affected, upon proper occasion; and also for the designation by the Administrator of three impartial persons appointed by him as his representatives thereon.

Your deputy confidently expects that the code authority will function in open public, and that a penetrating spotlight of public interest will be focused upon it.

Under such circumstances, your deputy believes that no just grievance or complaint can be disregarded with impunity by the members of the code authority. The fact that the code authority is fairly constituted, that it is composed of men of the highest reputation for fair dealing in the industry, and the fact that it will be subjected openly to a scrutiny from every group and division in the industry, as well as without, should assure the Administrator and every element in the industry, no matter how small or large, of its proper functioning.

It is respectfully submitted by your deputy that in the event the code authority should fail to be representative, or should fail to be impartial, fair, and just, the Administrator charged with the responsibility for its creation must alter its constituency. However, your deputy does not believe that this code authority could fail to be mindful at all times of the trust reposed in it for the benefit of the industry.

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ARTICLE IV. LABOR PROVISIONS

A. In the production of motion pictures, as the general rule, skilled and unskilled labor is given a 36-hour week, while so-called "white collar" help is given a 40-hour week.

The hourly rate for classifications of employees ranges from 40 cents an hour to $2.25 an hour, the wage increase generally being approximately 15 percent and representing an increased pay-roll expense upon the producers estimated upward of $8,000,000 per year. All classifications of the employees, according to their experience and skill and according to the locality of employment, have been preserved, with maximum hours of labor, minimum rates of pay, and other conditions of employment necessary to effectuate the purposes of the code, and carefully safeguarded.

While provision has been made for the exigencies of motion picture production work, specified employees engaged therein receiving $70 or less per week have received the benefit of lay-offs with pay for working over a stipulated number of hours per week. Undoubtedly a committee will be established by the code authority for the further study of problems affecting employees employed in production work.

News-reel cameramen and soundmen have for the first time been given a limitation upon hours of employment with compulsory days off with pay under stipulated conditions.

Studio mechanics working more than 6 hours per day are compensated at not less than time and one-half for their overtime.

Special effort has been made to safeguard those workers in any locality who are receiving higher minimum wages and working a lesser number of hours than the minimum wages and maximum hours specified in the code. Such higher wages and lesser number of hours are preserved to such employees.

With respect to extras and "free lance" players, not only is a standing committee provided for to aid and protect such players, but extras are provided with a higher minimum rate of pay than has heretofore existed, ranging from $5 per day for crowds and atmosphere people to $7.50 per day for extras, with their pay graded upward according to the character of the performance and personal wardrobe required. Extras are also provided with working conditions safeguarding their employment and compensation for interviews lasting more than one hour and a half.

Child labor in the production of motion pictures is absolutely prohibited, except that children may fill roles or make appearances upon compliance with the provisions of State laws appertaining thereto.

B. In the distribution of motion pictures a 40-hour week is provided for, with minimum wages according to population, ranging upward from $14 per week.

Child labor is absolutely prohibited.

C. In the exhibition of motion pictures:

Part 1. For employees other than actors: Child labor is absolutely forbidden, and a general 40-hour week is prescribed, with minimum hourly rates of pay provided for with respect to general unskilled labor, such as ticket sellers, door men, ushers, cleaners, matrons, watchmen, attendants, porters, and office help.

In your deputy's opinion, the provisions relating to skilled employees employed in the theaters, such as billposters, carpenters, electrical workers, engineers, firemen, motion picture machine operators, oilers, painters, theatrical stage employees, theatrical wardrobe attendants, constitute one of the most constructive portions of this code.

For a great many years there has been constant industrial strife existing in the communities where union labor is employed in the theater, and it was your deputy's determination that this code could not effectuate policies of the act unless sound provisions were incorporated for ameliorating this condition.

With the full approval of labor, therefore, provision is made for the establishment of the prevailing scale of wages and maximum number of hours of labor of organizations of any such employees affiliated with the American Federation of Labor with respect to their respective type of work in a particular class of theater or theaters, in a particular location, in a particular community.

The unions have agreed that in those communities wherein they are directly and regularly employed by the exhibitors, that any and all disputes relating to determination of scales and hours with respect to the particular class of theater or theaters in a particular location, in a particular community affected, that they will arbitrate and not strike, and the employers have agreed that they will not lock out such employees.

The National Recovery Administrator is given power to appoint the impartial additional person to finally determine the dispute where the parties themselves are unable to agree, and all such action is finally subject to review by the Administrator.

Where such unions do not exist, and union employees are not directly or regularly employed by the exhibitors, the minimum wage is 40 cents an hour.

Moreover, in order that the Administrator might be assured that no such skilled employee as above named might lose his position, the code provides that in no event shall the duties of any such employee directly and regularly employed by the exhibitors as of August 23, 1933, be increased so as to decrease the number of such employees employed in any theater or theaters in any community except by mutual consent.

A general pledge that the employers and employees shall attempt to arbitrate all disputes is also contained in the code.

Part 2. Actor employees in vaudeville and presentation theaters: Actor employees, including chorus persons, are for the first time in the history of this industry safeguarded with respect to their rates of pay and working conditions.

Reference to part 2, division C, of article IV of the code, discloses the elaborate safeguards provided for in the code to protect this class of actor labor.

Child labor with respect to such employees is also forbidden, except that where roles are to be filled or appearances made by children in vaudeville and presentation theaters, they shall be in compliance with the State laws appertaining thereto.

UNFAIR PRACTICES

Article V–A. General: Included in the statement of general unfair practices is a proposal under which the code authority is authorized to investigate whether any employer in the industry has offered an unreasonably excessive inducement to anyone to enter his employ. If so found, then with the approval of the Administrator, such employer may be assessed the amount of the unreasonably excessive inducement, up to the amount of $10,000. Nothing in the proposal, however, affects the validity of the agreement of employment so entered into between the offending employer and his employee (pt. 4).

The aim of the proposal is to check and correct certain alleged abuses of which widespread notice has heretofore been taken in investigations and legal proceedings.

Your deputy makes no recommendation with respect to continuing this provision in the proposed code.

B. Producers: Generally recognized unfair practices are declared such. There are two proposals, however, which demand comment.

The provisions relating to agents are of special interest. Briefly, it is provided that no producer shall transact any business relating to the production of motion pictures with any agents who have been guilty of what is generally recognized as unconscionable conduct. The claim was made upon the public hearing and at the conferences thereafter that unrest and dissension had been caused and fomented by agents representing the employees of producers, and that by reason of such activities the producers had in effect been deprived of the benefits and advantages of their contractual relationships with their own employees. Such claims were flatly denied and directly contradicted by representatives of such agents. In your deputy's opinion, there is a great deal to be said on both sides.

However, in view of the fact that employees under contract to producers constitute undoubtedly the most valuable asset of the producing companies, this

code provides for the creation of an agency committee, consisting of five representatives of producers and a representative each of agents, actors, writers, directors, and technicians, who shall sit to recommend to the Administrator with respect to any proposed regulations or rules governing the relationship between producers and such five classes of employees, and also with respect to possible registration of agents, in order that the problem, if existent, may be adequately dealt with. Any and all such actions, however, by such agency committee are directly supervised by the Administrator, whose approval is necessary in order to effectuate any action taken by such committee. In your deputy's opinion, such provisions are fair and equitable to all interested parties, and are carefully designed to safeguard the rights of all concerned. (Pt. 4.)

There is another provision which is intended to effectuate the same purpose—the preservation to a producer of the relationship existing with his employees.

Before discussing the specific proposals contained in the code in such regard, your deputy points out that when employees are regularly employed by a producer for a period of time, the relationship is customarily mutually beneficial. The producer in such case contends that his organization and his efforts result in building up the value of such employee. The employee, while usually recognizing the justice of the producer's contention, on the other hand contends that were it not for the innate abilities of such employee, the producer would not be able to realize value from the employment. These contentions of both producers and their employees are not only made with respect to actors, but are also made with respect to all employees engaged in creative, artistic, technical or executive capacities. (Employees whose labors are purely creative, such as writers, authors, and dramatists, contend that they are in a different position from other employees, and urge that any of the producer's contentions as aforestated are not applicable to them.)

To the end, therefore, that both producers and their employees shall receive, free from interference, full benefits and advantages arising out of the contractual relationship, the code provides that no offers shall be made by a producer to or for such employees of another producer until 30 days before the expiration of the then existing contractual relationship. The code further provides that as and when a firm bona fide offer has been made by the then employing producer to the employee involved, that during the last 30 days of the strictly contractual relationship such then employing producer shall receive notice of offers from the competing producer, so that the bidding for services shall take place in the open and the then employing producer shall have an opportunity to meet any offers made by a competing producer, and thereby, but only upon the free choice of the employee, be able possibly to continue in his own employment such employee. The employee's choice as between such offers made is entirely preserved. Such is the procedure provided for by the code up to the expiration of the contractual relationship (pt. 5).

Before continuing with the further provisions of the code upon this subject, it is pertinent to point out that the further provisions relate primarily to a theory of prior repute, that is, the theory of producers that those employees receiving very substantial compensation have been enabled to a large degree to secure for themselves such large compensation by reason of the efforts and facilities of their producer employers, and that by reason of such fact the producer employers have an ethical and moral right to be made acquainted for a stipulated period of time after the expiration of the contractual period of employment with offers made for the services of such former employees by competing producers, in order that the last employing producer may be able to meet such offers or at least negotiate with such former employee for a continuance of the employment with the last employing producer; and if such negotiations are successful, thereby preserving to the last employing producer an asset of undoubtedly great value.

These further provisions, relating to a time after the contractual relationship has ended, are presently opposed by organizations of the employees affected, upon the ground that such provisions will tend to decrease bidding for services and thereby directly tend to limit the compensation which such employees might expect to receive, if such provisions for open bidding were not embraced within this code. Your deputy offers no opinion with respect to this theory of price repute, advanced by producers, nor with respect to the arguments adduced by employees opposing such provisions, except to say that the provisions in the code relating to such subject matter are not, in his opinion, such as to work a hardship on either producers or such employees, and that the treatment of such proposals is entirely from the standpoint of fair practice on the part of producers, with entire

freedom of choice left to the employee with respect to their acceptance or rejection of offers.

Briefly, the proposals immediately above referred to are that when the last employing producer has made a bona fide firm offer for the services of such employee who has received compensation of from $500 per week to $1,000 per week, or of from $5,000 per picture to $10,000 per picture, the last employing producer shall have notice of offers made by competing producers for a period of 3 months following the expiration of the employment; and in cases where the compensation of such employees was more than $1,000 per week or more than $10,000 per picture, the period during which such last employing producer shall be entitled to receive notice shall be 6 months following the expiration date of the contractual relationship previously existing (pt. 5, sec. 4).

Provision is made with respect to the determination of the good faith of offers made so as to entitle producers to notice of subsequent offers, and procedure is also devised whereby after notice has been given to the last employing producer he shall have the very shortest reasonable time within which to negotiate to meet an offer made by a competing producer, together with adequate safeguards for the exercise by the former employee of his free choice in acceptance or rejection of offers (pt. 5, sec. 6).

One further provision with respect to the contractual relationship existing between producers and such above-described employees is deserving of special comment. Such provision declares that if the code authority, or any committee appointed by it for that purpose, after notice and hearing, shall find that any employee of any producer has refused without just cause to render services under any contract of employment, the code authority shall have full power, with the approval of the Administrator, to order all producers to refrain from employing any such person for such period of time as may be designated by the code authority, and making it an unfair trade practice for any producer to employ such person in violation of such order, or for any distributor or exhibitor, respectively, to distribute or exhibit any picture produced during the period prescribed by the code authority by or with the aid of such person. The interests of all parties concerned have been safeguarded with respect to the application of such provision of the code (pt. 5, sec. 7).

The foregoing provision is especially designed to meet instances where, without just cause, an employee under contract has declined to render his services, thereby in effect wasting the assets of the employing producer and otherwise jeopardizing or impairing his business, with resultant loss not only to the employing producer but also to his other employees and to all those interested in his business. The provision, while drastic, is supportable upon the theory that if an industry has the right to make rules and regulations with respect to fair practices, it has the concurrent right to make rules and regulations in the nature of self-discipline within the industry for the mutual protection and benefit of all concerned by or under such rules and regulations.

Your deputy respectfully submits the provisions of article V, division B, part 5, for consideration. In your deputy's opinion, these provisions require the most careful supervision, with thorough investigation and frequent reports demanded by the Administrator concerning their operation.

On the general subject of abuses and payment of excessive compensation, your deputy recommends thorough investigation, with report made to the President respecting such subject.

(Your deputy begs to comment that a fair method of determining compensation, where it is likely to run into large figures, especially with respect to production activities, would be employment at a minimum stipulated figure against a percentage of the receipts of the production with which such person is associated.)

C. Producers-distributors: Attention is respectfully directed to the provision which makes it an unfair trade practice for any producer or distributor to knowingly and intentionally interfere with the existing relations between an outside or associated producer and a producer or distributor, and forbidding negotiations with any such outside or associated producer at any time prior to 60 days before the termination of any agreement between such outside or associated producer and any other producer or distributor (pt. 2).

Justification for this provision is based upon the same theory of preserving to the parties thereto the mutual benefits and advantages of their contractual relationships.

D, E, and F. Distributors and exhibitors: In addition to the creation of local grievance boards and local clearance and zoning boards composed of exhibitors

and distributors, hereinafter more fully referred to, the code provides prohibitions upon distributors in their relations with exhibitors. Thus, prior to negotiations and during the course of negotiations between a distributor and an exhibitor, the code prohibits a distributor from—

(1) Threatening the exhibitor in order to coerce the exhibitor to contract for the distributor's pictures, or to pay higher rentals therefor, that the distributor will build a theater in competition with the exhibitor's theater (D, pt. 1).

(2) Exacting as a condition of the licensing of feature pictures, to the exhibitor who seeks to contract for them, that the exhibitor contract also for short subjects of the distributor in excess of the exact proportional ratio of the exhibitor's full program that is supplied by the distributor (D, pt. 5).

Other limitations upon a distributor's usual right of contract are:

(1) The distributor may not, in any contract where the license and rental fees paid by the exhibitor are not based on a percentage of the receipts of the exhibitor's theater, designate the day of the week upon which such pictures may be played; and even if the contract is upon a percentage basis, so that the distributor's revenue is directly affected by the day of the week on which the pictures are played, and the distributor designates a picture for a certain day, the exhibitor may nevertheless be relieved from the obligation to play the pictures on that day if the local grievance board determines that the picture is unsuitable for the exhibitor's theater for that day (D, pt. 9).

(2) The distributor is deprived of the right to contract that he may substitute for certain types of motion pictures covered in the contract, and in cases where the right of substitution is allowed it must give notice of such substitution within the time and according to the manner prescribed in the code (hereinafter more fully discussed) (D, pt. 3).

(3) The distributor, where it contracts to give the privilege of selection to an exhibitor who contracts for less than 85 percent of the motion pictures distributed by the distributor, is prohibited from contracting to permit the exhibitor to take more than 21 days in which to exercise its right of selection. By a provision in the code, if the exhibitor fails to exercise his right of selection in 21 days the picture is deemed to have been selected (E, pt. 1).

Furthermore, the code makes uniform certain elements of the contract relationship between exhibitors and distributors.

The contract to be executed between distributors and exhibitors, unless the parties otherwise agree, must be on the form of the optional standard license agreement (1933). That form was negotiated between representative distributors and exhibitors and contains all the terms of the contract to be performed by both parties other than the license fees to be charged, and the clearance granted.

The clearance granted to the exhibitor by the distributor under the contract must not exceed the applicable clearance established in the schedules formulated by the local clearance and zoning board. Previously the clearance to be granted was one of the most determining factors in arriving at an agreement regarding the license and rental fee to be received by the distributor. Now this element in the contract is regulated by the clearance and zoning board, and the parties to the contract may not grant or receive, respectively, clearance beyond that prescribed as fair and reasonable by the representative boards (art. VI, pt. 1).

After the contracts have been entered into, the code makes provision with regard to the enforcement of the contract and the remedies for enforcement:

(1) There is a provision that if for any reason certain pictures are not delivered under a contract in which the exhibitor has contracted upon the basis that the rental fees of the picture when averaged shall be a certain sum, that the distributor must make a fair adjustment in the rental price of the picture which are delivered under the contract so that the average may be achieved; and that the local grievance board may hear and determine any disputes with regard to such adjustment (D, pt. 8).

(2) There is a provision that if the distributor makes a special production he must first offer such special production to the exhibitor who has contracted for 50 percent or more of the distributor's motion pictures (D, pt. 11).

(3) The distributor is prohibited from transferring its assets for the purpose of avoiding delivery to exhibitors of pictures which it has contracted to deliver (D, pt. 7).

(4) The distributor is prohibited from divulging any information received in checking the receipts in the exhibitor's theater where the distributor's rental and license fees are determined upon a percentage of such receipts ascertained by checking (D, pt. 6).

(5) The distributor is prohibited from licensing motion pictures for non-theatrical accounts contrary to any determination, restriction, or limitation by the local grievance board that such exhibition is unfair to the exhibitor. The right of such accounts to secure motion pictures is preserved, however (D, pt. 4).

In addition, if the contract with an exhibitor is made and it should be found by the local grievance board that the exhibitor bought more pictures than such exhibitor required, with the intention and effect of depriving his competitor of those pictures, the distributor must, if the local grievance board so determines, license those pictures to the complaining exhibitor. Furthermore, the distributor must comply with other determinations made by the code authority with respect to its contracts where exhibitors complain before the grievance board and the grievance board certifies such complaints to the code authority. (E. pt. 2 and 3, sec. 3.)

If the exhibitor defaults in the performance of his contract, if he has agreed to arbitration as provided by the optional standard license agreement, the distributor must resort to arbitration to determine any dispute or claim of default (F. pt. 2).

In such cases the distributor may not refuse to perform other contracts with the exhibitor.

Some corresponding obligations are imposed upon exhibitors to distributors:

(1) An exhibitor is prohibited from transferring his theaters for the purpose of avoiding existing contracts with distributors (E. pt. 4).

(2) The exhibitor is prohibited from exhibiting motion pictures at admission prices lower than those publicly announced or those specified in the contract for such motion pictures (E. pt. 3, sec. 1).

Rebates are forbidden, and the use of premiums is regulated (E. pt. 3, sec. 2).

(3) The exhibitor is prohibited from showing the picture prior to the days for which it is licensed, to show the picture in the license agreement (E. pt. 5).

While a local grievance board has jurisdiction over any contention that a non-theatrical account is unfairly competing with an exhibitor, nevertheless the code specifically provides that nothing in the code shall be interpreted to prohibit the licensing of motion pictures for exhibition at Army posts, or camps, or on board ships of the United States Navy or ships engaged in carrying passengers to foreign or domestic ports or at educational or religious institutions or at institutions housing "shut-ins", such as prisons, hospitals, orphanages, etc. (D, pt. 4 (b)).

The proposal by exhibitors that distributors be prohibited from charging score charges in connection with the licensing of motion pictures has not been acceded to by your deputy, for the reason that such proposal, if granted, would constitute an act of interference with the sales policies of the respective distributors.

Another proposal by the exhibitors that no distributor should have the right to require that the exhibitor license the exhibition of short subjects where he desires to license only feature subjects has been dealt with by a proviso that no distributor shall require as a condition of entering into a contract for the licensing of the exhibition of feature motion pictures that the exhibitor contract also for the licensing of the exhibition of a greater number of short subjects (excepting newsreels) in proportion of the feature pictures for which a contract is negotiated bears to the total number of feature pictures required by the exhibitor. This proviso is in the code by assent of the distributors. Were it not for such assent, it is your deputy's opinion that the practice of "tying-in" short subjects with feature motion pictures in exhibition contracts would not be a proper subject of decision under this code, as such practice is one relating to the individual sales policy of the distributors involved. Your deputy is frank to state that the validity of such practice is not determined, and this code makes no attempt to determine that question (D, pt. 5).

Proposals that double-feature programs, that is, the use of two feature pictures on the same program, be abolished outright or upon the vote of a majority of the exhibitors in any territory, were opposed by independent producers. Your deputy did not regard it within his function to jeopardize the business of independent producers nor to even partially place the stamp of disapproval upon a practice which in certain portions of the country has existed for many years. The exhibitor's right to show a double-feature program, the producing company's right to refuse to permit its pictures to be shown on a double-feature program, and another producing company's right to insist on being able to sell its pictures on a double-feature program, all involve questions of individual policy. This code makes no attempt to determine such questions, each and every one highly controversial and, in your deputy's opinion, outside the scope of this code at the present time.

SUBSTITUTIONS (D. P. 3)

It is the practice and custom of this industry for exhibitors to license motion pictures approximately a year in advance of their exhibition. There is no question but that the exhibitor in making such license to a large extent knows little or nothing about the kind or quality of the photoplays which he is licensing. His desire in making such license is to take advantage of the standing, position, and reputation of the producer whose product he is contracting. Insofar as it is possible to do so under such system of licensing, the kind and quality of the product should be, and customarily is, indicated to the exhibitor.

Your deputy holds no opinion with respect to the advantages or disadvantages of such a system of licensing. While considerable claim has been made by exhibitors that they desire to license their product as and when same is made and screened for purposes of their purchase, the fact is that the present system of licensing is in vogue, the producers claiming that they could not assure exhibitors of either a continuous flow of product or a budgeted production program otherwise.

Considerable latitude to the producer is therefore essential under the present system of licensing the exhibition of motion pictures. Not only may illness or death of players or unadaptability or untimeliness of the subject matter make necessary changes in the cast or nature of the production but frequently changes in cast, production, and plot are necessary to improve the motion picture. Moreover, producers have found it desirable to require or select stories or plays on timely subjects which could not be anticipated at the time when the license agreement with the exhibitor is made.

Percentage bookings, that is, the licensing of motion pictures by the distributor with revenue to the distributor dependent upon the gross income to the theater and which system of bookings has now become quite common in this industry, is a practical assurance to some extent that the producer will and should make every effort to create a more desirable motion picture rather than one of poor quality.

A degree of elasticity in the requirements of definiteness is therefore warranted under the present system as above described.

The practice of substituting another motion picture for one which has been described in the exhibition contract as made or to be made with the participation of a named star or stars, or named director or that of a named well-known author, book, or play, constitutes an unfair practice. The substitution in such case is a species of fraud and should not be permitted..

Consequently, this code declares that no distributor shall substitute for any feature motion picture described in the license agreement as that of a named star or stars, a named director or named well-know author, book or play, another feature motion picture not conforming to such description (D. pt. 3 (a)).

The optional standard license agreement, the use of which is provided for in this code, also affords the parties the opportunity of marking described photoplay, "No substitute", and the code provides that photoplays thus designated may not be substituted for, even if there be no named star, etc., described.

Moreover, even when the distributor has under specified circumstances the privilege of substitution, he is obliged under the code to give reasonable notice of such substitution prior to the release date of the motion picture in question (D. pt. 3 (c)).

CANCELATION (F. PT. 6)

The practice in vogue in this industry as above described whereby a number of motion pictures are licensed without the exhibitors having a right of individual selection, is known as "block booking."

The subject of block booking has long been a subject of controversy in this industry. The adherents to any policy of block booking, claim that this practice is economically sound, not only for the reasons of affording a continuous and steady flow of product to exhibitors, and at the same time stabilizing on a budgeted program the production activities of the respective studios who make numbers of feature motion pictures, but they further claim that the practice is economically essential because sale of motion pictures on an individual basis would result in raising the license fees to a prohibitive extent without benefitting either exhibitor or distributor. Such adherents also claim that by virtue of this practice, exhibitors are obliged to a great extent to exhibit a finer grade of motion pictures which may not be popular from a box office viewpoint and therefore an outlet is assured for those photoplays which tend to lift the standards of the screen.

The opponents of the practice of block booking assert that this practice obliges an exhibitor to exhibit motion pictures which he would not otherwise select or exhibit. Your deputy does not doubt that there is a great deal more which can be said for or against this practice.

The fact is, however, that this problem involves a sales policy which in your deputy's opinion is not within the purview or scope of this code. As a practice block booking has heretofore been the subject of litigation and as the sales policy of an individual company, it has been held to be a legal practice. On the other hand, the courts have held that when such practice is employed in combination with restraint of trade, the same is an illegal practice and will be enjoined.

There is nothing in this code which affects or impairs such decisions of our courts. Such decisions must still stand as the law of the land with respect to this practice.

Your deputy believes, however, that since it is the exhibitor's expressed desire to eliminate those motion pictures which he deems he should not be required to exhibit, he should be given a right to eliminate a percentage of the same without payment therefor.

In the past, cancelation privileges have existed to some extent. Under the optional standard license agreement, provision was made for a cancelation privilege but such cancelation privilege was inadequate in the opinion of your deputy, and even then a number of the distributor companies declined to use such form of agreement on the theory that a cancelation privilege is economically destructive. The majority of exhibitor and distributor code-formulating committees recommended a cancelation clause. This code proposes a cancelation clause affording greater relief to exhibitors than they have ever enjoyed before. The exhibitor is granted an outright 10-percent cancelation privilege without payment for the license fees of the motion pictures canceled. The optional standard license agreement for use of which the code provides has been amended so as to grant this extended cancelation right.

The method of the operation of the cancelation privilege in your deputy's opinion is fair and works as follows:

Assume the exhibitor has licensed the exhibition of 36 motion pictures. This entitles him to cancel four of such motion pictures without payment. If the third motion picture of the first group of 10 is canceled, payment is made for the same, but the tenth picture actually exhibited need not be paid for. If none of the first 10 are canceled by the exhibitor, he may cancel without charge any one in the second 10 licensed without any payment therefor, and if he desires to cancel any in the second 10, he would pay the license fee for the second so canceled and receive credit for the amount of such payment upon the twentieth motion picture exhibited. The privilege is accumulative so that if none are canceled up to the thirty-second photoplay exhibited, the exhibitor would have the right to cancel the remaining four without any payment whatsoever.

The only condition attached to the cancelation privilege is that, if after an exhibitor has canceled certain motion pictures licensed under his exhibition contract without paying therefor but thereafter fails and refuses to substantially perform the terms and conditions of such license agreement, he may be held liable for the license fee of the motion picture theretofore canceled as part of his liability for his breach of contract. This provision, in your deputy's opinion, is just.

The application of the cancelation privilege to only those exhibitors who have contracted to exhibit the motion pictures offered and the licensing fees of all thereof average $250 or less, will embrace the vast majority of the exhibitors of the United States.

CLEARANCE AND ZONING BOARDS

Motion pictures have the greatest drawing value when they are new. Exhibitors, therefore, are keenly desirous of licensing the early exhibitions of the various photoplays. The license fees reflect the advantage of a prior exhibition. Thus the very same photoplays for which the distributor may receive a license fee of $10,000 for a first run, will be licensed to a last-run exhibitor for as little as $5. The exhibitor who pays a large license fee, in consideration of the priority of exhibition, specifies this right in his contract with the distributor.

The provision involving priority of exhibition in license agreements is commonly referred to in the industry as "clearance" or "protection."

There have been claims of economic abuses with respect to clearance. The exaction by an exhibitor of an unreasonably long period of time during which his competitor may not exhibit the same photoplay, or the exaction of an unreasonable area over which these rights are obtained, are the abuses complained of. In

other words, it is conceded that in consideration of a larger license fee, the exhibitor is entitled to attract audiences to the prior exhibition without fear that competitors will either at the same time, or so soon thereafter that the public will be inclined to wait, exhibit the same photoplay. It is contended, however, that if the period of time during which competitors are excluded is too long, or if the area over which the right is asserted is so distant that it does not embrace competitors, that a legitimate right has been turned into an abuse.

In order that this abuse might be eradicated, and this complicated and technical problem be fairly solved by experts within the industry, the code establishes clearance and zoning boards (art. VI). These boards will be established in the 32 motion-picture industry territorial subdivisions of the United States. They will be constituted of distributors and exhibitors representative of the various classifications concerned. These boards are not expected to destroy and thereafter rebuild the present system of clearance in force throughout the country. Their principal function is to regard situations as they presently exist or as they may hereafter exist, and to right that which may be wrong, to correct abuses which may exist, and to be thoroughly constructive. The board will be composed of 2 distributors, 2 first-run exhibitors, 2 subsequent-run exhibitors, and 1 person approved by the Administrator who will have no affiliation with the motion-picture industry, and who will be an impartial representative in the event that the board is deadlocked in its decision.

To further assure the fair composition of the board, distinctions have been made between affiliated and unaffiliated exhibitors, so that both classes may be fairly represented. The schedule will be binding upon exhibitor and distributor alike. In this manner the purchasing power of the large exhibitor will be curtailed to the extent that he will be unable to insist upon and obtain unreasonable clearance beyond the fair provisions of the schedule in the territory. Thus, while the legitimate rights of the prior runs will be preserved, the rights of the subsequent runs usually represented by small exhibitors, will be granted protection against the economic pressure behind unreasonable demands. The code also provides machinery for the filing of claims or protests against any decision of the board, and an appropriate appeal from any adverse decision.

Your deputy believes that clearance and zoning boards will eliminate an abuse which has been the cause of great differences in this industry for many years, and will aid in effecting peace and harmony amongst the competitive elements of the industry.

With respect to the clearance and zoning boards and grievance boards provided for in this code, your deputy desires to point out that they are created for good and not for wrongdoing, for constructive and not destructive work, for the rectification and not for the creation of abuses. The test of their value will be forthcoming by the results they accomplish.

One of the most constructive efforts made under this code to insure ethical and fair dealing is the creation of local grievance boards.

LOCAL GRIEVANCE BOARDS

There can be no question but that abuses exist with respect to the licensing of motion pictures by exhibitors who are in competition. The very existence of affiliated motion-picture theaters to the largest degree affiliated in interest with producers and distributors is sufficient in itself to raise the problem. Moreover, the presence in the exhibition field of large circuits of independent theaters is a great contributing factor to the presence of the problem. So long as circuits of theaters exist, whether affiliated or independent, the problem will remain, in your deputy's opinion, because the "buying power" (a misnomer for "booking power") of such circuits is a factor which cannot be overlooked.

The licensing of motion pictures for a great number of theaters undoubtedly entitles the licensee to a discount, but when the discount approximates the securing of benefits or advantages not usually or customarily given to another licensee, the very root of the problem is touched. Coexisting with wholesale booking by large circuits of theaters, whether affiliated or otherwise, is the right of the individual producer and distributor, exercising their dominion under the copyright laws of the United States, to freedom of choice in the selection of those with whom they wish to deal.

The problem of securing motion pictures of value for exhibition in their theaters has been inaptly referred to by exhibitors as the "right to buy." Innumerable clauses and proposals by exhibitors with respect to this alleged right to buy have been examined by your deputy, and extended conferences have been held with exhibitors and others with respect to the same.

Your deputy has consistently declined to entertain any proposals with respect to the alleged right to buy without there accompanying such proposals, safeguards and protection to the producer and distributor, who have urged a contravening phrase inaptly called the "right to sell."

Neither the drafters of proposed clauses on behalf of the exhibitors, nor the exhibitors themselves, have clearly defined their proposals. Their inability to do so, in your deputy's opinion, has been caused by the fact that each exhibitor has his own particular situation in mind with respect to this problem. This is true also with respect to the distributors, who have insisted that they have the right to deal with each situation as it presently exists or arises.

This industry is, in your deputy's opinion, one of the most highly individualistic in our country. Each distributor proposes his right to his own sales policy, and each exhibitor opposes that he has the right to conduct his own business as he sees fit. The ancient phrase that "what is sauce for the goose is sauce for the gander" well applies to this situation. As a professor of law once put it: "One man's rights end where the other man's nose begins."

The determination, therefore, of the problems generally relating to sales policy, and of the problems of exhibitors in connection therewith, required that your deputy walk upon the invisible and intangible line of demarcation separating the two contentions. In decrees of the United States courts condemning certain practices of motion-picture producers and distributors under the Sherman Act, where such acts condemned are done in combination and conspiracy, the same decrees provide that if such acts are done by the individual producers and distributors not acting in combination, they are not condemned. There is nothing in this code for this industry, so far as your deputy can learn, and certainly there is no intention that there should be in this code anything which vitiates or impairs the decrees of our courts enjoining the acts condemned heretofore, when done in combination.

So, with respect to the problem of exhibitors licensing motion pictures in open competition, your deputy has carefully avoided approving any policy which at the outset would restrict and limit a distributor in pursuing his own sales policy (except with his assent) or which would restrict any exhibitor (without his assent) in his attempt to do that which he feels is necessary for the proper conduct of his business. Approximately 85 percent of the complaints coming to the attention of your deputy from exhibitors have been with relation to situations where their competitors have licensed so much of the available valuable motion-picture product that they themselves are unable to secure a sufficient amount of such product to properly run their theaters. Such a complaint is against a practice which is commonly known as "overbuying."

In your deputy's opinion, while broad regulation of sales policies and the exhibitors' rights cannot be satisfactorily solved at this time under this code, nevertheless abuses incident to the licensing of motion pictures or incident to the "buying" of motion pictures, in your deputy's opinion, are directly within the scope of the Administrator's functions.

Consequently, there are proposed specific provisions to eliminate abuses incident to the licensing of motion pictures.

Where one exhibitor with the intention and effect of depriving his competitor of a sufficient number of the available valuable motion pictures which such competitor requires to operate his own theater,—has licensed more motion pictures than are reasonably required by him, or has adopted an unfairly competing operating policy of unnecessary and too frequent changes of motion pictures, or has exacted without just cause an agreement from any distributor as a condition for entering into a contract for motion pictures that such distributor refrain from licensing its motion pictures to his competitor, or has committed any other similar act, with such intention and effect, the code provides that such practices are unfair.

While the declaration that any of such practices constitutes a violation of the code is as far as the code could ordinarily treat with such a matter, it was desirable that further provision be obtained, if possible, which would not only outlaw such practices but would grant affirmative relief to the competitor. In other words, it was necessary that in such a case there be some authority to direct the offending exhibitor to surrender some of the photoplays to his competitor, even though he had licensed them under contract. This involved further difficulty, for the distributor who was party to the contract and who might be innocent of any offense could resist the interference with his contractual rights. Your deputy therefore sought a voluntary compliance with the additional relief, and such compliance and provision is now contained in article VI, part 2.

Thirty-two local grievance boards are to be appointed and to be constituted of distributors and exhibitors fairly representative of the respective elements of the industry. These boards will consist of 2 distributors and 2 exhibitors, and 1 person not affiliated with the motion-picture industry who shall be approved by the Administrator, and who will be the impartial representative of the code authority and will cast a vote if the board is deadlocked.

To further assure the fair composition of the board, it is required that one of the distributors be a national distributor with theater affiliations, and that one of the distributors be without theater affiliations. Similarly, one of the exhibitors shall be an affiliated exhibitor and one shall be an unaffiliated exhibitor. All members of the local grievance board are required to take an oath that they will fairly and impartially determine disputes before them. Any exhibitor may file a claim with the local grievance board, and if it is determined that an exhibitor with the intent of depriving another exhibitor of sufficient motion pictures to operate his theater has licensed more motion pictures that are reasonably required, or that he has accomplished the same purpose by adopting an unfairly competing operating policy of unnecessary and too frequent changes of motion pictures, or has induced a distributor not to license motion pictures to his competitor, or has committed any other similar act with the same intent and effect, relief may be granted to such complaining exhibitor.

The grievance board will have the power to direct that certain photoplays thus acquired by the offending exhibitor be licensed instead to the aggrieved exhibitor upon certain terms and conditions specified in section 3 of part 2 of article VI of the code. These provisions mark a new advance in the regimentation of industry so as to eradicate abuses existing since the inception of the industry.

In an industry of the complexity of this, numerous other complaints and grievances, whether justifiable or not, and whether embraced within the subject matter of the code or not, will arise. Heretofore such complaints could only be solved by the voluntary amicable adjustment between distributor and exhibitor, or by resort to law courts, involving all expenses and delay necessarily incident to legal procedure, or by resort to propaganda of public and political variety which has contributed its share to the antagonisms within the industry in past years. Such internal industrial wars should be stopped. Stability and harmony should be substituted for the belligerency which has existed in the past. This can only be achieved if a fair forum is created whereby just grievances may be aired and remedied. This forum should be an industrial forum composed chiefly of experts in the industry who are familiar with its problems and can better determine the validity of the complaints made.

The local grievance boards will act as such a forum and the code provides (art. VI, pt. 2, sec. 4) that all complaints and grievances are specifically designated to be heard or passed upon by the code authority by arbitration or by the local clearance and zoning boards, shall be heard by the local grievance board. Thus the motion-picture industry, by its own industrial courts, fairly constituted of the conflicting elements and with an impartial and Government-approved representative on the grievance board to determine deadlocked cases, should afford speedy, just, and uncostly relief to any exhibitor or distributor no matter how small or large.

Your deputy considers the establishment of the local grievance boards a great advance in the interest of industrial peace. All constructive elements in the industry should join in giving these boards a fair opportunity to function properly.

On this subject your deputy's adviser from the Administration's Division of Economic Research and Planning has stated:

"I heartily subscribe to the principle of self-government on the part of the industry as expressed in the provisions for local boards and code authority review. It appears to me impracticable and unnecessary for the code to state explicitly such standards of competition as the "right to buy" and thereby raise questions of a definitive nature when the practical approach to the matter is an analysis of the policy or procedure in a specific situation which may be brought before a local board and reviewed by a national board. No code provision on such practices could be written, in my opinion, that would not result in a serious economic readjustment of contractual relations. A possible lack of uniformity in industrial regulation as a consequence of localized jurisdiction on problems of trade practice may be effectively guarded against, I believe, by a close supervision over local arbitration by the national authority."

Your deputy believes that with respect to the code provisions designed to eliminate the presently existing abuses in this industry, the industrial forsum

which have been created for the solution of such abuse problems should be effective.

Whether or not these agencies will do that for which they are being created is beyond the power of your deputy to know.

Your deputy respectfully submits that the administration of the boards hereinbefore referred to must be at all times carefully supervised, and feels that it is his duty to state that if such boards, or indeed if any of the provisions of this code, do not accomplish that for which they are intended, they should be speedily and expeditiously changed and remedied.

GENERAL TRADE POLICY PROVISIONS

Under this code this industry has pledged its combined strength to maintain right moral standards in the production of motion pictures, and to maintain the best standards of advertising and publicity procedure, and to those ends has pledged itself to adhere to the regulations promulgated by and within the industry to assure the attainment of such purposes (art. VII).

With respect to this subject the consumers' advisory board has heretofore advised your deputy as follows:

"Moral standards: Consumer interest is intensified in this industry, for, in addition to the cost of entertainment, the public is concerned with the educational, social, and moral values of motion-picture entertainment. In fact, the entire industry has sufficient possibility for good influence on the adolescent public to bring recommendations that it be treated or controlled as a quasi-public utility.

Nevertheless it is now generally recognized that moral standards are elevated by education rather than by policing or enforcement agencies. The claim that a morals provision be inserted in the code is confronted with the probability and disappointment of ineffective enforcement. We believe that truth and propriety in advertising * * * should be made mandatory, but on the intangible factor of moral standards the industry itself should define and publish a satisfactory policy."

It is needless to add that, in your deputy's opinion, it is entirely within the Administrator's functions to require that the pledges by this industry as above stated be observed by the members thereof, since such subjects affect the public welfare and the standards of living of the American people, and otherwise relate to the rehabilitation of this industry.

* * * * * * *

This code is approved and adopted by the authorized representatives of representative groups of motion-picture producers, distributors and exhibitors, and labor, as appears from their approval in writing appended hereto.

There are also appended hereto the reports on this code, of the Labor Advisory Board, Consumers' Advisory Board, Division of Economic Research and Planning, Industrial Advisory Board, and Legal Division.

Your deputy finds that:

(a) The code as revised complies in all respects with the pertinent provisions of title I of the act including, without limitations, subsection (a) of section 7 and subsection (b) of section 10 thereof; and that

(b) The respective producers', distributors' and exhibitors' committees, under their coordinators, were and are industrial groups truly representative as a whole of the motion-picture industry; and that such groups imposed no inequitable restrictions on admission to membership therein; and that

(c) The code is 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 title I of the National Industrial Recovery Act.

Accordingly, your deputy hereby recommends the approval of the Code of Fair Competition for the Motion Picture Industry.

Respectfully submitted,

SOL A. ROSENBLATT, *Deputy Administrator.*

LEGAL DIVISION, *October 25, 1933.*

Mr. SOL ROSENBLATT,
Deputy Administrator National Recovery Administration,
Washington, D. C.

DEAR MR. ROSENBLATT: We have raised and discussed with you the various legal problems presented in connection with the Code of Fair Competition for the Motion Picutre Industry, and understand that all points which we have raised

have been fully considered. The draft which you have submitted to us today has been examined and passed by the legal division.

May we personally thank you for your cooperation and compliment you on the solution which you have achieved for many of the difficult problems presented in the industry.

Sincerely yours,

LEGAL DIVISION,
By BERNICE LOTWIN.
LAWRENCE M. C. SMITH.

OCTOBER 18, 1933.

To: Sol A. Rosenblatt, Deputy Administrator.
From: John P. Frey, Labor Adviser.
Subject: Revised Motion Picture Industry Code.

REPORT OF LABOR ADVISER

In addition to numerous conferences in connection with the preparation of the Code of Fair Competition for the Motion Picture Industry, I have made a careful examination of all of those portions of the code dealing with labor. I have also been in contact with the official representatives of these several labor groups. It is gratifying, in view of these facts, to advise you of my approval and endorsement of the code.

May I be permitted to make this personal comment: I have thoroughly enjoyed my association with you as your labor adviser because of your constant effort to secure all of the facts and to give full consideration to all phases of the problems which were called to your attention.

Sincerely yours,

JOHN P. FREY, *Labor Adviser.*

OCTOBER 24, 1933.

Memorandum to: Sol Rosenblatt, Deputy Administrator.
From: Consumers' Advisory Board.
Subject: Approval of Code for the Motion Picture Industry.

The Consumers' Advisory Board approves the above code (third revision) and commends the manner in which difficult and controversial problems have been met in the code as now formulated.

L. F. BOFFEY, *Consumers' Advisory Board.*

INDUSTRIAL ADVISORY BOARD,
October 25, 1933.

Deputy Administrator SOL ROSENBLATT,
National Recovery Administration, Washington, D. C.

DEAR MR. ROSENBLATT: Mr. E. N. Hurley, industrial adviser, has approved the final copy (third revision, draft available October 23) of the Code for the Motion Picture Industry, and the Industrial Advisory Board hereby confirms this approval.

Very truly yours,

EDW. R. STETTINIUS, JR.,
Washington Representative Industrial Advisory Board.

HARVARD UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS ADMINISTRATION,
Boston, Mass.

Mr. SOL A. ROSENBLATT,
National Recovery Administration, Washington, D. C.

DEAR MR. ROSENBLATT: I wish to acknowledge receipt of copies of first and second revisions in the motion-picture industrial codes, for which I thank you.

Without the formality of a written report, but meeting, I believe, the requirements of the Division of Economic Research and Planning in code procedure, may I state the following opinions on the code as it may be written.

I heartily subscribe to the principle of self-government on the part of the industry as expressed in the provisions for local boards and code authority review. It appears to me impracticable and unnecessary for the code to state explicitly such standards of competition as the "right to buy" and thereby raise questions of a definitive nature when the practical approach to the matter is an analysis of the policy or procedure in a specific situation which may be brought before a local board and reviewed by a national board. No code provision on such practices could be written, in my opinion, that would not result in a serious economic readjustment of contractual relations. A possible lack of uniformity in industrial regulation as a consequence of localized jurisdiction on problems of trade practice may be effectively guarded against, I believe, by a close supervision over local arbitration by the national authority.

While I have mentioned only the so-called "right to buy", the principle would also be effective in deciding the vexatious problems of conflicting interests in double-featuring and other practices.

An attempt to codify a control over maximum salaries and emoluments to actors and executives of the industry is, in my opinion, inconsistent with the principle of self-government, and an unwise procedure from the point of view of industrial development. To put a check of any sort upon the exercise of managerial judgment as to a worth-while expenditure for services on a particular feature production or a group of productions in an industry where judgment of artistry plays such an important part, would destroy incentive and have a deterrent effect upon the quality of the product. This opinion would be substantiated, I am sure by an analysis of any half-dozen pictures produced by a particular company, whether from a social or economic point of view.

I regret that I have not the opportunity of serving you further.

Very respectfully yours,

H. H. THURLBY,
Assistant Professor of Industrial Management.

OCTOBER 25, 1933.

Mr. SOL A. ROSENBLATT,
Motion Picture Industry.

I have perused Mr. H. H. Thurlby's letter in which he comments on the Code for the Motion Picture Industry and I wish to state that I concur in his conclusions.

As regards control over maximum salaries to actors and executives, especially actors, even though they are usually remunerated on the basis of artistry, the most important feature is the potential volume of business obtainable through the employment of certain actors. In other words, the salaries of so-called "high salaried stars" might represent a considerably smaller ratio when compared with the volume of business obtained from a given production than the salary ratio to volume of low salaried actors. In other words, from a managerial standpoint, the return on salary investment is more important than the salary itself.

It is also felt that managerial judgment, initiative, and incentive should not be stifled by maximum salary provisions inasmuch as the foregoing conclusions apply in that case as well.

Furthermore, the very nature of the industry makes it extremely hazardous to employ low caliber executives and that might be the result if maximum salary provisions are included in the code. The ability to forecast future requirements is highly essential in this industry and this necessarily is coupled with careful judgment and execution.

In view of the above, it is felt inadvisable to attempt to control maximum salaries in the Code for the Motion Picture Industry.

DONALD K. WALLACE.

EXHIBIT NO. 2

PUBLICATION OF BUREAU OF FOREIGN AND DOMESTIC COMMERCE OF THE DEPARTMENT OF COMMERCE, ISSUED FEBRUARY 1, 1935

(This exhibit which is a chart showing the number of motion-picture theaters in the United States to be 10,143, will be found on file with the committee.)

EXHIBIT NO. 3

STATEMENT OF ASSENTS TO CODE DELIVERED TO PRESIDENT

The undersigned do hereby approve and adopt the foregoing Code of Fair Competition for the Motion Picture Industry.

Building trade department of the American Federation of Labor, M. J. McDonough, president, William C. O'Neill, secretary.

American Federation of Musicians, 1450 Broadway, New York, N. Y., Joseph N. Weber, president.

Brotherhood of Painters, Decorators, and Paperhangers of America, L. P. Lindelof, general president, by William J. Gallagher.

International Alliance Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, Fred J. Dempsey, general secretary-treasurer.

International Union of Operating Engineers, John Possehl, general president.

International Brotherhood of Electrical Workers, Dan W. Tracy, president.

International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, John F. McNamara, international president.

Chorus Equity Association, 110 West Forty-seventh Street, New York, N. Y., Dorothy Bryant, executive secretary.

Fleischer Studios, Inc., Max Fleischer, president.

Educational Films Corporation of America, E. W. Hammons, president.

Educational Pictures, Inc., E. W. Hammons, president.

Warner Bros., H. M. Warner, President.

First National Pictures, Inc., H. M. Warner, president.

Stanley Company of America, H. M. Warner, president.

Vitagraph, Inc., H. M. Warner, vice president.

Fox Film Corporation, S. R. Kent, president.

Universal Film Exchanges, Inc., Carl Laemmle, president.

Universal Pictures Corporation, Carl Laemmle, president.

RKO-Radio Pictures, Inc., M. H. Aylesworth, chairman.

B. F. Keith Co., M. H. Aylesworth, chairman.

Keith-Albee-Orpheum Corporation, M. H. Aylesworth, chairman.

Loews Inc., N. M. Schenck, president.

Metro Goldwyn Mayer Distributing Corporation, N. M. Schenck, president.

Metro Goldwyn Mayer Corporation, N. M. Schenck, president.

Paramount Productions, Inc., E. Cohen, vice president.

Paramount Pictures Distributing Corporation, G. J. Schaefer, vice president.

Motion Picture Theater Owners of America, Ed. Kuykendall, president, representing 4,819 theaters located in all States of the United States except Nevada, and including the District of Columbia.

Kuykendall-Sanford Enterprises, Inc., Ed Kuykendall, president.

M. E. Comerford Theaters, Inc. (66 theaters), Ed Kuykendall, under power of attorney.

Ed Kuykendall, under power of attorney, for Toney Sudekum Enterprises, Inc. (38 theaters).

Theater Owners Chamber of Commerce, Charles L. O'Reilly, President, Sam Sonin, secretary.

National Industrial Recovery Act Code Committee of Independent Theater Owners of the Omaha territory, Calvin Bard, chairman.

Golden State Theater & Realty Corporation (31 theaters), L. S. Hamm, secretary and attorney.

T. & D. Jr., Enterprises, Inc., L. S. Hamm, secretary and attorney.

Redwood Theaters, Inc., Morgan A. Walsh, vice president, and L. S. Hamm, secretary and attorney.

National Theaters Syndicate of California, Morgan A. Walsh, vice president and L. S. Hamm, secretary and attorney.

Independent Theater Owners of Northern California (150 members), Morgan A. Walsh, president, and L. S. Hamm, attorney.

William Berinstein, estate, B. N. Berinstein.

Cornell Theaters, Inc., B. N. Berinstein.

Independent Theater Owners of Southern California (300 members), B. N. Berinstein, president.

Baysam, Inc.; Sydor, Ltd.; Bunsam, Inc.; Luberco, Ltd.; B. N. Berinstein, secretary.

[Telegraph]

LOS ANGELES, CALIF.

Hon. SOL A. ROSENBLATT,
Deputy Administrator National Recovery Administration, Chamber of Commerce.

This confirms action our president, Berinstein, in signing code. His authority to do so full and complete. We wish to express our sincere thanks and appreciation for many courtesies and help you have extended our president, Berinstein. You are assured of our complete cooperation. Sincere best wishes.

INDEPENDENT THEATRE OWNERS OF SOUTHERN CALIFORNIA.

The undersigned do hereby approve and adopt the foregoing Code of Fair Competition for the Motion Picture Industry:

FOX WESTCO,
GEORGE SKOURAS, *Vice President.*
SKOURAS THEATERS CO.,
GEORGE SKOURAS, *Vice President.*
PARAMOUNT-PUBLIX CORPORATON,
SAM DEMBOW, JR., *Representative.*

MEMPHIS, TENN., *October 23, 1933.*

Hon. SOL A. ROSENBLATT,
Administrator, Washington, D. C.

We, the theater owners of Arkansas, Mississippi, and Tennessee, unanimously voted endorsement of you and code as written by you for the motion picture industry in our Twenty-third Annual Convention at the Chisca Hotel, Memphis, today. We pledge our whole-hearted support. Regards.

M. A. LIGHTMAN, *President.*
ALMA WALTON, *Secretary.*

Endorsement of the code has also been received by telegraph from the following: Robb and Rowley Theatres, representing 51 theaters in Oklahoma, Texas, and Arkansas; Charles W. Picquet, president, representing Theatre Owners of North and South Carolina; M. A. Lightman, representing 35 theaters, Memphis, Tenn.; George F. Bromley, secretary, representing Independent Theatre Owners of South California (300 members); H. F. Kincey, representing North Carolina Theatres, Inc.; Roy L. Walker, owner, representing 5 theaters, Walker Theaters, Texas; H. H. Cluck, representing Beltonia Theatre, Belton, Tex.; Allan Garcia, executive chairman, representing Supporting and Extra Players, Hollywood, Calif.; Frank Woods, representing Supporting and Extra Players, Hollywood, Calif.; Sol E. Gordon, representing Jefferson Amusement Co. and East Texas Theatres, Inc.; Martin G. Smith, owner, representing 5 theaters, Toledo, Ohio and secretary, Motion Picture Theatre Owners of Ohio; H. J. Fitzgerald, representing Wisconsin Amusement Enterprises, Milwaukee, Wis.; Jack Miller, president, representing Exhibitors Association of Chicago (200 members); E. V. Richard, Jr., representing 90 theaters, New Orleans, La.; Fred Wehrenberg, St. Louis, Mo., representing as chairman of the board, Motion Picture Theater Owners, and as individual theater owner; C. L. Niles, president, representing Allied Theatre Owners, Inc., representing independent exhibitor members and nonmembers, Iowa-Nebraska territory; Love B. Harrell, secretary, representing Southeastern Theatre Owners Association (200 members, 400 theaters) in 4 Southern States; A. J. Brylawski, president, representing Motion Picture Theater Owners of the District of Columbia; Karl Hoblitzelle, president, representing Interstate Circuit, Inc., Dallas, Tex. (80 theaters); Hollywood Picture Players Association, Hollywood, Calif.; R. M. Clark, representing Griffith Amusement Co., Oklahoma City, Okla.; Morris Lowenstein, representing Majestic Theatre, Oklahoma City, Okla.; A. F. Baker, president, Kansas-Missouri Theatres Association; F. B. Pickrel, representing Murray Theatre, Ponca City, Okla.; O. M. Enloe, representing Criterion Theatre, Elreno, Okla.; L. E. Brewer, representing Royal Theatre, Pauls Valley, Okla.; E. G. Kadane, representing Ramona Theatre, Frederick, Okla.; and Pat McGee, representing Regal Theatres, Inc., Oklahoma City, Okla.

EXHIBIT NO. 4

STATEMENT OF GENERAL JOHNSON ON MOTION PICTURE CODE, NATIONAL RECOVERY ADMINISTRATION

(Immediate release Nov. 4, 1933. Release no. 1555)

General Hugh S. Johnson today issued the following statement:

"(1) Upon receipt of the Code of Fair Competition for the Motion Picture Industry from the Deputy Administrator, I was advised by a certain group of exhibitors that they desired a hearing and an investigation in respect of the conduct of the Deputy Administrator in the formulation of said code and in respect of the provisions thereof.

"(2) I personally heard this group and referred the whole matter to R. W. Lea, Assistant Administrator for industry, who accorded the requested hearing and carefully investigated the representation of this group.

"(3) I have received Mr. Lea's report and discussed it at length with him, and I find that the charges made against the Deputy Administrator are wholly without foundation and that the complaints made with respect to the code are based principally upon fear and suspicion that just decisions may not be made by the administrative boards set up in the code, and further, that others of the complaints could not be taken care of in the code without the invasion of legal rights.

"(4) This code, as stated in the report of the Deputy Administrator, will require most careful supervision, and such supervision the Administrator proposes to exercise over all of its operations at all times."

EXHIBIT NO. 5

NATIONAL RECOVERY ADMINISTRATION OFFICE MEMORANDUM NO. 266—OFFICE ORDER NO. 86, PORTION OF NATIONAL RECOVERY ADMINISTRATION MANUAL

(Office memorandum no. 266, July 18, 1934)

PROPOSED AMENDMENTS TO CODES

Where amendments to codes are proposed, it is still desired that the procedure set forth in office order no. 86 be followed and that, in order to reduce separate treatment, improvements in codes be effected in conjunction with amendments that must otherwise be made. However, the following points must be emphasized:

(1) Determination as to whether such suggested additional modifications should be noticed for hearing and effectuated is still the sole responsibility of the Division Administrator subject to disapproval by the Administrator.

(2) Where legal defects or definitely harmful or troublesome aspects of code provisions have been developed in practice, modifications to correct the same should be made in connection with proposed amendments, unless extraordinary circumstances (need of speed or otherwise) indicate the advisability of limiting the particular proceedings more narrowly.

(3) Recommendations of advisory boards for the consideration of amendments should be supported by a statement setting forth the need for the amendment, including any facts which may have been developed in the administration of the code.

(4) Division Administrators should give notice of rejection and reasons therefor to advisory boards and others whose suggestions for modifications are rejected.

(5) Advisory boards and others should endeavor, in their suggestions for such modifications, to confine themselves to matters of importance and, in the absence of new light on the subject, should not endeavor to reopen for consideration the issues which were thoroughly discussed and decided in connection with the adoption of the existing version of the code.

By direction of the Administrator:

G. A. LYNCH, *Administrative Officer.*

OFFICE ORDER NO. 86—REVOKING OFFICE ORDER NO. 73

AMENDMENTS

1. The committee named in officer order no. 73 is abolished.

2. Hereafter when an amendment to a code is being considered the representatives of the advisory boards, and of the legal and research and planning divisions, assigned to the industry division in which such code is being handled, shall be given notice thereof by the executive assistant of that division.

3. Within 48 hours after the receipt of such notice, the above-mentioned representatives shall deliver to the division administrator in charge of such code the recommendations of their respective boards and divisions, if any, relative to such amendment; and any provision of such code not within the scope of such amendment which in the opinion of such boards or divisions should be opened for reconsideration at the hearing to be held on such amendment.

4. The division administrator shall consider such recommendations and determine and state in the notice for such hearing the extent to which such code shall be opened for reconsideration.

5. The division administrator's final decision to hold or not to hold a hearing on an amendment, and his decision on the scope of such hearing, without regard to the source of the proposal, are final rulings subject to the disapproval of the Administrator and shall be filed with the review division.

By direction of the Administrator:

G. A. LYNCH, *Administrative Officer.*

CODE MAKING AND AMENDMENT II-5000

AMENDMENTS

5000 (5099) 1. DEFINITION

5000 *a.* The term "amendment" as applied to National Recovery Administration codes means any addition, deletion, or other change of any language thereof.

5010 (5019) *b.* To preserve uniformity of usage, the words "modification", "supplement", "revision", "addition", or "adjustment" will not be used to describe amendments.

5020 (5089) (Unassigned.)

5090 (5099) Miscellaneous.

5100 2. SUBSTANTIVE GUIDES

5100 (5109) *a. Content*

(1) The substantive rules set out in Code Making Substantive Guides (see pt. II–1000 above) will apply to the content of amendments.

5101 (5108) (Unassigned.)

5109 Miscellaneous.

5110 (5119) *b. Scope*

5110 (1) *Administration proposals.*—In addition to amendments proposed by industry, amendments designed to correct code provisions which in practice have proved to be defective, harmful, or troublesome should be proposed by National Recovery Administration itself and considered at the same time as, and in connection with, amendments proposed by industry, unless extraordinary circumstances (need of speed or otherwise), indicate the advisability of limiting the particular proceedings more narrowly. Amendments so proposed by National Recovery Administration itself are hereinafter referred to as "Administration proposals."

5111 (2) *Issues previously decided.*—Administration proposals should be confined to matters of importance. In the absence of new light on the subject, such proposals should not contemplate reopening issues which were thoroughly discussed in formulating the existing version of the code.

5112 (3) *Special situations.*—In the original formulation of codes, certain proposed provisions, directed to special situations requiring particular treatment, were often rejected in order to save the time necessary to explore such special situations. In such cases sponsors were told to propose amendments to meet these situations at a later time. Such proposed amendments should now be considered.

5113 (5118) (Unassigned.)

5119 Miscellaneous.

5120 (5129) *c. Nature of proceedings*

(1) Whenever a likelihood exists that a substantial minority or group will object to a proposed amendment, or where the nature of the subject matter involves the public interest, a public hearing should be called. In other cases notice of opportunity to be heard or to file objections will ordinarily be sufficient.

5121 (5128) (Unassigned.)

5129 Miscellaneous.

5130 (5189) (Unassigned.)

5190 (5199) Miscellaneous.

5200 (5299) 3. PROCEDURE

5200 (5209) *a. General*

5200 The promulgation of an amendment to a code has the same force and effect as the promulgation of the code, since the amendment becomes part of the code. Therefore, the formation and approval of an amendment should be given the same balanced consideration as a code. No final approval or disapproval of proposed amendments will be made except over the signature of the Administrator.

5210 (5219) *b. Who may propose*

5210 Any interested party may propose an amendment.

5220 (5229) *c. To whom proposed*

5220 (1) *The code authority.*—If a code delegates to the code authority the power of the sponsoring group or association to assent to amendments on behalf of the industry, all proposed amendments on behalf of the industry should be referred to the code authority with the request that it apply therefore to the Administrator.

5221 (2) *The sponsoring group or association.*—If the code authority has not been delegated the power of the sponsoring group or association to assent to amendments on behalf of the industry, such proposals on behalf of the industry should, nevertheless, be referred to the code authority with the request that it obtain the recommendations of the sponsoring group or association and transmit these to the Administrator together with such comments as it may see fit to make on its own initiative.

5222 (3) *National Recovery Administration.*—No amendments on behalf of the industry will be considered by National Recovery Administration unless they have been referred to the code authority and a reasonable opportunity for reply has been allowed. The Communications Division will establish a control on such reference.

5223 (5228) (Unassigned.)

5229 Miscellaneous.

5230 (5239) *d. Administration proposals*

5230 (1) *With whom filed.*—All proposals originating in National Recovery Administration will be currently filed with the Research and Planning Division, the Review Division, and the appropriate deputy administrator.

5231 (2) *Supporting facts.*—Such proposals will be accompanied by a statement of the necessity for such an amendment and of the facts supporting the contention of necessity.

5232 (3) *Time of proposals.*—Advisory boards and others should not wait until the code authority has proposed an amendment (as for example, an assessment provision) to come forward at the last moment with sweeping plans for wholesale amendment, but should be constantly studying all codes—proposing amendments as the results of these studies indicate.

5233 (4) *Duties of National Recovery Administration divisions.*

5233.1 (*a*) Research and Planning Division: The Research and Planning Division will compile, study, and file all administration proposals as received. Whenever a code authority proposal is referred to it or at any time upon the request of the deputy, the Research and Planning Division will submit a report and recommendation upon the economic advisability of all such proposals to the Deputy Administrator.

5233.2 (*b*) Review Division: The Review Division will compile, study, and file all Administration proposals as received. Whenever a code authority proposal is referred to it, or at any time upon the request of the deputy the Review Division will submit a report and recommendation to the deputy upon all such proposals from the standpoint of consistency with approved policy and the elimination of conflicts.

5234 (5238) (Unassigned.)

5239 Miscellaneous.

5240 (5249) *e. Presentation of documents*

5240 (1) A code authority recommending an amendment to an approved code will submit to the Administrator, through the Communications Division (hitherto through the code record section) the following documents: 12 copies of the proposed amendment; 12 letters of transmittal to the Administrator explaining the necessity for the proposed modifications (4 must be signed, i. e., "originals"); 4 certified excerpts from the minutes of the code authority meeting at which the amendments were approved, indicating such approval.

5241 (2) Any office, other than the Communication Division receiving proposed amendments directly from the code authority will send all copies to the Communications Division for proper registration and distribution.

5242 (3) The Communications Division will immediately distribute copies of the documents as follows:

Office	Amendments	Letters	Minutes
Code Record Section	2	2 (original)	2
Deputy Administrator	4	2 copies	1
Code Legal Adviser	1	1	1
Research and Planning	1	1	
Review Division	1	1	
Advisory Council	3	3	
Total	12	4 originals 8 copies	4

5243 (4) *Faulty presentation.*—If for any reason the documents are not in proper order, the Communications Division will immediately consult the Deputy Administrator, who will decide whether the documents are to be returned to be prepared properly, or whether the deputy will correct the deficiency and inform the applicant of errors. The exercise of the deputy's discretion will depend upon

such considerations as the importance of the proposal, the facilities available to the code authority, and the gravity of the deficiency. In cases where the office of the code authority is near at hand, where the budget provides for adequate clerical assistance, or where the preparation of numerous copies would place a heavy burden on National Recovery Administration personnel, the code authority should be required to resubmit the documents in proper form.

5244 (5248) (Unassigned.)

5249 Miscellaneous,

5250 (5259) *f. Duties of National Recovery Administration divisions*

5250 (1) *Research and Planning Division—*

5250.1 (*a*) Within 72 hours of receipt of a proposed amendment, from the Communications Division, the Research and Planning Division will submit a report to the Deputy Administrator which will include—

5250.11 (I) Its approval or disapproval of the proposed amendment from the standpoint of economic advisability, together with its reasons therefore, and

5250.12 (II) A compilation of all administration proposals which have been filed with it, together with its approval or disapproval of each such proposal from the standpoint of economic advisability and its reasons therefor.

5251 (2) *Review Division—*

5251.1 (*a*) Within 72 hours of receipt of a proposed amendment from the Communications Division, the Review Division will submit a report to the Deputy Administrator, which will include—

(I) Its approval or disapproval of the proamendment from the standpoint of consistency with approved policies and the elimination of conflicts.

5251.12 (II) A compilation of all administrative proposals which have been filed with it, together with its approval or disapproval from the standpoint of consistency with approved policies and the elimination of conflicts.

5252 (3) *Code Legal Advisor—*

5252.1 (*a*) Within 72 hours of receipt of a proposed amendment from the Communications Division, the Legal Advisor will submit a report to the Deputy Administrator with his approval or disapproval together with his reasons therefor.

5253 (4) *The Advisory Council—*

5253.1 (*a*) Within 72 hours of receipt of a proposed amendment from the Communications Division, the Advisory Council will submit a report to the Deputy Administrator with its approval or disapproval of the proposed amendment, together with its reasons therefor. The Advisory Council will confine itself to the amendment in question, its proposals for further amendments having already been filed with the Research and Planning Division, the Review Division, and the Deputy in accordance with paragraph 5230 above.

5254 (5) *The Deputy Administrator—*

5254.1 (*a*) *Delayed Reports to the Deputy—*

Where unavoidable complications necessitate the delay of a report to a deputy on a proposed amendment, beyond the 72-hour limit, the reporting agency should immediately inform the Deputy of this fact and every effort should be made to resolve the complication. If any reports have not been submitted within the required time, and if there is no justifiable cause for delay, the Deputy should, nevertheless, make his recommendations to the Division Administrator, indicating the absence of such report.

5254.2 (*b*) *The Deputy's report.*—Upon receipt by the Deputy of the reports on a proposed amendment (or upon expiration of the time limit) he will consult with his code legal adviser, and with such other advisers and representatives of the industry and others as in his discretion he deem necessary. Such consultations will not be allowed to result in protracted delays in acting upon the proposed amendment. We will then submit his recommendations to the Division Administrator as to—

5254.21 (I) Whether the proposed amendment should be disapproved or considered further, either in its present form or as revised;

(II) What administration proposals should be considered at the same time;

5254.23 (III) Whether the subsequent procedure should be by public hearing or on notice of opportunity to be heard.

5254.24 The deputy's recommendations will be accompanied by the reports of the Research and Planning Division, the code legal adviser, the Review Division and the Advisory Council.

5255 (6) *The Division Administrator—*

5255.1 (*a*) The Division Administrator will report to the administrative officer cases of undue delay on the part of reporting agencies.

5255.2 (*b*) The Division Administrator will make final decisions on the recommendations of the Deputy Administrator.

5255.3 (*c*) The Division Administrator will notify the deputy of his decision and will instruct him to prepare a notice of opportunity to be heard or a notice of public hearing in accordance with that decision.

5255.4 (*d*) The Division Administrator will have the notice and administrative order checked to see that they are properly prepared in the required form and will forward to the review division.

5256 (5258) (Unassigned.)

5259 Miscellaneous.

5260 (5269) *g. Subsequent procedure under notice of public hearing*

5260 (1) If the decision is to call a public hearing, the procedure will be that for code making, set out in paragraph — above, substituting the word "amendment" for the word "code" wherever the latter appears therein.

5261 (5268) (Unassigned.)

5269 Miscellaneous.

5270 (5279) *h. Subsequent procedure under notice of opportunity to be heard*

5270 (1) If the decision is to publish a notice of opportunity to be heard: the procedure will be as follows:

5270.1 (*a*) If the Division Administrator is in doubt as to whether or not there is an established policy which should govern the content of the proposed amendment, he will consult the Review Division which will inform him of the governing policy, if there be such, within 24 hours. If the Review Division reports that there is no governing policy, the Division Administrator will request the Assistant Administrator for Policy for a ruling. The Assistant Administrator for Policy will issue a ruling within 48 hours (where possible not limited to the particular problem presented by the immediate case but broad enough to cover all cases of the same type). The Assistant Administrator for Policy will file copies of such ruling with the Review Division, the Legal Division, the Code Record Section and the Division Administrator, requesting the ruling.

5270.2 (*b*) The Deputy Administrator will prepare a notice in the prescribed form (see pt. V–F). At the same time in administrative order of approval of the amendment in its proposed final form will be prepared and forwarded to the Review Division.

5270.3 (*c*) The Review Division will check the notice and order for consistency with approved policy. If found to be inconsistent with policy, the Review Division will point out the inconsistency and return the documents to the Division Administrator for correction.

5270.4 (*d*) Where the Division Administrator recognizes the inconsistency with approved policies but contends that an exception therefrom should be made in a particular case, he should so indicate stating his reason therefor. In such case, neither the Assistant Administrator for Policy or the Review Division may grant such exceptions. The Review Division will call attention to the deviation and the reasons therefor and will append its recommendation as to approval or disapproval and will submit the file to the administrative officer for his action. If the administrative officer is not in doubt he will either approve or disapprove the proposed amendment. If he is in doubt he will obtain the recommendations of the general counsel and the economic adviser and such other advisers as he deems appropriate and will make a final decision on the matter. Copies of decisions deviating from approved policies will be filed with the Assistant Administrator for Policy and the review officer for their information. If the administrative officer approves or disapproves the deviation, the proposed amendment will be returned to the Division Administrator who will release the notice or reject the proposal as the case may be.

5270.5 (*e*) When cleared by the Review Division or the administrative officer (if a deviation from policy is involved) the notice will be signed and released by the Division Administrator and the order will be held until the expiration of the waiting period.

5270.6 (*f*) At the expiration of the waiting period, the Division Administrator will forward the order and all other necessary documents (vols. A and B will be prepared and submitted in the same manner as for codes) to the Review Division for the signature of the Administrator and release. If the objections received have caused the Division Administrator to recommend disapproval, an order of disapproval will be prepared and forwarded to the Review Division for the Administrator's signature.

5271 (5278) (Unassigned.)

5279 Miscellaneous.

5280 (5899) (Unassigned.)

5900 (5999) Miscellaneous.

EXHIBIT NO. 6

STATEMENT ISSUED BY GENERAL JOHNSON AND DONALD RICHBERG RE EFFECT OF THE FORM OF ASSENT TO MOTION PICTURE CODE

FEBRUARY 21, 1934.

For the information of members of the motion-picture industry with respect to the form of assent distributed by the code authority of the Motion Picture Industry under the terms of article VI, part 2, section 8 of the code:

1. It is not the intent or purpose of article VI, part 2, section 8 of the code that any member of the industry assenting to the code on the forms used by the code authority shall thereby waive or be estopped from setting up any right which such member of the industry may possess under general or statutory law against any arbitrary, oppressive, injurious, and unreasonable action by any administrative official or agency under the Motion Picture Industry Code.

2. It is not the intent or purpose of such article, part, or section of the code that any member so assenting shall be precluded or estopped from seeking amendments to or modifications of said code.

3. Members of the industry not assenting to the code on the forms above mentioned cannot be denied any of the rights and remedies afforded by the code save only that they will not enjoy the right to file complaints before the administrative agencies provided for in the code. Upon acceptance of any of the benefits and advantages of the code, such members of the industry may be assessed a reasonable amount, subject to the approval of the administrator, to help defray the expenses of administering the code, but not otherwise.

4. While assent on the form above mentioned is necesary to enable a member of the industry to lodge protests with clearance and zoning boards and to make use of the facilities of the local grievance boards, nevertheless such assent is not essential to enable any member of the industry to interpose his defense before any such board if he so desires in any matter affecting his interest, and thereafter to prosecute any and all appeals therefrom to the same extent and in the same manner as a member assenting on the form above mentioned.

5. The statements contained herein apply with respect to the execution, either heretofore or hereafter, by any member of the form of assent above mentioned, and all such assents will be deemed to have been executed in the light of these statements.

HUGH S. JOHNSON, *Administrator.*

Approved.

DONALD R. RICHBERG, *General Counsel.*

EXHIBIT NO. 7

EXECUTIVE ORDER NO. 6949

NONWAIVER OF CONSTITUTIONAL RIGHTS IN CONNECTION WITH CODES OF FAIR COMPETITION

By virtue of and pursuant to the authority vested in me by title I of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195), and in order to effectuate the policy of said title and to eliminate any confusion or misapprehension which may have arisen concerning the effect on constitutional rights of assent to, or cooperation under, codes of fair competition, I hereby order that:

(1) It is understood that neither the Government nor any member of industry waives, or can properly insist that the other has waived, any constitutional right pertaining to the Government or to any individual by approving, assenting to, or cooperating under a code of fair competition.

(2) The approval orders of all such codes heretofore approved are hereby modified to the extent necessary to make this order a condition thereof, and this order shall operate as a condition of the approval of any such code hereafter approved.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, *January 22, 1935.*

EXHIBIT NO. 8

CLASSES OF EMPLOYMENT MOTION-PICTURE INDUSTRY

PRODUCTION, HOLLYWOOD, NEW YORK CITY

Executive: Attorneys, department heads, directors, managers, producers, purchasing agents, unit business managers.

Office: Stenographers, timekeepers, accountants, accounting-machine-operators, bookkeepers, clerks, garage clerks, messengers, mimeograph operators, secretaries, telephone and telegraph operators, typists.

Miscellaneous: Firemen, gardeners, janitors, porters, restaurant workers, seamstresses, watchmen.

Professional: Actors (contract players, day players, extras, free-lance players), art directors and assistants, cameramen and assistants, costume designers, doctors, draftsmen, hairdressers, make-up artists, librarians, musicians, nurses, optical experts, set dressers, script clerks, sound mixers, sound recorders, "stand-by" men, wardrobe fitters, wardrobe men and assistants, writers.

Animated cartoon: Animators and assistants, cartoon photographers, musicians, opaquers, story writers, tracers.

Studio: Artists and sculptors, moulders, automotive mechanics, operating engineers, blacksmiths, ornamental iron makers, carpenters, painters, casters and mouldmakers, cement finishers, construction foremen, electrical foremen, electrical workers, floormen (electric), foundrymen, fur finishers, gaffers, grainers, grips, laborers, lamp operators, machinists, marbelizers, modelers, modelmakers, pattern makers, plasterers, plumbers, projectionists, propertymen (first), propertymen (second), scenic artist, set drapers, sheet-metal workers, sign writers, sprinkler fitters, steam fitters, structural steel workers, swing gang (property), upholsterers, welders.

News reel: Cameramen, editors and subeditors, film cutters, film joiners, soundmen, typesetters.

Laboratory: Breaker-downs, chemical mixers, film loaders, negative assemblers, negative developers (assistant), negative notchers, positive daily assemblers, positive developers' assistants, negative splicers, processing and negative polishers, rewinders, shift boss printers, positive release splicers, printers, release inspectors, sensitometry assistants, vault clerks.

Distribution: Albany, Atlanta, Birmingham, Boston, Buffalo, Charlotte, Chicago, Cincinnati, Cleveland, Dallas, Denver, Des Moines, Detroit, Indianapolis, Jacksonville, Kansas City, Los Angeles, Memphis, Milwaukee, Minneapolis, New Haven, New Orleans, New York City, Oklahoma City, Omaha, Philadelphia, Pittsburgh, Portland, St. Louis, Salt Lake City, San Francisco, Seattle, Washington.

Executive: Office, salesmen, miscellaneous.

EXHIBITION—10,143 THEATERS, 1934

Executive: office, house managers, actors, principals, chorus.

Front of house: Ticket sellers, ushers, matrons, attendants, doormen, cleaners, porters, watchmen.

Skilled mechanics and artisans: Bill posters, electrical workers, firemen, oilers, stage hands, carpenters, engineers, motion picture machine operators, painters, wardrobe attendants.

EXHIBIT 9-A

MAY 15, 1934.

Hon. FRANKLIN D. ROOSEVELT,
President of the United States,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: Attached hereto are the reports of each Divisional Administrator replying to the strictures of the Darrow Report, and a summary of the latter by our General Counsel, Donald Richberg—all of which I have carefully read and with all of which I agree. A more superficial, intemperate, and inaccurate document than the report, I have never seen.

In the hope of an impartial forum to which "little fellows" might complain, I agreed with Senator Nye on the creation of the Board and, as the record demonstrates, nobody could have shown more good faith than I in its composition. But this Board is not in good faith. It assumes, after a few hours of cavalier

inquiry and prejudiced and one-sided testimony, to pass on codes upon which we have spent days and weeks of inquiry and negotiation.

It impugns the motives of the Divisional Administrator in the Motion-Picture Code because he formerly worked for an attorney who has clients in that field, and it asks his removal. Nobody here has rendered more public-spirited, disinterested, and intelligent service than this Divisional Administrator.

In my judgment, this Board has missed a great opportunity for a real public service. As it is now acting, it is of no service to anybody—it is a political sounding board. In view of its fixed prejudices and partisanship and its unfair methods of taking and reporting on testimony, the conclusion is inescapable that the Board is not proceeding in good faith to fulfill its public obligations. Its continuance as a agency of Government would enable it to promote private purposes at the public expense, and in my judgment would impair seriously the usefulness of the National Recovery Administration. The Board was established at my suggestion to supply fair and constructive criticism. It is clearly incapable of fulfilling this function and, therefore, I recommend that it be abolished forthwith.

Sincerely,

HUGH S. JOHNSON, *Administrator.*

EXHIBIT 9-B

COMMENTARY ON MAJORITY REPORT OF NATIONAL RECOVERY REVIEW BOARD, BY DONALD R. RICHBERG, GENERAL COUNSEL NATIONAL RECOVERY ADMINISTRATION, SUMMARIZING THE DETAILED ANALYSIS MADE BY DEPUTY ADMINISTRATORS OF THE FINDINGS AND RECOMMENDATIONS OF THE REVIEW BOARD CONCERNING VARIOUS CODES

MOTION PICTURES

The record of this hearing by the Review Board is a revelation of its methods. The Board reports that the Deputy Administrator "was invited to testify but refused to do so." The record, including a letter from the Deputy Administrator, shows that he not only offered to testify, but to make all his records available to the Board.

The code was assented to in writing by 9,039 members of the industry. Twenty-one complaining witnesses were heard by the Board, including 15 out of 7,500 theater operators. In contrast to 14 hours and 20 minutes of "hearings" by the Board, National Recovery Administration spent over 1,200 hours on the drafting of the code, heard 206 witnesses and obtained a code acceptable, not only to the industry, but approved by all the advisory boards of N. R. A. representing industry, labor, consumers, economic research and law.

The Board acted solely on the basis of a disorderly mess of unsworn and largely false testimony of a few malcontents (many of them discredited by previously illegal practices), covering only 8 out of 288 subdivisions of the code, and arrived at sweeping conclusions upon the entire code founded on obvious ignorance of the code, of the industry and the law. The detailed analysis of the Board's action shows conclusively that the investigation was carried on with utter disregard for fair play and that the conclusions of the Board are unworthy of the slightest consideration.

Anyone adequately informed concerning the industry could learn without difficulty, as is evident from the volume of support given the code and the small volume of complaint, that the code is of incalculable benefit to the small enterprises of the inquiry and affords great relief from the monopolistic effects of the copyright laws and other property rights which give legal advantages of an oppressive character to large enterprises, which they are required under the code to forego to a considerable extent. A return to the "savage, wolfish" competition advocated by the Board would mean simply an enlargement of monopolistic power sanctioned by law.

The refusal of the Board even to receive correct information is shown in its rejection of the brief filed by seven producing-distributing companies. The Board specifically agreed to the presentation of testimony through this brief—since all other testimony was unsworn—and then disregarded it on the announced basis that since these major producers-distributors "could have appeared and testified" their brief should not be given serious consideration. Thus by giving no attention to the vast files of information of the N. R. A., or the principal testimony offered in support of the code, and by refusing to listen to the exceptionally well-informed Deputy Administrator, the Board was able to arrive at findings contrary to fact and conclusions contrary to any intelligent opinion.

EXHIBIT 9-C

I. Comment Upon the Report of the National Recovery Review Board in Respect to the Code of Fair Competition for the Motion Picture Industry

STATEMENT

If the report of the National Recovery Review Board is intended to be a mere expression of opinion concerning the Motion Picture Code, the members who signed it are entitled to their opinion.

If the report is intended to be a conclusion based on testimony and findings of fact, it can easily be demonstrated that it is wholly unwarranted, unjust, prejudiced, and ignorantly contrived.

A fair analysis of the report of the National Recovery Review Board reveals that it is composed of three parts.

The first is a formal legal conclusion that the code is designed to promote monopolies and oppress small enterprise. This conclusion is unsupported by any factual basis.

The second is a number of recommendations with respect to certain sections of the code. These recommendations, it will be demonstrated later, are unscientific, inaccurate, unfair, and inequitable. Frequently they are based on flagrant misconceptions of the provisions of the code. Many of them are founded in the biased views of the National Recovery Review Board unsupported by a scintilla of evidence in the record.

The third is the acceptance by the Board of the malicious, previously disproven, and slanderous attacks upon the Deputy Administrator, and a recommendation that he be removed. The report itself does not even pretend to justify this recommendation, which is totally unsupported by even the slightest proof of any kind and is based solely upon the vicious mouthings, innuendoes, and conjecture of a few disgruntled and disappointed enemies of the National Industrial Recovery Act and particularly of the Motion Picture Code.

II. Contrast Between Drafting of Code and Report

A. THE CODE AND THE REPORT

Seventy-nine days and nights of continuous labor on behalf of all elements of the industry preceded the submission of a voluntary code to the President.

The overwhelming majority of all interests in the industry, exhibitor, distributor, and producer, independent and otherwise, expressed their satisfaction with the code as submitted and signed. Nine thousand, thirty-nine written assents to the code have been filed with the code authority. Of this number 8,950 assents represent theaters, 60 represent distributors covering 31 exchange territories, and 29 represent producers.

Of the 400 codes now in existence, the Motion Picture Code is one of two which have encompassed in one document the conflicting interests of exhibitor, distributor, and producer. For 30 years these conflicts have been insoluble. For 30 years no agreement could be arrived at amongst the contending forces. Through the efforts of the Deputy Administrator, who labored 18 and 20 hours a day over long periods with bickering, irritable groups, agreements substantially satisfactory to all but an insignificant, raucous minority were reached.

During this process 206 representatives of every element of the industry as well as of the public testified or filed briefs presenting their respective conflicting views.

During this process 776 pages of testimony were taken and carefully considered.

During this process approximately 65 briefs, totaling 3,000 pages were submitted by the contending forces and carefully read and digested by the representatives of the National Recovery Administration.

During this process impartial representatives of the Labor Advisory Board, the Industrial Advisory Board, the Consumers' Advisory Board, the Division of Economic Research and Planning, and the Legal Division reviewed the testimony, briefs, and arguments of the contending forces, and assisted in arriving at the final code draft to which they gave their official sanction.

Thus the code now successfully being operated is the fruition of profound study, limitless patience, tolerant sacrifices by the respective groups of some of their previously unyielding positions; it tested the firmness and accuracy of testimony by immersing it in the contrasting testimony of hostile groups; it arrived at an impartial judicial determination of factual and legal disputes—all with a patriotic zeal to further the President's recovery program by eradicating the "chiseler" and protecting the small man.

And now we have the Report of the National Recovery Review Board upon this effort. On what is it based?

According to the Report (p. 76) four "hearings" were held, lasting 14 hours and 20 minutes. In contrast to over 1,200 hours spent by the National Recovery Administration in drafting the code, 14 hours and 20 minutes were spent by the National Recovery Review Board to determine that it was an abortive effort.

In contrast to the 206 witnesses who offered testimony or filed briefs in the National Recovery Administration proceedings, 21 witnesses made statements before the National Recovery Review Board.

In contrast to full consideration given by the National Recovery Administration to the conflicting views presented by all elements in the industry is the ex parte presentation by a small minority of "kickers" made to the National Recovery Review Board upon which its "conclusions" were reached.

In contrast to the consideration by the National Recovery Administration of every phase of the present code, comprised of 288 subdivisions, is the consideration by the National Recovery Review Board of only eight subdivisions of the entire code, although conclusions were reached on other subdivisions.

The hearings before the National Recovery Review Board was not even a "star-chamber" proceeding. It was no proceeding at all. The statements of a few discredited and disgruntled witnesses, some of whom have been found guilty by the Supreme Court of New York of being violators of the code provisions with respect to labor, and who, it will be demonstrated later, brazenly misstated facts, constitute the basis of the report.

None but complaining witnesses were heard, and of 7,500 theater operators in this country only 15 appeared before the Board to give unsworn statements.

Throughout the hearings before the National Recovery Review Board, counsel for an exhibitor association which had from the first instant insisted that the National Industrial Recovery Act did not apply to its members and which has attacked the National Recovery Administration in the courts and which has used every despicable means to obstruct and sabotage the President's program, sat beside counsel for the National Recovery Review Board and virtually engineered the entire proceedings. It was he who urged and probably wrote the recommendations for changes in the code; recommendations, many of which after careful consideration had been rejected by independent exhibitors themselves.

Flagrant misstatements of fact were anxiously devoured by the Review Board, ex parte accusations were accepted as the solemn truth despite volumes of testimony at hand to disprove them. Prejudice and factionalism were poured into the ears of the Board and were accepted in lieu of the impartial findings of months of investigation made by the National Recovery Administration on the same subjects.

Is the labor and wisdom of months of efforts to be upset by such undigested, hasty, one-sided and ill-considered opinions?

Is comfort to be given to the enemies of the National Recovery Administration who express their distaste for the labor provisions of the act by hiding behind slogans such as "the oppression of the little man"?

Is this report to be considered as if it were an impartial finding, based upon testimony and careful consideration?

If so, then it is fair that a judgment rendered in a court of law after 2½ months of trial shall be reversed on an ex parte hearing for a few hours of a few of the losing and discredited witnesses!

THE CONTEMPTUOUS REJECTION OF THE ANSWERING STATEMENT SUBMITTED TO THE NATIONAL RECOVERY REVIEW BOARD

The first notice to the members of the code authority to appear before the National Recovery Review Board requested their attendance on March 26 at 9:30 a. m. That notice was received on March 26 at 10 a. m. In other words, the notice was received in New York one-half hour after the members were requested to appear in Washington. This was due to a misdirection of the notice by the secretary of the National Recovery Review Board.

Subsequently, telegrams were sent requesting the members of the code authority to appear before the Board on Thursday at 10 o'clock. On that same day there had been previously scheduled at the same hour a meeting of the code authority, and consequently an adjournment was respectfully requested by letter on file with the National Recovery Review Board. The adjournment was granted and notification was given that a later date would be set.

Pursuant to arrangement between counsel for the Board and the acting chairman of the code authority, conference was arranged between them in Washing-

ton. In view of the absence from New York of a number of the members of the code authority, and in view of the fact that the "testimony" being taken was unsworn, and that there was no cross-examination, it was agreed that a statement was to be filed with the Board and accepted in lieu of the appearance of witnesses. Reference to this arrangement appears at page 350 in the minutes, and agreement to this arrangement by at least two members of the Board affirmatively appears. No objection by any other member was made.

Pursuant to this arrangement an answering statement by seven distributing-producing companies was filed.

Immediately upon its submission and in violation of the arrangement made, the acting chairman of the code authority was advised that this statement would not be considered as evidence but would be treated merely as a demurrer. In other words, the statements of complaining witnesses were to be deemed to be true and uncontradicted despite positive incontrovertible evidence in the answering statement that representations of fact made by these witnesses were absolutely false.

The National Recovery Review Board in its report refers to this answering statement. It admits that an analysis of the various sections of the code and the summary thereof set forth shows that the great majority of these sections of the code are in favor of exhibitors (p. 76). The report takes no issue with this analysis.

It then recites that the answering statement reviews the testimony of exhibitor witnesses and "purports to set forth facts showing that their testimony before this Board was misleading and false" (p. 77). The report takes no issue with these facts showing that the witnesses before it had lied.

The report reveals that the answering statement recites the number of claims for breach of contract filed against the complaining exhibitors. The report takes no issue with the accuracy of these revelations. Its only comment is "this information is obviously put in for the purpose of discrediting the testimony of these witnesses" (p. 77). So it was. And one would imagine that the National Recovery Review Board would be interested in discovering that its witnesses had been discredited.

After virtually admitting the effectiveness of the answering statement in destroying the irresponsible statements of a few complaining witnesses, the Board reaches this remarkable conclusion:

"In view of the fact that the major producers-distributors knew of the hearing before this Board, and could have appeared and testified in defense of the code if they so desired, this Board does not believe that the brief by these seven producers-distributors should be given serious consideration, particularly in view of the nature of many of the statements made therein" (p. 77).

Thus the Board, in violation of its arrangement and despite the incontrovertible factual exposure of the complainants' "testimony", contemptuously ignored the very evidence which would make its findings impossible.

No better evidence of the prejudice with which it proceeded can be had than that it deliberately pushed aside the truth and proceeded upon ex parte statements. That this is no over-statement is revealed by a glance at the answering statement rejected.

III. The Report of the National Recovery Review Board is Based on False Testimony

The report makes no reference to the testimony upon which its conclusions are based. It deliberately avoids any comment upon the statements of the complaining witnesses because such statements were proven to be fabricated and untruthful.

One witness testified that the Leonia Theater in Leonia, N. J., is operated at present by the Fox Film Corporation (p. 70). Another complaining witness appearing before the Board contradicted the preceding witness by stating that he himself and not the Fox Film Corporation operated that theater (p. 96, 97). Consequently the point that this witness made that the Fox Film Corporation was the source of its difficulty was completely false.

The same witness testified that the Leonia Theater gets priority of the big producers' pictures (p. 70). The fact is exactly the reverse and this witness so admitted in a court proceeding in a Federal Court (*Quittner* v. *Paramount Publix Corporation*, U. S. District Court, Jan. 5, 1933, stenographer's minutes, p. 243).

This witness testified that in his successful year in 1929 he had an income of $110,000 (p. 82). Yet even during this year he violated his contract so many times that 15 suits were instituted against him. All these claims were proven

justifiable and collected. Despite this fact set forth in the answering statement in detail the report naively concludes that:

"Nothing further than the statement that the claims were filed is included in the brief" (p. 77).

This same witness further admitted in a court proceeding in the Federal court that he had perjured himself in denying that a letter had been sent to him by a distributor, charging him with having made false box office reports (*Quittner* v. *Paramount Publix Corporation*, stenographer's minutes (p. 271)).

Another witness made the point that affiliated theaters were prospering at his expense (p. 77). The fact is that his competitive theater, the Paramount, was open only 3 months and went into bankruptcy. The theater was then taken over by an independent operator (p. 75).

Still another witness testified that

"* * * Since Warners came into the picture, they took all of the pictures away from us and forced this big house into second run position and put the first run pictures into this Lyndhurst Theater" (p. 125).

This was not correct. Fox Pictures Corporation had made a new contract with the witness by giving all of its product first run to him. The United Artists Corporation which had previously given his opposition first run actually reversed the situation after Warners came into the field and gave the first run to the witness. In this instance the entrance into the field of Warner Bros. resulted in the witness acquiring a first run which he did not previously have.

This witness further complained that after his theater changed from a first-run to a second-run theater, he was obliged to pay the same price for pictures he had paid before (p. 125). This was untrue. He had received 19 percent reduction in price from Paramount and 20 percent reduction from Columbia. In other instances he had continued playing first-run pictures although he represented otherwise when he made his statement to the Board.

Even more significant was this witness' complaint against the code because of the burden it placed upon him in the form of increased cost of labor (p. 122). Even a casual reading of the statements made to the National Recovery Review Board would reveal that the witnesses belonged to that group of patriotic citizens who want the benefit of the N. R. A. but are unwilling to bear any of its burdens. Their chagrin at being obliged to pay increased labor salaries is expressed in the form of a cry of the oppression of the "little man." They have not the courage to state their objection honestly.

Still another witness, upon whose statement the report is based (p. 134) was fould guilty by the N. R. A. Regional Compliance Board on February 24, 1934, of having violated the terms of the code with respect to labor.

This witness also testified that for the same type of film for which he paid 35 percent of his gross income, he learned that the Warner Theater paid 10 percent. The basis of his information was that he had received inadvertently a confirmation of billing to the circuit Warner Theater (p. 134).

Mr. Sinclair, a member of the Board, asked whether he had this bill in his office and he stated that he had. It was promised to be produced upon the following hearing. It never was produced. Undoubtedly there is no such bill.

Furthermore, this witness has, on two separate occasions been charged with violating the copyright laws of the United States with respect to unlawful exhibitions of motion pictures. On both occasions he settled the claims. He was revealed to be a notorious violator of contracts, there having been filed against him several hundred claims for breach of contract in a period of 4 years.

Another witness gave a dramatic recital of his visit to every major film company and his inability to obtain any pictures from them (p. 105). The fact is that this same witness had contracted for 320 pictures from the large distributors for the season 1933–34. These features include 65 from Paramount, 53 from Fox, 48 from Metro., 45 from Universal, 37 from Columbia, 52 from RKO, and 20 from United Artists.

Still another witness impressed the Board with the fact that there was discrimination in favor of the affiliated theater because a large first-run theater was paying $25 for the picture, "The Bowery", while he was paying $40 for the last run. He stated that he had learned this fact because a bill was accidentally forwarded to him by the film company instead of to his opposition theater (p. 140). This was the second time that evidence of a witness was based on the extraordinary coincidence of the receipt improperly of a document addressed to someone else.

This statement, just as the previous one, proved to be untrue. The bill in the case of the picture "The Bowery", sent on film rental invoice no. 252, had no price upon it at all, since the contract had a total license fee without allocation of prices against individual pictures. Even, therefore, if the bill had been received by him, there could have been no price upon it.

Furthermore, the fact was that his competitor had paid more than three times the sum paid by this witness.

Another witness, who was not only an exhibitor but the president of an exhibitor association in New York, and who was one of those who "summed up" before the National Recovery Review Board, had submitted an affidavit in the Supreme Court of the State of New York in opposition to a motion for an injunction against the members of his association for violating the N. R. A. labor provisions.

Supreme Court Justice Collins had disbelieved this witness's affidavit and held in an opinion—

"The evidence is quite convincing that as to wages and hours there has been a violation of the P. R. A., N. R. A., and the code."

An injunction was accordingly issued restraining the members of the witness' association "from violating directly or indirectly the provisions of the code. * * *"

This decision was affirmed by the Appellate Division of the Supreme Court of the State of New York.

Thus the witness who had been most loquacious concerning the proper operation of the code and upon whose testimony chiefly the report is based, has been found guilty in a representative capacity by the Supreme Court of New York for being a violator of the provisions of the code—another forceful illustration of the illegitimate motives of the "chiseler" who testified before the National Recovery Review Board.

This witness testified that the independent operator could not continue to exist and that he was being crushed out of business. Yet this same witness has a chain of 16 theaters, 10 of which were acquired in 1933, 1 in February 1934 and 2 in April 1934, 2 weeks before he testified before the National Recovery Review Board.

Since testifying before the board, an article has appeared in a recognized trade paper of the industry that this witness is acquiring six more theaters.

This same witness filed on behalf of his exhibitor association affidavits in the Supreme Court of the State of New York attacking the constitutionality of the National Industrial Recovery Act. In voluminous briefs his counsel attempted to demonstrate that the Constitution of the United States had been torn shred from shred by the President's Recovery Program.

Again we have a ray of light on the real motives of these witnesses in giving false testimony to the National Recovery Review Board. They hoped that what the courts held to be legal and proper they could nevertheless scotch through the National Recovery Review Board. The National Recovery Review Board is incredulously naive in accepting such bunkum presented to it.

There was no limit to the extremities to which the witnesses would go in their endeavor to strangle the code.

For example, a witness testified not only that the practice of block booking is illegal (p. 154) but that "it has been so ruled in several courts, several district courts in the United States" (p. 155).

The chairman of the Board was interested in this testimony that the courts had held block booking to be illegal, and he asked counsel for the Board to "bring that out" (p. 155). Counsel promised that he would.

The fact is that there is only one decision in the United States on the subject of block booking. That decision declares it to be legal, not illegal. The case is entitled "*Federal Trade Commission, petitioner,* v. *Paramount-Famous-Lasky Corporation, respondent, et al.*" (57 Fed. 2d, 152), decided in the United States Circuit Court of Appeals for the second circuit.

This deliberate false testimony by the witness was brought to the attention of the Board and of its counsel. The opinion of the United States Circuit Court of Appeals which held that the practice was legal and not illegal, as the witness testified, was sent to the Board and its counsel. Neither made the correction on the record. Silence was resorted to to cover up the falsity of the testimony; and, as if this lack of mental integrity were not sufficient, the Report of the National Recovery Review Board affirmatively recommends a clause abolishing block booking unless a committee to be especially appointed submits a report prior to a certain date (p. 120).

In other words, the National Recovery Review Board overrules the Circuit Court of Appeals and holds that to be illegal which the court found after careful judicial proceedings to be legal. All this, without revealing the incorrect statement of its chief witness that block booking had been held to be illegal by the courts.

The prejudice of the Board on this subject is demonstrated by its proposal of a committee to investigate the subject of block booking in one breath and in the

same breath indicating its conclusion in advance by directing that unless the committee makes its report by a date certain, its proposed clause be incorporated in the code.

Another witness testified that an exhibitor he knew had been unable to obtain second-run pictures for his theater (p. 218). The fact was that this exhibitor had 249 first-run pictures under contract with the following companies: Paramount, 65; RKO, 62; Columbia, 48; Independent, 62; United Artists, 12.

These facts, and many additional similar illustrations, equally provocative, were ignored by the National Recovery Review Board. It closed its eyes to the truth and in the darkness conjured up technical arguments about demurrers with which to salve its conscience.

The shunting aside of the true facts for technical reasons, and the acceptance of falsity in their place, is weird procedure.

The legal hocus-pocus by which the facts are declared to be a mere demurrer would be humorous as well as ludicrous were it not for the fact that upon such a pebble the skyscraper of a disapproving report is constructed.

Most of the witnesses who appeared before the National Recovery Review Board had also appeared at the public hearings on the code. Their statements there were tested by investigation and comparison and found wanting.

Yet upon repetition, and by the curious process of locking the doors to those who revealed its falsity, this testimony is made the basis for reforming the code of the industry.

One cannot even excuse the report's aberrations on the ground that its signers were careless. They were deliberate in the irresponsibility of their findings.

IV. Repudiation of Complaining Witnesses by Independent Exhibitors

The report speaks of the complaints of the independent exhibitors as if the witnesses who appeared before the Board spoke for them. The impression is given by the report that the independent theater operator believes himself to be oppressed by the code. Whether intentional or inadvertent, this representation of the report is completely contrary to the facts.

Eight thousand nine hundred and fifty written assents to the code for theaters have been filed with the code authority. Many hundreds of others have assented to the code by requesting benefits thereunder, and many hundreds have recently requested in writing that permission be given them to assent to the code so that they could accept its benefits.

Exhibitor associations have earnestly approved the code and issued analyses which indicate that the small man has been greatly benefited under the code.

The responsible representatives of independent and small operators have approved the code.

Seventy-four percent of the total number of written assents filed with the code authority are those of independent theater operators.

Every industry has its raucous outer fringe of professional objectors who thrive on contest and publicity, who obtain professional jobs to lead the opposition, and who detest the codes which render useless such parasites.

With the exception of two or three, all of the exhibitor witnesses who testified before the National Recovery Review Board have over a period of many years appeared as witnesses time and again before congressional committees, courts of law, and other forums to testify that, due to the oppression of the large producers and distributors, the death knell of the independent exhibitor was at hand. Yet according to the testimony of the 11 exhibitor witnesses (pp. 65, 72, 91, 94, 108, 111, 115, 127, 139, 141, 189) the average period of their successful existence in this industry is 18 years for each, and they are still in business today with larger theater holdings than previously.

On the other hand, some of the producers and distributors who are repeatedly alleged to control the industry and by concerted action to aggrandize themselves, are in bankruptcy and insolvency.

V. Analysis of the Recommendations of the Report

1. Definition of affiliated exhibitor

The report agrees with the definition that an affiliated exhibitor is one who is engaged in the business of operating a theater which is owned, controlled, or managed by a producer or distributor or even in which a producer or distributor has a financial interest.

The recommendation is made, however, that the next sentence be stricken out. This sentence provides that "the mere ownership, however, by a producer or distributor of any theater premises leased to an exhibitor shall not constitute any such exhibitor an 'affiliated exhibitor.'"

The theory that this fair provision may be abused and result in fraud is unsound in the light of the prior language that a producer or distributor may not have even a financial interest in the ownership or control of the theater, if the exhibitor is to be deemed unaffiliated. There is no danger that he can avoid the intent of the last sentence.

On the other hand, instead of assuming fraud, it is fair to assume that there will be a legitimate case in which a distributor or producer grants a completely independent lease to another to operate a theater. This sentence was inserted at the behest of unaffiliated exhibitors.

In the last year or two there has been a reduction of circuit affiliated theaters and a consequent increase of independently operated unaffiliated theaters.

The recommended alteration of the definition is trivial. It is also unsound. If the report's suggestion were adopted and this sentence stricken out, unaffiliated exhibitors who in good faith had taken advantage of the distress of affiliated circuit operation and had acquired, under lease, such theaters for independent unaffiliated operation, would nevertheless be deemed affiliated operators and unentitled to designation upon the various grievance and clearance and zoning boards in the industry.

In other words, if the report's recommendation was adopted, the only sufferer would be the independent operator whom the report professes to protect.

2. THE CODE AUTHORITY

The report finds that the appointment of 10 members on the code authority, divided equally between the affiliated producers, distributors, and exhibitors on the one hand and the unaffiliated producers, distributors, and exhibitors on the other "is a fair one if the representatives are properly chosen and in fact represent the divisions they are supposed to represent" (p. 85).

The report, however, concludes without even attempting to state any basis, therefore, that "only two of the members representing the unaffiliated producers, distributors, and exhibitors are truly representative of that class."

The only ostensible reason for this serious charge is that some of the members of the code authority are members of responsible trade associations in the industry. Since when does such participation in a responsible trade organization in an industry disqualify a man or deprive him of independence of judgment? If such an unwarranted inference could be drawn then, indeed, none of the exhibitors' representatives would qualify, for in every instance they are members of trade associations.

There is legal machinery in the code for removal of any biased, unfair, or prejudiced members of the code authority. All of the men now appointed upon the code authority have distinguished themselves over a period of years as leaders of high standing and character in the industry.

The blanket charge, without any support that several of these men are flying under false colors, is typical of the irresponsibility of the report's conclusions.

The inference is that, because of anticipated treachery to the groups which they represent, the code authority, as now constituted, will favor the distributors and producers by a vote of 8 to 2. This slanderous conjecture can best be tested in the light of the actual conduct of the code authority.

On an important interpretation rendered by the code authority, with respect to the applicability of the 10-percent cancelation clause to contracts made prior to the effective date of the code, the code authority held in favor of the contentions of the independent exhibitors. This interpretation cost the large producer and distributor approximately $12,000,000. Strangely enough, the vote which passed this interpretation was 8 to 2. In other words, the vote was precisely opposite to that which the report guesses will be rendered in an important matter.

A review of the actions of the code authority and the votes cast by it in important industry questions completely refutes the report's finding.

There have been 13 meetings of the code authority since its organization, at which the members voted upon 156 matters coming before them for determination. Upon these 156 matters, the vote was unanimous, all members voting, excepting in the case of five matters where there was a division.

Of the five matters, one was upon an interpretation of the so-called "10-percent elimination privilege" referred to above. As indicated, the vote was 8 to 2 in favor of the independent exhibitor.

Of the remaining 4, there was a division upon two occasions by a vote of 8 to 2 upon the question of publishing the administrator's interpretation of the elimination clause. But ultimately the vote was unanimous for such publication.

The remaining two matters were votes upon the appointment of one individual as a member of the grievance board in the Philadelphia and the Dallas territory, respectively.

In the case of the nominee for the Philadelphia Grievance Board, the vote was 7 to 3 against his appointment. In the case of the nominee for appointment to the Dallas Grievance Board, the vote was 8 to 2 against the appointment.

It is significant that of 372 appointments of members to the grievance and clearance and zoning boards throughout the country, there was a unanimous agreement by the code authority in 370 cases.

The report fears evil where actual conduct reveals only good. The report anticipates dishonesty where actual conduct reveals honesty. The report presumes that the personal interest of the members of the code authority will sway their honest judgment. The conduct of the members of the code authority conclusively demonstrates the opposite.

The report suggests changes before the code has been tested. The testing of the code in operation thus far reveals its efficiency.

Is the code to be upset at the very outset because the National Recovery Review Board, without any evidence to support it, wishes to read evil intentions into the minds of the leaders of the industry?

The report's criticism of the section of the code which provides for the replacement of a member of the code authority in the case of absence or incapacity is based upon a misunderstanding of the code provisions.

The report criticizes the fact that the alternate appointed by the independent exhibitor may be rejected by the other members of the code authority (p. 84). The fact is, that this procedure is applicable to producers and distributors as well.

The code requires that an alternate must represent the same general class of the industry as the principal and must be a "bona fide executive of that class, or a bona fide exhibitor, as the case may be." (This clause was objected to previously by counsel for complaining witnesses because it barred him from the code authority.) The code further provides that "such designated alternate shall be certified to the code authority by such member, but the code authority may reject such alternate and require another to be so designated."

It is to be noted that each alternate must be approved by the Administrator (art. II, sec. 2 (e)). In the event the alternate is not acceptable, the code authority, subject, however, to the approval of the Administrator, must select the alternate.

There is no discrimination between exhibitors, distributors, and producers in respect to any of these sections. At all times, and no matter how many alternates are appointed, the representation of the respective divisions of the industry is maintained on the same fair basis which the report itself admits to be proper; i. e., 5 unaffiliated and 5 affiliated representatives. Therefore, there is no sense at all to the criticism that the code authority is "a self-perpetuating body." This is resort to a catchword accepted without understanding or discrimination by the report. So long as the representation is kept equal, of course, it will be the same; and so long, therefore, as it is the same, it can be deemed to be self-perpetuating.

There are conflicting trade associations and dozens of exhibitor units in the motion-picture industry. There are many hundreds of exhibitors who are not members of any trade associations or units. If these thousands of exhibitors divided into differing and at times conflicting groups, and large numbers of them not organized at all, and separated geographically across the entire breadth of the United States, had to vote upon and select the representatives of the code authority, the whole matter would be thrown into the realm of political contest and favoritism. Months of time would be lost and no choice could be deemed satisfactory to all. Weeks of earnest deliberation and thought by all elements in the industry were given to this problem, and except for the rantings of the same few snipers referred to before, the administration provision and those selected were deemed highly satisfactory.

The National Recovery Review Board, without a realization of the problem or any consideration of it at all, has nevertheless rushed to a conclusion.

More typical of the failure of the report to even understand the provision of the code which it criticizes is its recommendation that committees appointed by the code authority must be constituted in the same proportion as the code authority representation (p. 87).

It is conceivable that only 1 member of the code authority may be appointed as a committee, or that 3 will be appointed under certain circumstances. It is impossible to split 1 man into 2 representative groups, and yet it may be advisable to have a committee of 1. The chief check upon this situation is entirely overlooked by the report.

Section 4 of article II provides "any action taken by any such committee shall be reviewed by the code authority." The power of review by an equally constituted board is, of course, equivalent to the power of equal representation on the committee.

Furthermore, the conduct of the code authority, as contrasted with the report's conjecture on the subject, completely negates the criticism. When a special committee was appointed to select nominations for appointments to the grievance boards and the clearance and zoning boards, the code authority appointed a committee composed of 4 unaffiliated as opposed to 2 affiliated representatives. Here again the conduct of the code authority was precisely the reverse of the fears of the report.

The criticism of the report in respect of the appointment of committees is based upon a complete misconception and misunderstanding of the section of the code itself.

The final recommendation of the report in respect to the code authority is that the Administration members shall have a vote instead of merely acting in an advisory capacity. This suggestion is contrary to the spirit and letter of the National Recovery Act. It is contrary to the President's repeated statements that he did not wish the Government to actually run business but that he merely wished it to be in partnership with business and thus to protect the public interest.

If the Administration members upon code authorities voted, how could the Administrator properly review the actions of such code authorities? He would be obliged to overrule his own representatives.

If Administration members voted, they would become actual participants in matters, the technical basis of which they know nothing about. Instead of being advisers in matters affecting the public interest, they would become business operators.

In making this recommendation the report is either ignorant of the President's views on this subject or is defiant of such views, without a single word of explanation or justification.

Fools rush in where angels fear to tread. How much wiser is the man who rushes in where angels have already trodden and have revealed the implacability of the road?

3. LABOR PROVISIONS

The report states that certain changes were recommended "by independent labor union, but because of lack of time * * * this Board has withheld any recommendation as to changes in this article" (p. 90).

The complaining exhibitor witnesses, hand in hand with certain union representatives who are not associated with the American Federation of Labor, claim that the labor provisions of the code were oppressive.

Nothing is more significant than the attack upon the labor provisions by complaining witnesses who hid their illegitimate motive with cries that the code "oppresses the little man."

Counsel for complaining witnesses, who throughout the hearing before the National Recovery Review Board acted as unofficial associate counsel to the Board, and who testified and summed up, indulged in a discussion concerning certain labor provisions which he termed "unique" (p. 55). But, strangely enough, this is the only instance in which the testimony was not taken down and there appears inserted in the record the statement: "At this point there was a discussion off the record" (p. 55).

Another exhibitor "leader", whose association members, for whom he fought, were found guilty of violating the labor provisions of the code, made a vicious attack upon an American Federation of Labor local (p. 379).

Still another witness who had been found guilty by the Regional Compliance Board of having violated the code with respect to labor was listened to attentively on the subject of "oppression."

Another witness complained about "the labor provision in which we have had to increase the number of employees we have and put the employees on the working schedule that is in accordance with the provisions of the code" (p. 122).

How horrible! How familiar the cry, that because of increased labor costs the codes are oppressive. How extraordinary that such testimony should have led the Board to report that the code was oppressive and promoted monopoly.

Another witness complained that under the code he had "about 17- or 18-percent increase in pay roll alone" (p. 131).

The complaining witnesses fit neatly into the category of that heroic group of men who in the time of national crisis shed crocodile tears because they are asked to make some contribution to save their own necks.

Is it not extraordinary that of all the matters testified to before the National Recovery Review Board, the only one upon which it did not have time to make a report is the labor provision of the code?

It had the time to make findings with reference to the correction of a definition, the composition of a subsidiary committee, the change of the word "and" to "or" (p. 109), but it had no time to express any view of the subject of labor.

4. SHORT SUBJECTS IN PROPORTION TO FEATURES

To prevent the sale of more short subjects than exhibitors can use, the code for the first time affords relief which even the courts have been unable to give.

It provides, in part 5, division D, article V, that the distributor may not require the exhibitor, as a condition for the licensing of feature photoplays, to license more than a corresponding proportion of the short subject pictures required by the exhibitor. By virtue of this device, the short subject licenses of the various distributors are so proportioned that in no event may the exhibitor be required to license more than 100 percent of his needs.

Typical of the report's failure to grasp the provisions of the code which it deals with is its preposterous statement that "this provision still allows the distributor to force on the exhibitors more short subjects than they can use" (p. 92).

The report, consistent with the haste of its conclusions, does not attempt to justify its erroneous statement. It merely states its conclusion, which has no basis in fact at all, and proceeds pompously to submit a "new clause."

The Board was undoubtedly ignorant of the weeks of negotiation on this subject. The clause in the code was a concession wrung from the distributors and producers, who insisted that they had the right to sell their product as they saw fit in accordance with their individual sales judgment.

Finally, when stubbornness had yielded to the early hours of the morning and to the pleas for sacrifices by the Deputy Administrator, this important concession was obtained for the independent operator.

Now the report, without any conception of the matter before it, waives aside the valuable gain of the independent operator under the code, and by the simple process of misunderstanding the section disapproves of it.

5. DESIGNATION OF PLAY DATES

No more flagrant misunderstanding of a subject passed upon by the report is available than this. The language of part 9 is so clear that the report's misstatement of its meaning indicates either deliberate misconception or gross negligence

This provision of the code does two things:

First, it prohibits a distributor from specifying a specific day of the week upon which his picture is to be exhibited unless he has obtained this right by contractual provision with the exhibitor.

Second, even where the distributor has such a right in his contract, the code takes it away from him if the exhibitor proves that the subject and character of the picture is unsuitable for exhibition on that particular day; for example, a sophisticated picture on Sunday, when many children attend the theater.

The method by which the relief is obtained is the submission of a complaint to the local grievance board. The grievance board is given the power, despite the language of the contract itself, to relieve the exhibitor from the necessity of playing the picture on that day.

None of the rights granted to the independent exhibitors by this provision of the code existed prior thereto. The distributors and producers contended vehemently that when their pictures are exhibited on a percentage basis they are in partnership with the exhibitors insofar as that engagement is concerned, and that they should have a voice in the selection of the date upon which such picture should be exhibited.

The distributors and producers had always had and exercised such rights. During the arduous code conferences the Administration prevailed upon them to surrender these rights as a sacrifice for harmony.

Yet the National Recovery Review Board, ignoring the very language of the code provision itself, states:

"It was brought out that in many communities such pictures as those featuring certain stars are not suitable for exhibition on Sundays, but the distributors insist that the picture be shown on that day because of the greater return he receives" (p. 74).

The report disregards the language of the code provision itself which gives the exhibitor relief in just such a case.

By virtue of such misinterpretation the report reaches the conclusion that this provision of the code requested by exhibitors, and finally obtained for them, "appears to be one solely in favor of the producers and distributors, and in the opinion of this Board is unfair to the small independent exhibitors" (p. 95).

Such absurd findings from facts which warrant the very opposite conclusion need no further comment.

6. MINIMUM ADMISSION PRICE

The report criticizes the right of distributors and exhibitors by contract between them to specify a minimum admission price to be charged at the theater. For more than 10 years upon the demands of exhibitors there have been minimum admission prices in standard and other exhibition contracts. The courts have held such clauses legal and not in violation of public policy (*Sono Art World Wide Pictures, Inc.* v. *Wm. Lando, County Court of Allegheny County, Pa.*).

The overwhelming majority of exhibitors are desirous of maintaining a reasonable minimum admission price. This industry like many others, has been plagued by cutthroat competition. In many vicinities, despite contract clauses requiring a minimum admission price of 10 cents, theaters have charged 5 cents admission and in addition thereto, given away prizes and premiums.

The exhibitors' committee, representing all elements of exhibitor opinion, which submitted proposed clauses for the code referred to this subject of premiums and rebates and itself specifically presented the clause, including the following:

"This shall not be deemed to prohibit exhibitors from reducing or increasing their admission scales as they see fit except as may be prohibited by exhibition contracts."

Thus, the exhibitor group itself, composed among others of counsel for the complaining witnesses, recommended the regard for minimum admission clauses where present in contracts.

The report further recommends in respect to this subject, that the local grievance board should not have the power to direct distributors to refuse to distribute pictures to those who violate the terms of this article. This provision refers to contests between exhibitors. It contemplates a fair grievance board decision which is nevertheless resisted by the violating exhibitor. The assistance of distributors who have no interest in the controversy was demanded by exhibitors to enforce the finding.

7. DOUBLE FEATURES

The exhibitors' proposed clause declared double features to be an unfair competitive practice, but, because of peculiar local conditions where it had existed for a long time, permitted its continuance unless 60 percent of the theaters disapproved it.

Despite this agreement by the exhibitors and distributors on this subject, there were independent producers and some exhibitors who protested against the abolition of double features. It was the opinion of a number of experts on the advisory boards, as well as of the Deputy Administrator, that this entire subject involved questions of individual sales policy and that the code ought not to attempt to determine such a matter.

Certainly, if this is a matter of individual sales policy, a distributor acting individually may have the right to determine when he licenses his picture that it shall not be exhibited with another picture on the same program. Particularly is this true where there are percentage engagements and the distributor's picture may have cost $1,000,000 to produce, while the second feature on the program cost but $50,000 to produce. The exhibitor's policy is likewise involved. In view of the controversial subject matter involved, it is extraordinary that the report should now recommend that the distributor may not individually require that his feature shall not be shown with another feature. This is going to the opposite extreme and against the expressed opinion of a large part of the industry.

To support its recommendation, the report cites the consent decree in the *Fox West-Coast Theaters case.* This case was miscited in the report. It did not hold that a distributor could not adopt as a sales policy a requirement that his picture be not played with another on the same program. It merely adopted

the well-recognised rule of law that if all distributors acted in concert on such a matter they would be engaged in an illegal conspiracy. The gravamen of the consent decree was the concerted action of all distributors and not the individual sales policy of any one of them. The decree specifically preserved the rights of an individual company respecting its own practices.

Consequently, the criticism by the report of the right of the distributor to determine his individual sales policy is not supported by the case cited by it. This is another illustration of inaccurate reference by the report.

The criticism of the report is rendered even more incongruous by its expressed uncertainty about the wisdom of abolishing double features. For it says:

"If the practice is one which it is to the interest of the industry to eliminate, there should be a provision in the code to that effect" (p. 100).

And immediately after it expresses its "impartiality" on the subject, and indeed infers that double features should be prohibited, it suggests a clause which makes it illegal for a distributor to adopt an individual sales policy in this respect (p. 101).

CANCELATION

The code provision permits an absolute 10-percent cancelation by exhibitors of the photoplays they have entered into contracts for. There is no other industry in America which affords such an unequivocal and extraordinary right. The code grants the greatest cancelation privilege ever afforded in the motion-picture industry.

This special relief was intended particularly for the small operator. Consequently it provides that its privilege extends only where the average license fee of a contract averages not more than $250.

The report of the National Recovery Review Board refers to this sum of $250 as $250,000 (p. 102). That this is no mere typographical error is revealed by the fact that this sum of $250,000 is repeated three times (p. 102).

It is very possible that the Board never even read the code provision. Certainly it never understood its simple language. If it did, it could not have made the error of assuming that the average license fees for all pictures are more than a quarter of a million dollars.

The report actually criticizes the code on this basis, for it says:

"It also includes a provision limiting the benefits under the clause of exhibitors whose license fees for all pictures average not more than $250,000" (p. 102).

What a revelation this misreading of the code is in respect to the study and scientific basis upon which the report is based.

One does not know whether to be more astonished than amused by such scientific findings.

9. CLEARANCE AND ZONING BOARDS

After arguing why clearance and zoning boards should not exist (p. 103), the report concludes in characteristic fashion to the opposite effect:

"It is believed by this board, however, that the establishment and operation of such boards as provided for in the code offers a possible solution to this troublesome question" (p. 104).

One page later and the report has lost the last vestige of doubt on this subject:

"This report believes that the clearance and zoning boards should be kept * * *" (p. 105).

Criticism is then leveled at the composition of the boards because—

"They are dominated by the distributor and first run exhibitors who interests are the same" (p. 104).

Of course, their interests are not the same but diametrically opposite. The distributor is the seller. The exhibitor is the buyer. To say that their economic interests are the same is like saying that black and white are the same color.

The clearance and zoning boards as now constituted under the code are composed of 2 distributors, 1 affiliated and 1 unaffiliated; 2 first run exhibitors, 1 affiliated and 1 unaffiliated; 2 subsequent run unaffiliated exhibitors and 1 person not associated with the industry and approved by the administrator who shall vote if the board is deadlocked.

The distributors contended that the representation upon the board was unfair to their interests, for there were 4 exhibitors as opposed to 2 distributors. They argued that on such matters as price and clearance (the two are inseparable) the interests of the exhibitors were common and the interests of the distributors were common, and consequently the distributors would be outvoted by 4 to 2.

This contention resulted in conferences and reflection which lasted several weeks. The distributors finally yielded their position.

The report now naively suggests that the clearance and zoning board should be composed of 2 distributors, 1 affiliated and 1 unaffiliated, 2 first run exhibitors, 1 affiliated and 1 unaffiliated, and 4 subsequent run unaffiliated exhibitors.

This would cause the board to be constituted of 6 exhibitors as against only 2 distributors, or of 6 unaffiliated representatives as against 2 affiliated representatives. No matter what interpretation is given to the economic interest, this recommendation is clearly inequitable. It deliberately stacks the board against the seller.

The National Recovery Review Board was so gullible that it swallowed the recommendation of a few exhibitors who, whatever their irresponsibility might have been, must have had their tongues in their cheeks when they made this proposal.

Nothing was too much, however, for the Board. It now solemnly submits this suggestion in its report.

The suggestion that the code authority should not appoint members of this Board because the independent interests on the code authority will be out voted in the selection of representatives, is ludicrous in the light of actual experience in this respect.

Two hundred and seventeen members of clearance and zoning boards have been appointed by the code authority, from several thousand nominations made directly by representatives of the industry. The code authority unanimously agreed on every one of the 217 appointments made.

This is another instance where the National Recovery Review Board saw its own shadow on the wall and announced its belief that there was a ghost in the house.

10. CONSIDERATIONS TO BE REVIEWED BY CLEARANCE AND ZONING BOARDS

The report finds no fault with this section of the code except that it believes the members of the clearance and zoning boards would know what factors to consider and that it is unnecessary to guide them (p. 107). Thus there is a sudden expression of confidence in the ability, standing and experience of the members of the clearance and zoning boards, which obviates the necessity of even submitting to them the rules of combat.

The sole objection to this section is that it is argumentative. The recommendation is too trivial to be worth argument.

11. APPEALS FROM CLEARANCE AND ZONING BOARDS

The report criticizes this section because it permits the presentation of new evidence to the code authority where an appeal is taken from the clearance and zoning board.

While it is a technical rule of law that on appeals only the record below and not new evidence may be presented, no complete stenographic minutes will be kept in these informal hearings and there will be no motions for setting aside the case on the ground of new evidence.

In view of the desire of the code to permit equities rather than technical rules to govern, and in view of the informality of the proceeding, it was thought just that all facts, whether designated new or otherwise, should be presented upon appeal.

It is unlikely that any litigant would withhold information in order to prepare for an appeal. Practical business men do not gamble with their rights this way. If, however, in an industry the product of which is ever fresh and moving, new and vital evidence should appear after the hearing before the local clearance and zoning board, it would defeat the ends of justice if for technical reasons it could not be presented to the code authority.

With typical inconsistency the report suddenly turns technical and insists upon the adherence to an age-old technical rule which closes the door to a fact because it was not in the formal record.

The suggestion of the report that exhibitors would have to come to New York on appeals is unsound. There is nothing in the code which requires personal appearance. Such appearance is permitted but not obligatory (art. VI, sec. 7 (b)).

The recommendations of the report in this respect are hypertechnical and unsound. More than that, they misinterpret the simple meaning of the language of the code itself. To accede to the recommendation of the Board would be to defeat justice.

12. GRIEVANCE BOARDS

Most of the suggestions of the report in respect to this article are too trivial to be worthy of comment. It suggests that the word "and" be changed to "or" (p. 109).

It suggests that grievances be not certified to the code authority under certain circumstances, but that they be passed upon and then appealed to the code authority (p. 110).

Less trivial and more extraordinary, however, is the suggestion that a distributor has not the unequivocal right to license his own photoplays to any theaters operated by him (p. 111). This right has at all times been conceded by every member of the industry, and indeed was conceded by the very witnesses who appeared before the National Recovery Review Board.

The recommendation is again made that the code authority shall not appoint the members of the grievance boards. The code authority requested that nominations be made to it by representatives of the industry. More than 3,000 nominations were thus sent in.

A special committee, appointed by the code authority to make recommendations to it from these nominations, was composed of four unaffiliated representatives, as opposed to two affiliated representatives. Finally, of 155 appointments, 153 were made by unanimous vote of the members of the code authority.

The report then criticizes the composition of the grievance boards. If a burlesque recommendation were made on this subject, it could not capture the spirit of exaggeration and fantasy as well as the report does.

It actually urges that, where an exhibitor brings a complaint before a grievance board against another exhibitor and a group of distributors on the ground that the exhibitor is overbought, and the distributors should be compelled, despite their contracts, to surrender their films to the complaining exhibitor, that the distributor has no interest in the controversy, and that he ought not to be represented at all (p. 112).

Thus the report solves the question of equitable representation on grievance boards in one masterful stroke.

It simply suggests that the board be composed solely of exhibitors and expresses the hope that such unanimous control may satisfy their hunger for fair representation on grievance boards.

Where other complaints brought before the grievance board are directly against distributors, the report is more generous. It asserts the following profound conviction:

"It is believed that the boards should consist of one representative of distributors and three representatives of exhibitors * * *" (p. 113).

Even the complaining witnesses must be shaken with mirth at this pronouncement.

There follows a recommendation again that new evidence should not be permitted on an appeal. This matter has been commented upon under the clearance and zoning section.

One is almost thankful in the light of other recommendations that the report has not taken the stand against old evidence as well as new, being presented upon appeal.

The code provides that those who wish to file complaints with the local grievance boards or clearance and zoning boards must execute the code within 45 days after it is signed by the President.

The National Recovery Review Board states that "This provision is entirely unwarranted and oppressive" (p. 114).

Is it oppressive to require that one who wishes the benefits of the code provisions should consent to it so that he may also undertake the obligations thereof?

The National Recovery Review Board did not appreciate the significance of its comment; for if it is oppressive to deprive an exhibitor of the relief afforded by the code, how can it be argued that the code oppresses exhibitors?

How can the report contend on one hand that the waters of the code are poisoned with monopolies, and on the other hand that those who are not permitted to drink its curative waters are sinned against?

Those who execute the code are required to contribute financially to its operation, but those who do not need make no contribution. By what moral considerations does the report reach the conclusion that one should be able to escape contribution to the operation of the very machinery the advantages of which he seeks?

It is revelatory of the report that it seeks to protect the shirker and the slacker and to aid him to get under the wire.

We have seen that the report has a sympathetic arm for the one who squeals about labor costs. It has a moist eye for the one who wishes to raise technical objections on appeal to defeat a just claim. And now it raises an indignant and tremulous voice for one who wants the fruit of the code but refuses to sow the seed or plod the soil that makes it grow.

13. RECOMMENDATIONS FOR A SPECIAL COMMITTEE

In the comparatively few hours that the National Recovery Review Board listened to a one-sided complaint, it formed opinions not only on all matters within the code but even those omitted from it.

On such subjects as block booking, which have been the source of intense study and literature for a number of years, the report states "this Board has certain well-defined views" (p. 116). In this instance, however, its views are spared to us, although judging by the profundity of its past recommendations one can only express regret at having been deprived of this pleasure.

However, complicated machinery is set up for a commission to make further report on these subjects omitted from the code, a commission which incidentally assumes the indefinite continuation and participation of the National Recovery Review Board itself.

And as the report benignedly ignores the decision of the circuit court of appeals, which declares the practice of block booking to be legal, and indicates its own impartiality on the subject by suggesting that if the commission to be appointed does not report by August 1, 1934, a clause is automatically to be written into the code which declares block booking to be illegal.

The omission of these subjects from the code was the result of careful consultation with the Legal Division of the National Recovery Administration, and upon the advice of the Division of Economic Research and Planning.

The prejudgment on this subject and the sublime unawareness of the true nature of the problems involved make unnecessary further comment.

14. CONCLUSION

There have been analyzed above, all of the recommendations made in the report of the National Recovery Review Board.

It is highly pertinent that the great majority of these recommendations have had nothing to do with monopoly or oppression on any group of the industry. They were mostly individual trade policy provisions which could only remotely have an effect upon the subject of unfair competition. In the substantial sense of the word, the report is wholly deficient in specifying how the adoption or operation of the code tends to promote monopoly or wherein such result would follow from the adoption or operation of the code.

Waiving this jurisdictional matter, however, and examining the recommendations of the report on their merits, one finds that they are based upon—

1. Flagrant misinterpretations of the provisions of the code.
2. False unsworn statements of a few discredited complaining witnesses.
3. Misstatement and deliberate evasion of rulings made by the courts.
4. Bias and prejudice of the boards members resulting from an ex parte hearing or from preconceived notions.
5. Sympathy for the "chiseler" and "kicker", who for selfish reasons seeks to destroy the national recovery program.
6. Anticipated fears and forebodings actually disproven by past and present conduct.
7. Ludicrous counter proposals which are completely oblivious to the reality of the situation.

In the light of these considerations the comment of one of the members of the National Recovery Review Board as quoted in the Baltimore Sun of May 8, 1934, appears moderate despite the virility of its contents.

Mr. John F. Sinclair, vice chairman of the National Recovery Review Board, said:

"Not in my 25 years of business and research experience, during which time I have been a member of many boards and committees of investigation, have I witnessed such utter disregard for fair play or the basic facts as the National Recovery Review Board under Clarence Darrow has shown, even in its open hearings.

"Such an attitude in times like these is nothing short of tragedy.

"I have opposed from the beginning the kind of sloppy, one-sided, half information that is the foundation upon which the Darrow-Russell report has been written."

VI. The Attack Upon the Deputy Administrator

A. BACKGROUND OF DISPUTE

Symbolic of the report's hostility to the efforts of the National Recovery Administration is its attack upon the Deputy Administrator. The deputy's efforts brought the industry's factions to voluntary agreement. Editorials in the trade press expressed the admiration of the industry, from the "extra" in Hollywood, the chorus in the theater, and the small theater owner, to the presidents of the large producing companies, for his energies during the harrowing months of negotiation.

His efforts caused the administration to put in his charge the formulation and supervision of more than 100 codes in industries where conflicting groups seemed irreconcilable.

In the course of his labors he encountered many resistant forces, but with one exception their violence was due to disagreement on specific clauses and not to the ulterior purpose of blocking the submission of the code.

That one exception was a handful of so-called "unaffiliated exhibitors" and their counsel, whose deliberate purpose it was to sabotage the code conferences. This same group constituted the complaining witnesses before the National Recovery Review Board. There, strangely enough, their miserable intentions did not handicap them. On the contrary, their misleading statements, as indicated previously, were exclusively adopted and formed the basis for the report.

The extent to which this group, including its counsel, went in its efforts to obstruct the formulation of a code excited the attention of the entire administration, including the President himself.

In the very early sessions of the code conferences this group placed upon the record its program to the effect that it was not to be bound by any code. Because it was not engaged in interstate commerce, and other shams since worn out, it gave notice to the Deputy Administrator that it would participate in the conferences "to protect its interests" but that it would not concede that it could be bound by the President's program. At the very outset, therefore, this small group was an irritant to all other groups including representative groups of independent unaffiliated exhibitors in the industry which intended to make their respective sacrifices as a contribution to the President's program.

During the weeks of conferences in Washington, this same defiant small group did everything in its power to make impossible agreement amongst the contending forces. One of its weapons was to slanderously impugn the honesty and sincerity of the Deputy Administrator. Vicious rumors, wholly unsupported by even a shadow of suspicion, were spread. Notwithstanding, the Deputy Administrator relentlessly moved forward despite the wracking harassment to which he was thus subjected. Eighteen and twenty hours a day, including Sundays, were spent under his direction by the representatives of all of the groups, including this bickering group, to bring them closer together.

Newspaper headlines attest to the fact that it was predicted throughout the industry that no voluntary agreement could ever be reached. Many conservative observers said that only a miracle could bring together the hopelessly differing groups. That miracle began to appear likely as the responsible elements in the industry with commendable patriotism yielded their positions and self-interests under the conciliatory but insistent pressure of the Deputy Administrator.

Then it was that the handful of complaining witnesses and their counsel (who appeared before the National Recovery Review Board) resorted to a desperate maneuver. They broadcast an alarm that a code might be agreed upon and asked the various exhibitor units of their association throughout the country to flood Washington with telegrams, addressed to the President of the United States, in protest against the provisions of the code in an effort to block it. They stated that 100,000 telegrams to the White House would "do the job." To disguise the source of this malicious attack they prepared many forms of protesting telegrams which they sent to their representatives so that when these telegrams were received the differences in their wording would lend credibility to their genuineness. Fortunately, the mimeographed instructions and form telegrams fell into the hands of the Administration.

All of these telegrams were acknowledged by the Administration and a number of those to whom such acknowledgement was sent replied in surprise that they had not sent any telegram. Thus it was proven not only that the origin of the telegrams was faked but that names of senders were actually forged in order to give the impression that there was protest throughout the country.

On the basis of their destructive program these same obstructors made appeals for funds to the exhibitors they so dishonestly represented. This was done under the guise that moneys were needed to "protect" the exhibitors' interests. Many innocent exhibitors succumbed to this scheme and were mulcted of large sums. In the Detroit territory alone about $9,000 was collected by means of this racket. When the scheme was exposed a number of its victims appeared at the office of the Administrator in Washington and asked for assistance to get their contributions back. Undoubtedly the appearance of the complaining group before the National Recovery Review Board was used by them as an excuse to request further contributions.

Even the requirement of tact which a conciliator must always guard yielded to the indignation which swept the Deputy Administrator and the National Recovery Administration at the revelation of these facts. The hoodlum who throws bricks at windows is far more respectable than the hoodlums who attempted to undermine the structure the President was rearing for the Nation.

In the meantime, this group of obstructors, having been exposed, attempted to save their faces by walking out of the code conferences and raising the cowardly cry that they could not obtain a square deal. Having walked out and quit the conferences in the very last stages, they testify before the National Recovery Review Board that they were not consulted, and the Board, hearing no contrary evidence, and making no investigation, believes these statements and joins with these unscrupulous forces to punish the Deputy Administrator.

When the code was finally drafted, this defeated group attempted to appease its chagrin by passing a resolution charging bias and prejudice against the Deputy Administrator. They were summoned to the Administrator's office in Washington. The Deputy Administrator faced them and exposed them to the Administrator.

The Administrator referred the charges to Col. Robert W. Lea, Assistant Administrator for industry under the National Recovery Administration, who, after full hearing of the complainants (incidently the same group which appeared before the National Recovery Review Board) found that the charges of bias and prejudice against the Deputy Administrator were unfounded.

At the hearing before Colonel Lea, all of the clap-trap presented to the National Recovery Review Board was given in even greater detail. Colonel Lea found the charges wholly unwarranted.

The National Recovery Review Board, listening to only one side, and without any knowledge of the background of the controversy, found that the Deputy Administrator "may be" prejudiced against independent exhibitors. The overwhelming number of independent exhibitors in this country think otherwise.

Even the "Harrison's Reports", a trade paper of and for independent operators, whose editor was with this group, states in an editorial:

"All I can say is that Mr. Sol Rosenblatt knows the motion-picture industry and its people thoroughly, and that all have found him to be intelligent, honest, and understanding."

This is a tribute from the independent camp. The obstructionists never ceased their labors even after the code was approved by the President. They instituted an action in the United States District Court against the members of the code authority and the Deputy Administrator on the ground that the requirement of consent to the code without qualification was illegal.

The attorney for this group was the attorney in that suit. The complaint requested that the provisions of the code be declared unconstitutional. That suit, based on willful misconception, was discontinued.

The latest endeavor of this "wrecking crew" is its appearance before the National Recovery Review Board.

B. THE REPORT'S FINDINGS CONCERNING THE DEPUTY ADMINISTRATOR

1. The report states that there is testimony before it to the effect that independent interests were not consulted with reference to various drafts of the code. The fact is that the Deputy Administrator spent at least 10 times more time with the representatives of the unaffiliated interests during code conferences than the National Recovery Review Board spent in all its hearings on the subject of the Motion Picture Code. Day and night, into the early hours of the morning, the Deputy Administrator met with committees and groups of unaffiliated independent producers, distributors, and exhibitors. Even Sundays were not excluded from this schedule and suggestions were submitted to him in person for approval. He visited their hotel rooms and they came to his office.

The report does not state whether the testimony given before the Board was believed. Judging by its conclusion, it was. In any event, the testimony was absolutely false.

The report further states:

"Of the many suggestions made by the independent exhibitors for provisions of the code very few were adopted" (p. 80).

There is available the official printed record of the "exhibitor committee's" proposals for clauses to be incorporated in the code. Actual computation from this record reveals that 39 proposals were made in respect to matters of unfair competition. Of these 39, 26 were adopted in the code as finally signed. Four were partially adopted and nine were rejected.

In other words, more than 76 percent of the proposals submitted by the independent exhibitors were substantially adopted.

Despite this fact, the National Recovery Review Board reports that "very few" of the suggestions made were adopted.

The report states that the Deputy Administrator, prior to his appointment, was a practicing attorney, associated with another attorney "whose clients were and are now engaged in the theatrical and motion-picture industry" (p. 80).

Although no conclusion is drawn by the report, the innuendo is that because this attorney also represents, among his clients, two distributors, that the deputy administrator "may be" biased. Perhaps according to the Board, mere association with a law office which represents, among other things, motion-picture interests disqualifies an attorney from any position of trust.

It is the fact that the attorney, with whose office the Deputy Administrator was previously associated, was noted for its representation of independent and unaffiliated interests as against the affiliated distributors and producers. It was that office which represented the plaintiff in the *Singer case* in the Supreme Court of New York, in which a small theater operator won an important victory and made important law highly favorable to independent-exhibitor interests.

It is the fact that the Deputy Administrator is a graduate with honors of Harvard College and of the Harvard Law School, a member in good standing of the Association of the Bar of the City of New York, of the New York County Lawyers Association, and of the American Bar Association. His practice in New York City concerns itself to the largest extent with the protection and safeguarding of the rights of independent and unaffiliated exhibitors, distributors, and producers, so far as any motion-picture industry clients were concerned.

Upon accepting his position and responsibility with the National Recovery Administration on July 14, 1933, he forthwith completely severed any and all connection with his former law firm and since that time has devoted himself exclusively to the National Recovery Administration.

It is submitted that the facts adduced in this comment should be sufficient in themselves to any person who has taken the time or trouble to discover their accuracy, that the Deputy Administrator instead of being possibly prejudiced against the independent interests has undoubtedly been their protagonist.

The report in concluding that the Deputy Administrator "may be prejudiced" states that one witness testified that the Deputy Administrator would not permit him to make notes of what was going on at the meeting.

This hardly sounds like a serious charge upon which to found a recommendation of removal. Its bareness reaches skeleton proportions when the true fact is revealed.

The attorney for the obstructionist group, described above, was at one time a stenographer. An interesting reflection upon his own scrupulousness is his distrust of others. During informal conferences he would surreptitiously scribble shorthand notes of what was being said. Subsequently these notes would appear as garbled and misquoted statements and when protest was made that these quotations were maliciously inaccurate he would fall back upon his skill as a stenographer and reveal that although no one had suspected it, he had taken stenographic notes and could not be wrong.

Having learned of this contemptible procedure and having had the experience of being willfully misquoted, the Deputy Administrator at a subsequent conference directed that his secretary take stenographic minutes of the conversation unless this attorney ceased to take notes surreptitiously. This reasonable and rather patient precaution on the part of the Deputy Administrator is now turned into a claim with which he is charged.

It is interesting in this connection that Colonel Lea, having been informed of this practice, was on guard, and at the conference with him, actually observed this attorney taking stenographic notes surreptitiously.

The report recites that another witness testified that the Deputy Administrator admitted he was biased against independent exhibitors (p. 81).

Does it not challenge credulity that at a conference with independent exhibitors, the Deputy Administrator would admit to them that he was prejudiced against that class?

The Deputy Administrator denies any such admission. His frank statement to the Administrator and to Colonel Lea of his opinions concerning the few individuals who composed this handful of obstructionists and who appeared to make unwarranted and false charges against him is now tortured into an admission against unaffiliated independent exhibitors as a whole.

The National Recovery Review Board, however, was able to exercise no discrimination in selecting truth from brazen falsity.

It was fortunate that the National Recovery Review Board was not handed a rubber $10 bill, now being hawked as a novelty on the street corners. It would probably have accepted it as genuine currency.

The report mentioned these scraps of testimony but made no comment upon its credibility or value. It carefully refrained from finding these matters as facts. It contented itself with reference to the fact that some witness had made reference to the matter. Apparently these false and in many instances unimportant pieces of testimony were recited to give color to the conclusion, which was unsupported by any facts.

The conclusion of the Board to remove the Deputy Administrator is, however, based on two specific charges stated at the very end of this section.

In the language of the report these two charges are:

"Because of the defiance of the Deputy Administrator of this Board, and because of testimony to the effect that he is prejudiced against the independent exhibitors, distributors, and producers in the industry * * *" (p. 81).

On what is the charge of defiance of the Board based? The minutes of the proceedings before the National Recovery Review Board reveal the following statement by the Deputy Administrator:

"Mr. ROSENBLATT. Let the record show that I am here voluntarily, that my files are completely available, but I do not know what these proceedings are about. I have heard no name mentioned except the name of Binsell and I have a file with that name in my office——

"Mr. MASON (interposing). May the record show that he refuses to testify. Mr. Russell Hardy, will you please take the stand?" (p. 5).

Counsel for the Board interrupted the statement of the Deputy Administrator—charged that he refused to testify—and rudely placed another witness on the stand to cut off any further statements.

The Deputy Administrator was given no notice of the hearing (p. 4). When he appeared voluntarily nevertheless and stated that he was an Administration member upon the code authority of the industry and desired to make a statement, the following took place:

"Mr. DARROW. How does that give you any right to speak at this time?

"Mr. ROSENBLATT. I believe that even this Board is required to observe a semblance of what is popularly known as "due process of law", and it is in that regard and prior to the time that I am to say anything here that I desire to be heard * * *" (p. 3).

Subsequently the Deputy Administrator again appeared voluntarily before the Board and offered to bring before the Board any file in his office "that you want at any time, night or day" (p. 84). The record reveals that this offer was made unequivocally:

"Mr. MASON. You suggested the other day, I think, that you would let us have all of the complaints.

"Mr. ROSENBLATT. Yes; they are still down there. You can have anything you want at any time you want" (p. 84).

Despite this statement, the report charges that the deputy hedged on making available his files (p. 81). The extraordinary and deliberate blindness of the Board to the actual facts is accentuated by a letter sent by the Deputy Administrator to counsel for the National Recovery Review Board at the end of its first hearing. This letter was delivered in person and was received. In view of the charge that the Deputy defied the Board it will be quoted in full:

MARCH 28, 1934.

NATIONAL RECOVERY REVIEW BOARD,
Willard Hotel, Washington, D. C.

(Attention of Mr. Lowell B. Mason.)

GENTLEMEN: With respect to your hearing on the Motion Picture Industry Code, I beg to advise you that to date neither I nor any member of the National

Recovery Administration, so far as I know, has heard from your Board with regard to utilizing either the facilities or records of the National Recovery Administration, although I have kept myself available both night and day since Monday in order to be of service.

So far as I know, your Board has neither requested nor sought my report to General Johnson, dated October 26, 1933, which carefully reviews all steps and procedure in connection with the formulation of the Motion Picture Industry Code and the reasons for my approval of the respective sections found therein.

Further, so far as I know, your Board has not requested any information concerning the numerous legal decisions of record respecting the motion-picture industry, such decisions not only being the consent decrees secured by the United States Government, but also the decisions of the United States Circuit Court of Appeals and the decisions of the courts of Pennsylvania, Oklahoma, New York, Washington, and the Supreme Court of the United States.

Further, so far as I know, your Board has made no effort whatsoever to learn anything concerning the results which would have come to all branches and divisions of this industry had there been separate codes for each of the three separate divisions of the industry, and the results which have been achieved by coordination of all divisions of the industry under a single code.

Further, so far as I know, your Board has neither made inquiry concerning nor sought advices with respect to the actual operation of the code to date and what has been achieved and accomplished for and on behalf of the smaller enterprises in this industry even in advance of the actual functioning of the local grievance and the local clearance and zoning boards provided for under the code.

I am advised that the regular meeting of the code authority of the motion-picture industry has not been adjourned and will proceed at 10 a. m., March 29, 1934, at New York, as I directed the same to your attention on last Monday.

I have advised General Johnson that your Board has sought the attendance of members of the Motion Picture Industry Code Authority at Washington the same time and date.

I have also advised General Johnson of my willingness to appear before your Board at its convenience to answer all material, relevant, and pertinent questions, with the right on my part to make such statements as I may deem necessary with respect to any of the subject matter addressed to me, and further with the right on my part to be heard at the conclusion of all testimony which your Board may adduce, and after I have a sufficient opportunity to study the record of all such testimony.

In the meantime, as I advised you on Monday, in my capacity as administration member of the Motion Picture Industry Code Authority and in the performance of my duties as such administration member, I must necessarily attend the meeting of such code authority at New York City on the 29th, holding myself in readiness as above stated to your convenience at any time.

I have no objection to your incorporating this letter into your record.

Yours very truly,

SOL A. ROSENBLATT,
Division Administrator.

No answer to this letter orally or in writing was ever made, even though the Board met three times thereafter on the Motion Picture Code. The Board ignored the offer of the Deputy Administrator to produce all of his files and "to appear before your Board at its convenience to answer all material, relevant and pertinent questions." Apparently the Board was determined to have nothing but a one-sided hearing.

To characterize its own refusal to listen to the deputy and to receive his files as his refusal to give his files and appear before it is typical of the mental somersaults in which the Board indulges.

Even more acrobatic and audacious is the Board's utilization of its own error as a basis upon which to charge the Deputy Administrator with "defiance." It was the Board which was defiant of all the rules and principles of fair play.

It was the Board which was defiant of ordinary standards of accuracy in referring to a record.

Even if it were to be assumed that the refusal of the deputy to testify when he was not subpenaed or even notified to appear was a "defiance" such as warranted his removal, there are no such facts in the record. The Board has transposed its own refusal to listen to facts as a refusal of the deputy to give them.

Even more shocking as a statement without an iota of support is the second charge upon which the removal is recommended—that is, that he "may be prejudiced" against independent exhibitors.

Analyses issued by exhibitor-distributor and producer groups reveal that the independent operator obtained the major advantages of the code's provisions. With the exception of those who testified before the National Recovery Review Board, there is virtually unanimous agreement on this point.

To quote, the issue of Harrison's Reports dated February 17, 1934:

"I say to ——— (the attorney referred to throughout) just as I have said to every exhibitor, that we went into this code proposition without a shirt and came out of it with something—with 25 reforms. One of the reforms is costing the producers millions of dollars—the 10-percent cancelation provision; and correspondingly it saves the exhibitors millions of dollars."

The cancelation clause above referred to as costing the distributors and producers millions of dollars and conferring this benefit upon the unaffiliated independent interests, was a concession obtained by the Deputy Administrator from the affiliated groups. Furthermore, it was the Deputy Administrator who ruled that this cancelation clause was to be retroactive and was to apply to contracts made long before the code went into effect.

Further proof that the composition of the code authority as approved by the Deputy Administrator is not prejudiced in favor of the large interests, was its approval of this interpretation by the Deputy Administrator.

Grievance boards have recently begun to function. Every decision emanating from them indicates their independence and their sympathetic consideration of the small man's problem. As recently as May 11, 1934, the code authority unanimously affirmed a determination of the Milwaukee grievance board in the case of *Saxe Amusement Management Corporation* v. *Ashley Theatres*.

The complaint in this case was made by an unaffiliated independent exhibitor against a circuit of theaters and a major distributor on the ground that the circuit of theaters had contracted for more pictures than the circuit actually required. It prayed for an order directing the distributor and the circuit of theaters to relinquish to him 30 pictures.

The Board granted this relief, which, prior to the code, could not have been entertained by any court—not even the Supreme Court of the United States.

For this complaint requested that a contract between two parties be abrogated and that one of the parties be compelled to deliver a portion of its product to the complainant who did not have a contract with it.

Against the fatuous prognostications of the report stand the real achievements of the code machinery in affording relief to the small man.

C. CONCLUSION ON RECOMMENDATION AGAINST DEPUTY

The report recommends the removal of the deputy because of his defiance of the Board and because he "may be" prejudiced.

There was no defiance and there is no prejudice.

The report even after distorting the minutes before it, was unable to offer a word of justification in support of its charges. It is vacuous, unfair, biased, and prejudiced, and does not even make a pretense that its conclusion was arrived at upon any facts.

When the obstructionist group, described above, passed a resolution in Chicago, making charges of bias against the Deputy Administrator, which were dismissed by Colonel Lea, it also made another significant recommendation.

According to the press, it recommended the "hiring of a prominent Democratic lawyer who has an 'in' at the White House" to protest on behalf of that group:

Contrasted with the farcical report of the National Recovery Review Board are the following opinions which recommended approval of the Motion Picture Code:

The Legal Division of the National Recovery Administration wrote as follows to the Deputy Administrator:

"We have raised and discussed with you the various legal problems presented in connection with the Code of Fair Competition for the Motion Picture Industry, and understand that all points which we have raised have been fully considered. The draft which you have submitted to us today has been examined and passed by the Legal Division.

"May we personally thank you for your cooperation and compliment you on the solution which you have achieved for many of the difficult problems presented in the industry."

The Labor Adviser of the National Recovery Administration wrote the Deputy Administrator as follows:

"In addition to the numerous conferences in connection with the preparation of the Code of Fair Competition for the Motion Picture Industry, I have made a careful examination of all of those portions of the code dealing with labor.

have also been in contact with the official representatives of these several labor groups. It is gratifying, in view of these facts, to advise you of my approval and endorsement of the code.

"May I be permitted to make this personal comment: I have thoroughly enjoyed my association with you as your Labor Adviser because of your constant effort to secure all of the facts and to give full consideration to all phases of the problems which were called to your attention."

The Consumers' Advisory Board wrote to the Deputy Administrator as follows:

"The Consumers' Advisory Board approves the above code (third revision) and commends the manner in which difficult and controversial problems have been met in the code as now formulated."

VII. THE MOTION PICTURE CODE IS NOT DESIGNED TO PROMOTE MONOPOLIES OR OPPRESS SMALL ENTERPRISE

There are approximately 288 sections in the Motion Picture Code. Most of them are intertwined with one another.

A fair idea of what Mr. Sinclair called the "sloppiness" with which the National Recovery Review Board proceeded is the fact that the complaining witnesses before it referred to only 8 of the 288 sections. Most of the references to even these eight sections were inaccurate and misleading. Of the 399 pages of unsworn testimony, taken before the Board only about 15 pages make reference to sections of the code. The overhwelming portion of the testimony was irrelevant to the hearing.

An exhaustive, scientific, and accurate analysis of the code, as contrasted with the hop, skip, and jump method of the National Recovery Review Board—with most of the hops and jumps left out—reveals the following (as recently analyzed):

There are 45 parts in the unfair trade practice provisions of the code. Of these 45 parts, 26 were for the benefit of unaffiliated independent exhibitors, distributors, and producers. Of these 26, 25 parts granted them rights which they previously did not have.

Of the remaining 19 parts, 16 referred to general rights and were not designed to benefit specially any group in the industry. One part was for the benefit of the large exhibitors, and two parts were for the benefit of distributors. These two parts granted no rights to distributors which they did not previously have. They merely codified existing law.

To translate these figures into percentages:

(1) Excluding general provisions which were not designed to benefit any particular group in the industry, 89.5 percent of all provisions of the code were for the benefit of unaffiliated independent exhibitors, distributors, and producers.

(2) Ninety-nine and nine-tenths per cent of these provisions gave rights to the unaffiliated independent exhibitors, distributors, and producers which they did not have prior to the code.

(3) Four percent of all of the provisions of the code were for the benefit of distributors. No part of this 4 percent represents rights which distributors did not previously have.

Even this mathematical picture of the partiality of the code to the independent operator does not reveal the full protection which the code affords to small enterprises. These figures allow equal weight to each provision. If the number and quality of the provisions were weighed, the balance in favor or small enterprise would be even more striking.

Such provisions as those creating grievance boards and clearance and zoning boards, granting 10-percent cancelation privileges, and limiting short subjects in proportion to features involved sacrifices by distributors and producers of hundred of thousands of dollars, in favor of the independent exhibitor.

The provisions of this code assure to small enterprises that which the National Industrial Recovery Act was designed to obtain for them.

SOL A. ROSENBLATT,
Division Administrator.

May 14, 1934.

(The following communications and exhibits submitted by Mr. Abram F. Myers, chairman of the board Allied States Association of Motion Picture Exhibitors, Washington, D. C., were ordered inserted in the record. Mr. Myers' communication and exhibits refer to a letter and exhibits received from Mr. Sol A. Rosenblatt, division administrator, National Recovery Administration, previously placed in the record.)

ALLIED STATES ASSOCIATION OF MOTION PICTURE EXHIBITORS,
Washington, D. C., April 24, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance, United States Senate,
Washington, D. C.

DEAR SIR: This communication is in pursuance of my letter to you dated April 22 (a copy of which is annexed hereto marked "Attachment A") and my conversation over the telephone with Mr. Johnston of your office. It is a reply to the letter from Divisional Administrator Sol A. Rosenblatt dated April 12 which you inserted in the record. Since Rosenblatt's letter contradicts sworn testimony given in open hearing, it is submitted that this communication should also be included in the record to the end that the committee may make a full and accurate report on the facts as contemplated by Senate Resolution No. 79.

I. *Standard contract.*—Rosenblatt is correct in saying that the code provision requiring a standard form of contract was supported by all factions. The form prescribed was, however, agreed to by representatives of producers and exhibitors in 1932. Rosenblatt blasted all hope of realizing this reform by rejecting the exhibitors' proposal to make use of the form mandatory and by allowing the producers to write in all manner of "deals" in the schedule to the contract. Not only have the producers availed themselves of this loophole but they are openly flaunting the mandatory requirements of the code. As pointed out in the letter from Mr. Yamins (included as a part of my testimony), this disregard of the code provision in question, and the serious consequences thereof, have been called to the attention of Rosenblatt's code authority which has steadfastly declined to act in the matter. Rosenblatt, as Divisional Administrator, and as the administrative representative on the code authority, is perfectly familiar with this situation and has done nothing about it.

II. *Burkan's connection.*—Rosenblatt's flat statement that Nathan Burkan had nothing to do with the drafting of the code as approved by the President calls for further details concerning the negotiations leading up to the presentation of the first draft of code by Rosenblatt early in October 1933. Prior to the time that Burkan became active in the matter, Rosenblatt was most considerate of the exhibitor representatives and repeatedly assured them that the code would remedy many of the outstanding abuses in the industry. When Burkan became active there was a noticeable change in the attitude of Rosenblatt in his treatment of the exhibitors and he would argue for the producer point of view in all discussions. Our reasons for believing that Burkan, attorney for the "big eight," either wrote or unduly influenced the writing of the code are not based solely on the fact that he was formerly Rosenblatt's employer, but rather on the extraordinary privileges granted and deference shown to him by Rosenblatt during the discussions.

The producers' committee and the exhibitors' committee never met in joint session, although the code affected their relations vitally. The exhibitors met in a basement room in the Mayflower Hotel, the producers upstairs. Rosenblatt presided over the exhibitors in the daytime and met with the producers at night. Burkan not only participated in the exhibitors' discussions but also attended the meetings of the producers. When Rosenblatt presented his first draft of code to the exhibitors, who were waiting in breathless suspense, it was noted that copies were not delivered to the producers. This was noted by newspaper men and was the subject of comment in certain trade papers. If Rosenblatt drew the code as he claims he did, there must have been as much anxiety among the producers as to its contents as among the exhibitors. Apparently, however, they were well acquainted with its contents.

Later I will review the provisions of the code and show the subtlety with which provisions which ostensibly favor the exhibitors actually are meaningless or else favor the producers.

III. *How the code was signed.*—Rosenblatt challenges the testimony of the undersigned that the code was signed in secret and was a minority code. His claims are refuted by the fact that the four representatives of this association, having by far the largest membership of any trade association in the industry, were not invited to sign, were not notified of the time and place of signing, and all inquiries addressed by this association to National Recovery Administration as to the status of the code between October 31 and November 27, 1933, were utterly ignored.

The complete refutation lies in the Statement of Assents to Code Delivered to President, marked "Exhibit No. 3", which now comes to light for the first time. There are 42 signatures. The "big eight" are represented directly by 17. Ed Kuykendall signed for the Motion Picture Theatre Owners of America, claiming

4,819 theaters. He also signed for his own theater and for the Comerford chain, a member of M. P. T. O. A., thus showing further duplication. Charles L. O'Reilly signed for the Theatre Owners Chamber of Commerce of New York City, an organization from which virtually all independent exhibitors had previously withdrawn to form the Independent Theatre Owners Association of New York, leaving only affiliated chains as members—a further duplication of Kuykendall's claims. The few individual exhibitors do not swell the number appreciably. Not a single representative group of independent exhibitors is contained in the list.

Now, let us look at the list of "endorsers" who, according to Rosenblatt, wired their endorsements:

Here the same duplication obtains. The Picquet, Lightman, Bromley, Sol Gordon, Fitzgerald, Miller, Berinstein, Richard, Wehrenberg, Harrell, Brylawski, Hoblitzelle, and Clark signatures are duplications of the Kuykendall or other "big eight" signatures.

This leaves only Kuykendall as even claiming to represent any representative number of theaters. In the case of *Youngclaus* v. *Omaha Film Board of Trade* the methods by which Kuykendall's M. P. T. O. A. is financed were fully developed. It receives an allowance from the affiliated chain theaters through the producers' organization of which Will Hays is president. In the case of *Quiltner* v. *Paramount* the executive secretary of M. P. T. O. A. testified that the organization consisted mainly of producer-controlled theaters and derived most of its revenue rom this source. This testimony has been supplied to National Recovery Administration and doubtless is well known to Rosenblatt. Therefore, Kykendall is not a representative of independent theaters but of producer-controlled theaters.

Not only that, but he was not authorized to sign for many of his regional units which undoubtedly were included in the figure of 4,819. As shown in my testimony he had no authority to sign for the then largest M. P. T. O. A. unit (eastern Pennsylvania) or its next largest unit (Wisconsin). Neither he nor Martin Smith had authority to sign for the M. P. T. O. of Ohio and the endorsement of the latter doubtless represented his own theaters and not those of the members generally.

The conclusive evidence of this is that since that date, and in protest against Kuykendall's activities in behalf of the producers, the independent exhibitors formerly belonging to M. P. T. O. A. units in eastern Pennsylvania, Wisconsin, southern California, Georgia, Florida, Tennessee, Alabama, and the District of Columbia have withdrawn and organized new and strictly independent associations. Most of these have joined Allied States Association; the others are cooperating fully and are contemplating joining. The following is a telegram just received from the Wisconsin association:

"Wisconsin Independent Theatres Protective Association representing all independents in distributing territory request you represent it before Senate Finance on code. Also endorse Allied's plan to amend or alter code."

IV. *Assents subsequent to approval by President.*—The facts in reference to the manner in which written assents were obtained are given in the testimony of the undersigned and in the verified bill of complaint in the *Congress Theatre case*, which was deposited with the committee as a physical exhibit. In addition, we have received the following copy of a telegram from the southern California exhibitors to Senator Barkley, which came wholly unsolicited, and illustrates how even the modified assents were obtained:

"We wish to correct misleading information you have on voluntary acquiescence of independent exhibitors in signing motion picture code. Such is not the case. Exhibitors were threatened that they would have to comply with code whether they signed or not. Furthermore that they could not file complaint before the board if they did not sign. Were it not for the above facts overwhelming majority independent exhibitors would not sign code because it was lopsided agreement dominated by big producers. After approximately 2 years we do not even have equitable zoning and clearance in this territory."

Numerous inspired rumors from anonymous sources were circulated to the effect that theaters which did not assent could not exhibit films containing the "blue eagle." Also that theaters would have to pay code assessments whether they assented or not and that they might as well assent and thus qualify to file complaints. These methods are being continued by the producer-controlled code authority to coerce exhibitors into paying such assessments. The following is quoted from the "Second Notice of Assessment Due for First Half of 1934":

"Your attention is called to a resolution unanimously passed by the Code Authority of the Motion Picture Industry on April 6, and approved by the Administrator on April 13, 1934. The resolution follows:

"*Resolved*, That upon the failure of any person engaged in the exhibition of motion pictures to pay to the code authority the amount assessed against the theater or theaters of such persons as hereinabove provided within 30 days after the receipt of notice of such assessment and the amount thereof, unless a local grievance board shall unanimously recommend that such 30-day period be extended, such person shall refrain from exhibiting in the theater or theaters of such person, any motion picture to which is attached or made a part thereof, the insignia (blue eagle) of the National Recovery Administration, and any exhibition of any motion picture in violation of this resolution shall be deemed a violation of the Code of Fair Competition for the Motion Picture Industry."

Inasmuch as all films carry the National Recovery Administration insignia this amounts to a threat to put out of business any exhibitor failing to pay the assessment.

V. *The Johnson-Richberg interpretation.*—Rosenblatt lifts the onus of this queer proceeding from General Johnson and places it upon the President. As to this, we have no information beyond the newspaper accounts that Will Hays led his "big eight" both to the White House and to General Johnson's office. Of course, this does not contradict the fact that the beneficent provisions of the Executive order were emasculated by an order signed by General Johnson. If Rosenblatt's purpose was to show lack of diligence on our part in protecting our interests at the White House, we can only reply that we protested to Secretary Early and sought an interview for a small delegation of exhibitors similar to that granted Will Hays, and that no acknowledgment was forthcoming. In order that the record may be complete, a copy of the letter to Mr. Early is annexed as "Attachment B."

Rosenblatt then goes on to say that notwithstanding the interpretation in question, decisions of the code authority have in fact been reviewed by the National Recovery Administration. By this, I take it, Rosenblatt means that he has reviewed these decisions. Obviously, if he reversed a decision in favor of the "big eight" they could claim with reason that he was without authority under the ruling of his superior. But appeals to Rosenblatt carry no reassurance to the independent exhibitors. The mischievous part of the Johnson interpretation is that it prevents appeals to the Industrial Appeals Board. The committee heard from Father Ryan, of Catholic University, about the few appeals taken by small business men to his Board. Let us consider what happened when a New Jersey exhibitor, represented by Attorney General Wilentz as counsel, noted an appeal to this Board in a case. Rosenblatt objected to the jurisdiction of this Board under General Johnson's interpretation, and the Board very timidly set down the case for hearing, not on the merits, but on Rosenblatt's objection. It would be worth the effort for the Finance Committee to get the facts in reference to this proceeding directly from Attorney General Wilentz.

The essential fact is that the Industrial Appeals Board, created to hear the complaints of small business men, is not open to the independent motion picture exhibitors.

VI. *Make-up and acts of code authority.*—No substantial defense is offered to the charge that the code authority and the quasi-judicial local boards were packed in favor of the "big eight." Unanimity of action by the code authority meant only that the independent representatives, always outvoted, went along with the majority in the early stages in deference to the expressed wish that the proceedings be not marred by open divisions. This does not mean that a losing fight was not waged. One fact having an important bearing on the dominance of the "big eight" is that they elected one John C. Flinn, a former "big eight" employee, as executive secretary of the code authority, and in most instances elected the secretaries of the Hays film boards of trade as secretaries of the local boards, thus placing all control over the records, statistics, and information in former employees of the "big eight."

Based upon these facts and our experience to date, we do not accept the data furnished as to the number of assents, the number of cases heard, and the results thereof, nor the manner of voting. All are contrary to the understanding and belief of a majority of informed exhibitor leaders and doubtless are subject to all manner of analysis, explanation, and qualification. I repeat my belief, based on wide association with exhibitors in this association, that few if any exhibitors have received any adequate relief under the Motion Picture Code.

VII. *Provisions of the code analyzed.*—Rosenblatt has attached to his letter his reply to the findings of the Darrow Review Board, including a summary of the provisions of the Motion Picture Code. This summary gives a distorted impres-

sion of the value of these provisions to the exhibitors. It, therefore, is necessary to briefly analyze these provisions to show either that they are utterly inconsequential or else actually favorable to the producers.

A. DISTRIBUTORS

1. *Threatening to build.*—This would have been valuable during the period when producers were building and acquiring theaters. The producers refused to support such a provision at the Trade Practice Conference in 1927. It is now being violated by one of the "big eight" in Chicago.

2. *Distributor's employee having interest in theater.*—Only one instance of the thing at which this provision is aimed has ever come to the attention of the undersigned. It is not aimed at a general practice. It may prevent the inauguration of such practice, but it really is "window dressing."

3. *Substitutions.*—This is in reality a contraction, not an expansion, of the rule of law that a man may not be compelled to accept and pay for something different than that which he bought. Moreover, the producers do not give sufficient distinguishing data to enable an exhibitor to detect a substitution.

4. *Nontheatrical accounts.*—With the bona fide cooperation of the producer-distributors this might have been helpful in the limited number of cases where exhibitors are subjected to nontheatrical competition. However, the onus is cast on the exhibitors of creating ill will by opposing the serving of such accounts before the local boards, and the boards refuse to deal with blanket complaints.

5. *Short subjects proportionate to features.*—At the Trade Practice Conference the producers pledged themselves to the following clear-cut, honest undertaking: "Newsreels and short subjects will not be included in any block with features, and the lease of newsreels or short subject blocks shall not be required as a condition of being permitted to lease feature blocks or vice versa."

This undertaking was ignored as the Federal Trade Commission had no power to enforce it. The exhibitors during the code proceeding submitted a provision which would cut out the practice by the roots. The provision in the code permits the forcing of shorts to the full extent of an exhibitor's playing time and recognizes and legalizes the practice. Moreover, it is so worded that it can be easily evaded.

6. *Checking receipts confidential.*—The exhibitors sought to secure a provision which would prevent the use by the producers of a joint checking service. This Rosenblatt denied. The provision in question expresses the pious but futile hope that these joint agencies will not reveal the confidential information gained from an exhibitor to any principal other than the one immediately affected.

7. *Fraudulent transfer by distributor.*—There is no penalty attached to a fraudulent transfer by a distributor. But consult division E, part 4, p. 247 of the code to see what happens to an exhibitor who makes an alleged fraudulent transfer!

8. *Adjustment of average price contract.*—This is one of the most fraudulent provisions in the code. It covers a practice which does not and never has prevailed. The exhibitors submitted to Rosenblatt a provision which covered the dishonest practice of dividing the blocks into certain price groups and then allocating pictures to the high-price groups and leaving the inevitable deficiency in the low-price groups. Although this was fully explained to Rosenblatt, he ignored the exhibitors' effective provision and adopted the meaningless clause submitted by the producers.

9. *Designating special days of the week.*—The provision grants no effective or substantial relief and merely recognizes and legalizes the practice. The provision that play dates shall not be designated for flat-rental pictures is comparable to that noted in the preceding paragraph and is the joke of the industry.

10. *Withholding features because of a breach of short subjects.*—This alleged boon to the exhibitor only comes into play if the exhibitor has signed the optional arbitration clause of the standard exhibition contract. In that case he can, of course, be compelled to make up his arrearages in shorts. The two clauses are mutually destructive and there is no benefit for the exhibitor.

11. *Offer of additional feature.*—This provision can be evaded by the simple expedient of putting too high a price on the picture in offering it to the exhibitor entitled to receive it.

12. *Fire regulations.*—No comment necessary.

B. EXHIBITORS

1. *Rejection under selective contract.*—Clauses similar to this were negotiated with the producers in 1930 and 1932 but were not make effective. It may prove of benefit where a subsequent-run exhibitor is short on product, but he will lose first-run exploitation.

2. *Overbuying.*—This is a rehash of rule 14 of the trade practice conference rules, which never was observed. To be effective it must be enforced by public authority. Experience under the code to date has brought only sporadic and inadequate relief. The danger is that prosecuting officers may take the position that an exhibitor should first pursue his remedy before the producer-controlled grievance boards.

3. *Rebates.*—This is for the benefit of the affiliated first-run theaters. Under this admissions of subsequent-run independent theaters can be and are regulated in the interest of prior-run producer-owned theaters. The boycott provision enables the producers to terrify the independents into acquiescence by threatening to cut them off from all pictures. The producers have long desired a provision like this. It gives them absolute power to control admission prices in all theaters. They are now preparing to make use of the clause to knock out all 10- and 15-cent admissions, raising the minimum to 20 cents.

4. *Fraudulent transfer by exhibitor.*—This was commented on in connection with paragraph A–7. For the history of attempts by the producers to compel exhibitors taking over theaters to assume the contracts of their predecessors, see *United States* v. *First National* (282 U. S. 44).

5. *Advertising by subsequent-run exhibitors.*—This is for the benefit of the prior-run affiliated exhibitors, since a majority of the big first-run houses are operated, directly or indirectly, by the producers. It is decidedly unfair and oppressive so far as the subsequent-run independent exhibitors are concerned.

6. *Interference with exhibitor's lease.*—This was introduced into the exhibitors' code committee by Mr. Burkan, acting, in this instance, as attorney for the Skouras Bros. who operate a chain in affiliation with Fox. It is of doubtful value and still more dubious legality.

7. *Exhibition before dawn.*—Admittedly this is for the benefit of the distributors.

C. DISTRIBUTORS AND EXHIBITORS

1. *Standard optional contract.*—This form of contract was negotiated with the producers in 1932 but was not put into effect. The producers ever since the decision in the *Paramount case, supra,* have been anxious to have a standard contract with an arbitration clause. The exhibitors were anxious to get certain changes in the form then in use. The optional standard contract was a compromise on the part of all concerned. Its adoption is of equal interest to all concerned. But the requirement that it be used is not being enforced.

2. *Arbitration under contract.*—The comments in reference to the preceding paragraph apply here. The system provided is fair and is of equal benefit to all concerned. It is a part of the contract and no credit goes to the code.

3. *Inducing breach of contract.*—This is of equal benefit to producers and exhibitors. It is another make-weight of no substantial value.

4. *Obtaining advantages by gifts.*—This provision also is of the ho-hum variety and the same comment applies.

5. *Disclosing box-office receipts for publication.*—This clause is being ignored.

6. *Ten-percent cancelation.*—Its intended purpose was to still the cry against compulsory block booking. Had it succeeded the price would have been cheap indeed. But it affords no solution of the problem. There is some indication that the producers will be willing to up the percentage a little in a further effort to stem the flood of criticism. The producer-controlled Motion Picture Theatre Owners of America have just gone on record as favoring a 20 percent elimination right. It is unthinkable that they would have done this without the prior consent of the producers. It is obvious that, even if the right is enlarged, the hampering restrictions of the provision would have to be omitted if it is to be of any substantial value.

D. GRIEVANCE AND ZONING BOARDS

These provisions of the code have been so fully discussed that nothing needs be added at this point beyond saying that the grievance boards have been clothed with no power to make binding decisions in favor of the exhibitors but

under the boycott provision can put an exhibitor out of business; and that the clearance and zoning boards are what the producers have long sought but have been deterred from obtaining by the salutary provisions of Sherman Antitrust Act (see *Youngclaus case, supra*).

E. BLOCK BOOKING

This subject has been so thoroughly covered that time will be taken only to describe the encouragement held out by the National Recovery Administration that the matter would be covered in the code and to answer a few prejudicial statements incorporated in the producers' brief.

Rosenblatt made it quite plain at the general meeting in New York in August 1933 (before Mr. Burkan made his appearance) that something would have to be done about block booking. That is the distinct recollection of exhibitors who heard him on that day.

As early as September 1933 a joint Department of Commerce and National Recovery Administration planning committee worked out a model code for all industry that by actual name specified the practices of "block booking" and "tying" among the unfair practices.

Later another model code was issued which omitted specific reference to "block booking" but contained, instead, the word "coercion" as applying to the forced sale of one article in order to purchase another.

Subsequently this last-mentioned model code was withdrawn and on November 6 another was made public in which the reference to coercion was amplified to include both the forced "sale" and "lease" of articles.

All of these definitions cover squarely the practices of block booking—i. e., compelling the exhibitor to buy pictures which are unsuitable and which he does not want in order to acquire those which are suitable and which he must have for the proper conduct of his business.

It is respectfully submitted, therefore, that the exhibitors were warranted in believing that the National Recovery Administration would contribute something to the solution of the block-booking problem.

As to the effects of block booking we refer the committee to the testimony of the undersigned; also to the brief prepared by this association for the use of the House Committee on Interstate and Foreign Commerce, a copy of which has been filed with the secretary.

VIII. *Provisions which are monopolistic under decisions of the courts.*—

A. *Clearance and zoning boards.*—"Clearance" is the time that elapses between the showing of a film in a first-run house and its exhibition in a subsequent-run house.

The major producers through control of the films and their close association in the Motion Picture Producers and Distributors of America (Hays' association) have in some cases imposed clearance in favor of producer-owned houses and against independent houses of from 1 year to 18 months in time and for upwards of 50 miles in area.

This is done to compel the public to patronize the high-admission, first-run houses in order to see pictures while they are fresh. The imposition of unreasonable protection not only is calculated to drive the independent theaters out of business but is unfair to the public.

The Attorney General has several times interceded in behalf of the independent theater owners and has enjoined unfair and unreasonable protection schedules in Chicago and Los Angeles.

Moreover, the exhibitors have brought suits to defend themselves in such situations, the case of *Youngclaus* v. *Omaha Film Board of Trade* (60 Fed. (2d) 538), being typical. Numerous such proceedings are now pending.

The exhibitors, therefore, have legal rights which, under the code, are committed to these producer-controlled tribunals in which the division, based on interest, is 4 to 2 against the subsequent run theaters.

The clearance and zoning schedules framed by these boards are made binding on all exhibitors and are, of course, exempted from the antitrust laws, and the only recourse for an exhibitor is an appeal to the code authority in which the majority in favor of the producers will be even greater.

We respectfully submit that it is not a proper function of the code to transfer the adjudication of the legal rights of the exhibitors from the courts to tribunals in which persons having an antagonistic interest cast the deciding vote.

B. *Local grievance boards.*—The code also provides for local grievance boards to hear and determine complaints of certain classes of trade abuses, such as the overbuying of films, in which the producers also have a clear-cut majority.

These boards have no power to enforce their decisions, which are not made binding, hence the hope of relief from this source is very faint.

The danger is that since the abuses are mentioned in the code, and these tribunals are erected for airing them, the courts will hold that the code has the force of law and establishes an exclusive remedy, and the practices will be exempted from the antitrust laws and the protection which the exhibitors now have will be withdrawn.

C. The producers have many times sought to fix admission prices by clauses in exhibition contracts under which they lease their films to the exhibitors. The exhibitors have resisted these attempts particularly in cases where the pictures are played on a flat rental basis as distinguished from a percentage arrangement.

The code confirms this right in the producers-distributors:

"No exhibitor shall (a) lower the admission prices publicly announced or advertised for his theater by giving rebates in the form of lotteries, prizes, reduced script books, coupons, throw-away tickets, or by two-for-one admissions, or by other methods or devices of similar nature which directly or indirectly lower or tend to lower such announced admission prices and which are unfair to competing exhibitors, or which deceive the public; or (b) *fail at all times to maintain the minimum price of admission specified in any contract licensing the exhibition of any motion picture during the exhibition thereof.* This section shall not be deemed to prohibit exhibitors from reducing or increasing their admission scales as they see fit, *except as may be prohibited by exhibition contracts.*" (Italics ours.)

In addition, the code provides that a violation of the price restrictions shall be punished by a boycott:

"In case any exhibitor is found after notice and hearing by a local grievance board, provided for in this code, to have violated any provision of this part, and if such local board shall on account thereof declare that such exhibitor shall not be permitted to license the exhibition of any motion picture unless the exhibitor ceases and desists from such violation, *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 exhibitor* and shall refuse to make further deliveries of motion pictures to such exhibitor under existing license agreements if the exhibitor refuses to cease and desist." (Italics ours.)

This form of boycott has been expressly condemned by the United States Supreme Court in *Paramount* v. *United States* (282 U. S. 30).

The producers are closely allied through the Hays' association, and dominate the boards, so that the effect of the foregoing is to vest in a small group of men absolute power and control over the admission prices of all theaters. This, we submit, is price-fixing with a vengeance.

The danger to the public from these provisions will be more readily appreciated if considered in the light of the facts of the industry. The major producers own theaters which they operate in competition with the theaters of other producers and the independent exhibitors. The producer-controlled houses are generally the so-called "de luxe" first-run theaters in the downtown sections of the larger cities. The independent houses are for the most part located in the residential districts of the cities and in the small towns. They cater to the "family trade."

The producers have an incentive to boost the admission prices of the independent theaters so as to regulate the extent of their competition with the producer-owned houses. They also desire to boost admissions in the hope that such action will pave the way for increased film rentals. This has already been done in and around Dallas, Tex.

The substance of the foregoing was contained in the protest sent to the President at Warm Springs prior to his approval of the code as testified to on page 2993 of the mimeograph transcript.

IX. *Rosenblatt's reply to the Darrow report.*—Rosenblatt has seen fit to incorporate his lengthy reply to the report of the Darrow Review Board which recommended his removal. Much of the material contained in this reply is irrelevant to the testimony of the undersigned and calls for no comment. However, the reply and its treatment of the witnesses who dared testify before that Board are revealing and should have the attention of the committee. Although (as pointed out in attachment A) Rosenblatt refused to take the stand and testify, he availed himself of the opportunity to compose this lengthy screed, which in its references to some of the witnesses borders on the scurrilous, and have it broadcast with the imprimatur of the National Recovery Administration.

In considering this remarkable document the committee should bear in mind that Rosenblatt was saddled upon the exhibitors, that he does not have their confidence, and that despite his obvious (and admitted) bias against the greater part of the independent exhibitors he is the sole representative of the Government in the code authority which wields power of life or death over the business and fortunes of these exhibitors.

There is no partisanship or animus behind the determination of the independent exhibitors that the facts in reference to the Motion Picture Code shall be fully uncovered. They had hoped for an investigation by a body that would send for books and records and make an affirmative, aggressive inquiry. An inquiry dependent upon volunteer witnesses who must suffer vituperation as the price of their brashness cannot, perhaps, resolve all the issues raised. But your committee can and should provide for an end to the situation herein revealed and provide for the writing of a fair code.

The committee should go further and recommend that the new code be written under conditions that are beyond reproach. The resolutions adopted by the various exhibitor organizations requesting a congressional investigation of these matters recited that the end to be achieved was the writing of a new code under the eye of a fair-minded and unbiased deputy administrator. This has led some of our leaders to suggest that we add to the recommendations heretofore submitted a proposal that, beginning with the new bill, all such officers be appointed "by and with the advice and consent of the Senate."

Respectfully submitted.

ABRAM F. MYERS,
Chairman of the Board.

ATTACHMENT A

APRIL 22, 1935.

Hon. PAT HARRISON,
Chairman Committee on Finance, United States Senate,
Washington, D. C.

DEAR SIR: There have been a number of developments since my appearance before your committee on April 8 which make it necessary to supplement my statement in certain particulars.

1. *No connection with I. T. O. A.*—Immediately following my testimony Mr. Melvin Albert made a statement in behalf of the Independent Theatre Owners Association of New York City. An interchange between Mr. Albert and certain members of the committee leaves the record confused as to the relationship between his organization and ours. We disclaim any responsibility for Mr. Albert's statement. The I. T. O. A. of New York City is composed of independent exhibitors and they are genuinely opposed to the code. But they are engaged in a labor controversy peculiar to New York City with which our members have no connection and with which they do not wish to be identified.

The company union sponsored by the I. T. O. A. bears the name "Allied"; but it was not formed by and never has had any connection with this association, and we wish to guard against any confusion growing out of the similarity in names.

While the labor provisions of the Motion Picture Code are open to question because they make all other unions subordinate to those affiliated with the American Federation of Labor, going further in this respect than any other code, this association has not contested those provisions and has at all times counseled its members to observe strictly the labor provisions and believes that they have done so.

2. *Rosenblatt's brief.*—We are informed by the trade press that Divisional Administrator Sol Rosenblatt instead of appearing and testifying under oath, subject to cross-examination, has filed a "brief" with the committee denying all charges made against the Motion Picture Code.

Rosenblatt employed the same tactics before the Darrow Review Board. Called to the stand, he refused to testify, and insisted on haranguing the Board. He then told the Board he would have to obtain General Johnson's permission before testifying and promised he would obtain this permission as soon as possible. He never returned. The Board asked the Rosenblatt-appointed code authority to appear and they refused.

I hold no brief for the Darrow Board and do not know how they conducted their investigations of other codes. But the foregoing is a complete refutation of General Johnson's charges of unfairness so far as the Darrow Board's report on the Motion Picture Code is concerned.

After the testimony had been closed a brief appeared from some mysterious source, bearing the names of the "big eight" of the Hays' association, but dealing with matters supposedly known only to Rosenblatt and tinctured with all the animus and malice which he harbors against the independent theater owners. Then as now it was attempted to slip the ex parte statements and arguments into the record without serving a copy on representatives of the exhibitors. However, a copy was obtained and a complete answer was filed and so the stratagem was spoiled.

We, of course, have not received a copy of the brief filed by Rosenblatt with your committee, but from the excerpts in the trade press enough appears to demonstrate its tenor and quality.

We protest against the incorporation of this brief in the record, or its consideration by the committee, unless a copy is furnished us and our reply is printed along with the brief. After all, Rosenblatt is attempting to controvert formal testimony with an ex parte "brief", and those responsible for such testimony are entitled to analyze and refute it for the benefit of those who may be called upon to consider it.

If the Rosenblatt brief is not going into the record, and is to be treated merely as a personal appeal to individual members of the committee, we will present members of the committee with an informal answer, based on the trade-paper excerpts.

We would be pleased to have your advice at your earliest convenience.

Yours very truly,

ABRAM F. MYERS.

ATTACHMENT B

NEW YORK, N. Y., *December 10, 1933.*

MR. STEPHEN T. EARLY,
Secretary to the President, Washington, D. C.

DEAR STEVE: This is going to be a disagreeable letter from the standpoint of yourself, your chief, and some of your associates. If I were in your place I would prefer hearing these things from someone trying to perform a friendly service than to have them fester and finally break out in antagonistic quarters. If I am wrong, score it as an error in trying for an assist and that will be that.

The motion-picture business, as you know from your experience, is the world's most gossipy industry and at the outset of the code proceedings the "wise guys" freely predicted that the outcome would be to give the major producers that domination over the exhibitors from which they had been thwarted by the anti-trust laws.

As reasons they cited the following alleged facts:

1. The newsreel is a valuable medium of publicity and the Administration will want to sew it up.

2. H. M. Warner made one of the largest single contributions to the Democratic campaign fund and will expect a quid pro quo.

3. Frank Walker, treasurer of the national committee and the holder of a responsible position in the Administration, was an officer of the Comerford (Paramount-Publix) circuit of theaters and cooperated with the Hays' office in exhibitor matters.

4. Solomon Rosenblatt, appointed deputy administrator for amusements, was an employee of Nathan Burkan, motion-picture lawyer, in some way connected with the Loew-M-G-M Co., and was, therefore, "hand-picked."

5. No. 4 was strengthened by the fact that Mr. Burkan participated in the code proceedings as attorney for the producers, more especially Loew-M-G-M.

6. Mr. McIntyre and yourself were former newsreel men, representing Pathe and Paramount, respectively, and would see that our case was not presented at the White House after we had been kicked around by the National Recovery Administration.

7. General Johnson's executive assistant and guardian of the outer chamber, Miss Robbins, was a former employee of R-K-O lent by that company to the Democratic committee.

8. Assistant Administrator R. W. Lea was formerly an official of a Chicago bank that lent a lot of money to Paramount-Publix a few years ago and was supposed, therefore, to be interested in the last-mentioned company.

9. Harold Phillips, a former newspaper man employed by Will H. Hays, had virtually taken charge of publicity matters in Rosenblatt's office, where he spent the most of his time and assumed an air of importance and authority.

Our confidence in the President, as well as in the correctness of our position was such that we paid no attention to sniping (at least, I did not) and we cooperated with the Deputy Administrator up to the point where he drafted a code which conferred on the major producers the power to put the theaters we represent out of business. A mass meeting of exhibitors was called in Chicago and telegraphic protests against both Rosenblatt and his code were sent the President.

The resolutions committee of the meeting was summoned by General Johnson for a conference. In the course of it Rosenblatt declared his prejudice against every exhibitor leader present (they represented six regional associations as well as the national). Thereupon General Johnson turned the matter over to the above-mentioned Colonel Lea for a report.

While our conferences with Colonel Lea were in progress the trade papers published statements emanating from Washington to the effect that nothing would come of the move and that the code would be approved as written by Rosenblatt.

These statements were verified by the event, but the President's approval was accompanied by an Executive order which provided for certain safeguards against the unrestricted power conferred on the major producers by the code. The President also reflected credit on himself and honored the industry by appointing Dr. A. Lawrence Lowell as one of the three Government representatives on the code authority.

It now develops that the major producers led by Mr. Hays, were unwilling to submit to a review by the Administrator of their acts under the code. They were received by the President and General Johnson has just announced an interpretation of the Executive order which, to all intents and purposes cancels the safeguards against arbitrary action which had been so fairly and justly imposed.

Now, Steve, it is no mere phantom that we have been protesting. I know that Phillips and others have spread the propaganda that our group is not representative of the exhibitors and that we are a small group of selfseekers. The records placed before Colonel Lea refute these and other equally untrue statements. We will meet this issue any time, any place. But the important question is, are we right? We have a right to consideration on the merits of our position, regardless of number or kind of persons represented, or the character of the representation.

The code authority, set up and named in the code, consists of 6 producers (sellers) who are members of the Hays organization, 1 independent producer (also a seller) and 3 representatives of exhibitors (buyers). Since the time has come to call a spade a spade, let me say that of the 3 exhibitor representatives 1, Charles L. O'Reilly, is a Tammany politician who has been out of the theater business for years, and now is, unless he has made some sort of connection to qualify himself for the code authority (the specifications for which call for "bona fide" exhibitors). Mr. O'Reilly's principal business is the installation and operation of candy-vending machines in theater lobbies (you can view some of these machines at Keith's, if you are interested). He has been for many years president of the Theatre Owners' Chamber of Commerce, a trade association in New York City comprising both producer-owned and independent theaters. About 2 years ago nearly all of his independent members withdrew and formed the Independent Theatre Owners' Association (of New York City) so that the Theatre Owners' Chamber of Commerce stands as primarily a producer-owned theater organization. Mr. O'Reilly's function has been to represent those interests in their relations with the city government (at which he will not be so proficient after January 1). There was placed before Colonel Lea an exhibit taken from the record in a lawsuit in New York showing the payment to the Theatre Owners' Chamber of Commerce by the major producers, through the Hays office, of the sum of $25,000.

Another exhibitor representative named in the approved code (and of course the President had no opportunity to investigate these persons and we did not run a propaganda mill of our own) is Ed Kuykendall, president of the Motion Picture Theatre Owners of America. You do not have to rely on our characterization of that association as a mere subsidiary of the Hays organization; you may find confirmation in Professor Lewis's splendid book, The Motion Picture Industry, p. 302, and in the finding of Judge Munger of the United States District Court in Nebraska in the case of *Youngclaus* v. *Omaha Film Board of Trade* (60 Fed. (2d) 538). Moreover, there was filed with Colonel Lea an excerpt from the record in the *Quittner case*, in New York, consisting of the testimony of Michael O'Toole, executive secretary of the Motion Picture Theatre Owners of America, to the

effect that producer-owned theaters predominate in the membership of that organization and furnish its principal financial support.

That leaves Nathan Yamins, the third exhibitor representative, as the only true independent on the code authority.

I cite these facts to show how the President, who approved the code with these names written in, has been placed in the position of making representations which come to the independent theater owners as a great shock. And now let me show you how far this misrepresentation is being carried. Today's New York Times, dealing with yesterday's proceedings in Washington, says:

"With regard to the issue over the make-up of the authority, the industry maintained that under the Executive order the Government could provide any kind of a board it saw fit to name. As constituted the board is made up of 5 members representing the producers and 5 representing the buyers.

"If the Executive order remained in force, it was argued, the 'balance' as between buyer and seller could be broken at any time General Johnson saw fit to do so. Under the agreement reached General Johnson will act only on the recommendation of a majority of the voting members of the authority. Members representing the National Recovery Administration are without vote."

Now, Steve, even if we accept O'Reilly and Kuykendall as bona fide exhibitors, the sellers have a majority of 7 to 3 over the sellers; and this latest agreement between the Hays group and General Johnson means that this viciously unfair arrangement can never be disturbed except by the vote of a majority.

But the misrepresentation concerning the set-up is not confined to statements to the public press. It is in the code itself. The division set up therein is between "affiliated" and "unaffiliated" members (i. e., affiliated with theater circuits). Five Hays producers with large affiliated chains are properly placed in one category; the independent producer (Ray Johnson), the three exhibitor representatives above mentioned, and R. H. Cochrane, of Universal Co., are listed as "unaffiliated." Let us consider Mr. Cochrane, who is a member of the board of directors of the Hays association and bound to the five affiliated companies by every tie of association and interest. This company formerly had a goodly number of theaters but dissociated itself from most of them by various forms of transaction and operating agreement. But if you want to know whether it is a theater operator, you need not leave town to investigate, as the Rialto Theater on Ninth Street will answer your question.

If this were merely a scrap over representation on the code authority, you might be mildly concerned that the President had been put in a false position and let it go at that. But the motion picture code is peculiar in that it sets up quasi-judicial boards to deal with controverted questions of legal right, between competitors and between buyers and sellers. The code formula calls for the naming of these boards by the code authority (dominated as aforesaid), with a majority of producer affiliated representatives, with the sole power of review in the code authority.

Now there is a limit to all things, and I believe that unbiased students of this set-up must pronounce it beyond the limit of what is proper and fair. The President's Executive order lent fairness and, as I believe, legality, to the formula. But the President, who has ignored our protests on the code, as well as our modest request to be heard on it, has received Will Hays and Nicholas Schenck (the highest-paid executives in the business at whom the suspended salary clause must have been aimed) and at their behest the beneficent provisions of the Executive order have been emasculated.

As matters now stand, a local clearance and zoning board, appointed by the code authority, may approve a clearance schedule that will hold the independent theaters back so far in playing time as to put them out of business. Their only recourse is to appeal to the code authority which appointed the local board and on which the majority enjoyed by the majors is even greater. Now the producers have been striving for years to get just such a set-up. They attempted it in cooperation with the corrupt M. P. T. O. A. leaders a few years ago but were halted by the decision in the *Youngelaus case*. Following that decision they promised the Department of Justice to abandon the campaign. Now the power is to be conferred on them to carry on this campaign of extermination without liability under the antitrust laws.

The trade papers have published the story, and it is not denied, and in film circles is accepted as true, that the Department of Justice protested to the National Recovery Administration against this code set-up on the ground that it condoned monopolistic practices and was contrary to numerous decisions and decrees to which the Government is a party.

The final disappointment was the naming yesterday of Deputy Administrator Rosenblatt as one of the Government representatives on the code authority. He has in the course of the proceedings, and in his draft of code, expressed his conviction on all issues between the independents and the trust. He has, moreover, displayed active antagonism to all independent representatives not subsidized by or subservient to the major producers. His appointment effectually negatives the good that we hoped would result from the naming of Dr. Lowell.

The board of directors of this association meets at the Pantlind Hotel, Grand Rapids, Mich., on the 12th and 13th. While there I will address the annual convention of the Allied Theatre Owners of Michigan. Thereafter I will address meetings of theater owners on the code in Pittsburgh, Boston, Albany, Trenton, and Cleveland. After that itinerary I expect to address a series of meetings in the West. I have at all times told the exhibitors that they could absolutely rely on the President for a fair deal. And whether you know it or not, I have stopped several movements directed towards carrying these grievances into the open by retaining some Democratic politician to make a fight and by a trailer campaign on the screens. But, Steve, I am now stopped; I have no answer for the questions that are going to be hurled at me as to why the President ignored all requests for consideration in connection with the code itself; why, after affording a measure of protection in his Executive order, he has now withdrawn it; why, after refusing to acknowledge the request of the independent theater owners to hear their side of this vital controversy, he has received Nicholas Schenck, Joseph Schenck, Eddie Cantor, Will Hays, and other members of the Hays organization and apparently given them everything they asked for.

The President, I know, has not had time to go into all these matters and, I am sure, knows little of the details of the code. But his course has, unfortunately, given credence to all the inferences and suggestions herein outlined.

I am going to make a final constructive suggestion, and if it goes the way of all others I will at least have the satisfaction of knowing that I tried to bring about harmony and understanding. I suggest that the President receive a small delegation of independent exhibitors, representing theater associations in their respective States, in order that they may state briefly their terrible concern over the code and receive that assurance which the President knows so well how to give—that the New Deal in the picture business will be a square deal. I further suggest that you wire me Tuesday at the Pantlind, or to James C. Ritter, president of this association, at the same address, so that the assembled exhibitors will know that they are not the "forgotten men." I suggest December 17 as being convenient date between scheduled conventions, or sometime during Christmas week.

Yours very sincerely,

ABRAM F. MYERS.

The CHAIRMAN. If there is no objection, I would like to have this committee devote consideration to the so-called "bonus proposals" that are pending before the committee. Without objection the committee will meet Monday and Tuesday for that purpose at 10 o'clock.

Is Mr. Harriman here?

Mr. HARRIMAN. Yes, sir.

TESTIMONY OF HENRY I. HARRIMAN, WASHINGTON, D. C., PRESIDENT UNITED STATES CHAMBER OF COMMERCE

(Having first been duly sworn, testified as follows:)

Mr. HARRIMAN. Mr. Chairman and Senators: My name is Henry I. Harriman. I am the president of the Chamber of Commerce of the United States.

Two years ago I appeared before your committee on behalf of the Chamber of Commerce of the United States to favor the enactment of a law designed to remove the ruthless and cutthroat elements from competition and to better relations between employer and employee through trade agreements which had received the approval of the Government.

Neither the act which was passed nor its administration has had the entire approval of American business. In my judgment, the very name of the act was unfortunate. It was not, in fact, so much an Industrial Recovery Act as one for the betterment of conditions under which business and industry is carried on. Too much was expected of it; too much was attempted under its provisions. Its development should have been gradual. Experience should have been the teacher and guide. The policy adopted in the enthusiasm of the moment was one of codifying the entire Nation and of bringing under the wings of the "blue eagle" industries both large and small; both intrastate and interstate.

We may admire the courage with which the measure was administered, but we cannot be surprised that so gigantic an experiment worked both good and evil, and was applauded by some and derided by many.

It is my conviction that the scope of the act should have been definitely limited, either by law or by administration, to those large industries which are truly interstate, or which definitely affect interstate competition. The eighteenth amendment taught us the difficulty of attempting to enforce an act which affected a large and hostile minority. We have had a similar experience with those codes which affected and restricted thousands of small concerns—particularly the codes which attempted by minute stipulation of trade practices to correct in a day the bad business practices which had grown up through the years.

Nevertheless, my faith in the basic principles of the N. R. A. is unshaken, and I again appear on behalf of the Chamber of Commerce of the United States, to urge, with certain specific changes, an extension of the act beyond June 16 next. In December of 1934, the membership of the Chamber voted by an overwhelming majority that, prior to the expiration of the National Industrial Recovery Act, new legislation should be enacted, embodying the following specifications:

First. It should be a temporary act for a period of 1 or 2 years. During that period, the country will have had further experience with the act, and the Supreme Court will undoubtedly have defined the limitations of Federal action.

Second. Any new legislation should be limited to businesses engaged in, or affecting, competition in interstate commerce.

Third. Each industry should be permitted to formulate codes containing rules of fair competition, and such codes should become effective when they receive governmental approval.

Fourth. The Government should have the power to approve or disapprove a code formulated by industry, but should not have the power to modify or impose codes.

Fifth. All codes should contain provisions against child labor, and should provide for minimum wages, maximum hours, and collective bargaining. There is a wide divergence of view in industry as to whether power should lie with the President to impose codes covering child labor, minimum wages, maximum hours, and collective bargaining if an industry fails to present a code, and if he finds that such unfair practices are developing in the industry. On this subject, the chamber has not spoken, but it is my own belief that such power should be granted to the President, but strictly limited to those four items.

Sixth. Price fixing and production control should not be permitted under codes except in rare instances, where large and unmanageable surpluses have accumulated or are threatened. The chamber favors, however, reasonable restrictions on machine hours, and considers that, if drawn in proper form, such regulations do not harmfully restrict production or limit competition, but do prevent the accumulation of unusable surpluses.

Seventh. Codes should not oppress small industries, and should not create monopolies; but codes or agreements approved by the Government should be lawful until the approval of the Government is withdrawn.

Eighth. The right of employees to bargain, individually or collectively, as they themselves may choose, exists without a Federal statute. Labor should have the right to bargain as to the conditions under which it will work, either directly or through agents of its own selection, uncoerced or unintimidated by employers or others, and membership or nonmembership in any labor organization should not be a condition of employment. The Chamber of Commerce of the United States is in favor of the real open shop; that is, a shop which is open both to workers who do or do not belong to labor organizations; it is not in favor of any law which would prohibit employers from dealing with individuals or minorities as well as with majorities in the determination of labor conditions; it is opposed to any statutory limitation of hours, such as the 30-hour week, and it does not favor any philosophy of scarcity or any attempt to limit production, short of the broadest possible demands of the market.

Ninth. Rules of fair competition contained in codes, which have been presented by a predominant part of an industry, and approved by the Government, should be binding upon all concerns in that industry.

Tenth. An industry which has adopted a code should have a right to withdraw its code and, likewise, the President should have the right to cancel his approval.

Eleventh. There should be opportunity for members of an industry to enter into agreements as distinguished from codes which, when approved by the Government, shall be enforceable against the parties to the agreement.

Twelfth: The act should be written to involve civil rather than criminal liabilities, and violations of code provisions should preferably receive injunction relief. Criminal proceedings should be confined to those offenders who knowingly falsify statistical data or make statements with intent to mislead the Government.

The bill which you are considering conforms to many of the above specifications. So far as it does, it has the hearty support of the Chamber of Commerce of the United States. Where it does not, the chamber feels that the bill should be amended.

As I read the bill, I am impressed with the fact that it is much more complex and confusing than the present recovery act. Too many restrictions and conditions are imposed, and too many changes have been made from the simple and clear language of the present law.

May I now briefly discuss with you some of the points on which Senate 2445 agrees with and differs from the chamber's recommendation.

Senator KING. Before you proceed with that, may I interrupt you?

Mr. HARRIMAN. Certainly.

Senator KING. Have you read the provisions of the bill, and may I say in passing that that is not before us in the sense that the hearings were initiated by reason of that. These hearings were under Senate Resolution No. 79, which charges many things of omission and commission against the existing law, but what I was about to ask was whether you have examined the bill with a view to determining whether or not it repeals by implication if not directly all antitrust laws and also whether it does not emasculate and destroy the provisions of the Federal Trade Commission Act?

Mr. HARRIMAN: I cannot answer the latter part. I have not given it particular consideration. I do think that the provisions with reference to the antitrust laws are not right. They differ from the present act.

Senator KING. Would you favor any law that would repeal the operations and enforcement of the antitrust laws?

Mr. HARRIMAN. I think that any code that is adopted should be legal for all members of industry until the President's approval has been revoked. The President can revoke his approval of a code at any time under the act if he finds that the code is creating a monopoly or is restricting or harmfully injuring small injuries. In that event, he can revoke it. I do not think it is right, however, to impose the liability of triple damages upon people who are under a code as long as that code exists.

Senator KING. Do you not think that in view of the fact that we have the antitrust laws, that we should put into any code, the authority by code authorities or by the President of the United States himself, to repeal the operation of the antitrust laws?

Mr. HARRIMAN. Senator, the antitrust laws are very broad in their nature. You are never sure whether you are violating them or not until the Supreme Court has finally spoken. I think that if companies are acting under a code they should not be open to suits. I think at any time that any party should have the right to request the opening of a code on the grounds that it is against the provisions of the antitrust laws. Agreements under codes, in my judgment, if they are to have any value whatsoever, should be recognized as lawful even though they interfere with the antitrust laws, until they are revoked.

Senator KING. Do you not think it would be very dangerous to put into codes authority for anybody, even the President of the United States, to legislate the repeal, by implication, if not directly, of the antitrust laws?

Mr. HARRIMAN. I do not see anything either in the present act or this act that repeals the present antitrust laws. It simply says or should say that the concerns operating under a code shall not be subject to attack under the antitrust laws.

Senator KING. Is that not a repeal?

Mr. HARRIMAN. It is a temporary repeal; yes.

Senator KING. Do you think it would be wise to commit to code authorities selected by industry itself or by the President, authority to repeal any law?

Mr. HARRIMAN. Of course, Congress is really doing the repealing and the agency is merely interpreting the repeal, but if you were not going to make agreements under codes lawful so long as the codes

exists, then I think you had better repeal the entire act and not have any N. R. A. In other words, if these agreements are to be entered into with the approval of the Government, those agreements should not be subject to attack in the courts.

Senator KING. Do you not assume, as a premise of your observation, that business ought to be permitted to make agreements even though those agreements tend to restrain trade?

Mr. HARRIMAN. Will you ask that question again, please?

Senator KING. Do you not assume in your answers which have been given here, that power ought to be given to the code authorities to repeal, directly or indirectly the antitrust laws?

Mr. HARRIMAN. I think that our industry has become so complex that it is now necessary to permit agreements which are contrary to the antitrust laws. I do not think they should be permanent arrangements, but arrangements which should last as long as there is good proof that they are working in the public interest.

Senator KING. Do you not assume by that answer that business may not exercise itself in a legitimate and proper way, not only for the welfare of business but for the welfare of the consuming public, without monopolistic agreement and monopolistic practices?

Mr. HARRIMAN. I do not think, Senator, an agreement which is in a certain sense restrictive is necessarily monopolistic. I do not think an agreement to establish a certain fair minimum wage or maximum hours is monopolistic, yet probably such agreements would be against the antitrust laws because they are agreements in restraint of trade. The absence of such authority was what led to the sweatshop and led to many of the worse conditions that have existed in business. I do not myself believe that free, absolute, and open competition is the answer to the problem today.

Senator KING. You believe there should be restrictions then?

Mr. HARRIMAN. I believe there have got to be restrictions. I believe that otherwise business has in itself the seeds of its own destruction.

Senator KING. Even though those restrictions would tend to monopolistic control of commodities?

Mr. HARRIMAN. Even though for a temporary time they did so.

Senator COUZENS. Do you believe that the antitrust laws have been effective, Mr. Harriman?

Mr. HARRIMAN. Not very; no, sir. They have been reasonably effective in preventing certain types of agreements and have forced companies who wanted to get together to combine in large groups rather than to enter into agreements. To that extent they have created monopolies.

Senator COUZENS. Can you instance a case where the Government has enforced the antitrust laws effectively against any consolidation or monopoly?

Mr. HARRIMAN. They broke up the Standard Oil Co.

Senator COUZENS. How effective was that?

Mr. HARRIMAN. I do not know.

Senator COUZENS. Neither does anyone else that I can see.

Senator KING. Proceed.

Mr. HARRIMAN. First recommendation: The bill agrees with the chamber's first recommendation that it should be a temporary act, running for a period of 2 years.

Second recommendation: It partially agrees with the chamber's second recommendation that legislation should be limited to businesses engaged in or affecting competition in interstate commerce, but the definitions of interstate commerce are so broad that, in my judgment, an attempt has been made to include, under the provisions of the measure, restrictions upon intrastate business. It is practically impossible to write in specific language a clear-cut definition of interstate commerce, and I believe that the courts should be left with wide latitude to determine whether, in any given case, commerce is interstate or intrastate.

Third recommendation: The bill conforms to the third recommendation that each industry should be permitted to formulate its own code, which would become effective when approved by the Government, and that industry would have opportunity to withdraw its code if the approval contained unacceptable amendments or conditions.

Fourth and fifth recommendations: The bill does not agree with the chamber's fourth and fifth points. The power to impose codes is too broad and, under the wording of the act, might be construed to include almost any trade practice. It is my feeling that the power of the President to impose codes should be strictly limited to the prohibition of child labor, and to the imposition of maximum hours, minimum wages, and collective bargaining. Many an industry would not favor the grant of even this power.

Sixth recommendation: The chamber's sixth point is in opposition to the fixing of prices and the limitation of production except in rare instances where unmanageable surpluses have accumulated. There are some excellent features in the bill pointing to this end, but there is language which would imply that the natural resource industries are to become public utilities. That, in my judgment, would be a most serious mistake.

Seventh recommendation: The chamber, in its seventh recommendation, is emphatic in its views that codes should not oppress small industries, and should not create monopolies, but it does feel that if a code has been approved by the Government, such a code should be lawful for the members of the industry until the approval of the Government is withdrawn. That is clearly the intent of the present act. Under the proposed bill, an industry is only exempted from the penalties of the antitrust act.

Senator COUZENS. Is it not true, Mr. Harriman, that the authorities under the codes have frequently been exceeded?

Mr. HARRIMAN. I think that may be so.

Senator COUZENS. And that has caused the trouble, more than the codes themselves?

Mr. HARRIMAN. I think so.

Senator KING. Has not some of the trouble been brought about by reason of the fact—I am assuming it is a fact—that the number of trade organizations rush in early and got codes without due consideration to nonmembers of the trade association, or perhaps to those small units who were within the trade organization, and that the code authorities have been dominated by a limited number who were the large producers in any particular unit?

Mr. HARRIMAN. Senator, I said at the very start that I thought that too great a scope of regulation had been attempted; that too

many industries had been included under the provisions of the act; that small industries which are really intrastate had been included and should not have been; and it should have been limited to the broad industries which are clearly interstate or affecting interstate industry.

Senator COUZENS. That raises a very interesting question, Mr. Harriman, and that is this: You are familiar with the *Shreveport railroad case*, are you not?

Mr. HARRIMAN. Yes.

Senator COUZENS. Can you define any industry that does not affect interstate commerce?

Mr. HARRIMAN. I think most of the service trades do not. I think many of the retail stores do not. I think a great many of the small industries that are local in their nature, and industry, for instance, makes tile or brick for use in that immediate vicinity and not for general trade, are instances of industries which do not affect interstate commerce.

Senator COUZENS. Is is not possible, though, even in that type of industry, that the wage and living conditions may be so terribly bad that it would affect the purchasing power of the community?

Mr. HARRIMAN. That is perfectly true, Senator, but we still have States and they still have authority to act on such matters.

Senator COUZENS. It seemed in the *Shreveport case* that it was quite clearly determined that where an activity with a State affected interstate commerce, that it came within the jurisdiction of the National Government.

Mr. HARRIMAN. That is perfectly true. I can conceive, for instance that a cloak concern or a dress concern that might sell its entire output in a given city, let us say, Chicago, where it is located, and caters entirely to the local trade, it would be in competition with similar concerns in New York or St. Louis or some other places if it was a large concern; therefore it would be affecting interstate business, but I do not believe that the question of whether the barber of Chicago charges 25 cents or 35, or 45 or 55 cents for a hair cut affects interstate commerce.

Senator COUZENS. You do not believe then that if all of the barbers in Chicago, for instance, were cutting hair for 15 cents and thereby reducing their living expenses to a very low standard or degree, that it would have any effect on interstate commerce?

Mr. HARRIMAN. I do not think it would affect the price that the barbers charge in St. Louis, I think it might be very harmful for their own trade in Chicago, but let the States correct that.

Senator COUZENS. Would it not be harmful though, in connection with the purchasing of goods from without the State?

Mr. HARRIMAN. I think that only the courts can draw the line as to whether an industry affects or does not affect interstate commerce. The *Shreveport case* clearly points out that if it does substantially affect it, then it comes within the purview of Federal regulations, but I do not think that that means that every small grocery store comes within that provision.

Senator KING. You are not ready to accept the thesis that all of the States should be compounded into one sort of colloidal mass, and that Washington should regulate everybody?

Mr. HARRIMAN. I do not accept the thesis that the States should be abolished.

Senator COUZENS. There are a great many activities within a State that do not in any sense affect interstate commerce, and we have a great many prerogatives in a State like the police power, without affecting interstate commerce, but almost every activity in commerce within a State has its effect upon interstate commerce. I think you will find many members of your organization that will agree with that.

Mr. HARRIMAN. I can assure you that there are differences of opinion in the chamber.

Senator COUZENS. I recognize that.

Mr. HARRIMAN. If I may continue?

A mistake may have been made, and, even with the best of intention, a code may not entirely conform to the final interpretations of the act; or a code may be imposed which, likewise, contains technical or legal errors. Under such circumstances, and without any fault on their part, members of an industry might be liable for suits for triple damages under our antitrust laws, and would be constantly subject to the threat of strike suits. I strongly feel that if a code has been approved by the Government, concerns operating under it should be exempted from the penalties of our antitrust measures. The protection of the public lies in the fact that if it is found that such a code does not conform to the provisions of the law, it can always be revoked by the President.

Eighth recommendation: The eighth point deals with labor relations. In December, the chamber voted that section 7 (a) should be so modified as to protect labor in collective bargaining from coercion or intimidation by any persons; that is, from the flying squadron and the labor racketeer, as well as from the coercion and oppression of unfair employers. This is sound law and sound morals. But it is my belief that 7 (a) might now be reenacted in exactly its present form. This clause soon will be interpreted by the Supreme Court, and I believe it should be left unchanged until that tribunal has passed upon it.

I am strongly opposed to provisions in the bill which attempt to fix certain specific limitations in working hours, even if the latitude of choice is broad. If there should be a marked revival of business, neither 30 nor 40 hours per week would be sufficient in which to produce the goods which the nation will require. We want no philosophy of scarcity. We want no fixed limitations of hours, except those required by health.

Ninth recommendation: The bill conforms to the ninth point of the chamber, to wit, that a code which has been presented by the preponderant part of an industry, and approved by the Government, shall be binding upon all in that industry.

Tenth recommendation: The bill and the chamber do not agree on the chamber's tenth point, to wit, the right of an industry to withdraw a code after it has been in effect and has become onerous instead of beneficial. The President can, at any time, withdraw his approval of a code. The chamber feels that a similar right should lie with the industry.

Eleventh recommendation: The bill satisfactorily covers the eleventh point raised by the chamber, to wit, that there should be a right for agreements, as well as codes, in industry.

Twelfth recommendation. The chamber's twelfth point is that the act should be written to involve civil, rather than criminal liabilities,

and that violations of code provisions should receive injunctive relief. In spirit, the bill conforms to that suggestion, but I think the language could be clarified, and some modifications of the enforcement of provisions made.

In closing, let me repeat that I have not attempted to suggest specific amendments, but rather to point out the broad limitations within which the new act should be drawn.

Senator KING. Thank you very much.

TESTIMONY OF WALTON HAMILTON, MEMBER NATIONAL INDUSTRIAL RECOVERY BOARD, NATIONAL RECOVERY ADMINISTRATION

(The witness was duly sworn by the chairman.)

Mr. HAMILTON. My name is Walton Hamilton. I have been connected in one capacity or another with the N. R. A. since October 1933; first, as a member of the Consumers' Board which brought me to Washington occasionally until the beginning of last summer. Last summer I became chairman of the Advisory Council, and when the N. R. A. Board was appointed late in September 1934, I discovered in the New York Times that I was a member of that Board, in which capacity I have remained since.

This morning I have not prepared a statement because of the fact that I thought I could be most helpful to you by addressing myself to the specific questions that you wish to ask, rather than have any monologue of my own, and I would like to have it rather definitely understood that at this time I am speaking for myself and not for the whole of the National Industrial Recovery Board. Even in an organization of that kind, there is occasionally a slight difference of opinion among the brethren.

Senator KING. Doctor, may I ask at the outset whether your views are now substantially those set forth in your article, Consumers' Interest in Price Fixing?

Mr. HAMILTON. I should say that the fundamentals there have not seriously been changed since; that I have something of the same attitude, amplified and probably supported by more detail than I had at just that time.

Senator COSTIGAN. When was that article published?

Mr. HAMILTON. In January 1934, I believe.

Senator KING. February 1934. You may proceed, Doctor. We will be happy to have a monologue from you.

Mr. HAMILTON. I would like to start with some of the elements of the problem, namely, the question of what industry is, because it seems to me that a great deal of wrong thinking comes from the fact that we are not getting down to the essentials of the problem. As I understand it, an industry is an organization with a technical process back of it by which the community supplies itself with some necessary goods or service. If that is true, it seems to me to follow that there are three rather distinct parties who are together concerned in the conduct of the industry. There is first the managerial investment group that has its funds there and is actively charged with the operation of the venture. Second, there is the group of laborers who have staked their lives and their living in a sense, upon the success of that industry; and, third, there is the group of consumers.

Senator KING. Whose lives are somewhat dependent on it?

Mr. HAMILTON. To a slight extent, I should say.

And it seems to me quite essential, because there is a tendency to use a shibboleth to conceal problems, and we have to get back of this to understand what is going on. One which has appeared recently and which is very much in vogue is that of self-government of industry.

That is capable of two interpretations. One interpretation is the government of all that concerns industry by the managerial group. That is not self-government of industry because it excludes two vital parts from the industry. Self-government in industry would necessarily involve bringing the other groups in. And if we are going to pass from the control of the market to the control of the state, not over all that concerns industry but over many aspects of it—and that is what is proposed in a good many of these codes—then it seems to me to be essential that the laborers and the consumers should have in the control some actual equivalent for that which they are giving up in the market.

In the market, as we know, the buyer competes with the buyer and the seller is played off against the seller, and in the competition of seller with seller lies the protection of the consumer.

If by self-government in industry you mean leaving it to a single group, it is virtually leaving a great deal that concerns the terms of the contract to one of the parties to the contract.

In that connection it is just a little amusing to note that the expression "self-government in industry" is not a native American expression. It is an importation. It came into this country in 1919 from England, and in England it had been coined by the Guild Socialists who were using it in quite a different sense from the one in which it is being employed over here.

Senator KING. Was it not used back in Germany when they formed the Hanseatic League in some of those States?

Mr. HAMILTON. Yes; it was.

Senator COSTIGAN. What is the German use of the expression "self-government in industry?"

Mr. HAMILTON. As usual, it is an apologetic expression which is intended on the surface to appear quite self-evident, but back of which one discovers that it is rather a rationalization of a particular interest, in other words, that the art is one that is fairly well known. Our phrases are used quite habitually. I have discovered that very frequently, in our arguments with each other, that the result depends upon our careful choice of words to the right ethical shade rather than the way we make our arguments go.

Senator COSTIGAN. It refers wholly to an industrial democracy as against the consumers' interests?

Mr. HAMILTON. The "industrial democracy" as the term is usually employed takes in all of the groups and commits itself to a control to an extent that is almost unthinkable in this country. It goes much further I think than anything that we shall at this time at least be willing to consider.

In the past we have depended for the protection of these interests very largely upon the market, where a balance is struck between them by the forces of competition. For some time we looked upon this as quite natural and we thought of this system as quite inevitable.

But as time has gone on we have found that there are defects in the system which require amendment, and I should say that at the present time they very roughly divide themselves into two general groups—one, those for which regulation by the State is found to be quite necessary and for which we use the expression "public utility"; and, second, those that are still left to competition and to the market. In competition in the market I should set down three cases—one, those in which competition works not perfectly but at least reasonably well—and I should say that a great many industries fall into that particular group—second, those in which competition is underdone, where there is some tendency on the part of men to get together and to restrict production or to fix prices, or in other ways to replace the market by a will of their own: and third, a series of cases in which competition is overdone, where too many have rushed into the industry, the struggle for markets has become too severe, the incidence of it falls upon all of the parties, and there is disorder as well as order.

These three cases need to be rather separately dealt with. In those cases where competition is adequately taking care of the interest of all, no intervention of the State is necessary. Where there is a tendency on the part of those in industry to get together—and here I am using the expression in the narrower sense, that extends over other parties to the industry—then it is necessary for the State to step in to insure that competition is preserved or maintained.

And that is the function (*a*) of the antitrust acts, and (*b*) of the Federal Trade Commission.

In the cases where competition is overdone, the coal industry is a very good example, textiles is another. The whole bother there is not that the consumer is not adequately taken care of. I think in coal that it could be shown that the price is too low at the present time to insure what you and I would regard as a fair living to laborers. Or, if I may put that in the rhetorical terms, that really the consumer there is being subsidized by the sweat and toil of the people within the industry, and it is necessary to set up some sort of a barrier against the rather ruthless competition on the part of the operators expressing itself in a standard of life which is lower than we would like to have.

So we have these three separate and distinct problems.

There are various agencies for dealing with these. First there is the antitrust law for undercompetition. That was the common law of the land in England going back to the seventeenth century. It was common law in this country. There were State statutes on that subject before the Sherman Act was enacted in 1890, and since that time we have tried rather valiantly to deal with the thing through the Sherman Antitrust Act.

Senator KING. Was not the common law of England announced by Coke and others for the purpose of breaking up really the authority of the State to fix prices, or rather, the authority of industry with the support of the State to fix prices in practically everything—fix the price of labor, fix wages, fix the things which should be made and the things which should be worn, so that combinations were formed by the producers with the support of the State——

Mr. HAMILTON (interrupting). And in many cases, royal patents of monopoly were given by the state. The fault of monopoly is a very good case in point.

Senator KING. That prevailed also under the feudal systems of France and Germany?

Mr. HAMILTON. Yes.

Senator KING. And in Great Britain the courts came to the rescue of the people and broke up those monopolies of industry which fixed prices and the wages of labor.

Mr. HAMILTON. And the thing was a part of the common sense of the people long before it was written in the Sherman Antitrust Act.

With the purposes of the Sherman Antitrust Act I have no quarrel at all. The ends that the thing wishes to serve, I think, are quite admirable. If there is a criticism there, it is a criticism of the act as a mechanism, and while I am not willing to have it repealed, I am quite willing to admit that in many respects it has not worked as well as it ought to have worked.

Senator KING. That is the fault of the administration rather than the law itself.

Mr. HAMILTON. I should say partly the fault of the law and partly the fault of the administration, but going back of the law, it is partly the fault of our way of doing things. It may be that there are no better ways of doing it than that. I do not want to express a judgment on that, but let us take note. What you want to do through the Sherman Antitrust Act is to preserve or maintain competition, but you translate an economic policy then into an act of the legislature, and there you employ the language of the legislature. Then you leave the enforcement of that to the courts. The people who are called upon to enforce this are the judges, and the judges know a great deal more about Cooley or Blackstone than they do about overhead cost and about price fixing and restriction of production.

In other words, you have got to work the thing there through minds that have been habituated to the law. Furthermore, if you are going to reach results you have to do it through one of two processes; one is by criminal prosecution and the other is by a suit in equity. A criminal prosecution grew up to meet quite other needs than those of the enforcement of an economic policy, and in that there are enormous hazards in the way of a conviction, the whole handful of cards in this particular game belong to the person who is accused of the crime.

Once or twice I have been called up by someone in the antitrust division and asked, "Won't you go to lunch?" And then a little bit later on I called on that party and had them say, "I have a conference with some people whom we are about to prosecute." So I said "You are going to lunch with these potential criminals, are you?" Which I think indicates the general attitude toward which the thing is approached, that is, those who are indicted for crime under the antitrust act do not fall into the criminal class. They are not rogues. The court cannot look upon them in that way. You cannot persuade a jury to look upon them in that way, and the result is that the whole attitude is quite out of point.

Furthermore, if you start a criminal prosecution, you have an interminable time which elapses between the time that you started and the time that you eventually get a favorable verdict, and under our system in which there is an appeal, and the appeal is based upon errors rather than upon securing a fair trial all anew, a very ingenious lawyer can find the most interesting ways by means of which he can at least stall that action off for a great many years.

You may in that connection remember the remark that is reputed to have been made by the late Mr. Morgan about his most distinguished counsel, and that is "Never once in all of the long years of my association with him did he ever tell me that anything that I wished to do was illegal", that ways could be contrived to block the action.

I am simply pointing out some of the hazards that lie in the way of the use of criminal prosecution as a means of enforcement.

Senator KING. We have encountered that with respect to the gangsters and those who violated the common law of theft and larceny and so on. We have punished but a few out of the number, and out of the thousands of homicides but few have actually been incarcerated or hung.

Mr. HAMILTON. Which of course raises this question, and that is whether the occasional conviction is enough to serve as a deterrent, and for the most part our laws work that way. They deter people from action. If, for instance, we had to punish in every particular case, there would be vastly more business than the courts could possibly handle. So that is the question, I think, about the enforcement of these acts.

About 7 or 8 years ago your body asked the Department of Justice for a statement on the enforcement of the antitrust laws.

Senator KING. I offered that resolution.

Mr. HAMILTON. And I looked for a copy of it yesterday and could not find it, and I called upon the Department of Justice and they promised to run it down in a couple of days. I have not succeeded in getting it, but you remember the story that is presented there, and that is that since the antitrust act was passed in 1890, which is roughly about 40 years at the time your resolution was offered——

Senator KING (interposing). I might also say that a resolution was offered—I am not so sure that it was not embodied in the one to which you refer—inquiring as to the reason why forty-odd cases which had been presented to the Department of Justice by the Federal Trade Commission when Huston Thompson was a member of it, why action has not been taken under those recommendations. The evidence had been produced, facts had been found showing violations of the law, violations of the Clayton Act at least, and yet no prosecutions were instituted by the Department of Justice. There was a case where, as I indicated a few moments ago, the fault was not in the law but the fault was in the Department of Justice for failure to prosecute.

Senator COUZENS. The fault was really with the luncheons and the dinners that you referred to. [Laughter.]

Mr. HAMILTON. We do meet these people on terms of equality. Those little amenites of social life cannot be completely separated from the administration of the law of the land. It is very interesting, I think, to plot the number of prosecutions which are started year by year in terms of the Attorney General, and I think one cannot wholly escape the conviction that maybe, after all, this is not wholly a Government of law, but that men have something to do with it.

At any rate, the net picture is that, during a period of 40 years, we have, I think, something like 40 or 50 individuals sent to prison. We have the collection of less than $2,000,000 in fines, and in view of the fact that most of the concentration of wealth has been brought about

since 1890, I would set that down as a little bit less than the traffic could be made to bear.

And you recall that the law, among other things, provides for the confiscation of goods shipped in interstate commerce in violation of the Antitrust Act. The records show that there has been confiscated, during this 40 years, 40 cartons of cigarettes, and with very great force, the report of the Department of Justice has a footnote stating that these were afterward released under bond.

And, of course, the general question there is the question of the deterrent effects of the law, because in terms of its formal administration the number of cases is pitiful, the amount of fines assessed is pitiful, the number of people sent to jail for violation of this law is almost negligible as against the great course of the concentration of wealth which has occurred in this country in the last generation and a half.

Which raises very sharply to my mind the question of whether, admitting the objectives of the Antitrust Act and the interest they meant to protect, we ought not to be able to contrive something which is a great deal swifter and a great deal more efficacious than those acts and there, it seems to me that your body can help enormously by instructions which you will read into the new act which you pass, if you do pass the act.

It seems to me that it is very well indeed to say that nothing that appears in any of the codes which are written under the act shall encourage monopoly. It seems to me as fully important to say that the trade practices must be constructively designed with the end in view of preventing monopoly—having a positive injunction as well as a negative injunction which ought to be written into that particular act. In that case then, an N. R. A. can be a very valuable addition to and a very valuable supplement to the administration of the antitrust acts and to the very effective work which is being done by the Federal Trade Commission.

The CHAIRMAN. Doctor, let me ask you your reaction upon your experience with N. R. A. Do you believe it is better to let these trade associations or industries administer the codes, or that they should be administered after the codes are prepared and approved, by Government supervision and Government authority?

Mr. HAMILTON. You do not mind my breaking your question into three or four questions, do you?

The CHAIRMAN. Not at all.

Mr. HAMILTON. I will say this. It seems to me that inasmuch as codes concern all of the parties to the industry, there ought to be no discrimination against any particular party. The consumers, laborers, the business managements, ought all to have the right to propose provisions which are to go into the codes.

Senator KING. That means the little man who is engaged in business as well as the big trade associations——

Mr. HAMILTON (interposing). Ought to have the right to propose. I think, too, that the administration of N. R. A. ought to take a more determined position than in the past we have been able to do about that. I do not think that we have actually bargained with industry. I think there have been a number of instances in which those words might a little inexactly be applied to what is going on, but I cannot conceive of an organization that really represents public control

approaching a thing of this kind in terms of perfect equality with the representatives of industry. For that reason it seems to me quite necessary that there should be a great deal more initiative exercised by the Board than in the past has been exercised by the Board in those matters. And that seems to me, Senator Harrison, almost necessary because of the fact that your trade association is a simple, clean-cut compact group that for the most part knows its own mind. The little fellows do not find it easy to get together and they have not had the opportunity to talk their problems out and to find out just where there interests lie, but which the others do.

The laborers are half organized and half unorganized, and the consumers, as you know, are the most inarticulate mass who have not yet found a clean-cut voice there in these matters.

The CHAIRMAN. Proceed.

Senator COSTIGAN. Have you answered Senator Harrison's question yet?

Mr. HAMILTON. That is a wonder to me in my own mind whether I had or not.

Senator COUZENS. I have not heard it yet. I have been listening but I have not heard it. What is your answer?

Mr. HAMILTON. Won't you rephrase it in you own words?

The CHAIRMAN. I understand, the little man should be represented.

Mr. HAMILTON. Very definitely; yes.

The CHAIRMAN. And that their interest should be represented?

Mr. HAMILTON. Yes.

The CHAIRMAN. That a fair code should be prepared?

Mr. HAMILTON. Yes.

The CHAIRMAN. As to that, I am in doubt whether after the code has been prepared in such manner as you have stated, and approved, whether it should be administered then by the trade organizations as heretofore largely, or by Government agencies?

Mr. HAMILTON. My attitude on that, I think, is perfectly clean-cut, and that is if the code concerns matters which are wholly of interest to the managerial group, I see no objection whatever to their administration by a code authority representing the trade association, but the moment they get——

The CHAIRMAN (interrupting). They ought to be representative of industry, however.

Mr. HAMILTON. They must, however, be representative of the industry, and may I put in a parenthesis at that point, and that is that it is not easy to find a rule of representation because of the differences existing in different industries. For instance, here is an industry in which the various concerns are pretty much of the same size and they are operating under about the same conditions. There, a majority vote is fairly typical of the whole and really represents a consensus of opinion.

Here is another industry in which two or three concerns dominate the whole thing, and there a vote of the industrial majority would really amount to an exclusion of the little fellows.

So your rule would have to be differently contrived in that case from the rule that you contrived in the other case.

Senator KING. There is no industry, is there, in which the managerial forces are the only ones who are interested? In other words,

the public is affected. There is in the aluminum organization or trust if you may use that expression, a very limited number of people dominating it, and a limited number of people controlling it, but nevertheless, the public is very vitally affected by the determination of those who control it. So that is it not true that in all of these industries, that some one is interested in the industry aside from those who own or manage the industry?

Mr. HAMILTON. Very definitely so.

Senator KING. So that if you are going to have any sort of regimentation, it ought not to be regimented solely by those who run the industry.

Mr. HAMILTON. No; and the moment that you get into questions which concern more than the managerial investment group, there the authority must not be left in the hands of those who represent only a single group.

I think that where competition is overdone it may be necessary to impose some control upon production. There are a few cases where it may be necessary to control prices, but where production is controlled and price is controlled, the control must not be left in the hands of a code authority that represents only a single party to the industry. There again you have the terms of a bargain being made by a single party, for the conduct of an industry is really a continuing bargaining between the people who make the goods or supply the service and the people who are actually using it.

Senator COUZENS. You are referring now to the question of the making of the code. I still would like an answer to Senator Harrison's question. After the code has been made and approved, do you believe that the industries interested should enforce the code, or do you believe that public officials should enforce the code?

Mr. HAMILTON. There again let me make a little distinction.

Senator COUZENS. I wish you could say yes or no. I cannot get it the way you answer.

Mr. HAMILTON. I am very sorry, but my bother is that I do not find so awfully many questions here that I can answer easily yes or no.

Senator KING. You are like a witness on the spot.

Mr. HAMILTON. I wish that my world was so orderly and clear cut that I could answer yes or no, but it happens that when I look at this from the standpoint of the N. R. A., I find the questions are somewhat complicated. Certainly when it comes to the question of code provisions on the mere details, the mechanical details of running the business, I see no reason why the Administration there should not be left definitely in the hands of the code authority. When there comes to be a public interest, then in its administration very definitely the public should be represented by the public officials. I do not believe in allowing any group or body to be in the double position of an interested party and a judge of their actions at the same time.

Senator COUZENS. I wish you would specify an industry in which they do not have any personal interest in the enforcement of the code.

Mr. HAMILTON. I did not say that there was a situation where they did not have an interest. I said there were certain aspects of an industry that, while probably not of no concern to the public, was of so little concern to the public that relatively the thing can be left to the individuals themselves, but in all questions which have to do with this larger matter, namely, what may be called the terms sale, very definitely administration must be in the hands of public officials.

Senator COSTIGAN. Have you attempted to make a list of those industries which should be self-governed and those which should be supervised?

Mr. HAMILTON. I have tried that over and over again, and the bother that I run into is that there are at the present time 500 so-called "industries" which are codified, that they look alike when you simply look at their codes, but when you examine them in detail, you find them very different one to another, and when you hit upon a scheme of classification, it will look very good for a while, but as your instances accumulate, you will find the thing tends to break down. I think that probably such a classification can be worked out.

Senator COSTIGAN. Have you made a start in that direction?

Mr. HAMILTON. We have made a start in that direction; yes.

Senator COSTIGAN. Will you give the committee the benefit of the conclusion you have reached? If you prefer to make a statement later and submit it, of course, that may be done.

Mr. HAMILTON. I would like rather to make a statement later and submit it to the committee.

The CHAIRMAN. Very well, then, Dr. Hamilton, you may do that.

Senator KING. Proceed, Doctor. Have you anything else?

Mr. HAMILTON. I am conscious that I am probably taking too much of your time and probably I had better cut this short by going ahead upon the assumption—well, probably the best thing to do is perhaps to mention some of the changes which I personally would make in this bill before the thing is passed.

The CHAIRMAN. That is what we would like to hear.

Senator KING. Before you leave the stand, I want to ask you: Assume that we do not pass any bill and we will let the other expire, then I shall ask you a few questions.

Mr. HAMILTON. It is a very interesting hypothesis.

Senator KING. I hope it is more than an hypothesis.

The CHAIRMAN. You can answer that question first if you desire. What would happen if we do not pass a bill?

Senator KING. Let us answer the other first. [Laughter.]

Mr. HAMILTON. I am willing to leave it to either you or Senator Harrison which one I shall take up first. In this case I do not promise to answer, but I promise only to entertain the question.

The CHAIRMAN. We would be very glad to get your constructive changes in the event that we should continue N. R. A.

Mr. HAMILTON. Again remember that I am speaking only for myself. I should start at the very beginning, I think, with a rather clear-cut declaration to the effect that an industry is affected with a public interest, that it has its private aspects, it has its public aspects, but that there is nothing contradictory between the two, and they are simply aspects of exactly the same thing. That would mean then that the State has the right to break in whenever the State decides that the conduct of the industry is not serving the interest of all who have a stake in it.

Senator COSTIGAN. It is your view that all industry is affected with a public interest?

Mr. HAMILTON. Yes, that is my view, that all industry is affected with a public interest. I understand there is quite a weight of authority, or at least there was at one time quite a weight of judicial authority

on the other side. At one time the United States Supreme Court was disposed to erect a rather small category of industries affected with a public interest. I do not think that is any longer true. I think the decision of the court in the *Nebbia case* makes it perfectly clear that when a case can be made out that there is disorder that requires the obtrusion of the State, that then the thing will be found to be affected with a public interest. But the reality of the situation is not that they are industries affected with a public interest and therefore the State steps in. The actuality rather is that an industry is in a disorderly condition and because of that disorder the State steps in, and when it does, that industry is affected with a public interest.

I think the common law is pretty clearly with me on that, and I think the great bulk of the Supreme Court decisions is with me on that, because there is not a doubt in the world about the constitutionality of the Sherman Act or the Clayton Act or the Federal Trade Commission Act, and they give the States the right to step in when it is found that in various ways the interests of the consumers is affected or the competition between rival business men is affected. So I would like to have that declaration at the very beginning.

Next, I would like to see a great broadening of the definition of "unfair competition." Competition is ruthless and competition without rules of the game becomes very destructive to the interest of all concerned. There must then, it seems to me, be rules of fair competition.

But there are three respects in which competition can fail. Competition can fail because of the fact that one business competitor resorts to practices that are ethically to be frowned upon, and he may do damage to his competitor or he may even force his competitor to fall in line. Competition then, must be fair as between the persons who are engaged in the business struggle.

Again and secondly, competition must be fair to the laborers, because if one of a number of competitors lowers the wage, which he could easily do in a condition of great unemployment, or if he works the laborers long hours, if the margin of profit is very small throughout that whole industry, and he forces others to come in as the condition of their own survival, it seems to me that such competition is quite as unfair as competition that simply concerns business rivals.

In the third place, competition must be fair to the consumer—that is, practices must not be indulged in that will pass on to him.

I raise the question because there has been an interpretation of certain clauses in the Clayton Act which limit fairness of competition rather narrowly. You remember probably the *Rollodon case*, which affected an obesity cure in which the highest court in the land thought probably that this is a fake remedy but found that its competitors also were probably turning out a fake remedy, and inasmuch as they regarded that clause as simply concerned with the rights of the seller against seller, they were not going to interfere between this group of people who were waxing fat at the expense of the public. In this case, then, they rather narrowly limited that, but they did it in terms of the interpretation of a statute and not in terms of anything that was in any sense unfair in that statute, and that of course is well within your power to amend, so I would like very much to see that conception of competition rather definitely widened.

In the next place, I would like to go further than your bill goes, Senator Harrison, in requiring information from the industries which are being controlled, because it seems to me that the information gathered should be relative to the breadth of the problems that are taken up, and that that information should be just as broad as the problems that we are called upon to settle. In several cases the hands of N. R. A. have been tied although the problems were quite insistent, and yet the facts could not be found and the facts were not forthcoming largely because of little quarrels between the people in the industry, quarrels of almost negligible importance, compared with the real value of the facts to the administrative authority.

I think I mentioned before that it seems to me that there should be a positive injunction against monopoly, for most of these trade practices grow up within an industry, and when they grow up they grow up to serve the purposes of the moment. For the most part they serve the needs of keeping the business alive, keeping it solvent, but as they grow up without control, they may have antipublic features, and it seems to me to be quite necessary to see to it that these trade practices are domesticated to public use.

The CHAIRMAN. You would, in the collection of this information, have industry do that under Government supervision?

Mr. HAMILTON. Very definitely.

The CHAIRMAN. Would you treat that information as confidential?

Mr. HAMILTON. So far as the particular forms are concerned, it seems to me it ought to be treated quite confidentially. It can be gathered into a form in which it can be easily released for the benefit of all concerned.

I have mentioned here the making over of trade practices. In the same connection, it seems to me it is quite possible for us at least to begin trying to do something with the larger problem of monopoly, and Senator, since you have mentioned it, may I bring in again the matter of the aluminum industry which has been of some sore concern to us for, lo these many months.

The CHAIRMAN. And to others for many years. [Laughter.]

Mr. HAMILTON. Yes; for many years. And quite a thorn in the side of the Department of Justice.

Senator COSTIGAN. When you referred to "us", Did you mean the consumers' representatives?

Mr. HAMILTON. No, I mean in this case it has been with the N. R. A. officially. Of course one great bother in connection with the antitrust acts has been the impossibility of securing information which would stand up under the rather strict rules of evidence which are being interpreted by the courts. Your information may be such as to persuade me, the information may be such as to convince you, but yet, nevertheless, there may be technical flaws in it when measured by rules of evidence that were never intended in their growth to be applied to the matter investigated. At any rate, the result has been that although this has been a problem for many years, we found it almost impossible to do anything with it.

If there is a positive injunction against monopoly in the National Industrial Recovery Act as well as a mere negative statement to the effect that nothing therein shall tend to promote monopoly, something might be done.

There has been in the coal industry, it seems to me quite necessary if it can be done with due regard to competitive fuels found necessary to establish a price floor. In the aluminum industry I should like to see an attempt made to establish a price ceiling. That, it seems to me, is an administrative matter and not a judicial matter, and it is quite possible that the thing will be attended with fewer hazards than attend a cause at law in the courts.

Here one of the things we want to do is to secure as wide a use as possible of commodities. We want a philosophy of plenty and not a philosophy of scarcity.

Senator KING. You do not want to go down to the A. A. A. organization with that idea.

The CHAIRMAN. Do not let us get into that. [Laughter.]

Mr. HAMILTON. I think the A. A. A. thought is quite persuasive in favor of the philosophy of plenty. There are certain particular exceptions that are quite necessary in order that the philosophy of plenty in general may realize its real results. Aluminum is certainly not being widely used at the present time, and it is quite possible that a control of this kind might put it to wider use.

The CHAIRMAN. Is there an Aluminum Code?

Mr. HAMILTON. Yes, there is rather a nice story there. I do not know whether you want to hear it.

The CHAIRMAN. I guess we had better not take up the time. [Laughter.]

Mr. HAMILTON. Rather, there was an Aluminum Code. There is now the remnants of an Aluminum Code.

Senator COSTIGAN. What happened to the Aluminum Code?

Mr. HAMILTON. What happened was this. We had an understanding with the industry in connection with certain amendments which would not solve the problem, but which we thought would supply us with the information which would enable us to make an intelligent attack upon the problem, and sometime later we found that it turned out that their understanding of the matter was not strictly in accord with our understanding of the matter, and the result was that we could not go on, and then we canceled all of the provisions of the Aluminum Code with the exception of the labor provisions, which is the way that the matter stands at this time.

Senator COSTIGAN. Are the labor provisions admirable?

Mr. HAMILTON. If you use provisions in other codes as standards, they are probably admirable.

The CHAIRMAN. Did the aluminum industry request price fixing in their code?

Mr. HAMILTON. No; they did not find it necessary to do so.

Senator KING. Did any of the monopolies ask for price fixing?

Mr. HAMILTON. A monopoly does not have to ask for price fixing in a code.

The CHAIRMAN. Proceed, Doctor.

Mr. HAMILTON. What happens in a case of that kind is that there are understandings behind the scenes and that that usually takes care of the thing, and very frequently a provision of the code gets blamed for something which has been in existence for years and years and which would go on without one at all. Of course, we are finding all the way through that when there was no N. R. A. people would blame other conditions, and sometimes even blame themselves. Now

that there is an N. R. A., there is a sure scapegoat for anything that goes wrong in your business or in your industry.

The CHAIRMAN. Nobody has blamed the N. R. A. with reference to aluminum prices. [Laughter.]

Proceed.

Mr. HAMILTON. I think that indicates the general lines along which it seems to me that the thing might be most helpful.

The CHAIRMAN. Now you can answer Senator King's question.

Senator KING. You are familiar with the work of the Federal Trade Commission, are you not?

Mr. HAMILTON. Reasonably so.

Senator KING. And the practices which they have denominated as being injurious and unethical and condemned?

Mr. HAMILTON. Yes.

Senator KING. Are you familiar with the fact that quite recently the wholesale druggists met with a representative of the Federal Trade Commission and set out a code of fair trade practices, or rather condemned things that were not fair?

Mr. HAMILTON. Yes.

Senator KING. And are operating fairly well and with a reasonable degree of certainty in their attempt, and that they are proceeding along ethical and proper lines? Do you think that that procedure was wise, and do you not think it might be employed in other activities and in other industries?

Mr. HAMILTON. To that question I would say "yes", but I want to add one qualification, and that is that there is a little story that precedes your story. The wholesale druggists came to the N. R. A., and the N. R. A. was quite willing to sanction certain trade practices, I think about the same ones that were sanctioned by the Federal Trade Commission, but they also insisted upon certain labor standards.

Senator KING. Were those taken care of?

Mr. HAMILTON. They were quite unacceptable to the wholesale druggists, and for that reason they went over to the Federal Trade Commission.

Senator KING. But the N. R. A. labor provisions still exist in their industry? They still exist and they are subject to the wage provisions?

Mr. HAMILTON. Yes.

Senator KING. As are other industries to the same extent I suppose?

Mr. HAMILTON. To the same extent.

Senator KING. Do you believe that the bill before us or any bill should abrogate the Sherman Antitrust Law and the Clayton Act?

Mr. HAMILTON. Senator King, I would reply to that and say that I think that the ends of the act should not be abrogated. I think the interests of the act are intended to preserve it and it should be carefully preserved. The whole question in my mind is whether we can devise better mechanisms than the Antitrust Act for accomplishing the same purposes.

Senator KING. Do you believe that the State should permit industry either by self-control or with the connivance of the State to establish monopolies under which the general public would be adversely affected?

Mr. HAMILTON. No; very definitely.

Senator KING. And do you not think that monopoly as a rule is in the interests of a limited number and that it results in injury to the masses of the people or to the consumers?

Mr. HAMILTON. To that let me say that I should read into an N. R. A. Act, if one is to be passed, the same ends and values which I would read into an Antitrust Act or the Federal Trade Commission Act. I think the thing has one very constructive advantage over the others, and that is it gives a chance to work out constructively problems with the industries themselves; whereas the Federal Trade Commission and the Department of Justice look down upon them from aloft. Their attitude is more or less a punitive attitude; that of the N. R. A., I think, can be made a much more constructive attitude.

Senator KING. Was not that the plan that President Wilson had in view when the Federal Trade Commission Act was passed?

Mr. HAMILTON. I think he did in all probability.

Senator KING. That to that organization, industry might go with a view to determining what would be ethical and fair to industry and to labor and to the public?

Mr. HAMILTON. Yes.

Senator KING. And that certain practices and certain standards there agreed upon might be the basis of their operation?

Mr. HAMILTON. But, of course, this has happened: In the first place the power of the Federal Trade Commission has been depleted to a considerable extent by the courts. Take for instance the example of the Western Meat case, and when it comes to this and the provisions of the Clayton Act being interpreted to the effect that if one concern acquires the properties of other concerns, and the monopoly exists that way, that is all right. But if the little boys whisper together behind a schoolhouse that is all wrong; because the public is hurt as much by one practice as it is by the other practice.

Senator KING. May I say that there is a measure which has been drafted, and I prepared one as well as several others, which would prevent the first thing being done to which you refer, namely, the absorption or acquisition of the assets, and that might be controlled so as to make more effective ethical standards and fair and legitimate competition in industry. You see, in the Federal Trade Commission, do you not, plus the antitrust laws, the method under which if those laws are properly interpreted and properly enforced, the public interest may be protected and industry may have a legitimate and proper field?

Mr. HAMILTON. I should say where the public interest may receive a measure of protection. I think it is quite possible through the N. R. A. to add to that, another measure of protection and probably a more important measure of protection than has yet been achieved there. It seems to me, Senator King, that as yet we have not anything too much to be proud of in this country in our control of American industry. We have been fumbling with the problem. The antitrust act is a tentative answer, it is an instrument, it is a mechanism and not a final answer to the problem.

Senator KING. You do not want the corporative state the same as Mussolini?

Mr. HAMILTON. Nothing of that kind.

Senator KING. You are not advocating regimentation of conduct?

Mr. HAMILTON. Most of those things were invented with the end in view of lumping all of those problems into one that you can get an answer to. It is a great deal like the word "socialism" and "capitalism"—words which have been invented to conceal thought and to prevent us from coming to grips in a real way with real problems. If our problems are to be solved in this country, they have to be solved by taking them up one by one by investigation and analysis and digging things through. The problems of one industry are not the problems of another industry. It is a great deal, Senator King, like swapping cooks. You simply get another collection of faults for the one that you have given up.

Senator KING. It gives the stomach a rest perhaps. [Laughter.]

Mr. HAMILTON. And these vary a great deal. The N. R. A., and if I may say one final word, I do not want to take up too much time—but I think I will agree with Mr. Harriman who preceded me in one respect, that is, that it is a little wrong to call this a recovery measure, because the problems were problems which were here a long time before there was necessity for recovery, and probably our most serious mistake has been trying to take problems which are essentially problems of getting industry a little more nearly in order, at a pace of recovery. It cannot be done that hard. We only started less than 2 years ago. We knew too little about the problems. All of us were amateurs, from the President of the United States down to the office boys.

What we need as much as we need a law is a personnel that is acquainted in a very realistic and actual way with the real conduct of industry, and that personnel has to be created. It does not exist at the present time.

The ordinary business man who is very efficient in his own business, has attempted to run these things in terms of forms he has worked out there, and a thing which works gloriously in one business, if all others remain the same, as for instance, restriction of output, will play havoc if you take the thing in general, and one of the things which industry has learned has been that the provisions that they were most insistent upon getting into their codes, of cost formulas and of the restriction of output and price fixing, have had repercussions which have accompanied them. That lesson has been learned.

We have learned an enormous amount in the last 18 months, and remember that we have within less than 21 months been called upon to do a job which would ordinarily take 2 or 3 decades. It was from 1887 to 1906 before the Interstate Commerce Commission Act became really effective. The Sherman Antitrust Act was passed in 1890 and even yet we have not made the thing wholly effective.

I think N. R. A. can do a constructive job that the Federal Trade Commission and the Department of Justice cannot do, by devising administrative remedies against monopoly. I think they can also address themselves to the job of trying to find out why various industries are not turning out goods in greater abundance and why the American living standard is as low as it is. That is a long-time job; it is not a matter of panacea; it is a matter of detailed treatment; it is a matter of years; and what is needed here is the best law that you can possibly give us and a personnel which can gradually become equal to the job, but we are not going to turn any tricks or miracles.

Senator KING. I am going to introduce into the record a part of your article.

Mr. HAMILTON. All right.

The CHAIRMAN. Dr. C. K. Leith, of Madison, Wis.

TESTIMONY OF C. K. LEITH, VICE CHAIRMAN OF PLANNING COMMITTEE FOR MINERAL POLICY OF THE NATIONAL RESOURCES BOARD

(Having first been duly sworn by the chairman, Mr. Leith testified as follows:)

The CHAIRMAN. You are chairman of the planning committee for mineral policy of the National Resources Board?

Mr. LEITH. Vice chairman.

The CHAIRMAN. Very well, proceed. Have you a written statement?

Mr. LEITH. I have not. I will make my statement brief.

The CHAIRMAN. If you can get right to the point of the proposition, it will be helpful. We have three other witnesses and we want to finish if we can by 12 o'clock.

Mr. LEITH. I might say in opening that I am vice chairman of this committee—the active chairman—Mr. Ickes is the chairman. The committee was appointed directly by the President, and is also acting as the mineral section of the National Resources Board. I am also on the advisory committee of the Bureau of Mines and on the advisory committee to the raw material section of the War Department.

Our committee is made up of the officials in Washington having to do with minerals, the Bureau of Mines, Geological Survey, representatives from the N. R. A., the War Department, Department of Commerce, and so on, and we were asked by the President to review all of the different phases of the mineral policy as it affects these departments and to formulate a national policy.

I will touch only on the part of our conclusions that deals with the N. R. A. I may say that we have submitted a preliminary report to the President through the National Resources Board, and I will summarize very briefly the parts of it which seem to us to affect your conclusions about the continuance of the N. R. A.

Our approach is based upon the special characteristics of minerals; namely, that they are exhaustible and that they are unequally distributed, not only among the nations but around the country. The business in minerals is essentially an interstate business and not intrastate, by the very nature of their concentration in a very few places. Conservation, then, and national defense are the foundations of the conclusions that we reach. By conservation we do not mean hoarding; we mean the efficient use of the minerals.

Senator KING. Are you speaking of gold now and silver?

Mr. LEITH. Yes; all of them.

Senator KING. You do not think we ought to be regimented in mining silver and gold to increase our monetary stocks?

Mr. LEITH. I have not said that we ought to be regimented in any of them. I will come to that question in a moment, perhaps.

Senator KING. Proceed.

Mr. LEITH. Our particular concern in conservation is not the matter of complete exhaustion of any of our 50 or 60 commercial minerals, but in the unnecessarily rapid exhaustion of the highest grade and most cheaply mined, and on that path we are proceeding very rapidly.

We find that, after reviewing all of the mineral industries, there are five that stand out as industries showing great wastes, oil, coal, copper, lead, and zinc. We summarize some of these wastes; they are not merely a theoretical abstraction but may be reduced to figures. For instance, in coal, where the actual preventable loss in extraction as compared with the British practice, as established by sound engineering appraisal, is 150,000,000 tons of our highest grade coal, which is about sufficient to supply Germany for a year, and in all of these minerals——

Senator LA FOLLETTE (interposing). Is that an annual loss, Doctor?

Mr. LEITH. An annual loss.

Senator KING. That is by reason of leaving the pillars and then——

Mr. LEITH (interposing). Extracting a smaller percentage than the best practice makes possible. These are what we call preventable losses. There are others which are probably not preventable.

Senator KING. We lose a great deal, too, by failing to properly burn the coal. We do not get all of the combustion out of it that we should.

Mr. LEITH. Our figure does not take into account that very large loss. Prevention of unnecessary loss, then, is our principal concern. We find that that is not due to lack of knowledge of technological processes. They have advanced very rapidly. It can be traced directly to unrestricted and unregulated competition in the management of the industry, leading to a surplus of capacity and surplus of production, and all of the attendant and resulting evils with which you are all familiar.

We conclude in our report that for these exhaustible resources, some measure of production control, capacity control, or even price control may be necessary in the interest of conservation; and I would like to read into the record if I may a very brief statement which expresses the principle which we come to after careful study of the varying conditions in the coal, oil, copper, lead, and zinc industries, and of certain others to which specific reference is not here made. The committee makes the following general recommendations for permissive control of production and capacity, where resource waste is shown to be serious, and where control offers hope of reducing the waste.

1. The bituminous coal, oil, copper, and lead codes, and the proposed zinc code, all contain provisions permitting the industry to control competition in one way or another, under Federal supervision. So far as controls have been used, the benefits seem to warrant continuance of some such provisions after June 1935. For bituminous coal and oil, the case for permitting control is clear. For copper, lead, and zinc, the case is not so evident, but conditions are serious enough to warrant some modification of the rule of unlimited competition after the expiration of the National Industrial Recovery Act.

2. While control of production and capacity by most industries is impracticable, except perhaps in emergencies, such control is in the public interest where destructive competition causes serious waste of an irreplaceable resource and endangers living standards of the mine

workers, whose isolation, relative immobility, and hazardous life, merit special consideration. In the special case of coal mining provision for minimum and maximum prices may also be justified.

3. This committee recommends the consideration of action by Congress empowering an appropriate agency, or agencies, where resource waste and depression of mine labor standards are found to be serious, to authorize systems for the control of output or capacity, or both of them, and where necessary, as in the case of coal mining, to authorize minimum and maximum prices, and to supervise the operation of such control. If necessary, the antitrust laws should be specially amended to permit such action. In framing such legislation due regard should be had for the competitive interrelations of coal, oil, gas, and water power and of the nonferrous metals.

4. Authorization of any such system of control by the producers in an industry should be made contingent upon acceptance of whatever safeguards are deemed necessary by Congress to protect the mine workers and the consuming public, and upon assurance by the industry concerned that action will be taken to minimize resource waste.

The question of labor safeguards is a special subject of great importance and involves a clarification of the responsibilities of the miners as well as protection of their rights and liberties. This subject will be considered by other agencies of the Government and is outside the special province of the committee.

Regarding consumer safeguards, the committee feels that when an industry asks for the privilege of limiting competition, the supervisory authority should be given power to prescribe forms of accounts, to require reports, and to modify, disapprove, and review the operation of any proposal for price, production, or capacity control. At the same time, producers in the industry may reasonably ask to be protected against any unfair practices of organized and powerful consumers.

5. The committee makes no specific recommendations as to which agencies of the Government should be designated to administer the plan. The legislation necessary might take the form either of a separate act applicable to a single industry or of a general enabling act applicable to the natural resource industries as a group. In the case of bituminous coal and petroleum, it seems likely that separate acts might be preferred, to provide for special problems peculiar to these industries, such as the purchase of marginal mines, or the establishment of crude-oil quotas. In the case of copper, lead, zinc, and so forth, the general enabling act might be preferred, leaving each industry to avail itself of the act and propose a plan of control should conditions so require.

In view of the common problems of the mining industries, and in some cases of the competition between them, we would, however, urge the importance of centering administrative responsibility under the same general auspices. * * *

(6) Experience under the National Recovery Administration codes have shown the importance of flexibility and administrative discretion. We suggest, therefore, that the choice of the particular method of control in a given case should be left to the administrative agency in council with the industry concerned, selecting from whatever methods may be authorized by Congress the ones best suited to

the conditions of the industry. This would leave room for modification of the method of control in the light of experience and of judicial interpretation. A plan of control once approved, however, the powers of the administrative agency to require compliance should be made as clear and as complete as the constitutional powers of the Federal Government permit.

7. In general we recommend the selection of methods which leave a considerable field of competition among producing units in order to avoid the artificial maintenance of high-cost marginal enterprises.

That is the statement of the principles of our committee as submitted to the President and transmitted by him to Congress.

The CHAIRMAN. You feel that the codes, so far as these industries are concerned, have been very beneficial?

Mr. LEITH. Yes.

The CHAIRMAN. And you very much favor its continuance?

Mr. LEITH. Yes; I would like now to bring these principles down to the particular bill—to translate them into terms applicable to the bill S. 2445.

This is what I have drafted. It is not drafted by our committee, but it seems to me to express, as I interpret them, the idea of the committee.

On page 7 of the bill the President is given authority to grant codes under (c)—

to those trades or industries which are now or hereafter subjected to governmental regulation of prices, services, and methods of operation, as public utilities, or as natural resource industries (such as, among others, coal, oil, or gas), or because they are found to be affected with a public interest.

I may say that we find that statement a little obscure. It would seem as if the natural resources were to be classed as public utilities before they may come under that category, and our suggestion is to cut out the reference to resource industries in that section and add another section D—to express more clearly the purpose of the act as applied to these limited natural resources:

or (D) to industries engaged in the extraction of limited natural resources where the President finds: (1) that unregulated competition has caused and will cause serious waste of an irreplacable resource; (2) that stabilization of supply and demand by control of production, price, and capacity will aid in reducing waste; (3) that the proposed code contains such additional provisions for the improvement of technical standards and the elimination of wasteful practices as seem to him reasonably attainable; and (4) that the proposed code contains provisions for the fixing of maximum prices, if necessary, by a public authority sufficient to protect consumers against unreasonable advance in price.

We do not name the particular resources because to do so would in a sense pre-judge their classification. However, we have in mind particularly coal, oil and gas, copper, lead, and zinc. Possibly other resources, such as timber, could be included in this section.

In view of the Supreme Court's decision, we have in mind also that from the standpoint of minerals, this section should be strengthened perhaps by a statement of purposes that minerals are invested with a public interest, that the industry is substantially interstate in nature, and furthermore that the public has a special stake in these particular commodities, because of the necessity of conservation.

Please note that our recommendation refers only to "Codes of Fair Competition" to be made on application by the industries to the President. Our Committee has taken no position on the later section (page

9 of the bill) conferring right on the President to impose codes because of waste of natural resources.

Senator LAFOLLETTE. Are there any other sections of the report which you think might be helpful to the committee and should go into the record?

Mr. LEITH. I think there are. The entire report is short.

Senator LAFOLLETTE. I suggest that it be incorporated, at the conclusion of your testimony.

The CHAIRMAN. That may be done. The committee will recess until 2 o'clock this afternoon to meet in the District of Columbia Committee Room.

(Whereupon at 11:55 a. m. recess was taken until 2 o'clock of the same day.)

(The following is the report of the Planning Committee for Mineral Policy of the National Resources Board subsequently submitted by Mr. Leith.)

NATIONAL RESOURCES BOARD—A REPORT ON NATIONAL PLANNING AND PUBLIC WORKS IN RELATION TO NATURAL RESOURCES AND INCLUDING LAND USE AND WATER RESOURCES WITH FINDING AND RECOMMENDATIONS

PART IV. REPORT OF THE PLANNING COMMITTEE FOR MINERAL POLICY

LETTER OF TRANSMITTAL

PLANNING COMMITTEE FOR MINERAL POLICY

To the CHAIRMAN, THE NATIONAL RESOURCES BOARD.

DEAR SIR: In response to the request of the National Planning Board, there is herewith presented a preliminary report of the Planning Committee for Mineral Policy, appointed by the President April 7, 1934, to be included as a part of a report of the National Resources Board to the President.

The present report is a preliminary statement of the major elements of policy, with recommendations for action on a few of them, but without specific recommendations on many questions that are still under consideration.

At a later date the committee plans to prepare a fuller report for submission to the President.

The committee wishes to acknowledge the cordial cooperation of all the official agencies in the Government concerned with minerals. These include the Bureau of Mines, the United States Geological Survey, the Bureau of Foreign and Domestic Commerce, the Economic Adviser's Office of the State Department, the Office of the Special Adviser to the President on Foreign Trade, the Tariff Commission, the Industrial Planning Branch of the War Department, the Petroleum Administrative Board, the Science Advisory Board, and the Division of Research and Planning of the N. R. A. We are particularly indebted to F. G. Tryon, O. E. Kiessling, A. G. White, D. F. Kneipp, C. E Stuart, J. W. Frey, R. J. Lund, R. A. Cattell, Daniel Harrington, G. S. Rice, Herman Stabler, J. D. Northrop, and L. F. Hewett. Also there have been individual conferences with leaders in the mineral industries, but limitation of time on this preliminary report had made it impossible to extend these conferences as far into the industries as is hoped for later.

Respectfully submitted.

C. K. LEITH, *Vice Chairman.*
HERBERT FEIS.
JOHN W. FINCH.
J. W. FURNESS.
C. T. HARRIS, JR.
LEON HENDERSON.
W. C. MENDENHALL.
F. A. SILCOX.
WAYNE C. TAYLOR.
W. L. THORP.

WILLIAM P. RAWLES, *Technical Secretary.*

Introductory Summary

Salient features of report [1]

(1) The fact that mineral resources are exhaustible and irreplaceable is an essential consideration in a national mineral policy. Conservation is defined and analyzed. Better coordination of private and public effort is required.

(2) Consumption forecasts are the cornerstone of planning.

(3) Need for control of production, price, or capacity discussed for oil, coal, copper, lead, and zinc, without specific recommendations as to kind of measures. Need is clearly established for coal and oil. Enabling legislation recommended.

(4) For minerals in deficient supply within the United States, encourage development. Methods are specified. Discourage use of tariffs as a method.

(5) Minerals and the problem of monopoly are discussed. Antitrust law should be retained and vigorously enforced, with provision for authorizing collective action to control wasteful competition under public supervision.

(6) Possible extension of leasing laws on public lands to cover all minerals, except for that portion of Alaska outside of the national forests.

(7) Broad extension of Government or State ownership is not approved, with special exceptions.

(8) Development of submarginal deposits is to be encouraged only for minerals in deficient supply. Necessity of making provision for permanently stranded mining populations. Relation to land-use planning indicated.

(9) Taxation. Discovery and depletion allowances in income tax, designed to encourage development of minerals, to be studied as to their effect on the problem of production control. Anticonservational effects of State ad valorem taxes on reserves are discussed; study to be made of possible revision.

(10) States should be encouraged to exercise their constitutional authority to prevent resource waste by use of the police power.

(11) Government to sponsor scientific and engineering attack on problems of conservation and cost reduction.

(12) Safety and health of mine workers. Protection a primary obligation of Government.

(13) Federal agencies of mineral administration and their possible organization discussed.

(14) Foreign policy to be based on grouping of minerals into those in deficient supply and those in exportable surplus. Kinds of policy recommended for each of these groups.

(15) Imported minerals and national defense. Necessary to provide stocks of certain minerals now lacking in this country.

(16) Mineral tariff policy and reciprocal trade agreements to be considered in light of occurrence and extent of domestic reserves.

(17) Continue to seek equality of opportunity for American nationals in development of needed supplies abroad.

Section I. The Need of a National Policy

The United States leads the world in variety and abundance of its mineral deposits. No similar area contains as great a number of mineral deposits of such large size, high grade, and easy accessibility. It produces about 40 percent of the value of the world mineral production from within its own borders, and its commercial control of mineral resources in foreign countries brings its proportion of the world total up to 50 percent. It has shared with the British Empire in the exploitation of over three-quarters of the world's minerals. Through its use of mineral fuels and water powers, it produces nearly half of the mechanical energy of the world. Minerals account for about 40 percent of the value of the annual product of natural resources in the United States, which include its agriculture, forests, and water powers. In 1929 the mineral industries employed more than a million men and reported products to the value of nearly 6 billion dollars.

Mining is the stepchild of our economy. Rightfully it is coordinate with agriculture and manufacture; actually, it receives insufficient attention. Ours is the age of the power machine and the minerals furnish both the power *and* the machine. Not only is the United States the largest producer of minerals, it is also the largest consumer. Our per capita requirements of metal and fuel far exceed those of any other nation. Until recently consumption has increased like a sum at compound interest, so that in the last 30 years we have used more oil and coal, iron, and copper than in our entire previous history. While the rate of increase

[1] An abstract of the Committee's report will be found on pp. 32 to 35.

slowed down after the war and while consumption is now reduced by the depression, the future of our industries depends on an abundance of cheap metal and cheap fuel.

In the happy stage of skimming the cream of the resources, the Nation has taken its abundance of mineral supplies as a matter of course. But as we pass into the stage of maturity it is evident that the spendthrift habits and impetuous expansion of the pioneer days must give way to a more orderly and less wasteful development. The great mineral industries of the United States have been built up through individual initiative, with little social direction or control. Until recently it has been assumed that private enterprise required no guidance in developing the national resources and needed no help from Government. The World War, however, made people acutely conscious of their dependence on the minerals, and in the case of the fuels led to an elaborate machinery of wartime control. Following the war expansion came a difficult readjustment. Abroad, our trade in minerals was disturbed by the tide of economic nationalism, expressed in the spread of public controls of one kind or another. At home, coal, oil, and certain of the metals struggled with an unmanageable surplus of plant capacity. The difficulties of the mineral industries were brought to a crisis by the great depression.

The situation calls for review, to see whether it warrants better coordination of national policy in the public interest. The following report considers this question.

We shall make no attempt to discuss the many economic and social conditions that affect mining in common with other industries. The Nation's interest centers very largely around the 1,000,000 men and their families who are dependent on the mines for a living. The public is rightly concerned with the arduous life of the mine workers, their isolation, and their long struggle for the right of collective bargaining; with the immense fluctuations in employment; with living conditions that are sometimes healthful and comfortable, yet sometimes miserably poor. The committee is informed that the questions of employer-employee relations and of economic security for the unemployed and the aged are being considered by other agencies and are outside its terms of reference. We cannot, however, forbear a consideration of the stranded populations in some mining districts or of the special problem of health and safety. In general, the task assigned to this committee deals with mineral technology and markets. Yet the economic stability which we find the most urgent first step in preventing resource waste is also a prerequisite to ameliorating the lot of the mine workers.

Our discussion is concerned primarily with questions of policy arising from the inherent characteristics of mineral resources. Among these characteristics are: (1) That minerals are exhaustible and nonreproducible; (2) that some minerals do not exist in the United States in quantities adequate for national welfare; (3) that others exist in present surplus; (4) that geographic distribution is fixed by nature and cannot be changed by enactment, thereby determining trade routes and trade areas, both domestic and foreign; (5) that there are special hazards, both physical and economic, in mining; (6) that closing down a mine may result in losses far more serious than closing down a factory. The outstanding public problem arising out of these conditions is that of conservation. By conservation of minerals, we mean not hoarding, but orderly and efficient use in the interest of national welfare, both in war and peace, without unnecessary waste either of the physical resources themselves or of the human elements involved in their extraction.

The task in mineral conservation now before the Nation is to take up and carry forward the work begun under the leadership of President Theodore Roosevelt 30 years ago. The original conservation movement had two major objectives: (1) Protection of the public domain against despoiling by private interests, and (2) prevention of physical waste. Indignant at the frauds and evasions practiced under the old land laws, the friends of conservation attacked the first objective with zeal and vigor. Unappropriated mineral-bearing lands (except for the metals which were open to location as before) were withdrawn from settlement pending their classification and the enactment of new legislation. After prolonged debate, Congress passed a group of leasing acts, including the Alaskan coal land act of 1914 and the mineral leasing act of 1920, opening deposits of coal, oil, gas, phosphate, and salines on the public domain to prospecting and leasing with payment of royalty to the United States. With the passage of these laws, the first objective of the conservation movement was largely attained, so far as minerals were concerned, though there will always remain the task of vigilant and courageous administration.

But with respect to the second objective—the prevention of physical waste—much remains to be done. Great and encouraging savings have indeed been made

by engineers and scientists. Thus, the invention of the process of flotation has recovered large quantities of metal formerly wasted. In the production of oil, the technical men have learned how to cement wells against infiltration of salt water, how to utilize the lifting power of the imprisoned gas to increase the yield of oil, and have carried the maximum depth of drilling from 3,000 to 10,000 feet. The cracking process has doubled and trebled the percentage of gasoline obtainable from the crude. In the field of power generation, the fuel engineers have reduced the average consumption of coal from 5.3 pounds per kilowatt-hour in 1908 to 1.5 in 1933. These and other brilliant technical achievements have made available deposits formerly considered unminable and have greatly prolonged the life of out limited reserves. Among other things, they have shown the wisdom of conservation, for a barrel of oil saved for use today will generate four times as many horsepower-hours of work as it could have done 30 years ago.

But, as regards the waste of resources associated with the economic organization of mining, inadequate progress has been made. The waste of gas, oil, and coal now going on which is directly ascribable to the destructive competition characteristic of these industries, deserves the measured use of the word "intolerable." These wastes are not due to lack of engineering knowledge—our mining engineers and oil technologists are the best in the world. They are due rather to continuance of the literal application of the rule of competition to the development of these resources, and also, the special case of oil and gas, to the conflict between in the legal facts of surface ownership and the natural facts of geology. The present-day problem of conservation is to encourage an organization of industry that will control competitive waste. It involves, in the case of oil and gas, using the States' police powers to prohibit preventable waste and substituting the principle of the equitable share in the common reservoir for the judicial "law of capture." It involves permitting the control of production, stocks, capacity, and perhaps of price, under public supervision, by methods hitherto thought to be forbidden under the antitrust laws. The Nation must learn that the rule of uncontrolled competition applied to certain resources leads to excessive waste. The greatest single task of conservation is to insure economic stability in the mineral industries.

There is a wide-spread impression that waste is a thing of the past. Every schoolboy is taught how our pioneering fathers burned natural gas in great open torches 50 years ago. In point of fact, the wastes of that time were probably small compared with what is going on in the month of October 1934. As this report is written, in one field in the United States a billion cubic feet of natural gas is being blown into the air daily. That is gas enough to supply the United Kingdom twice over. It is forty times as much gas as all the Scandinavian countries use together. It is almost enough to supply every householder in the United States now consuming either natural or manufactured gas. The only use made of this particular gas is to strip it for the tiny fraction of gasoline which it contains, and this at a time when the supply of gasoline from other sources is already so great that measures to limit production are thought to be necessary. Similar wastes, though fortunately on a smaller scale, are going on in other gas fields and in other industries, to which we shall later refer. It is probable that during the time it would take the ordinary person to read over this report, enough fuel will have been wasted in our gas and oil fields and coal mines to keep at least 10,000 relief familes warm during the coming winter.

Were our resources unlimited, such losses might seem excusable. The facts are otherwise. Despite the difficulties of estimating reserves and the shortcomings of some past efforts, it is the consensus of geologists that the principal mineral regions have now been found; their general extent is known; in many cases their size has been measured. The geologic and geographic limitations upon further large developments are becoming fairly definitely understood. The rapid increase in the scale of production in the last few decades brings a new perspective into our judgment as to what constitutes adequate reserves. It is now established beyond reasonable doubt that the United States is deficient in many minerals necessary for industry, both in respect to present and to future requirements; that for others the supply is limited to a decade or a few decades; that, aside from the building materials, only a few of the minerals, such as coal and iron, exist in quantities sufficient to supply the Nation for long periods of 100 years or more, and even these are more limited in regard to the higher grade reserves. Present overdevelopment of some minerals has tended to obscure the central and dominant fact that, in relation to what we hope will be the life of the Nation, our mineral supplies are too limited to excuse the wasteful exploitation that now often prevails.

In approaching the problem of a national mineral policy, the committee starts with recognition of the fact that private industry has successfully developed the minerals of the United States to an extent never before approximated in the world; that the job on the whole has been done efficiently and without greater wastes or mistakes than were more or less inevitable under existing conditions of enforced competition and widely scattered ownership of the resources; that the desire for efficiency and profit has been mainly responsible for the great gains in conservational practice already made; that the nature and immense diversity of the problems—scientific, technical, economic, and social—have required a variety, elasticity, and boldness of attack scarcely possible under bureaucratic control, even if it be assumed that such control were competent, honest, and not hampered by shifting political currents. American consumers have been furnished the cheapest fuel and some of the cheapest metal in the world. The output per worker in the mines of the United States is generally far higher than in foreign countries. We believe that the record of the mineral industry in the United States warrants the presumption that it should continue to develop under private initiative. However, we also believe that mineral reserves are vested with a public interest which justifies extension of public supervision to those specific conditions affecting our mineral industries, which are distinctly detrimental both to the public and to the industries themselves, and which seem beyond the power of the industries themselves to remedy.

Soon after the passage of the National Industrial Recovery Act, several of the mineral industries embraced the opportunity to undertake collective action, under the public guidance and supervision afforded by the new law. Problems were taken up, in cooperation with the Government, which either because of the prohibitions of the antitrust laws or because of economic conditions associated with the depression had proved beyond their own capacity to master. It is mainly the conservational aspects of these questions that the committee has in mind in its discussion of possible extension of public regulation or control, Federal or State. By public control we mean not so much the forcible public interference with private business, as the addition of safeguards and powers to enable industry itself to act collectively, where necessary, in order to avoid the wastes, physical and social, of destructive competition.

Many agencies of Government, Federal, and State, permanent and emergency, touch the problem of conservation in one way or another, and progress has been made in the solution of the problems of individual industries. The various agencies now attempting to formulate a national program for land use are necessarily giving some thought to the minerals. The National Industrial Recovery Act is designed, among other things, to conserve natural resources, as well as human resources, and notable progress has been made in conserving oil. However, only a start has been made. Neither the N. R. A. nor any other agency has worked out the guiding principles, and naturally there is no consistent plan common to all of the agencies. The complex interrelationships of minerals have scarcely been considered. No individual policy for coal, oil, or gas, for instance, can be worked out or administered without consideration of their interrelations in a highly competitive fuel market. The same is true of the shifts in demand and the substitutions which are taking place among the major metals. A similar lack of a unified approach characterizes our activities touching minerals in the foreign field. All agencies of the Government dealing with foreign trade, or with national defense, are concerned with the minerals, yet policies hitherto have all too often been haphazard and even contradictory. Tariffs and reciprocal trade agreements, commercial treaties, foreign concessions and investments, the American attitude toward the "open door", all need review in the light of our present supplies and future reserves of the minerals.

Long-range considerations will dominate the discussion, though the special conditions of the depression cannot be overlooked. We shall consider first the problems raised in the domestic field, and then take up those in the foreign field.

SECTION II. POLICY IN THE DOMESTIC FIELD

I. DEPLETION AND THE GROWING HANDICAPS OF MINING

In the domestic field the central problem is the wise use of the national inheritance with regard not merely to the prosperity of the mining companies but the welfare of the army of mine workers and the long-time interest of the consuming public. Here the problem centers around the facts of limited occurrence and exhaustibility. At the moment attention of the mineral industries is preoccupied with the handling of an embarrassing surplus, but the surplus is a short-time

problem, in itself causing waste of the resources through destructive competition and thereby intensifying the long-time problem of mineral depletion.

The real significance of mineral exhaustibility is the tendency to force an increase in cost. When the Nation became conscious about the turn of the century that its mineral reserves were not inexhaustible, men pictured a day of wrath when all the coal and all the iron would be consumed. Then when the looked-for shortage did not occur, a feeling rose that conservation was a cry of "Wolf" and a reaction set in. To get a rational picture of the problem of conservation, it must be fixed in mind that the danger is not absolute exhaustion in some distant future, but rather an early increase in cost through depletion of the rich and accessible deposits. The mines grow deeper and the ore bodies leaner. Exhaustion of thick coal beds forces the use of thin ones. Once famous districts pass into decay, and except as the discovery of new deposits or the advance of technology offsets the growing difficulties of nature, costs tend to increase. The American people have attacked their unique endowment with an energy and also with an impetuosity hardly equalled in the world's history. Thus far, as the old areas of production were exhausted, new sources of supply have been at hand, technology has been gaining over the forces of nature, and on the average, costs have been going down. The immediate outlook is abundance of the principal mineral raw materials at declining cost.

But if a longer view is taken, the outlook is a formidable increase in the physical handicaps of mining and a rise in costs. Already signs begin to appear that domestic industries are feeling the pinch of competition and finding it difficult to meet the pressure emanating from younger countries that are still discovering new resources. For the construction materials—stone, clay, sand, and other earth products—our reserves are indeed inexhaustible. But for the metals and fuels, despite a magnificent endowment, depletion is further advanced than even mining men generally realize.

Of the 33 metal-mining districts that have yielded the greatest wealth to date, only 5 have been discovered since 1900, and none at all since 1907.[1] In gold the peak of American production was passed in 1915, and despite the enormous stimulus of falling commodity prices and devaluation of the dollar, production today is still far below the pre-war level. In silver, also, we seem to have passed the peak. Large supplies are indeed assured as a byproduct of the winning of the base metals, yet where will be found the camps to take the place of the Comstock Lode or Leadville? In the mining of copper the riches of Utah and of the Southwest obscure the troubles of Michigan and Butte. The mines of Michigan have gone a mile below the surface, by far the deepest copper mines in all the world, and at those depths, despite the ablest of engineering, they are quite unable to compete with many low-cost districts here and abroad. Hence the telltale demand for a tariff. In lead and zinc depletion is far advanced, and despite large known reserves, the geologist would find it hard to tell where the supplies of 20 years hence will be found. In iron ore the incomparable Mesabi range, opened in 1893, has already yielded nearly half of its really high-grade ore, and the rest will hardly last another 40 years, though fortunately there are huge tonnages of low grade.

In the oil industry the glut produced by east Texas makes us forget the hundreds of dead or dying pools in other areas. It now appears that American oil deposits may not be the world's greatest; our distinction seems likely to be rather that we have used them up the fastest. In the Appalachians, Illinois, Indiana, and many of the earlier districts of the midcontinent and California, there is small prospect of new discoveries to offset the advance of depletion. A similar condition prevails in natural gas. The youthful vigor of the astonishing fields of the Southwest hides the decline of many eastern districts and the death of the Indiana gas belt.

Even if one turns to coal mining, he finds signs that point along the same road. The anthracite fields of Pennsylvania, home of our highest-priced coals, are 29 percent exhausted, and already the industry has passed into the stage of increasing costs. In the bituminous fields there are indeed stupendous reserves of low-grade coals, yet in many of the high-grade seams depletion is far advanced. The glories of the Moshannon bed are a memory. Only a few acres of virgin coal remain in the famous Big Vein of Georges Creek. The life of the Pocahontas and New River coals is good for two and a half generations, that of the Pittsburgh seam in Pennsylvania for perhaps three.

[1] The reference is to date of first discovery of the district, not necessarily to beginning of production. In several of these major districts there have of course been notable extensions, such as the Picher field in the Tri-State zinc and lead district.

The experience of England shows how early in the exploitation of a mineral resource the stage of increasing cost may arrive. In the first half of the nineteenth century, the United Kingdom led the world, not only in coal and iron but in the production of copper, lead, zinc, and tin. In none of these metals are Britain's reserves wholly exhausted; yet the mining of copper and zinc has all but ceased and that of lead is small. The mining of tin continues but only in declining volume. In coal, according to the very careful estimates of the British geologists, only 7 percent of the original reserve in the United Kingdom has thus far been removed. Yet, in the course of winning that 7 percent, the British miners have been forced to work at depths as great as 3,700 feet and to use, at shallower depths, seams as thin as 14 inches. If such be the cost of winning the 7th percent, what will be the cost of the 97th percent? Largely because of these handicaps—though partly because of less effective use of machinery—the British miner produces only about a fourth as much as the American miner. The result is twofold: The British miner receives less for his labor and the British consumer must pay more at the pit-head for his coal. A ton of soft coal in America costs 1.7 hours of labor; in England, 7.5 hours. The increasing difficulties in the British coal mines have long since absorbed the gains of technology, and the output per worker has been falling since the eighties. A land in the stage of increasing costs of mining is hard pressed in competing with some newer lands in the fortunate stage of declining costs.

American mining is starting on the same road. Symptoms of advancing age are becoming clear. Production of key minerals shows signs of migrating to newer countries. Mineral exports are declining in relation to mineral imports. Until recently most of our larger mineral industries were content to remain upon the free list, amply able to compete in the world market. But in 1932, three of the largest—anthracite, copper, and petroleum—asked for and received protection. Today 63 percent of our mineral production has sheltered itself behind the wall of a protective tariff. The handicaps of thinner beds, leaner ores, and growing depth are beginning to be felt. The problem of conservation is not to prepare for a day centuries hence when all the fuel and metal shall be gone, but to minimize the readjustment to a stage of increasing cost which in the older lands has already arrived and in the United States is only a matter of time.

What is to be done? The broad answer is clear: Eliminate waste and improve mineral technology.

An economic organization of the mineral industries must be encouraged that will minimize the resource wastes and the business losses of destructive competition. Tax, tariff, and public-land policies should be reviewed in the light of their effects on resource use, and conservation. The States should be encouraged to use their constitutional authority to prohibit waste by the exercise of the police power. The arts of exploration, mining, and metallurgy must be fostered so as to offset the progress of exhaustion and the growing obstacles of nature. In all such action the liberties, health, and living standards of the mine workers must be guarded as a primary obligation..

Unless these things can be done, the menace of increasing costs, in time, will handicap American producers, press heavily on miners' wages, raise costs of the raw materials of industry, and in many indirect ways work to handicap the national welfare.

II. Forecasts of Mineral Consumption

Wise use of the national resources requires a knowledge of demand. Development of mines in excess of demand forces resource waste, capital loss, and irregular employment, and among the major causes of overdevelopment has been the lack of any clear picture of future requirements. Development programs have not been based on any common agreement as to the capacity necessary. We recommend the establishment of consumption forecasts, periodically checked and revised, to serve as a guide for current production and for investment in plant facilities.

Until recently our rapid industrial growth created such ever-mounting demand for minerals that in many cases the existence of an adequate market has been assumed, and attention has been centered mainly upon the finding and development of new deposits. Almost any mine sooner or later found an outlet for its product. Explorers, promoters, and their backers, as a class, have given very little attention to the possible limitation of the market for anything they might find or develop. Even the well-organized industries have been slow to realize that fundamental changes in demand are taking place.

The need of forecasts and the possibilities of basing them on past trends may be illustrated by production trends of the fuels and the major metals. For 2 or 3 decades preceding the war, consumption of all the principal minerals expanded rapidly—faster than the population—and it was a common belief that this expansion would continue indefinitely. This was a period during which many small mineral enterprises were consolidated into large units, and large capital was drawn in. Banks insisted on ample reserves of raw materials as a basis of financing. Holdings of reserves were sometimes augmented for trading purposes by companies contemplating merger. Manufacturers and distributors reached out for their own mineral supplies. As the commercial units grew larger, it became necessary to plan further ahead for capacity and reserves. The result was ever-increasing speed of exploration and development.

After 1914 growth was further stimulated by the World War. The munitions demand affected nearly all the minerals, and some were further boomed by the blockade of major sources of supply outside the United States. In many industries the war led to a huge increase of capacity, especially in zinc, copper, and bituminous coal.

After the Armistice, the industries which had been most stimulated by the war experienced a sharp reaction. The high prices of 1916–18 had brought on other changes beside expansion of capacity, such as substitution and economics in use. In iron ore, anthracite, and bituminous coal, for example, production has never again equaled the war peak. In copper, the smelter output from domestic ores did not regain the war level until 1929. Yet in many cases, the expectations of mining men continued to center on a projection of the pre-war curve. Thus in iron, the overdevelopment of mine capacity, which in some way must now be liquidated, is fairly measured by the gap between the projected pre-war trend and the actual trend. There were, of course, many other minerals, such as oil, natural gas, and sulphur, the demand for which continued to grow by leaps and bounds up to the coming of the great depression. In fact, the great majority of the domestic mineral industries established new peaks of production in the years 1926–30. Yet the experience of iron, coal, and copper suggests that a gradual flattening of consumption curves is to be looked for by other mineral industries even on return of normal business. Few subjects are of greater importance to any industry than the future of consumption.

No attempt will be made here to analyze all of the reasons for such changes in demand. Their existence only is emphasized. Study of industries concerned shows many detailed causes for these changes—technological advances, more efficient utilization, increasing use of scrap, changing habits of consumption, approaching saturation or decline in the demand for certain industrial products, slowing down of the acceleration of population growth, and other factors. All of these elements are capable of analysis in forecasting of trends. The flattening of production curves is not a special case applying to minerals alone, nor is it merely a temporary change due to the depression. Many other economic and social phenomena show a similar tendency toward retardation of earlier rates of growth.

General recognition of this fact by the industries affected has been very slow. Even yet the fundamental change in conditions is not everywhere recognized. The old psychology of indefinite expansion persists. There have been such wide fluctuations in annual demand over the last 20 years as to obscure the general trend, making it easy to assume that each year was abnormal and that in time consumption would come back to a scale indicated by the projection of the rapidly rising pre-war curve of mineral demand.

Far-sighted leaders of these industries, however, are awake to the need of forecasting consumption in the light of the changing conditions. Long-time forecasts are needed for such light as can be thrown on the problems of planning investment in plant capacity. Short-time forecasts are essential in the effort to balance current production with market needs. The value of such forecasts has been seen for some time, but up to the present collective action by the industries has been handicapped by the fear that it might be construed as conspiracy in restraint of trade under the antitrust law, by the lack of authority to secure comprehensive data, and by doubts as to the accuracy of some of the figures furnished by interested parties. Furthermore, estimates made by producers have on the whole lacked the check of similar estimates from the side of the consumers, who alone were in position to supply some of the data essential to the analysis.

In the opinion of your committee forecasts of mineral consumption are a proper function of Government. A Government agency with power to require reports, working in friendly cooperation with the mineral industries through their trade

institutes, and wherever possible with consumer organizations, or purchasing associations, would be able to secure complete figures from all sources. It is obvious that a record of consumption is esential to such a forecast. Individual returns should be held confidential, but the final estimates should be reviewed jointly by the Government agency in conference with representatives of producer and consumer organizations. Under this arrangement, the participation of the Government would insure freedom from bias, and the presence of business men representing both sides of the market would add confidence in the reliability of the forecasts. The estimates would command attention and respect, not only from industry but from that part of the general public which occasionally speculates in mineral development.

Oil is the only mineral for which the Government has thus far attempted such forecasts, and the experience with that commodity, starting with estimates by the Federal Oil Conservation Board in 1930 and continued under the present Petroleum Administrative Board, seems to demonstrate the feasibility of Government estimates for other minerals. There is general testimony from the oil industry that the inauguration of these estimates constituted a very important step toward conservation. While production has often overshot the mark thus set up, a definite objective has been in view for the first time, and it has served as a guide for all of the efforts to balance production and consumption that have since been made by the industry, by the States, and by the Federal Government.

Your committee recommends the regular issuance of similar forecasts of the demand for coal, copper, lead, and zinc. These are the minerals, in addition to oil, which are most afflicted with troubles of surplus, and consumption estimates are a first and immediate requirement in any attempt to balance production with consumption. For other minerals the need of forecasts seems less urgent, but as circumstances require, these also should be covered. Even without measures for production control, we believe that widely known official forecasts will go far toward discouraging unwise expansion of capacity, as financial support for new enterprises in fields already overdeveloped would be more difficult to obtain.

The committee is aware that all forecasting necessarily involves an element of hazard. Short-time forecasts are obviously much affected by the business cycle by the export market, and (in the case of fuels) by the weather. Long-time forecasts are dependent on the future of business, on technologic change, and many special factors. Any forecast, therefore, should state the assumptions on which it is based and the range of probable error, and should be revised periodically in the light of changing conditions. As industries mature, their characteristic growth trends become clearer, and even in long-range forecasts it seems possible to indicate upper limits not for particular years but for periods of the length involved in planning large-scale capital investments. Responsibility for decision remains with the individual executive, but we believe his decision will be wiser if made in the light of the collective judgment of trade experts and a Government agency studying all the facts.

The proper agency for this work would seem to be the Bureau of Mines working in cooperation with the Geological Survey and Bureau of Foreign and Domestic Commerce. These agencies already have experienced personnel and much of the necessary information, and at comparatively small expense could build up staffs and records to undertake the task.

III. Conservational Problems Arising from Surplus of Production or Plant Capacity

1. CONSERVATION AND PRODUCTION CONTROL

Foremost among the problems of conservation is the prevention of resource waste and associated social and economic disorder caused by the destructive competition characteristic of those minerals with a surplus of plant capacity or production. It may seem a paradox but it is a fact that resource loss is most serious in the same industries, such as coal and oil, where attention at the moment is centered on the disposal of an embarrassing surplus. In this group the problem of conservation is less one of technology than of economics. The task before the Nation is to help these industries to prevent competitive waste, bring supply in balance with requirements, stabilize employment, limit cutthroat competition, and, by achieving some measure of stability, permit the savings in the underlying resource which technology has already shown to be possible. It involves considering the control of production, of capacity, of stocks, and often of price by methods which traditionally have been thought forbidden by the antitrust laws. It involves recognition of the competition between mineral industries, as in the fuel and power group, as well as within them.

While it is clearly inadvisable to authorize price-fixing and limitation of output in the great majority of our industries, such as general manufacturing and trade, it may prove to be wise, under the necessary public supervision, in those industries involving natural-resource waste. Even during the present emergency, the N. R. A. has recognized a distinction between business in general and industries involving a problem in conservation. The Nation must learn that in some circumstances competition leads to waste that we can ill afford.

A review of the mineral industries shows that troubles of surplus are widespread, but most acute in coal and oil. They are present, though less acute, in iron, copper, lead, and zinc.

While there has been large overdevelopment of iron-ore capacity, there has been no difficulty in holding production reasonably in line with consumption or in stabilizing prices, because of the fact that nearly all of the mines are captive and also because of the concentration of ownership in a few companies. These companies will take a large loss, because their overestimates of future demand have led to a great excess of mine capacity. However, it is not apparent that Government cooperation is needed to effect conservation of the resources, though it may be needed for rehabilitation of unemployed workers and safeguarding the welfare of labor. Problems of the type involved in the concentrated ownership of the mines are discussed in sections II, V.

For the other five—coal, oil, copper, lead, and zinc—experience has thus far shown that the industries acting alone have been unable to prevent dissipation of resources or economic and social distress. Already, under the National Industrial Recovery Act, several of these industries are asking Government approval of various measures designed to stabilize supply and price, to control excessive stocks, or otherwise to set bounds to competition. Their leaders desire to continue the effort at stabilization in some form, and it is in the public interest to encourage them to do so. Each of the five listed has its own distinctive problems, sharply differing from those of the others, but all present in some degree the common problem of control of destructive competition.

2. BITUMINOUS COAL [1]

Need for stabilization.—The mineral fuels are subject to a high degree of substitution and interindustry competition. The bituminous-coal industry, as the oldest and most important source of energy, has suffered loss of markets to oil, natural gas, and water power. Competition within the industry has always been intense because of the widely scattered reserves and the thousands of producing units. Rivalries between districts and the legal obstacles of the antitrust laws have hitherto prevented any form of centralized organization.

Lack of adequate profits has meant inadequate wages and excessive waste of coal resources. For years the industry has worked in surroundings of poverty. Coal was therefore one of the industries which could gain the most from the facilities for collective action offered by the National Industrial Recovery Act. Its experience under the Bituminous Coal Code indicates that continuation of some form of price or production control is necessary to effect the stabilization of this industry.

Stabilization of the coal industry is needed to protect capital. In 1929, according to the Treasury Statistics of Income, there were 1,437 bituminous-coal companies, producing approximately 46 percent of the total output, that operated at a loss, and their deficits exceeded the income of the companies making a profit, so that the industry as a whole reported a net loss even during that year of boom. Virtually no other business covered by the Treasury's record showed such widespread money losses as the mining of bituminous coal.

Stabilization of the industry is needed to protect wage standards. The pressure of low prices upon wages in coal mining is direct and cruel. Whereas in manufacturing wages constitute 23 percent of the cost of the product, in coal mining they make up 65 percent. Any savings the operator can make in supplies, in power, in overhead, look small in comparison with the wage cost, and the pressure to reduce wages in periods of low prices is almost irresistible. Hence arises on the part of the mine workers the insistent demand for collective bargaining. Fifty years of bitter experience has proved beyond question that underlying the turbulent history of labor relations in this industry is the competitive pressure which

[1] The statements in this section refer only to the mining of bituminous coal. The mining of Pennsylvania anthracite is a separate industry, not here considered. The retail coal business is outside the terms of reference of this committee.

often made it difficult or impossible for the employer to pay a decent wage or earn a profit. The record of the years from the end of the Jacksonville wage agreement to the signing of the N. R. A. code (from 1927 to 1933) is proof of the depths to which wage cutting can go, and unless some means is found by which a reasonable margin of profit can be assured in the future, resistance to trade unionism can be expected to return as before, and maintenance of any such wage structure as is developed by the code will become impossible.

Stabilization of the coal industry is needed to minimize waste of the resource. In western Europe the average loss of coal in the mining of the beds now worked is from 5 to 10 percent. In the United States, according to careful field studies in 1923 by engineers of the Bureau of Mines and the United States Coal Commission, the average loss is 35 percent. Of this loss, 15 percent was considered unavoidable and 20 percent as avoidable, using the standards of engineering already shown to be feasible by the practice of the better companies. This meant that the avoidable loss amounted to 150 million tons a year, left behind under conditions that virtually prevent its being recovered.[4] That is coal enough to supply the entire requirements of the German Reich. In terms of energy it is equivalent to twice the production of natural gas in the United States. Conditions have since grown worse. Howard N. Eavenson, now president of the American Institute of Mining and Metallurgical Engineers, testifying in the Appalachian Coals case (August 1932) stated:

"The depressed condition in the coal business has had a great deal of effect on the waste in the mining of coal. Since the depressed condition of the last 7 or 8 years, a good many mines (that is, in Appalachian territory—a region where normally the recovery is relatively high) have found that it is very much cheaper for them to lose a very considerable proportion of the coal in the ground than it is to try to mine it. In other words, instead of recovering 85 percent or more, a number of them have gone to a practice where they will not get ultimately more than from 60 to 65 percent, because the ultimate result is cheaper than if they tried to mine the greater amount of coal. I think I could make the broad assertion that there is not a single bituminous mine in the country today that is not mining the very best coal that it has, and the cheapest, and is allowing portions of the mine to get into shape where a lot of the coal will never be recovered, because they cannot afford, at present prices, to mine it."

According to Newell G. Alford, from 1923 to 1932 a total of 4,802 bituminous mines were shut down or abandoned.[5] Some of these were worked out, but, unfortunately, exhaustion accounted for but a small percentage of the mortality. The great majority of these old pits are not likely to be reopened. The quantity of coal lost in these old workings through collapse of roof, crushing of pillars and stumps, or through permanent isolation of odd acreages of unmined coal is unknown but must certainly run into some hundreds of millions of tons. Were these mines located in Belgium the loss would be regarded as a national calamity.

In the United States we are prone to ignore the loss in mining because coal seems so abundant, but the facts are that while our reserves of lignite and low-grade bituminous are indeed enormous we are exhausting our best bituminous coals at a rate that makes their conservation a serious national problem. For example, with production at the 1929 rate, the life of the magnificent Pittsburgh bed in Pennsylvania is limited to a hundred years, and the high-grade portions of the seam in the gas and coking coal districts will be gone long before that.

In the famous smokeless fields of southern West Virginia, the reserves in beds of commercial thickness are placed by Eavenson at 4.8 billion tons, which, at the 1929 rate of production, would last but 85 years. The same authority states that the highest grade gas and metallurgical coals are 11 percent exhausted in Kentucky and 22 percent exhausted in southern West Virginia and Virginia. Yet these coals, the Pittsburgh bed in Pennsylvania and the southern low- and high-volatile metallurgical coals, are the foundation of the American steel industry and their depletion will handicap not only steel itself but all industries depending on steel.

The causes of the excessive waste attending the mining of our coals are complex, but the great underlying cause is destructive competition. The losses are nobody's fault in particular, for the individual operator is driven by economic pressure. In many cases the prevention of loss, while entirely possible from the point of view of engineering, involves a substantial increase in cost. Thus, in portions of the Middle West the removal of pillars would result in damage to the

[4] George S. Rice and J. W. Paul. Amount and Nature of Losses in Mining of Bituminous Coal. *Report of the United States Coal Commission*, pp. 1855–1858.

[5] Alford's study included some wagon mines, but on the other hand, it did not cover Ohio or the trans-Mississippi fields. The total shut-down was, therefore, even greater than the figure quoted. Transactions of the American Institute of Mining and Metallurgical Engineers, vol. 108, pp. 476–488.

surface. In such cases it may be many years before a change in present practice is possible. But there remain many other losses which can be avoided with slight additional expense as the practice of the better companies in normal times has already shown. Prevention of such losses depends on relieving the conditions of poverty which have surrounded the industry. The members of this committee who have given most thought to the question are convinced that the necessary first step in reducing the waste of coal in mining is to aid the industry in establishing itself on a stable and profitable basis.

Experience has shown that a reasonable margin of profit stimulates conservation. The more valuable coal becomes, the more men tend to save it. (It is true that if wage rates advance more than prices, reducing the operator's margin, the effect may be anticonservational.) A financially stable company can afford competent engineers and adequate supervision: that is an important factor, since large tonnages are lost in squeezes due simply to lack of engineering control. It is known, for example, that the captive mines, freed from the extreme pressure of competition, generally secure higher extraction than the average commercial mine in the same district.

Reduction in waste may also be expected from other results of a program of production control. A check upon new development will prevent the premature abandonment of mines before they are worked out, thereby eliminating in the future losses such as those resulting from the closing of the 4,802 mines above referred to. With some check on the expansion of capacity, steadier operation of the mines remaining will ensue, thereby increasing the percentage of extraction. It is well known that recovery of pillars depends on maintenance of a regular breakline and a systematic schedule of operations, and some part of the present waste is due to the simple fact of irregular and intermittent operation.

Moreover, if reasonable prices are made possible, the coal industry may be asked to give assurance of reducing the waste. It would, for example, be possible for an N. R. A. code authority to study the problem and set up a local technical committee on conservation in each of the mining districts, charged with the duty of formulating reasonable standards of extraction as indicated by the better practice attained in that district. Such standards could then be recommended to landowners for incorporation in coal leases, to the mine inspection and conservation departments of the States, and to individual operators for adoption by their engineering staffs.

In time, if the industry can be placed on a stable basis and competition between districts held within reasonable bounds, the legislatures of the coal-mining States may be expected to enact conservation laws to lessen waste of their coal resources analogous to those already adopted in some jurisdictions for oil and gas. Hitherto, State action has been impossible, because of cut-throat competition. Progress in this direction can go no faster than development of a strong opinion within the principal coal States. Meantime, the first and indispensable step is so to organize the economic forces of the industry as to relieve the extreme pressure of competition.

These considerations, the exceptional money losses of operators, the protection of wage standards of a depressed group of workers, and the prevention of resource waste justify governmental aid in the effort toward stability which the industry alone is unable to accomplish.

Stabilizing effect of price control under the N. R. A. code.—In the case of bituminous coal, the N. R. A. code authorizes the direct control of prices. The choice of the minimum price as the instrument of control in the code was dictated by market mechanics and industry psychology. Had the framers of the code attempted to set up a system of rigid production quotas, they would have become involved in a welter of conflicting interests and local controversies. Centering attention on the direct control of price, they were able to formulate a code which won acceptance by all important districts and which could be put in operation at once. Aside from the labor clauses, price control is the central idea of the code. The code authority in each district sets the minimum price for every grade of coal mined in the district, and except as modified by the Administrator the price is binding on all shippers in the district. Under present conditions the minimum price also becomes the maximum price, in nearly all cases, since competition prevents the shipper from obtaining more than the minimum.

Despite numerous criticisms, the code has achieved a great measure of success. Criticisms of delay on the one hand and of over-hasty action on the other are natural in so new and so large an undertaking. Complaints of discrimination are heard from individual producers. Correlating price differentials between competing districts has proved difficult. Evasions threaten to reach grave pro-

portions unless the power to force compliance is upheld by the courts. Yet in comparison with the competitive chaos which preceded it, the code is a great achievement. For the first time in years prices have generally been held above production costs. Employers, now able to pay the agreed-on wage, have taken a different view of labor relations. Wage standards and working conditions in the East and South are better than for years past. This has been accomplished without unreasonable burdening of the consumer or serious curtailment of demand. Opinion in so large an industry is always divided, yet it is generally agreed that many features of the code should be continued. It is clear, therefore, that nothing should be done to handicap administration of the present code and that the experience gained under the code should guide any future attempt to adjust supply and demand in this industry.

The case for continuing control.—In the bituminous-coal industry the outlook is not for a temporary emergency but rather for a long period of destructive competition and natural resource waste unless some continuing adjustment of supply and demand can be effected. In this industry the disadvantages of price and production control are less weighty, and they are offset by the public interest in conservation and in protecting the wage standards of the miners.

The problem of protecting the consumer against unreasonable advance in price is simplified in coal mining by the pressure of competitive sources of energy—oil, gas, and water power—and by the alternative offered to the larger consumers of opening mines for their own use. Industrial consumers already supply a fourth of their own requirements from mines which they control.

The objection that stabilization protects the inefficient producer loses some of its force in this industry where several thousand marginal producers (commercial mines, not wagon mines) had already been forced out of business before the great depression began. Any mine able to survive the years 1930 to 1932 has demonstrated a considerable efficiency. With deflation of the less efficient mines so far accomplished, the present time offers a unique opportunity to inaugurate production control.

The most serious objection to continued price control is the tendency under it to create more capacity, through development of new mines or reopening of old ones. There seems no answer to this objection short of providing some method of controlling the expansion of capacity, if permanent stability is to be attained.

Opinion in the coal industry is definitely in favor of continuing some form of price or output control after the expiration of the present code.[6]

Possible forms of price and output control.—The minimum price-concept of the present N. R. A. code and the tonnage-quota concept, developed first in Germany, tried later in England, and now proposed in many quarters for the United States, both have their strong points and their weaknesses, and both deserve consideration in any permanent scheme of control. Thus, foreign experience makes use of both price and tonnage control, and while the American code began with the simpler idea of minimum prices, it shows some signs of moving in the direction of quotas. There are, however, grave difficulties on the American scene which would make the quota plan much harder to operate here than abroad. One of the most serious is the difficulty of applying a national system of quotas to the intrastate shipments which in some fields make up a large part of the business. The choice of method is a highly technical problem to be worked out step by step on the basis of experience by the code administration in counsel with the industry. From the consumers' viewpoint, the choice makes little difference, for any minimum price that is observed necessarily affects the tonnage and, conversely, any tonnage limitation necessarily affects the price.

Even should it be found impractical to set up a uniform national system of prices or quotas, it would be possible to authorize price or production control schemes in the several districts, to be operated through district sales agencies or other local associations, subject to coordination by a central public authority. In any case, a large measure of district flexibility is necessary to meet the great diversity of local problems characteristic of this industry.

Necessary safeguards.—Any plan for stabilization of production and price must provide ample safeguards for the welfare of labor and the consumer. The question of safeguards necessary to protect the rights and liberties of the mine workers is a special subject of great importance, which will no doubt be considered by other agencies of the Government and is outside the particular province of this committee. The issue of consumer safeguards requires, in our view, (1) complete and uniform records of costs, prices, profits, and margins, and (2) review of any scheme of price or production control by a public authority clothed

[6] See Report of Special Legislative Committee of the National Coal Association, Oct. 27, 1934.

with ample powers. If the producer is to be protected by minimum prices, the consumer may reasonably ask to be protected by maximum prices. No such interference with free competition as is proposed by the coal industry is conceivable without such safeguards, both because the public would rightly withhold its consent and because the powers of Government are necessary to prevent a small minority of firms from paralyzing the action of the majority, as the experience of the present code so clearly shows.

Possible forms of capacity control.—Already the industry is awaking to the fact that control of price or output is not enough and that it must also grapple with the control of capacity.[1] Coal mining was overdeveloped 20, 40, or even 50 years ago. In 1929 the bituminous-coal industry was burdened with a huge surplus of plant capacity due to many causes and not simply to the World War. The excess capacity has been a prime factor in the cutthroat competition, the resource waste, the financial losses, the low wages, and the turbulent labor relations. The problem of capacity before the industry is twofold—first, to reduce the present surplus and, second, to control unwise expansion in the future so as to prevent a repetition of past overdevelopment. The necessity of some check upon future expansion is suggested by the increase in small truck mines which has already taken place under the code.

The Committee has considered some of the chief suggestions that have been offered for control of capacity.

It has been proposed at times that a sliding wage scale or a guaranty of minimum employment be included in wage agreements between operators and the miners' union, in a way to encourage a shift of business from high-cost mines to those able to operate more steadily.

It has been proposed that promotors of additional mines—as distinct from replacement of worked-out mines—be required by the Federal Securities Commission to include a full statement showing that existing capacity in the industry is already more than sufficient in all proffers of securities addressed to the investing public. Such a plan should discourage some unwise promotions. A similar provision is already in effect as to public lands through an order of the Secretary of the Interior that the offering of coal lands for lease or granting of prospecting permits be recommended only on reliable information that there is an actual need for coal which cannot otherwise be reasonably met.

It has been suggested that extensions of common-carrier railroads serving the coal fields should be controlled in the light of their effects on mine capacity. Under the Transportation Act a railroad desiring to construct a branch line must obtain a certificate of public convenience and necessity, and if the central coal authority found that existing capacity was sufficient and recommended against the extension, the Interstate Commerce Commission might withhold its approval. This would not prevent promoters of a new venture from building their own branch line down to the railroad and demanding a connection, but it should serve to discourage unwise development. It would obviously have no effect on the increasing number of mines served by motor trucks.

It has been suggested that marginal mines be purchased by a governmental agency and shut down, a small tonnage tax being levied to pay the cost of the acquisition and to pay for rehabilitating displaced miners. Such a plan should do much to relieve the condition of the mine workers. It would afford steadier employment in the other mines remaining and would tend to center production in the lower-cost mines whose savings in overhead through steadier running time would go far to absorb the tax. This plan deserves most careful consideration, though its execution would have to be timed with reference to general relief and unemployment policies, so as to give reasonable assurance that workers discharged by shutting down the mines in question could actually be placed in other occupations. In further support of this plan, it is argued that where employment of coal miners is reduced by public hydroelectric projects, an obligation rests upon the public to rehabilitate the workers displaced.

It has further been suggested that such a tax be used to purchase reserve coal lands accessible to existing railroads and available for immediate development, these lands to be held as a national coal reserve and later leased as needed for payment of royalty to the United States. This plan accords with the Mineral Leasing Act of 1920, by which coal deposits on the western public domain no longer pass with the surface title but are leased under royalty. The plan provides a market for coal lands, thereby relieving the pressure on landowners to

[1] Report of Special Legislative Committee, National Coal Association, Oct. 27, 1934. "As a permanent basis for a sound recovery in this industry some control of overexpansion of productive facilities should be established."

open more mines in order to meet taxes and interest, which, it is well known, has always been one of the most powerful causes forcing overdevelopment. To make the plan workable it would also be necessary for operating companies remaining in business to agree not to expand their own capacity beyond limits approved by the central authority. Possibly this could be done by contract or by code agreement. If such agreement to control the expansion of capacity of operating companies is provided, the plan for a national coal reserve deserves most careful consideration. In this form it resembles the national forest reserves.

From this sketch of some of the proposals to deal with surplus mine capacity, it will be obvious that the problem is not simple and that any plan to be tried would require most careful study of its economic, technical, and legal features. Nevertheless, it may well be that the adoption of some of the steps here outlined or of other measures could prevent serious future inflation of capacity and its train of evils.

The committee, therefore, would commend the importance of capacity control alike to the industry, the mine workers, and the Government. We would urge the industry to remember that some limitations on the individual are necessary in any form of joint action. We would urge upon the public the great importance of the ends in view, and feel that a friendly hearing should be accorded to any serious attempt by thi sindustry to stabilize production and capacity on a national scale. Above all, we would counsel against a defeatist attitude. We cannot believe but that if the bituminous-coal industry really desires to achieve economic stability there will be found both economic devices and constitutional powers sufficient for the purpose.

3. PETROLEUM

The importance of petroleum in national economy.—In this power age, petroleum is of paramount importance to our national welfare and security. The automobile, airplane, and oil-burning ship have become modern necessities. Liquid fuel to propel them and oil for their lubrication are indispensable. Consumers have an estimated investment of $15,000,000,000 in automobiles alone, and a $12,000,000,000 industry has been built up for the production, refining, and marketing of petroleum and its products.

The United States produces and consumes more oil than all other countries combined. During the past 75 years the United States has produced and consumed about two-thirds of the total world production of oil, although its share of the world's reserves probably did not exceed one-fifth. Proved reserves never have been sufficient to supply our domestic needs for more than a decade or two, and because of the highly conjectural nature of estimates of the magnitude of unproved reserves, fears of an imminent shortage have arisen repeatedly. Such fears generally are allayed during periods of large flush production like that from east Texas, but the fact should not be overlooked that the periodic flooding of the market is due more to an excess of wells through which oil may reach the surface than to a superabundance of the reserves.

The Nation's petroleum reserves.—At present (1934) the proved reserves of oil recoverable by usual methods of production are estimated to be about 13 billion barrels. These would last approximately 15 years at the 1933 rate of consumption. However, since some of the oil included in these reserves cannot be produced until 20 or 30 years hence (because of the decline in rate of production as a well grows older), a shortage during the coming 15-year period can be prevented only by discovery of new fields.[8]

New production to postpone the day of shortage will no doubt be found, but sooner or later the Nation's output of oil from wells will be insufficient to meet the demand. The United States is depleting its supply of oil at a more rapid rate than any other country that possesses oil reserves of major importance.

Petroleum accumulated in the rocks in times past only under certain special conditions. Geologists have blocked off the great regions where such conditions have never operated and defined with considerable accuracy those limited areas that offer promise of future discoveries. Therefore, though the Nation's petroleum reserves are large, they are exhaustible. Discoveries cannot continue to replace depleted fields for an unlimited period of time.

As prospecting for oil and the development of productive areas progresses, whole regions are eliminated as sources of new major pools of petroleum. Many

[8] See testimony and report of H. B. Soyster, U. S. Geological Survey, in Parts 1 and 2 of Petroleum Investigation Hearings before Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 73d Cong., on H. Res. 441.

parts of the United States have been so thoroughly prospected and developed that there is on possibility of discoveries of any considerable magnitude. In other areas, where the oil horizon lies at greater depths, the possibility of new major discoveries near the surface have been eliminated, leaving only the deep horizons, which require larger expenditures for development and operation. To-date, the discovery of new pools, required to keep production in step with demand, has been largely the result of prospecting in new territory and drilling to greater depths in areas that are producing. Potential areas in which major discoveries may be made are being reduced rapidly through such prospecting and development.

Substitutes for petroleum.—Liquid fuels and lubricants similar to those from petroleum can be made from coal and oil shale, but the processes cannot as yet compete in the domestic market with petroleum produced from wells. Probably the Nation will turn to such substances when the supply of petroleum becomes inadequate. The shifting from crude oil to coals and shales as the raw materials for the production of liquid fuels and lubricating oils probably will be deferred until petroleum products materially increase in cost. The substitutes cannot now compete commercially. It has well been said that:

"A forward-looking national fuel policy would seek to delay the day of making gasoline from coal as long as possible, by reserving the higher value fuels of natural gas and petroleum for these uses that cannot be so efficiently met by the direct combustion of coal.

"* * * it is now proved that technical processes for making gasoline or motor-fuel substitutes from coal are available if and when a failing supply of petroleum requires this step. But the product will be made with the sacrifice of much more of the original fuel energy than is lost in making gasoline from petroleum. Furthermore, the cost of the gasoline to the consumer will be materially higher. The fact that gasoline can be made from coal is no reason for continuing our present wasteful exploitation of petroleum reserves.

"* * * oil shale is by no means the ready source of fuel in an emergency that it is often assumed to be. A long period of time would be required to make the fuel available, much labor would be required, and costs would be extremely high." [9]

Waste of petroleum resources.—Serious losses of this indispensable, irreplaceable, limited resource, some of which were unavoidable under conditions that prevailed in the past, have accompanied development. Wasteful practices include (1) overcrowding of wells in flush-production areas and developing such fields more rapidly than the demand warrants; (2) operating oil wells with improper gas-oil ratios; (3) actual physical wastage at the surface of prodigious quantities of vitally important gas, resulting in lower ultimate recovery of oil from the reservoir; (4) underground losses, resulting from migration of oil and gas through defective wells, from productive strata to beds from which the fluids cannot be reclaimed, and also from invasion of water into the oil sand; (5) erection of excessive storage facilities above ground, resulting in needless expense and actual physical losses due to leakage, evaporation, and fire; (6) use of inefficient equipment, resulting in losses of oil, gas, reservoir energy, and, at times, loss of life; (7) consumption of distress oil, forced on the market by overrapid development, for purposes in which other fuels should be used; (8) flooding world markets with exports of distress oil; and (9) premature abandonment, as a result of demoralization of crude-oil prices, of thousands of small pumping wells; these, if allowed to continue to produce, would still yield a large aggregate of oil.

The most striking of measurable wastes is the blowing of gas into the air. Such gas is valuable as fuel, but it has another value that perhaps is more important. The expansion of gas as the pressure is reduced is one of the most important sources of the energy that drives oil to the well and through it to the surface. Under present competitive practices, much of the inherent value of gas as fuel is thrown away, and inefficient use is made of its propulsive power.

In 12 years in California, the quantity of gas known to have been wasted was about one-third of that produced for commercial use, and in 1929–30, the heating value of gas wasted from the Kettleman Hills field was equivalent to the expected energy output at Boulder Dam during a like period. In the fifth report of the Federal Oil Conservation Board the statement is made that in the Oklahoma City field alone the wastage probably averaged 300,000,000 cubic feet of natural gas per day for 1931 and 1932. As this is written nearly 1,000,000,000 cubic feet of

[9] Bureau of Mines chapter on substitutes for motor fuel in review of the petroleum industry in the United States, April 1934: Circular 11, U. S. Geological Survey, pp. 37–48.

natural gas is being blown to the air daily in the Texas Panhandle. This is equivalent in heating value to 40,000 tons of coal.[10]

Reservoir energy.—It has been pointed out that waste of gas involves more than a loss of its value as fuel. As recently stated:

"Probably the most significant trend of thought in oil and gas production is the growing realization that a producing structure is to be looked upon not only as a reservoir of oil and gas, but also as a reservoir of energy Such energy, if properly conserved and used, will move the hydrocarbon fluids to the well and through it to the surface, delaying the time when energy must be supplied from external sources through gas or air injection, artificial water drive, the pump, or other means."

The need for conservation.—There is no intention here to present a picture of gloom. The limited nature of our petroleum reserves and the rapidity with which they are being depleted are not such as to require a hoarding of oil and gas for future generations; however, they do necessitate a sound policy of conservation. Neither is there intention to blame the petroleum industry for the shortcomings of the system under which the Nation's petroleum reserves have been developed and operated. Some wasteful practices have been followed until recently because engineering study had been lacking. Others that have been pursued during the entire history of the industry may be attributed to the conditions arising out of:

1. The fluid nature of petroleum and natural gas. Other minerals remain in place until removed by the owner of the land in which they occur, or upon his authority. Oil and gas (and water) are unique in that they will flow toward a region of lower pressure, in utter disregard of property lines.

2. The law of capture, under which ownership of oil and gas is established only by their actual reduction to possession at the surface. Under the leasing system, a lessee often is required to drill to retain his rights, even though he has no need for additional well capacity, and to produce in order that the lessor may receive royalty, although the market already is flooded with oil.

3. The fear, until recently, of prosecution under antitrust laws, which made individuals and corporations reluctant to enter into agreements for voluntary control of production.

Valid arguments may be advanced in favor of the law of capture, and the antitrust laws, but the fact remains that their combined effect, together with that of the fluid nature of oil and gas, has been anticonservational. The tendency of the law of capture has been to induce each owner of an oil-bearing property to withdraw the oil as rapidly as he could, regardless of the market demand, in order to prevent drainage by a neighbor, and the tendency of the antitrust laws has been to prevent pooling of interests, by which the effects of the law of capture could be nullified or ameliorated. With such methods of production, waste of gas and heavy loss in the ultimate yield of oil are inevitable.

Control measures.—Recognizing the need for more effective conservation of the Nation's oil and gas and for the balancing of supply and demand, the petroleum industry, the various oil-producing States, and the Federal Government, have been endeavoring to find some type of control that would accomplish the desired ends.

Fear of an impending shortage of petroleum, especially in California, instituted serious thought toward conservation early in the twenties, leading to the creation of the Federal Oil Conservation Board in 1924. This board and the American Petroleum Institute attempted to work out a program, but before the support of the industry could be fully enlisted the country was drowned in floods of oil resulting from the competitive development of several pools of major size discovered in rapid succession. Industry was helpless in the confusion which each discovery caused, demoralizing markets and resulting in tremendous physical and economic waste of oil and gas. Meanwhile, many oil-producing States had accomplished much in the way of lessening physical waste by enacting statutes directed toward conservation of oil and gas.

Curtailment of production in the Seminole area, Oklahoma, in 1926 by voluntary agreement of operators, marked the beginning of the so-called "proration period." On August 9, 1927, the Corporation Commission of Oklahoma issued an order limiting production in the Greater Seminole area to 450,000 barrels a day and setting up a plan for allocation of that production to the different leases. Since then all newly discovered major fields in Oklahoma, and many other pools in the United States, have been developed under proration agreements or orders.

[10] Hearings on petroleum investigations before a subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 73d Cong., on H. Res. 441, pt. 1, p. 48.

The first State-wide proration in Oklahoma was established under an order of the Corporation Commission dated September 8, 1928. In 1931 State quotas were enforced temporarily by martial law in Oklahoma and Texas. A report submitted by a witness at a recent Congressional Committee hearing stated:

"It cannot be said that proration has been entirely successful in curtailing production of oil to market demand. However, every thinking person in the oil industry knows, and the public should know, that under no circumstances can the market absorb the entire output capable of being produced from wells now drilled and in the process of being drilled, and that some form of curtailment either voluntary or compulsory is not only highly desirable, but necessary. * * *"

Starting in 1930 a voluntary committee on petroleum economics, sponsored by the Federal Oil Conservation Board, made and published periodic short-term forecasts of the future demand for petroleum, for use by the industry. These proved to be remarkably accurate, and were of benefit to the industry in its attempt to achieve some degree of stabilization. About the same time, in 1931, the Secretary of the Interior proposed an interstate compact, later endorsed by the governors of Oklahoma, Kansas, and Texas, designed to bring some degree of order out of chaos but it was never placed in effect.

Voluntary unitization as a means of lessening the effects of the law of capture was partially successful over limited periods in certain areas, but often the dissenting small minority defeated the plans by draining oil from the field at the expense of the cooperating under the unitization agreement. Legal objections springing from the antitrust laws inhibited a serious attempt of the industry in 1929 to follow a plan of voluntary curtailment.

Success of the unit-development plan under a temporary act of Congress in the partly Government-owned North Dome of the Kettleman Hills oil field led to the passage in 1931 of permanent legislation authorizing the Secretary of the Interior to enter into unit or cooperative plans of development covering any oil or gas field on the public domain. Under the present policy known fields on Government lands will be unitized so far as practicable and future discoveries will be committed to unit operation in advance. Government policies, looking toward delay of production in time of surplus, account in part for the fact that although Government lands contain 15 percent of the country's proved reserves, they are supplying only 3 percent of the present output.

In 1932, in response to persistent demands by domestic producers, an excise tax was imposed on imported crude oil and refined products. This resulted in almost complete cessation of imports of light distillates and a considerable reduction in the importation of crude oil and heavy products. The law seemingly had little beneficial effect on the domestic situation, which went from bad to worse in the spring of 1933.

Finally under the Recovery Act the Government lent its hand, through section 9c of the act and the petroleum code, in an attempt to balance the oil supply with demand. Estimates of short-term future consumption, and allocation of production quotas to the producing States are made by an impartial Government agency. Attempts at enforcement have been made by both State and Federal agents, but only partial success has been achieved during the year in which the code has been in operation. Open defiance by small minorities, involving long court proceedings which have resulted in contradictory rulings, with a Supreme Court decision still in the future, has hampered effective control.

A bill to effectuate permanent Federal control over oil production failed of enactment in the spring of 1934, although provision was made for a thorough congressional investigation, now in progress, regarding the need for legislation of this type. Meanwhile, floods of "hot oil" from the East Texas field have seriously threatened to break down the oil code. As this is written, however, the situation is much improved through expeditious Federal action.

Conclusion.—The extent to which our limited reserves of oil and gas are being drawn upon demands prompt adoption of a national policy that will insure a wiser and more efficient use of the remaining supply. Such a policy should have the following influences:

(1) To develop technical and scientific knowledge that will enable the operators of petroleum properties to use energy associated with the oil for moving it to the well and through the well to the surface, leaving a maximum of energy in the system available to do such work in the future, thus minimizing the quantity of oil to be left underground beyond recovery by ordinary means.

(2) To discourage all forms of needless waste of oil and gas, and of the energy associated with them in their natural reservoirs.

(3) To discourage the drilling of more wells than conditions warrant.

(4) To prevent premature abandonment of small pumping ("stripper") wells.
(5) To encourage unitization of individual producing fields in order that geologic data and sound principles of engineering (rather than destructive competition arising out of property lines on the surface that bear no relation to conditions underground) may control the manner of their development and operation.
(6) While encouraging all proper and legitimate uses of oil and gas, to discourage production of distress oil, which demoralizes markets, leads to waste, and fosters inefficient or inferior use.

The movement toward production control is gaining impetus both within and without the industry, because regulation of output seems essential to a national policy that will promote the conservation of petroleum resources, the welfare of the industry, and ultimately of the consumers. The Congress, the Oil Administration, and the several States are wrestling with the highly controversial question of methods.

In this report your committee makes no specific recommendations as to methods of control, but urgently recommends the development and effective application of a well-rounded plan to adjust the supply of petroleum and its products to demand, in a manner that will minimize waste of oil, gas, and reservoir energy, and thus extend the life of our limited supplies. Such a plan should include:
(1) Methods of controlling supplies, involving regulation of domestic production, stocks, imports, and exports.
(2) Methods of controlling the development of fields discovered in the future. This involves orderly, rational drilling of the new fields in such a manner as to minimize waste and promote stability in the industry.

Unit development and operation of pools is the most effective antidote to the disastrous effects of the law of capture that thus far has been devised. The principles of unit operation now applied to most of the Federal lands should be extended, insofar as practicable, to those in State and private ownership.

The continuance and augmenting of a well-rounded Federal program of technical research to develop basic engineering information, and of Government estimates of demand, are necessary as prerequisites to any plan of control, present or future.

4. COPPER

Turning now to the nonferrous metals, we find the desire of the industry to control competition less strong and the problem of conservation less acute than in the case of the mineral fuels. Yet here, also, there is waste of resources that is of national significance and that results in distressing economic losses. Considerations of labor welfare also point to the need of some modification of the rule of uncontrolled competition. A public as well as a private interest is clearly involved.

Emergency control of sales under the N. R. A. code.—Under the N. R. A. each producing unit in the copper industry is allocated a pro rata share of the available business, the smaller producers being allowed at the moment a somewhat larger percentage of their capacity than the larger ones. The code is the product of prolonged effort to meet an exceedingly difficult situation. The only compelling basis of agreement was the realization that something had to be done. The Government's immediate concern was to maintain, as far as possible, employment and to prevent the forced closing of mines by assuring each producing interest an outlet for some part of its production. The code, as approved, is the result of prolonged negotiation in which the producers were unable fully to agree. It represents the Government's endeavor to reconcile conflicting viewpoints and, though not accepted voluntarily in the technical sense, it seems to be regarded by the industry as preferable to the preceding confusion. Despite frequent criticisms we believe that majority opinion in the copper industry would not favor abandoning the code.

Moreover, it appears that the emergency prompting the code will not be over by June 1935. Demand for copper is dependent on revival of the capital goods industries, and consumption is still very low. There is a huge surplus of productive capacity. The mines have a capacity, conservatively estimated, of 1,000,000 tons of metal per year, against which mine production in 1933 was 195,000 tons, or less than 20 percent. In Michigan, Montana, and others of our most famous districts, the mines are now so deep or the ores remaining so low in grade that they are quite unable to compete with certain of the newer fields abroad, not to mention lower-cost districts of the United States. Not least important, is the fact that enormous stocks of the metal have accumulated, which impede resumption of mining. At the end of 1933 the stocks on hand exceeded 600,000 tons, or more than enough to meet the entire domestic demand for at least a year or,

with allowance for expected return of scrap, enough for about 2 years. Employment in the industry is still tragically low, 16,000 men as against 65,300 in 1929, and protection of wage standards will remain a problem. It seems clear that continuation of some of the emergency features of the present code will be found necessary for a time after the expiration of the present Recovery Act.

Is there a case for long-time control?—How far it is wise to permit any long-time control of supply, assuming the return of general prosperity, we are not entirely sure. The copper industry has no background of experiment with production control, such as the petroleum industry has, to show either its advantages or drawbacks, as contrasted with unlimited competition. The domestic copper market is still interlocked with the foreign market; the problem of balancing supply and demand is fundamentally a world problem; and neither the copper industry nor the public have thought the problem through. Yet with copper, as with oil and coal, there are special considerations centering around the peculiar characteristics of mineral resources which suggest that the Nation must be prepared to consider some modification of the traditional regime of uncontrolled competition.

Economic stability is of peculiar importance to the nonferrous metals. They are especially subject to and they suffer from wide variations of price. They need, above all things, to balance supply and demand, to avoid needless expansion of capacity, and to temper the extremes of price fluctuation, whether sudden advances or violent declines. The quest for stability is seen in numerous foreign experiments, such as the European metal cartels, which have attempted, none too successfully, to control the extremes of competition.

Moreover, in the case of these metals, the consumer's objections to production control carry less weight than in the case of the typical manufacturing industry. The problem of protecting the public against unreasonable advances in price is simplified by the conditions of the copper market. International movements in a commodity selling at several cents a pound are extraordinarily fluid, and except for freight and tariff differentials, the price of copper is a world price. Competition from foreign sources is keen, so keen, in fact, that American copper producers have found it impossible to realize the full advantage of the import duty adopted in 1932. In the domestic field there remains a large reserve of high-cost capacity waiting for a chance to break into the market. Further, the consumer of copper has his own weapons. The scrap which he produces makes him a seller as well as a buyer of the metal. Copper is practically indestructible, and the total supply is cumulative. With minor exceptions, the fabricated product comes back in time for resmelting and reuse. In 1929 the recovery of scrap, including copper in brass, was 404,000 tons, as compared with a new mine production of 998,000 tons. This salvaged copper (not including new scrap returned direct by fabricators) averaged 38 percent of the mine production from domestic ores in the years from 1924 to 1928, inclusive, 41 percent in 1929, and rose to 76 percent in 1932. An advance in the producer's price must reckon with this flood of scrap. Again the consumer has the alternative of substitution. In the field of power transmission copper meets competition from aluminum. In other fields it competes with this and other metals, including a rapidly growing group of alloy steels. All these factors work to protect the consumer against any unreasonable advance in copper prices to a degree far greater than is true of most lines of manufacture. Aside from the vexed question of tariff protection, the consumer should have little to fear from control of copper production, under reasonable safeguards of public supervision.

On the other hand, the consequences of uncontrolled competition are far more serious in copper than in general manufacturing. Violent price fluctuations lead to excess capacity. New mines are opened, extensions are projected into the lower grade ore bodies of existing mines, and the capacity thus created in response to the high price may be left high and dry before systematic extraction of the ore body is complete. In all industries such stranded capacity results in capital loss, but in copper it also involves peculiar hardships to the mine workers and waste of the resources. The depression coming on the heels of the boom times has left thousands of miners wholly dependent on the mines and with no prospect of local employment. Decline of old metal-mining camps is often inevitable, but social welfare demands that the hardships on the mining population be lessened wherever possible. In the desert camps the very water supply itself may disappear when the mine closes, and today the plight of the copper towns of Houghton, Hancock, Butte, Globe, and lesser camps is perhaps the hardest of any American communities. As the water creeps up in the Michigan mines, the community dies. Any effort to avoid recurrence of these conditions by cushioning these extreme fluctuations in price and production is clearly in the public interest.

Not least important, these fluctuations in price and output lead to serious waste of the resource. Mining efficiency and resource recovery require orderly and continuous operation and are handicapped by violent change in demand. Existing mines were laid out with a certain price level in mind and with a certain anticipated life. When prices collapse, the initial plan of operation must all too often be discarded. Today mine operators are driven to neglect the most elementary work of maintenance. They are driven reluctantly to practice "selective mining"; that is, to take only the richest portions of the ore body, abandoning the attempt to recover the associated lower-grade material. This practice of gutting the mine or "picking the eyes out" reduces the average value of the ore left behind and at the same time increases future cost of recovering it, through caving and flooding of the workings. Again, mine owners are forced to take out the pillars previously left for support, when they contain bodies of high-grade ore, thereby allowing old stopes and levels to cave. As the shut-down continues, the damage grows progressively worse. Shafts and main haulage-ways collapse. Barren rock and ore are crushed and mixed together, making future separation difficult or impractical. In the great shrinkage stopes used in some mines waste rock mingles with the broken ore, diluting the metal content of the product and greatly increasing the cost. In Michigan and elsewhere mines are filling with water. The conditions cited are not imaginary. They are actually going on in many once famous mines, and taken together they act to endanger resumption of mining and to raise future costs. The increase in cost cannot be estimated closely. It depends on conditions and on the time that may elapse before attempting to resume production. But any mining man can visualize conditions where the unit cost of later reopening and recovering the rest of an abandoned ore body might be 50 percent, 100 percent, or 200 percent more than the cost if the same ore had been taken out in one continuous operation under the original plan of development. If the present shut-down of our copper mines continues for many years more, there will be huge tonnages of ore hitherto counted as 10-cent or 12-cent copper that will actually cost 15 cents or 17 cents.[11]

If the Nation could be sure that the price of copper would never rise above the present 9-cent level, there would be no cause for concern at the premature abandonment of those mines unable to produce at 9 cents. But the fact is that while America still has some of the lowest-cost mines in the world and while the life of these low-cost properties will run for many years, her total known reserves recoverable at 9 cents are placed at only 15,000,000 tons, which would meet the national requirements for barely 15 years at the 1927 rate of consumption. It is evident, therefore, that we can no more afford to waste our metal than our fuel. Indeed, copper is a clear example of the advancing depletion of the national resources. A large part of our original endowment is exhausted, and the centers of world production are shifting to Chile, Canada, and Africa, whose combined reserves now exceed our own in the ratio of four to one.[12]

In thus discussing the present plight of the domestic copper mines, we do not mean that the condition could have been prevented by a policy of price and production control. The surplus of capacity was primarily due to the World War. The high costs of the older districts reflect the steadily growing handicaps of nature, and the canyon-like drop in demand after 1929 was mainly caused by the world depression and loss of exports incident to the expansion of foreign capacity. But we are convinced that some more orderly control of supply and demand would have done much to check undue expansion and to cushion the fall. No small part of the present plight of the industry is due to the speculative boom of 1928–29, when prices which had hung for several years around 14 cents rose first to 18 cents and later, for one hectic fortnight, the metal was quoted at 24 cents a pound. The prices of 18 and 24 cents were very bad for the copper industry, and all people dependent on copper for a livelihood will be paying for the speculative excesses of that period for years to come.

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[11] To remove half an ore body at one period and then come back years later to recover the other half is expensive and wasteful. Often it would be necessary to sink a new shaft and drive new levels. This means, first, that the capital costs are doubled by the piece-meal development, and, second, that the later development could be started only at much higher levels of price. For the second operator has only half as large an ore body to work on, and in order to break even, he must plan to charge twice as much per ton in order to amortize his initial expenditure. In this connection it should be noted that, while the general effect of violent fluctuations in price is clearly anticonservational, a period of high prices does permit cleaning up some high-cost ore that would otherwise be abandoned.

[12] Reserves of metal must be measured by the price at which they can be produced. Published statements of reserves of American producers indicate a total of 21,000,000 tons, and of foreign producers of 33,000,000 tons, all in terms of metal that could be produced under past prices. These statements of reserve should be considered as a minimum rather than a maximum figure, though those of the United States are probably better known than those foreign countries.

It is now clear that the record demand of 1929 was in part artificial and forced. While the official statistics showed no great increase in the nominal stocks of producers, it is now known that fabricators affiliated with producer interests were accumulating an enormous stock, held largely for speculative purposes, and in some cases concealed from the rest of the trade. To make matters worse, in the fall of 1930 the copper industry stopped the monthly publication of stock figures. The policy of suppressing vital market information proved to be against the public interest and disastrous to the copper industry. Stocks continued to mount until the position became untenable. The swollen stocks have continued to hang over the industry; progress in reabsorbing them is very slow; and the necessity of reducing them acts to delay resumption of mining and employment.

At the same time the speculative boom of 1928–29 stimulated further expansion of capacity, not so much in the United States as in the foreign field. Foreign sources previously latent were actively developed. While capacity was thus increasing, demand feeling the onset of the great depression began to fall. A world surplus resulted, and in 1932 the higher-cost American producers induced Congress to levy an import duty on foreign copper of 4 cents a pound. Sufficient time has not elapsed to evaluate accurately the effects of this act on American producers.

Recommendations as to production control.—The committee is not prepared at this time to recommend either to the copper producers or to the public a copper cartel following the European plan, with full control of price, output, capacity, and other elements of supply. If such a system of control is to come in the United States, time must be allowed for experiment with less ambitious schemes and for development of a larger body of experience both in the technique of industry operation and of public supervision, under the very different conditions of American life.

But the committee would urge leaving the way open for experiment in these lines under public supervision and with provisions that will at once safeguard the rights of labor and clarify its responsibilities. We would urge that the problem of economic stability in the copper industry is essentially international and that joint action by American producers and foreign producers may often be needed. In the past this has sometimes been done indirectly through an export association operating under the Webb-Pomerene Act. In the future more direct collaboration will be necessary, and if adequate supervision by public authority is provided, such collaboration should be encouraged as in the public interest.

In addition, the committee offers the following recommendations.

(1) Full and compete statistics should be provided covering all factors of supply and demand, including consumption and consumers' stocks as well as production and producers' stocks, and including scrap as well as virgin metal. Such market information should be deposited with one of the permanent Government mineral fact-finding agencies. The basic data should be compiled in the form of totals or aggregates and published promptly for the use of both consumer and seller. The collection of such statistics should proceed with the closest cooperation of the trade organizations most interested.

(2) Forecasts of consumption should be made by a public agency in collaboration with representatives of both producers and consumers as outlined in section II.

(3) Some limitation should be imposed on the piling up of surplus stock. It is assumed that the emergency control under the present N. R. A. code will in time reduce stocks to manageable proportions. Thereafter we recommend limitation of stock accumulations by joint action of the trade, under supervision of public authority. If such joint action by the industry is forbidden by the antitrust laws, we recommend consideration of such legislation as will authorize it under the necessary public supervision.

The justification of the proposal for cooperation between Government and the industry lies in the conservation of a resource under an orderly program of production, in encouraging a sounder financial policy for exploration and development, and in curbing promotion of unwise ventures. Also it should help to insure a fair profit return from the most economic operations, provide more stable employment and maintain wage standards, prevent the periodic dumping onto private charity or public relief of standard populations, and protect the consumer from unnecessary price fluctuation and from price manipulation.

5. LEAD

Conditions in the other nonferrous metals are less acute than in copper, but here also the Committee finds the need of permitting joint action by the industry and Government to control some of the wastes of competition. In the lead industry the depression has greatly reduced consumption, but owing to the heavy cost of shutting down a mine it has proved difficult to make the necessary adjustment of output in an orderly way. Unmanageable stocks have accumulated, further delaying the resumption of mining. The situation has brought grave hardship to labor and waste of resources.

Present position of the industry.—Demand for lead is still very low. The principal uses are for pigments, batteries, cable covers, ammunition, industrial alloys, and for special purposes in the building trades. Consumption, therefore, has felt the depression of the capital goods, automotive, and construction industries. Meantime, demand for new metal has been further curtailed by the returning stream of scrap, to which we have elsewhere referred, as well as by the keen competition of other metals.

Responding to these factors, production of new lead has fallen sharply. The mine output decreased from an average of 667,000 tons a year in 1925–29 to 273,000 tons in 1933, a decline of 59 percent. The average, however, does not show the full extent of the decline in some important districts. In the Western States lead is largely derived from complex ores and the by-products, especially the gold and silver, recovered afford a substantial credit. In Missouri and others of the Central States the gold and silver are absent or, at best, unimportant. As a result, the decline of production has been the greatest in the Central States, where 1933 output was 68 percent below the predepression level, against 57 percent in the West. Recent advances in the prices of gold and silver have further increased the handicap of the central districts and increased the production of the complex ores of the West. This stimulus of by-product gold and silver has added to the existing surplus of lead.

Drastic as the curtailment of mining operations has been, it was still insufficient to bring production in balance with demand and to prevent the accumulation of huge surplus stocks. Total stocks of refined lead in the United States increased from 103,000 tons at the end of 1930 to 176,000 tons at the end of 1932, 203,000 at the end of 1933, and to a peak of 241,000 at the end of July 1934. Since then stocks have been reduced slightly, but at the end of September there still remained 230,000 tons on hand, or more than twice the stocks of 1930 and equal to nearly 8 months' consumption at the rate prevailing in 1933. The excess suggests a pressing need for some measure of stock control.

These conditions have resulted in widespread distress in the communities dependent on lead mining and smelting. The number of men employed has dropped to barely half of the 1929 level, a decrease of 14,000 men. Meanwhile, the working time of those still on the rolls has diminished by the necessity of spreading the employment available.

As with copper, conditions are forcing selective mining, premature abandonment of mines, and loss of low-grade reserves. Though the losses in metal are less than in copper, the industry can ill afford them, for the known reserves of lead are small in terms of the national life. No new domestic lead deposits of major size have been discovered in two decades, though important extensions of known ore bodies have been reported. Maintenance of reserves has been accomplished by making low-grade deposits commercially available by means of improved technology and lower production costs. Both processes have gone so far that less marked improvement in this direction can be expected in the future. The present known reserves of lead in the United States are estimated at about 10,000,000 tons of the metal. This would only be equal to about 15 years' supply at the rate of mine production in 1929.

Recommendations as to production control.—The Lead Industry Code approved by the N. R. A. set up no specific measures for the control of capacity or production. The industry's realization that some such step might be needed is shown by a provision that plans for the control of production through voluntary agreement, including stabilization of employment and conservation of lead resources, might be recommended to the Administrator.

Your committee feels that the lead industry will not be out of its difficulties when the present Recovery Act expires and that some means of permitting control where it may be needed might well be provided thereafter. Substantial improvement in this industry is dependent on revival of general business, and recovery of price to a level permitting a greater spread of profitable operation. Return of predepression prices cannot be expected, as the domestic price is controlled by

the London price, plus a tariff differential, and recent expansion of capacity by low-cost producers abroad makes it probable that world prices will be lower than those formerly prevailing. In these circumstances, there is need for measures to control stock accumulation and to reduce the present surplus to manageable proportions. There may also be need for collaboration between American producers and foreign producers, and with suitable participation of a public agency, such collaboration is in the general interest.

As with copper, the committee concludes that the formulation of specific plans should originate with the industry. We would suggest for immediate consideration, however, (1) development of better statistics of secondary lead to supplement the market information services already available for this industry; (2) establishment of consumption forecasts, to be made by a Government agency, such as the Bureau of Mines, in cooperation with producers and organized consumers; and (3) joint action by the industry under public supervision to control the accumulation of excess stocks.

6. ZINC

The economic problems of the zinc industry have much in common with those of copper and lead. As with the companion metals of the nonferrous group, the United States is the world's largest producer and consumer of zinc, but the American industry has felt the weight of the depression more heavily than operators in other countries. The zinc industry has been more successful in avoiding the accumulation of excessive stocks than have copper and lead, but the adjustment has been accompanied by acute unemployment, stranded mining communities, and permanent loss of substantial quantities of low-grade ore.

Present position of the domestic zinc industry.—In the predepression years the American zinc industry accounted for about 40 percent of the world's production and consumption. Its relative position has now changed, the output in 1933 having amounted to only 28 percent of the world total.

While few zinc deposits have been developed in the United States in the last decade, this is not true of the rest of the world. Large increases in capacity, either real or potential, have been made in Mexico, Canada, Spain, Yugoslavia, Australia, and elsewhere. The future price of zinc in world markets may, as a result, be expected to remain at low levels for some years.

The increase in production capacity abroad was reflected in lower prices as early as 1927. This led to the formation in 1928 of the European Zinc Cartel, an organization of producers operating outside the United States. While the Cartel was unable to stem the tide of deflation brought on by the world depression, it undoubtedly accomplished much good in providing a better balance between production and consumption. World stocks of zinc declined in 1932 and 1933 but the foreign situation was aggravated by depreciated currencies, imposition of tariffs, and maintenance of uneconomic production by Government subsidies.

In recent years our foreign trade in zinc has declined to small proportions. During the war a large export trade developed which reached a peak in 1917 when 218,000 tons of slab and sheet zinc were shipped abroad. This was equivalent to 33 percent of the total smelter output. Contemporaneously there was an increase in imports of zinc ore for treatment in domestic smelters. The maximum production of zinc from foreign ores was achieved in 1916 and amounted to 104,000 tons. The forced demand of the war period stimulated a huge expansion of mine and smelter capacity. After the war, our export trade in zinc sharply declined and since 1930 has been relatively unimportant. Imports of zinc ore have virtually ceased.

The metal is principally sold as slab zinc for galvanizing and brass manufacture and as sheet zinc. Pigments are made both from ore and from slab zinc. Competition is keen with copper and lead and with steel alloys. Use in galvanizing has declined but demand for zinc pigments has gained as compared with lead. The total available supply of zinc derived from ores and secondary sources in the United States decreased from 901,000 short tons in 1929 to 356,000 in 1932, but increased to 504,000 tons in 1933.

Since all of the zinc used for pigments and a large part of that for galvanizing is destroyed, the reclamation of zinc from old scrap is not so important a factor in relation to excess capacity as in the case of copper and lead. Such reclaimed zinc has amounted only to about 20 percent of new production in recent years.

At the end of 1928 stocks of zinc at primary reduction plants amounted to 47,000 tons. Beginning with July 1929 there was a constant and rapid increase in stocks which persisted until a peak of 167,000 tons was reached on December

31, 1930. During 1931 and 1932 there was a decline to 128,000 tons, but during the first half of 1933 there was a further increase which carried the total almost up to the previous peak. During the last half of 1933, however, there was a rapid decline owing to a sharp increase in consumption and at the end of the year stock stood at 110,000 tons. About the same amount was on hand at the end of September 1934, despite enforced curtailment of output by the strike of the miners and millmen in the Butte district. Assuming 45,000 tons as the normal stock requirement, excess stocks at present represent less than 2 months' supply at the normal rate of consumption and less than 3 months' supply at the average rate in 1933.

Capacity of both mines and smelters is greatly in excess of requirements. The surplus is primarily the result of the World War, and even in 1929 mines and smelters operated far below capacity. In 1933 only one-third of the capacity of zinc retorts was utilized.

The principal mining region is the Joplin or Tri-State district at the junction of Missouri, Oklahoma, and Kansas. Next in importance is the Western States area, the principal contributors being Montana, Utah, Idaho, New Mexico, and Colorado. In the East there are important mines in New Jersey, Tennessee, Virginia, and New York. During the depression the Joplin district and the Western States have borne the major part of the curtailment. In 1933 the Joplin district produced only 44 percent of its 1929 output and a much smaller fraction of its capacity. At the trough of the depression, the district was producing hardly 20 percent of its peak.

The loss of metal resources induced by such violent fluctuations of production is nowhere better illustrated than in the zinc mines of the Tri-State district. The ore-bearing formation underlies a wide area, at relatively shallow depth, and ownership was originally scattered among several thousand farmers. These conditions have led to a great number of small-scale enterprises. Under the stimulus of high prices, especially during the war, hundreds of mines have been opened. In comparison with some other districts, the ore is relatively low-grade. It is essentially a one-crop resource, and if the crop is not well harvested, there is trouble in recovering it later. Miners may return to abandoned workings, but in general, the total cost of such piecemeal development is much higher than if economic conditions permitted systematic extraction in a single operation. Under the present low prices, the operator is compelled to leave far more of the marginal ore behind, though construction of large central concentrating plants will help future recovery by reduction of milling costs.

The possible loss of metal is increased by the water problem. The ore-bearing formation is honeycombed with old and new workings, and over large areas these openings are interconnected. Drainage from one mine into another, always a factor, has been greatly increased by the premature closing of mines forced by the depression. In certain areas all the mines are now flooded, and could be reclaimed only by cooperative action at heavy expense. The situation threatens to force abandonment of a large tonnage of low-grade material under conditions that would make its ultimate recovery possible, if at all, only at great increase in cost.

Were our reserves of zinc unlimited, the Nation might feel no cause for concern. The facts are quite otherwise. No great new fields have been discovered in the last 20 years, though reserves have been increased by important extensions of known areas. The maintenance of reserves has been accomplished chiefly by improvement of technology. The perfecting of the process of selective flotation between 1921 and 1925 added greatly to the domestic reserves by making lower-grade deposits commercially available. This process not only made possible the recovery of zinc from ores formerly considered unworkable but increased the percentage of metal obtained from many ores already worked. The invention of a process of recovering zinc from lead furnace slags has also been an important advance in the conservation of this resource. Yet in spite of these metallurgical achievements, the total reserves of zinc so far as now known are placed at only 11,000,000 tons, or about 15 years' supply at the 1929 rate of mine production. In these circumstances, the threatened loss of metal in the Tri-State district and elsewhere calls for cooperative action. Consolidation of mining companies and pooling of efforts to meet the water menace should be encouraged. There is also need of joint action by the industry to temper the extreme fluctuations of the market, thereby avoiding needless expansion in boom times and cushioning the decline in times of depression.

Production control in the zinc industry.—Provisions in the Zinc Code, now pending before the N. R. A., may result in the formulation by the industry of

plans to control production, especially in the Tri-State area. As already indicated, some plan for the more orderly adjustment of supply to market needs is in the public interest. The committee believes that some authority to encourage the submission of such plans by the industry and to give the necessary approval and public supervision, should be continued after expiration of the Recovery Act. The need of cooperative action is likely to continue. Substantial improvement in the zinc industry depends upon the revival of general business and recovery of metal prices. A return to predepression prices probably cannot be expected, for the domestic price is controlled by the London price, plus a differential of about 1¼ cents, owing to the tariff, and excess productive capacity abroad makes low world prices probable for some years to come. It may prove wise to encourage collaboration of the American industry with the International Zinc Cartel under supervision of a public agency, in the way we have already sketched for copper.

As in the case of other nonferrous metals, the committee suggests for immediate consideration the issue of periodic forecasts of consumption. Such forecasts, made by an established Government agency in collaboration with operators and trade organizations, should be vitally useful in effecting a better balance of production and consumption. Joint action to limit the accumulation of excessive stocks may also be desirable, if the industry desires the cooperation of the Government to accomplish this end.

7. CONCLUSIONS AS TO PRODUCTION AND CAPACITY CONTROL IN THE MINERAL INDUSTRIES

After careful study of the varying conditions in the coal, oil, copper, lead, and zinc industries, and of certain others to which specific reference is not here made, the committee makes the following general recommendations for permissive control of production and capacity, where resource waste is shown to be serious, and where control offers hope of reducing the waste.

(1) The bituminous coal, oil, copper, and lead codes and the proposed zinc code, all contain provisions permitting the industry to control competition in one way or another, under Federal supervision. So far as controls have been used, the benefits seem to warrant continuance of some such provisions, after June 1935. For bituminous coal and oil, the case for permitting control is clear. For copper, lead, and zinc, the case is not so evident, but conditions are serious enough to warrant some modification of the rule of unlimited competition after the expiration of the National Industrial Recovery Act.

(2) While control of production and capacity by most industries is impracticable, except perhaps in emergencies such control is in the public interest where destructive competition causes serious waste of an irreplaceable resource and endangers living standards of the mine workers, whose isolation, relative immobility, and hazardous life, merit special consideration. In the special case of coal mining provision for minimum and maximum prices may also be justified.

(3) This committee recommends the consideration of action by Congress empowering an appropriate agency, or agencies, where resource waste and depression of mine labor standards are found to be serious, to authorize systems for the control of output or capacity, or both of them, and where necessary, as in the case of coal mining, to authorize minimum and maximum prices, and to supervise the operation of such control. If necessary, the antitrust laws should be specially amended to permit such action. In framing such legislation due regard should be had for the competitive interrelations of coal, oil, gas, and water power and of the nonferrous metals.

(4) Authorization of any such system of control by the producers in an industry should be made contingent upon acceptance of whatever safeguards are deemed necessary by Congress to protect the mine workers and the consuming public, and upon assurance by the industry concerned that action will be taken to minimize resource waste.

The question of labor safeguards is a special subject of great importance and involves a clarification of the responsibilities of the miners as well as protection of their rights and liberties. This subject will be considered by other agencies of the Government and is outside the special province of the committee.

Regarding consumer safeguards, the committee feels that when an industry asks for the privilege of limiting competition, the supervisory authority should be given power to prescribe forms of accounts, to require reports, and to modify, disapprove, and review the operation of any proposal for price, production, or capacity control. At the same time, producers in the industry may reasonably

ask to be protected against any unfair practices of organized and powerful consumers.

(5) The committee makes no specific recommendations as to which agencies of the Government should be designated to administer the plan. The legislation necessary might take the form either of a separate act applicable to a single industry or of a general enabling act applicable to the natural-resource industries as a group. In the case of bituminous coal and petroleum, it seems likely that separate acts might be preferred, to provide for special problems peculiar to these industries, such as the purchase of marginal mines, or the establishment of crude-oil quotas. In the case of copper, lead, zinc, etc., the general enabling act might be preferred, leaving each industry to avail itself of the act and propose a plan of control should conditions so require.

In view of the common problems of the mining industries, and in some cases of the competition between them, we would, however, urge the importance of centering administrative responsibility under the same general auspices. Conceivably this might be done under the Department of the Interior in order to effect the fullest use of that Department's fact-finding, scientific, and technical services, and to coordinate the operations of production control with administration of the public domain. Or conceivably it might be done under a permanent recovery administration in order to coordinate mining codes with other industry codes. Decision on this matter turns among other things on whether the present National Recovery Administration is to be continued in some form after June 1935. The important point is to provide a source of authority to be used when needed for price, production, and capacity control in industries involving waste of limited and irreplaceable resources.

(6) Experience under the N. R. A. codes has shown the importance of flexibility and administrative discretion. We suggest, therefore, that the choice of the particular method of control in a given case should be left to the administrative agency in council with the industry concerned, selecting from whatever methods may be authorized by Congress the ones best suited to the conditions of the industry. This would leave room for modification of the method of control in the light of experience and of judicial interpretation. A plan of control once approved, however, the powers of the administrative agency to require compliance should be made as clear and as complete as the constitutional powers of the Federal Government permit.

(7) In general we recommend the selection of methods which leave a considerable field of competition among producing units in order to avoid the artificial maintenance of high-cost marginal enterprises.

IV. Conservational Problems Arising from Deficiency of Domestic Supply

There are outstanding deficiencies in domestic supplies of antimony, chromite, manganese, nickel, and tin. Partly inadequate are the supplies of mercury, tungsten, asbestos, barite, china clay, graphite, magnesite, mica, pyrites, talc, and soapstone. These lists include several important ferro-alloy minerals necessary for the manufacture of steel. While the amounts required are not large, certain grades of steel cannot be made without them, and dependence on foreign countries is likely to be embarrassing in event of a national crisis, as was shown by the experience of the last war. Domestic unmined reserves of gold and precious stones also are inadequate, although their scarcity raises problems that are largely other than industrial in character.

Public encouragement is warranted for exploration in search of additional supplies of deficient minerals, for investigation of the possibilities of developing the use of substitutes, and for technological research that may make available low-grade and marginal supplies that cannot now be extracted profitably. Within the narrow limits of available funds, Federal and State agencies concerned with geology and mining have performed a valuable service in carrying on investigations of problems relating to these minerals. Expenditures for carrying forward this work on a more extensive scale are advisable. While in the past some of the efforts of Federal and State agencies have been devoted to expanding production of minerals already in surplus, now energy should be directed mainly to questions of increasing reserves of deficient minerals.

To encourage development of certain minerals in which we are deficient, such as manganese, mercury, and tungsten, tariffs have been imposed. It has usually been argued on behalf of tariffs—often without careful scrutiny of the reserve situation—that they would make possible the development of new supplies. In practice, however, the encouragement of tariffs has not greatly aided exploration,

discovery and, research; on the contrary, the stimulus of a protected market of uncertain duration has merely accelerated the depletion of the few high-grade deposits we have at a time when consideration for national defense requires that such limited supplies be conserved for emergency use. The wisdom, moreover, of tariff protection for minerals of which the small (actual or potential) domestic production meets only a minor portion of consumption requirements is open to further questions with which the committee is not primarily concerned.

As tariffs have generally failed in their objective to materially improve either the short-time or long-time outlook of deficient minerals, a more effective procedure would be the increase of direct appropriations to continue surveys, exploration, and technological experiments. The latter particularly have already proved their worth. A few years ago the United States was almost totally dependent upon European sources for potash; Federal Government-sponsored drilling in New Mexico, Utah, and Texas, inaugurated in 1927 after extensive geological reconnaissance, has now definitely assured adequate supplies of domestic potash. Similarly, Government-supported technologic studies on the recovery of helium gas have assured supplies adequate to meet all present domestic needs and have provided a reserve against future demands; in 1917 this gas was available in small quantities at a price of $2,500 per cubic foot, but by 1933 the recovery processes developed by Government scientists provided helium at about half a cent a cubic foot. Private research has also made noteworthy contributions, such as the successful extraction of the interesting and useful magnesium metal from brines.

The methods that have made available supplies of potash, helium, and magnesium metal promise further results when applied to some of the other deficient minerals. For example there are large reserves of low-grade manganese-bearing material already known in the United States. Experimental work on the recovery of manganese or manganese-bearing products from these sources and their use has come near enough to success to justify public expenditure for further experimental work. While such work as has been done has been indirectly encouraged by the tariff, it has resulted mainly from private, State, and Federal research activities that have not been greatly influenced by tariff considerations. Further surveys are needed to indicate those minerals which seem to merit special exploration and research efforts. If and when it can be shown that adequate supplies of the minerals which are now deficient can be found and made available by new processes at costs somewhat above world prices, then careful consideration should be given to the advisability of tariff protection.

V. Minerals and the Problem of Monopoly

The restricted occurrence of many minerals invites concentration of ownership. Nature in some cases creates conditions that make monopoly almost inevitable as man creates similar conditions for limited periods by patent laws. Ninety percent of the radium produced in recent years has come from one deposit. Until 1924, about 60 percent of the world's vanadium came from one mine, and another mine now produces 75 percent of the total production of molybdenum. There is only one deposit of natural cryolite of commercial size known in the world.

Some other minerals are widely distributed but a few deposits are so rich or so readily amenable to recovery that they create a similar situation. Eighty percent of the world's output of so common a mineral as native sulphur is taken from five deposits controlled by two companies. This particular type of deposit lends itself so well to an ingenious, specially adapted, low-cost method of recovery that the production dominates the world's markets.

Concentrated ownership in other cases may arise partly out of limited distribution of resources and partly out of control of patents, reduction plants, fabricating capacity, marketing facilities, or exceptional technical and managerial ability. One company controls the greater part of the known reserves of bauxite (the ore of aluminum) of present commercial grade in the United States and 100 percent of the reduction capacity for the making of virgin aluminum.[13] From such unitary control, the problem of concentrated ownership grades off into the condition illustrated by the California borax deposits; or by the high-grade ores of Lake Superior, where the bulk of the better reserves are in a few hands, although the Supreme Court in the steel case found no violation of the antitrust laws. The minerals involved in situations of this type range from those affecting only minor industries, relatively unimportant in the total volume of industrial production, to some of the world's major enterprises.

[13] From testimony by officers of the company given on pp. 20 and 124 of the transcript of the public hearing on the Code of Fair Competition for the Aluminum Industry, National Recovery Administration, 1933.

American law and tradition are opposed to unregulated monopoly. It is notable that some of the leading cases brought under the antitrust laws have been directed at alleged combinations involving control of mineral raw materials. The issues have been brought not by consumers only on the basis of excessive prices but also by smaller producers who have felt themselves deprived of a fair market, or from independent refiners.

In this connection the committee calls attention to economic forces tending to protect the consumer of mineral products even where concentrated ownership prevails. All metals are subject to the competition of substitutes, and the competition becomes more fluid with the advance of modern metallurgy and the chemistry of alloys. High prices stimulate the return of consumers' scrap. New deposits may be discovered at any time. Thus the dominant position in the vanadium market held for 15 years by a single mine in South America has been challenged by active competition from Africa. The virtual monopoly of radium enjoyed for 10 years by a mine in the Belgian Congo is now threatened by the discovery of new deposits in northern Canada. Synthesis of minerals through chemical advances may supply competitors of the natural product, as illustrated by the development of synthetic cryolite. The importance of such extra-legal forces in protecting the consumer is well shown by the anthracite industry of Pennsylvania. The final court decree directing the anthracite railroads to dispose of their coal mines was entered years ago, yet it is now clear that the legal processes of dissolution had less effect upon prices than the economic forces of competition from substitutes.

Although the committee believes that competition is the most effective general regulator of price and the one that best accords with American practice and the American genius, it recognizes that natural conditions preclude its effective operation in some parts of the field of the mineral industries.

The issue raised by concentrated ownership of minerals is, of course, only a part of a much larger question affecting all branches of industry and trade, yet it has certain special features. Thus the committee is aware of certain advantages of centralized ownership in the mineral industries. Where such ownership exists, it has some times avoided much of the resource waste associated with destructive competition among great numbers of producing units as well as the poor housing conditions so often associated with mining camps in the highly competitive industries. Concentrated ownership also has made great contributions in carrying new industries through the pioneer stage, in advancing mineral technology, and in developing new uses and new markets. On the other hand, there is always the possibility that monopoly control may strangle legitimate competitors and exact unreasonable prices. Unless an industry is operating under public regulation, the consumer is right in feeling that competition is necessary to assure a fair price.

In those industries burdened with a surplus of capacity such as coal and oil, for which we have recommended the encouragement of collective action among producers to control production, we have also recommended adequate public supervision. The suggested arrangement aims not to suppress competition but to confine it within orderly bounds. A measure of competition to stimulate efficiency and the progress of the arts is healthy and necessary. The objectives of production control should be rather to attain economic stability and to prevent serious waste of resources. For these purposes, as already indicated, we believe that collective action by an industry to control output, capacity, and even in some cases, prices may be in the public interest. Such collective action may appear to be in conflict with the traditional interpretation of the antitrust laws. If necessary we think the laws should be amended to permit collective action, but always under public supervision. The degree of supervision necessary in a given case obviously depends upon the extent to which free competition is to be modified, but in all cases should be ample to protect the rights of labor and the consumer.

Where there is no adequate supervision of price or production by public authority, the committee thinks it clear that the antitrust laws should be retained in full and vigorously enforced, whether the industry involved is one of many units or of few. This is the more appropriate because of the facilities for collective action under public supervision, made available by the Recovery Act or by the permanent provisions which we have suggested. Practices in control of competition that can be shown to be in the general interest are thereby made possible under public supervision. If there should be practices in control of competition that any business group is not willing to conduct under public supervision, these practices would be open to the suspicion that they constitute an unreasonable restraint of trade.

In discussing this subject, the committee bears in mind that the question of enforcement of the antitrust laws extends far beyond the field of mining. Even where mineral raw materials are involved, practices complained of as in restraint of trade may center around the fabrication of the finished product for sale to the ultimate consumer and therefore may involve manufacturing and distribution rather than mining. The committee has made no study of these practices. They raise legal questions outside its competence and its terms of reference, which are the responsibility of the agencies of the Federal Government charged with enforcement of the antitrust laws. The committee assumes that these agencies will be vigilant in prosecution of violations.

Where there is only one deposit of a mineral and that too small to permit economical development of more than one mine, the public interest is doubtless best served by unitary operation. But where deposits are sufficiently large or scattered to permit several enterprises of a size great enough to achieve the economies of large-scale operation, the committee believes that competition between several producers is healthier than monopoly. The provisions for collective action under public supervision which have been sketched offer a means of keeping competition within reasonable limits and insuring orderly conservation of the resources.

VI. Minerals on Public Lands

FACTUAL REVIEW

There are about 1,903,000,000 acres of land within the United States proper. Of this total, about 1,442,000,000 acres constitute the so-called "public domain", that is, the area that was once public land and under the direct control of the Federal Government. More than 1,000,000,000 acres of this total have been disposed of, leaving about 426,000,000 acres directly or indirectly in Federal control. The Commissioner of the General Land Office in his annual report for 1933 classifies this remainder as follows:

	Acres
Pending and unperfected public-land entries	23, 208, 704
Title remaining in the United States:	
Unappropriated and unreserved public land	172, 084, 580
National forests	137, 576, 500
National parks and monuments	8, 370, 989
Indian reservations (estimated net)	56, 676, 535
Military, naval, experimental reservations, etc. (approximate)	1, 000, 000
Withdrawals (estimates net)	27, 068, 532

Such part of the original mineral resources of the Nation as is still under Federal control is in this remaining fraction of the public domain and in about 35,000,000 acres of lands that have been disposed of with a reservation of some or all of the contained minerals by the United States.

The retention of these resources in public ownership, and the evolution of the leasing system under which they are now yielding a substantial revenue to both the Nation and the interested States, are an outgrowth of the original conservation movement launched by President Theodore Roosevelt early in the century. The coal and oil land classifications and withdrawals of 1906 and since, and the Mineral Leasing Acts, the most important of which is that of 1920, constitute changes in administrative practice and in law brought about by the conservation movement. There remains the continuing task of vigilant administration of the statutes enacted, and of securing such modifications of them as will assure the realization of the conservation objectives.

METHODS OF DISPOSITION OF MINERALS

There is a complex body of Federal law under which publicly owned mineral deposits may be acquired and developed. In a broad sense, the Federal laws for the disposal of these resources recognize two categories of mineral deposits—the metalliferous and the nonmetalliferous. Again speaking broadly, the metalliferous mineral deposits may be acquired in fee under the lode or placer acts and the nonmetalliferous deposits may be developed under a group of leasing laws. Location of a mining claim, followed by certain simple legal procedure, including the recording of notice of location in the appropriate county office and proof of annual assessment work, gives the locator a property right recognized by the courts. The locator may obtain a patent on discovery, an expenditure of not less than $500 on

the claim, and payment of the purchase price, $5 per acre for lodes and $2.50 per acre for placers, but a patent is not necessary in order that definite property rights may be acquired, so long as the provisions of the mining laws are complied with. Indeed, mineral patents are often deliberately avoided by claim owners to escape taxation or for other reasons and important mines in the United States have been developed on claims that have never been patented.

Metalliferous mining claims may be filed upon any part of the 172,000,000 acres of unappropriated and unreserved public lands, upon the 138,000,000 acres of national forests, and upon some part of the 35,000,000 acres disposed of with a reservation of mineral rights by the United States. It is unlikely that there remain any important known deposits in these areas that are not included in mining claims. The Federal Government has no record of these claims unless title is sought or contests are brought.

Generally speaking, the mining laws are not applicable to lands withdrawn and reserved for national parks and national monuments, although claims established prior to the creation of these reserves and maintained in compliance with law remain valid.

The lode and placer mining laws are not applicable generally to lands within Indian reservations. However, various special acts have been passed from time to time providing for the development of metalliferous minerals within Indian reservations by lease. Perhaps the most important of these acts was that of June 30, 1919, which, as amended on December 16, 1926, authorizes the Secretary of the Interior to lease any part of the unallotted lands within any Indian reservations in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, or Wyoming for the purpose of mining deposits of metalliferous and nonmetalliferous minerals except oil and gas. This act provides for the collection of 5 percent of the net value of the output of the minerals as royalty.

Lands withdrawn under the terms of the Withdrawal Act of 1910 in general are open to acquisition under the mining laws applying to metalliferous minerals. The Water Power Act of 1920 reserves lands, covered by an application filed under that act, and lands withdrawn or classified as valuable for power purposes from any type of subsequent mineral location or entry.

Coal, oil and gas, phosphate, potash, sodium, sulphur (in Louisiana and New Mexico), and oil shale on Government lands are now acquired not by purchase but by lease. Laws for the development and production of these substances provide for the issuance of prospecting permits for all except phosphate and oil shale. After discovery leases may be issued for lands included in these permits at royalty rates whose minima are usually fixed in the law. Leases may also issue, in general, to the bidder of highest bonus, for known deposits for which prospecting is unnecessary. These minimum royalties are for coal, 5 cents per ton; for oil and gas, 5 percent of the gross value of the crude production from a quarter of the area included in the prospecting permit and not less than 12½ percent for the remainder; for potash, not less than 2 percent of the quantity or gross value of the output at the point of shipment to market, etc. Common royalty rates for coal are 10 and 15 cents per ton and various rates above the minimum, including sliding scale rates up to 33⅓ percent, are applied to oil.

The maximum acreage that may be included in single permits or leases under this group of acts is usually 2,560. No persons, association, or corporation may hold coal, phosphate, or sodium leases or permits aggregating more than 2,560 acres in any one State, nor more than 7,680 acres in any one State under oil and gas lease or permit. The original lease term is usually 20 years, with provision for renewal by successive 10-year periods. An acreage rental is provided for, to be credited against royalties when minerals are produced.

These leasing laws apply to the unreserved public domain and to the national forests (except those reserved under the Appalachian Forest Act, which may be leased under a special act), but not to the parks and monuments. Oil and gas deposits in lands included within naval petroleum reserves are developed and produced either under the general leasing act or under a special act applying to these reserves. A group of special statutes provide for the development of oil and gas, lead and zinc, and coal on Indian reservations, generally by lease and under conditions comparable with but not identical with those applying to the public domain.

Operations on the public lands under the leasing acts are indicated in the following summary:

Minerals	Number of leases outstanding on June 30, 1934	Total acreage under lease	Total revenues accrued to June 30, 1934
Public lands:			
Oil, gas, and gasoline	848	294,720	$76,248,922.70
Coal	350	69,332	3,917,989.41
Phosphate	8	4,233	31,161.25
Potash	12	29,465	216,985.75
Sodium	1	640	10,571.88
Oil shale	1	2,680	6,700.00
Naval petroleum reserves: Oil, gas, and gasoline	24	9,948	27,245,625.03

The total income that has been derived by the Indians from the development of minerals on the reservations is about $345,000,000 for oil and gas and would aggregate about $400,000,000 for all minerals. The diversity of this activity and the number of leases and the acreage involved are indicated in the table below:

Minerals	Number leases outstanding on June 30, 1933	Total acreage under lease
Indian lands:		
Oil, gas, and gasoline (June 30, 1934)	6,534	711,843
Lead and zinc	41	5,924
Asbestos	15	1,474
Marl	9	548
Gold	13	1,080
Gypsum	1	219
Gold, silver, copper, etc	11	501
Limestone	2	280
Copper, lead, and zinc	1	50
Copper	3	200
Asphalt	1	80
Coal	37	15,576

Production from Public Lands

Mineral production from public lands is in general but a minor proportion of the total United States production. Potash is an exception because of the late discovery of bedded potash salts in southeastern New Mexico in deposits owned by the United States.

An idea of the relation between public-lands production and total production is given in the following table for the year 1933.

Mineral production in United States

	Total, United States, calendar year 1933	From public lands and reserves, fiscal year 1934	Percentage public lands of total United States production
Petroleum.....barrels	905,656,000	[1] 28,775,910	3.1
Natural gas.....M cubic feet	1,490,000,000	62,194,904	4.3
Bituminous coal.....tons	327,940,000	2,668,687	.8
Phosphate rock [2].....do	2,588,000	43,067	1.6
Potash salts.....do	333,110	294,156	88.3
Sodium salts.....do	305,047	46,047	15.1

[1] In addition, 23,822,148 barrels of petroleum were produced from Indian lands.
[2] Estimated.

The revenues derived from public lands as a result of the operations of the leasing acts are distributed as follows:

	Percent
United States Government	10
States	37½
Reclamation fund	52½

Royalties received from oil and gas leases on the naval petroleum reserves are deposited in the United States Treasury as miscellaneous receipts, and royalties from Indian lands are credited to the tribe or allottee entitled thereto.

FEDERAL POLICIES FOR MINERALS ON THE PUBLIC DOMAIN

From 1785 to 1846 the policy of the United States as to minerals on the public lands was one of reservation and lease—an exception being the opening to sale of lead mines and lands in Missouri in 1829. Knowledge of mineral deposits and use of minerals was meager a century and more ago, and these early laws were applicable chiefly to lead, though reservation of gold, silver, copper, and salines was provided. In 1846, following a report by the President in 1845 that the reservation of a million acres of land supposed to contain lead and other minerals and the leasing of such reserved lands was unprofitable to the Government and unsatisfactory to lessees, Congress authorized the sale of reserved lead mines and lands in Arkansas, Illinois, Iowa, and Wisconsin. Thus was inaugurated a policy of sale which was extended to other areas soon thereafter and to coal in 1864.

Among the reasons given for the abandonment of this early leasing experiment was the cost of its administration, reported as more than four times the revenue—in marked contrast to a revenue many times the cost under the conditions of 1934 and because of destruction of timber and the careless and wasteful manner of working the mines—again in marked contrast to the conservation of life, health, and resources accomplished through supervision of present-day mineral-lease operations.

Discovery of gold in California in 1848 led to a change in policy and law. In the absence of any governmental organization, either congressional or territorial, and in the absence of specific Federal law other than that reserving mineral lands from preemption, local customs, varying with different localities, grew up by common consent of miners and governed the location, size, and possession of mining claims and appurtenant water rights. By 1866 nearly a billion dollars in gold and silver had been produced from public lands of the West under these customs which came to be recognized by the courts and legislatures. Finally, in 1866, Congress recognized and validated equitable rights acquired in accordance with such local customs and provided that mineral lands of the public domain should be free and open to exploration and occupation and to acquisition by conforming, in general, to established local customs. Thus, except for coal, which remained under a policy of sale and purchase established in 1864, the general mining law of the United States became one of possessory occupation. The principle of sale and purchase was extended in 1870 and 1872 to mineral lands generally at the nominal price of $2.50 an acre for placer claims and $5 for lode claims, conformity with established rules and customs of local mining districts still being a general requirement.

In 1914 Congress revived the leasing system by enacting a coal-leasing law for Alaska and in 1917 extended the policy to potash on all public lands of the United States. In 1920 a general leasing law for coal, oil, and gas, phosphate, oil shale, and sodium was passed. In 1927 this was extended to cover sulphur, and in the same year the principle of leasing was applied to gold, silver, and mercury reserved to the sovereign in certain existing land grants.

These relatively new leasing laws have proven advantageous both to Government and industry. There is, however, a strong body of opinion that under them speculation in mineral rights has been excessive and that provisions intended to encourage discovery of new sources of supply have permitted unwise promotions with resultant loss to the general public and to diversion of the landowners' equity to middlemen, who do little or nothing for the benefit of either Government or industry. Amendatory legislation and improved administration to correct such abuses are suggested. But the general workability of the leasing laws and the advantages in conservation of life, health, and resources obtained through their operation have been amply demonstrated through a period of years. One has but to consider the course of development in two major oil fields during a time of general overproduction—Kettleman Hills, California, a public-land area, in which production has been held back, and east Texas, a non-public-land area, in which it proceeded apace with resultant disorganization of markets—to be

convinced that control exercised under Government ownership has been beneficial to the industry and to the Nation.

But other Government-owned mineral products, except the designated few, remain subject to the general mining laws under a highly decentralized, independent, individualistic system. Under it Government has no cognizance of rights established to public resources. So far as any requirements of the system are concerned the Federal Government does not know what mineral resources in the public domain are still public property and what are covered by valid claims which any court must recognize. Such a situation under modern conditions in a well-developed region is an anachronism. Under it Government cannot function effectively as a trustee of the national resources. Administration is baffled. It may determine that the highest value of a tract of land is for park purposes or for power or irrigation development or for forests or for playgrounds, only to discover that a valid mining claim on which "discovery" has been made and annual assessment work is done, exists at the critical point. The period when laws of this character were needed to make possible prompt and successful development of deposits of metalliferous minerals in mainland United States is past.

It is probable indeed that few known deposits of metals or their ores that are not covered by a mining claim exist in the 400,000,000 acres of public land remaining. Some new discoveries, however, will doubtless be made.

Future mining development should be provided for by an extension of the leasing principle, though probably in much simplified form, to all publicly owned mineral deposits in the United States proper. Moreover, if legally practicable any new enactment should provide that within a reasonable period all holders of claims then extant should be required either to apply for patent under the old law or for a lease under the new law. By this process existing rights will become a matter of Government record. Thus the present chaotic condition will gradually be cleared up and the Government will be in a position to function effectively as the administrator of all the public mineral resources.

Both the States and the Federal Government are at present expanding their holdings of land and the resources that they contain. Lands thus acquired by the United States will become in some sense public lands and their contained minerals should be brought into the general leasing system and administered as are those of the residual public domain.

Federal influence with States should be directed toward encouraging a form of State management that will harmonize with Federal policies. Abundant examples now exist of the disadvantages and confusion that arise from differing State and Federal policies on adjacent lands.

The possible advantages of Government control and management may be thus summarized:

(1) Substantial revenues are collected of which the States receive a large share.
(2) Conservation is fostered through reduction of waste and encouragement of greater ultimate recovery.
(3) Adjustment of rate of production to market needs is aided.
(4) Control of monopoly and of harmful price fluctuations is fostered.
(5) Care in operation and safety and welfare of workmen can be imposed.
(6) Maintenance of reserves of essential minerals can be assured.

Possible disadvantages may be similarly summarized:

(1) Increase of Government staffs and costs (bureaucracy).
(2) Interference with freedom of action of citizens.
(3) Danger that Government efficiency may be destroyed at any time by the withholding of appropriations necessary to administration.
(4) Instability of policies under changing administrations.
(5) Possibility of political favoritism in administration.

ALASKA

Alaska is still a frontier. It is still largely unsurveyed public land. It is not an agricultural nor an industrial region in the mainland sense. Its valuable timber is limited essentially to the southeastern coasts. It is and is likely long to remain chiefly a mining region. In any of its lands outside of national forests that contain commercial mineral deposits, those deposits quite certainly constitute the chief value of the land. There is, therefore, little or no conflict of values. Its resources of fuel minerals and fertilizer minerals are now subject to exploitation only under Federal lease. The old mining law in its application to the metals is simple of operation and effective in frontier regions. It requires the minimum of administration. Indeed, it is in effect self-administering, whereas leasing laws

require adequate administrative staffs. This is proper, indeed almost essential in remote regions, with short working seasons and inadequate transportation, if mining is not to be hampered. An elaborate procedure, requiring official action at Juneau or Washington before the right to take placer gold from a creek near the Arctic Circle can be acquired, is impracticable. The Government may well forego such royalties as it might receive under a leasing system in such circumstances.

It is, therefore, not recommended that the lode and placer acts be repealed in their application to Alaska, except in the national forests, to which the leasing principles should be applied. However, a simple requirement is not unreasonable, that a duplicate of the filings made at the local district office be forwarded to the nearest land office for record. Such a procedure would give the Government cognizance of claims existing on the public lands of the Territory. It has no such record at present.

VII. Extension of Government Ownership

As a phase of the growing tendency in all parts of the world to extend public control over natural resources, increasing interest is manifest in the possibilities of Federal or State acquisition and administration of mineral resources now in private ownership. Few political platforms in recent years, either National or State, have failed to include a plank on natural resources or to advocate measures designed to effect the greater conservation and more definite control of such resources for the benefit of the public as a whole. There is unquestionably a growing feeling that the minerals are a common heritage, that their exploitation should, therefore, be for the benefit of all rather than of the few, and that the wasteful practices of unregulated private exploitation can be eliminated only by a greater degree of Federal or State control than is now exercised.

While approving the policy of retaining ownership of mineral deposits on the public domain within the United States proper, to be administered under a leasing system, your committee does not recommend general extension of public ownership at the present time to the deposits of coal, oil, gas, iron, copper, lead, zinc, gold, silver, and a score of lesser minerals that have already passed into private hands. Whatever the abstract merits of public ownership may be, private ownership is so inherently a part of the American genius and tradition, and is so firmly entrenched, by law and custom, as a national policy, that the practical difficulties alone of any general reversal of the status quo at this late date appear insuperable. However, future conditions cannot be foreseen and the committee recognizes the possibility that restoration to public ownership of minerals now privately owned may sometime become a desirable feature of national policy.

Many of the recognized ills of the domestic mineral industries—excess capital investments, variable and uncertain market demands, and irregular tenure of labor—are such as inhere in an industrial civilization founded on the generosity of nature and governed by the laws of supply and demand and the survival of the fittest These and the problems peculiar to mining, which center around the fact of exhaustibility, can best be dealt with by private operation under public supervision along the lines recommended in our discussion of production control (sec. II, I) The consensus of this committee is that under present conditions the feasible limits of public control are encompassed by the principles of the producing and marketing cartel, or code, duly modified to protect the rights of the producer, large or small, and of labor and the consumer, and strictly and impartially administered in the public interest by the Federal Government, supplemented where needed by use of the police powers of the States to prevent waste in mining.

In this policy of attempting no general extension of public ownership, two minor modifications should be considered. The first relates to the proposal to purchase and retire some of the marginal coal mines and a portion of the coal reserves now in private hands, to which reference has already been made. In this case the proposal for public acquisition is supported by industry. It involves no attempt at Government *operation* of mines, but merely the creation of an eastern coal reserve (consisting of selected blocks of acreage) to be administered in much the same way as coal reserves on the western public lands. If this proposal is found to be the best way of meeting the problems of surplus capacity and stranded mine workers in the bituminous coal fields, as we think it possibly may, the favorable results obtained under the Mineral Leasing Act seem to indicate its feasibility from the viewpoint of public land administration.

The second modification relates to mineral deposits reverting to public ownership by the process of tax delinquency. Where tax-delinquent minerals are

unredeemed, there is clear proof that existing reserves in private hands are more than sufficient for the needs of the local industry To suppose that forced sale of such deposits will increase the State's revenue is often an illusion. Its effect is rather to depress the taxpaying ability of other mineral owners. Forcing such lands back into private ownership stimulates the vicious cycle of overexpansion of mine capacity in order to meet carrying charges on reserve holdings, with its train of capital loss, intermittent employment, and resource waste. A seemingly wiser course would be for the States to hold tax-delinquent mineral deposits in reserve until such time as they are actually needed, and then to lease them with payment of suitable royalty to the State, after the manner of the Mineral Leasing Act on the Federal domain. This point involves the need of change in present methods of mine taxation, which is discussed in Section III–X.

VIII. Submarginal Minerals and Mineral Lands

Mineral deposits may be marginal or submarginal producers because of varied circumstances. They may be too small to warrant investment in a plant sufficiently large to form an economic unit, or too low in grade to permit economic operation under existing conditions or in the near future; also, they may be too far from market. Furthermore, so much of a given mineral may be easily available that the market cannot absorb it all over a term of years at prices that will meet the expense of taxes and the cost of holding the investment. Mineral lands in the latter category have no real present value as mineral lands and the attempt to set them earning their board and keep merely disorganizes the industry. In addition, some deposits are in an anomalous position as they may be submarginal in times of depression although commercially productive in periods of great demand or high prices. The problems of mineral reserves of this type have been discussed in part in the section on conservation issues arising from surplus production or surplus plant capacity. Here we refer particularly to mineral deposits which, because of low grade, small size, high cost, unfavorable location, or advanced depletion are likely to remain submarginal for the immediate future, say for the next 10 years. All reserves of this character will doubtless be needed some decades hence as the richer deposits are exhausted, but meantime where prematurely opened they have left the communities dependent on them derelict and stranded.

The acute situation that exists in marginal agricultural areas has been forced upon the attention of the public by the present business depression. It is not so generally recognized that a parallel situation exists in mineral lands, due to much the same kinds of causes. The influences which led to breaking up and putting into wheat cultivation what now proves to have been too large an acreage for our present and probable future requirements were not fundamentally different from those which led to opening too many coal mines. Both cases raise a problem in resource conservation, and each contributes to the waste involved in excessive competition, failure, and abandonment. In both cases society is concerned in checking present waste and in preventing its repetition.

But equally urgent is the human problem, and here the miner suffers perhaps even more than the agricultural worker. Wheat land can be turned to other uses but a coal mine can yield nothing but coal. The cotton farmer is in an area where the possibility of other industries exists; too often the copper miner is in an inhospitable region where even his water supply fails when the mines shut down. Mines are necessarily where the mineral occurs, and it is an exception when other than subsidiary industries can be sustained in a mining town. When the mines close down the community dies; the towns, the railroads, and even the farmers in the vicinity find their market gone, as is true today, for example, in parts of Utah and other Western States.

One of the obvious lessons of this experience is the need not merely to alleviate the present hardship by such means as can best be applied in each case, but also to set up agencies that may serve as observation posts from which may be signaled warnings to industry so that similar acute situations may in the future be anticipated and avoided.

There is danger that in the haste to put more men to work they be merely set at reopening or enlarging marginal mines that will inevitably be high-cost producers, whose output, so far as it can be sold at all, will merely displace the product of low-cost mines already in operation and already employing labor. Just such projects for the opening of doubtful mineral deposits have been urged by various planning boards and committees and requests have been made for public funds with which to carry them out. Obviously, in cases where an actual surplus or a

surplus capacity to produce already exists, further opening of marginal properties would be shortsighted.

In search, also, for uses of power to be generated by the great hydroelectric projects now being built as public works, care must be taken to avoid merely increasing present troubles of the mineral industries by encouraging unneeded production from marginal or submarginal deposits as an outlet for surplus power. Such operations can only survive by reason of a direct or disguised subsidy. In this connection the fundamental relationship among the three great sources of power—coal, oil, and hydro plants—should be understood and articulated in any broad-power program, and the protests of the coal producers and mine workers against alleged too rapid development of hydroelectric projects at public expense warrants careful study to determine their merit.

For minerals already developed to surplus capacity, it is obvious that development of further submarginal supplies should be discouraged. Our recommendations for production control for some of these minerals in Sec. II, III include discouragement of new development. With the limits of demand more generally recognized through the issuance of consumption forecasts, recommended in Sec. II, III of this report, and with the knowledge that production must be kept within certain bounds, the explorer is likely to show more caution and will find it more difficult to secure backing for new enterprises than when the market was so wide and expanding that the question of ability to sell the product was a secondary consideration. If the Securities Commission should require a full statement of demand and market limitations in connection with the sale of stock issues, it might do much to discourage unwise development.

It is recognized, of course, that such a program may have to be compromised temporarily with the local necessities of employment.

For minerals of which the supply is known to be inadequate for the needs of this country, other measures should be taken. Whether it be to meet needs of national defense or to furnish raw materials for domestic industry, every reasonable encouragement should be given to those willing to venture their capital in development.

An exception to this general thesis may well be expressed in that the development and use in peace time of limited domestic deposits of critical war minerals should not be encouraged.

Topographic and geologic surveys have long been recognized as essential prerequisites to intelligent development and should be vigorously supported from public funds. In particular instances, special studies in the technology of production and recovery require reasonable expenditure of public money that is clearly justified. In the readjustment of public and private ownership in lands, whether by extension of the national forests and the national parks, the purchase of marginal agricultural lands, the forfeiture for taxes, or by other means, careful studies should be made to determine the mineral value of such lands and to classify them as to future usefulness. In instances where it is feasible to do so, it may prove to be sound public policy to take certain marginal mineral lands into the public domain. The cost of carrying them until they are needed will thus be minimized, and when that time comes the conditions of development can be set without prejudice to vested rights.

A more general understanding of national needs on the part of both Federal and State Governments and on the part of both permanent and emergency agencies of government should make it possible to support more adequately investigation of the problems of supplying our national deficiencies. The National Resources Board, through its contacts with State planning boards, could perform a very useful service in indicating just what minerals should be and should not be developed. Federal and State relief agencies should in all cases withhold support from new mineral developments except where it can be shown that supplies in the United States are really deficient at a reasonable price and that new production will not displace production elsewhere that has a better right to maintenance nor tend to exhaust limited supplies of minerals essential to national defense.

There remains the question of what to do with the stranded population of many mining districts, some of them large and well known, which are either so far exhausted or inherently so close to the margin that they cannot hope to compete successfully during the next decade. Much attention is being paid both by the Federal and State Governments to proposals for vacating marginal agricultural lands and moving the population to more productive areas. Zoning is already under way and there are suggestions for its wide extension. Minerals have been considered only incidentally in these moves, and no provision has yet been made for the derelict mining camps or their inhabitants.

Your committee has not had the time to make the studies necessary, but feels sure that the problem of what to do with submarginal lands involves consideration of the resources existing below the soil as well as those in and above it. Lands should not be vacated or put in the public domain or in forest and game preserves without ascertaining first whether any needed mineral supply is being taken out of the field of possible development. Steps should be taken to rehabilitate the thousands of metal miners and scores of thousands of coal miners who cannot hope to make a living in their present surroundings. The condition of these men and their families is perhaps the most tragic of any group of American workers. Openings must be found for them in other industries, local if possible, and, if not, in other regions. This is now recognized to be a social responsibility and, where necessary, a Government responsibility. In this connection serious consideration should be given to the suggestion (already referred to) of financing the retirement of marginal coal mines and the rehabilitation of displaced miners by means of a small tax on the tonnage of the more successful mines remaining in operation. Your committee recommends that an investigation of this entire problem be made a continuing activity of the National Resources Board.

IX. Taxation

FEDERAL TAXATION

The Federal Government taxes domestically produced minerals through the income tax. The income tax involves questions of conservation through provisions which make capital allowances for discovery, thereby reducing the tax and encouraging exploration and development. The discovery clause in the income-tax law was introduced during the war, the justification given at the time being primarily the purpose of speeding up oil development. While it applied to all minerals, regulations of the Treasury Department restricted discovery exemptions in the metallic minerals to a far greater extent than in oil. In 1921 the discovery clause was supplemented for oil and gas by a percentage depletion clause, liberalizing the depletion exemption of these commodities. The exemption on oil has amounted to about half of the net income. In 1932 the discovery clause, as it applied to coal, sulphur, and metals, was replaced by the percentage depletion provision.

The reason originally assigned for the allowance of deductions based on discovery value or percentage depletion—encouragement of exploration and development of oil—becomes nonexistent in mineral industries suffering from surplus problems. Whether or not the income deductions permitted to mineral producers have actually expanded development is not clear, though in any case their effect has probably been small. In 1934 the Secretary of the Treasury recommended to Congress the repeal of the discovery and percentage depletion provisions on the ground that in effect they were subsidies to a special class of taxpayer.

Your committee makes no recommendation on this subject but suggests there should be a study of the possible contradictory effect of the discovery and percentage depletion provisions in the income-tax law in promoting further development for the few minerals for which present overdevelopment and waste are so excessive that production control appears to be necessary. Also, the possibility of confining the special mineral depletion allowances to minerals for which production control is not necessary should be examined, particularly with reference to minerals of which the United States' supplies are deficient.

Within the last year the Federal Government has imposed a tax of one-tenth of a cent per barrel on petroleum to be paid by the producer at the point of production, one-tenth of a cent per barrel to be paid by the refiner at the refinery, and one-tenth of a cent per barrel on gasoline produced from natural gas. The purpose of these taxes is to defray the cost of administering the petroleum code. In addition to its value as a revenue-producing measure it has been of considerable assistance in disclosing the illegal production of oil.

Excise taxes, which are in effect import tariffs, have been imposed on coal and oil when imported into this country, consequently they will be treated elsewhere.

Federal, as well as State and local, taxes are imposed on the retail sale of gasoline but, as these are in the nature of sales or consumption taxes levied primarily for highway construction, they should be considered by other agencies than this committee.

STATE TAXATION

The heaviest burden of taxation on mineral industries is imposed by the States, counties, and townships. Inadequacy of assembled data prevents discussion of this complex field in detail, but we wish to call attention to certain general trends as they affect the problems of conservation.

Most of the States have ad valorem taxes, both on active mineral properties and on mineral reserves. The reserves are taxed annually for indefinitely long periods before coming into production. In some States the ad valorem tax is based on a larger proportion of true value than for other classes of property. In addition there is, in some jurisdictions, a multiplying group of special taxes on minerals, called "tonnage taxes", "severance taxes", "occupation taxes", and "royalty taxes." There are other special taxes on smelting, refining, and distribution. Some of the States have corporate income taxes. It is claimed by some mining companies that the cumulative effect of these measures is to burden minerals with a load of taxation heavier than other classes of property, in certain cases so heavy that it is said to approach confiscation.

The reason for this heavy burden, where it exists, lies partly in the growing feeling that natural resources are a heritage of the people and that the public has certain special rights in them, regardless of their private ownership. This feeling is often expressed in legislative discussions of tax measures, in reports of tax commissions, and in political platforms. Another reason is that so many of the large mineral properties are in absentee ownership. The taxation rend reflects in some cases an indirect effort to reacquire natural wealth which has passed into private ownership. Reinforcing these philosophical considerations is the very practical point that mines and minerals cannot escape heavy taxation by moving away, and that their value often bulks large in relation to other local property. Under these conditions, local taxing bodies in need of more revenue find it difficult to exercise restraint.

All industries, however, share in the problem of heavy taxation, and in this report we are interested primarily in the question as it affects the conservation of exhaustible resources. Of all taxes on minerals, the one which is most likely to be anticonservational is the ad valorem tax collected annually by the States on all minerals whether in production or in reserve. The effects of this tax are cumulative and some of them are only beginning to be recognized. Owners of mineral reserves are driven to open mines in order to provide income enough to meet their taxes, and the ad valorem tax has been one of the causes of overdevelopment of mine capacity, especially of the coal mines. It has a tendency to force selective mining with attendant loss of low-grade material. It handicaps the orderly development and extraction of the miscellaneous grades to be found in most mineral districts. It puts a premium on the use of methods of extraction which cost the least, regardless of the fact that these methods often involve the permanent destruction or locking up of important reserves costing more to extract. In all these undesirable results the ad valorem tax is only one of many factors, but that it is an important factor there can be no reasonable doubt. Moreover, the valuations on which ad valorem taxes are based are largely matters of personal judgment requiring highly experienced appraisers, and it is not surprising that there should be enormous disparities of tax between individual properties and between taxing divisions and between States.

Another major result is just now looming up. It is becoming apparent that by the time many of our great mineral reserves reach the stage of production they will have accumulaetd a charge of original cost, taxes, and compound interest far beyond any possible return from operation. This is particularly true of the coal, iron, and other extensive bedded deposits. Where the reserves were acquired for speculative purposes, this result certainly need cause no public concern, but in some cases it seems to apply to mineral holdings no greater than were thought reasonable at the time of acquisition in order to assure raw materials for the use of associated mills and furnaces. In short, the policy of acquiring reserves necessary for prudent planning of mining operations and for protection of capital investments in the manufacturing based upon them, so generally followed by American industry, may sometimes prove to be an economic impossibility with existing taxation. Already there has been the beginning of a reversal of the process in the cancelation of leases and in default of taxes. Future reversion of reserves to the States on a considerable scale seems not unlikely. It is clear that some of the very large accumulations of reserves under unit commercial control must be either dispersed among many private owners capable jointly of carrying the load or that part at least will have to go back to public ownership.

Because of these conditions there has been a distinctly growing trend among tax specialists and leaders of the mineral industry to question the merits of the ad valorem tax and to favor some form of tax on annual production as a substitute.

Viewed from the broad public interest the major objection to the abandonment of the ad valorem tax is that it would favor the concentration of ownership of mineral reserves in very few hands and hence would put a premium on monopoly.

Reserves acquired cheaply in pioneer days, or as an incident to timber or agricultural purchases, or for the purpose of shutting out future competition could be carried indefinitely at very low cost. Huge unearned increments would be enjoyed by a few lucky, shrewd, or unscrupulous individuals. There are occasional companies with holdings sufficient to last them 200 years. Clearly, therefore, the production tax alone will not fully serve the public interest.

Under these circumstances a possible approach to the problem might be found in an effort to adjust ad valorem taxes to a scale which would make it possible for the active mining operations to carry the reserves really necessary for prudent investment in mine plant and yet to discourage accumulation beyond this requirement. One possible solution to be studied would be the reduction or the elimination of the ad valorem tax on reserves held by operating companies in amounts representing a reasonable ratio to their production. For reserves held beyond the ratio set, the ad valorem taxes might be maintained or even increased. This procedure might result in the reversion to the States of many important mineral reserves which cannot be used until the distant future. This reversion might not involve any considerable sacrifice on the part of operating companies, if coupled with some provision for leasing State reserves when needed. The State would suffer a temporary loss of revenue from ad valorem taxes on such excess ores. This loss would be made up by output taxes of one form or another on active mines, reasonable ad valorem taxes on the limited reserves retained by the mining companies, and later might be more than made up by the collection of royalties from the reserves under State ownership. Whether this suggestion is practicable or not, the problem would seem capable of solution on the basis of the mutual self-interest of the public and of private industry, without the necessity of making arbitrary choice between political theories. In any case, the necessity of the taxing authority to raise the revenues required for public purposes must be admitted.

The full significance of the relation between mineral taxation and the public interest in conservation has just begun to be recognized and has not been the subject of sufficiently detailed examination and discussion to warrant any individual or group in making any recommendation as to public policy. In fact, primary data, needed for careful analysis of many questions involved, have not yet been assembled, and your committee merely calls attention to the problem as one affecting conservation.

We suggest that this subject, as well as that relating to the conservational effect of the Federal income tax, should be studied with a care commensurate with its importance. There is need of a thorough-going analysis of the broad problems of taxation in relation to the wise use of mineral resources, similar to the forest taxation inquiry now being completed by the Forest Service. The study should combine the viewpoints of the mine-taxation specialist, familiar with the practical problems of the mineral industries, and of the independent economist, familiar with the questions of public policy in taxation of other forms of property.

X. Scrap Metals

One of the factors offsetting depletion of mineral resources, particularly the metallic ores, is the accumulation of a huge working capital of metal, in the form of manufactured goods or of scrap. There are, of course, numerous raw materials of vegetable and animal origin that are salvaged and used again. The life span between initial use and ultimate destruction of such materials as paper and rubber, however, is characteristically short, whereas that of the more durable metals is characteristically long.

Secondary metals are those recovered from scrap sweepings, skimmings, and drosses. The secondary-metals industry began humbly with the collection of discarded scrap by the junkman. Its development, however, has been rapid, and it is now a well-established industry of vital importance as a source of many products. Secondary supplies of such metals as copper and lead, subject to little or no rust or wear, may be likened to a reservoir upon which future demand may draw whenever prices make collection and reclamation profitable. They serve as a permanent potential supply, supplementing the reserves of the mines. When a country is dependent upon foreign sources for its supply of a given metal, the amount of that metal in use in the country becomes of invaluable service in the event of war. Metals recovered from scrap compete in markets with the output of mines, displace mine sales by the amount of secondary sales, and have a powerful influence on metal prices.

The large return of secondary metal in certain industries has made it possible for some business organizations to supply their needs for raw metal entirely by

scrap originating from their own or similar operations. The railways, for example, produce large quantities of ferrous and nonferrous scrap which they sell to dealers or turn in to smelters as part payment for new metal. They also reuse at shops or plants, quantities of scrap metals such as babbitt, solder, and bronze. In iron and steel manufacture the extensive use of scrap has been an ever-increasing factor in the last quarter century.

The output of secondary copper, however, serves as perhaps the most eloquent example of the inroads secondary metals have made into markets formerly supplied entirely by the mines. In the period 1910–14 secondary copper represented 14 percent of copper produced by mines, whereas in 1929 it was 41 percent of mine output. In 1933, with many mines in the country closed or operating at a low rate, the output of copper from scrap was considerably more than mine production. Unless some new, large use for copper is developed, it is possible that in the not too distant future the annual production of new copper from the mines may be consistently smaller than the tonnage recovered from secondary sources.

Of the more important metals that come back after use as scrap, the United States is self-sufficient within its political boundaries in iron, copper, lead, aluminum, and zinc, but depends on foreign sources almost entirely for tin and nickel.

As already noted, copper is relatively indestructible and consequently a very large percentage of all copper that is mined and put in to use comes back on the market later as scrap. There is also a very large return of scrap lead, although a higher percentage of the consumption of lead is dissipated. The rapid growth and present importance of the secondary copper and lead industries are shown by the following comparisons in which the tonnage of secondary metal is expressed as a percentage of the output from virgin ores. Over the period 1910–14 secondary copper and lead were each equal to 14 percent of mine production; by 1924–28 the proportions had increased to 38 and 40 percent, respectively, and again in 1929 to 41 and 48 percent; in 1933 the tonnage of secondary copper reached the astonishing figure of 133 percent of the mine output, closely followed by a recovery of secondary lead equivalent to 82 percent of the virgin mined metal. For zinc, of which a large portion of the uses are dissipative in character, the tonnage recovered from secondary sources has remained comparatively stationary at about 20 percent of the mine output for all periods mentioned except 1933; in the latter year secondary zinc was 23 percent of primary production.

At the present time about 25,000,000 automobiles are equipped with storage batteries, in recent years the most important use of lead. As storage batteries were first used in automobiles about 1911, when automobile production amounted to only 210,000 units, the great increase in demand for lead for battery use is readily seen. When battery demand was first opening up a rapidly growing outlet for lead, it was not realized to what extent the discarded batteries would return to the market and furnish a fairly constant annual supply of secondary metal competing with primary lead. It has been estimated that as much as 85 percent of the lead used in the manufacture of storage batteries is normally returned to the smelters for reprocessing.

Insofar as the annual domestic recovery of tin from scrap enters the market in competition with primary tin it competes with the product of foreign mines, for the tin output of the United States from domestic ores is negligible. In this case the supply of secondary tin is somewhat of a safeguard to the American consumers of tin. Over the period 1924–28 secondary tin production was 41 percent of the metallic tin imported; in 1929 it amounted to 35 percent, and in 1933 to 31 percent.

That too little consideration has been given in the United States to scrap metals and their bearing on national and international problems is indicated by the fact that the United States is the only important industrial nation that has no regulatory measures concerning the exportation of scrap. Our exports of scrap furnish some importing countries with a cheap supply of metal, making it possible for them to compete on a favorable basis in the United States market for fabricated products. The exportation of tin scrap, which assumed comparatively large proportions in 1934, diverts from the secondary plants in the United States a large supply of crude material that they are amply equipped to handle, depletes the reserves of tin-bearing material in the United States, and weakens our bargaining power as regards prices at which new supplies must be purchased.

The subject of scrap is the great blind spot of the world's metal economy. Despite the importance of secondary metals, no statistics of an international character can be had. The United States is the only Government compiling figures of secondary metal production. The present annual statistics of the

Bureau of Mines should be established on a quarterly or monthly basis and expanded to include stocks and consumption, as well as output. This is one of the most constructive steps that could be taken for stabilization of the metal industries. Until the importance of scrap is recognized, effective adjustment of supply and demand in the metal industries will remain difficult or impossible.

XI. Use of the States' Police Powers for Conservation

Up to this point our discussion has dealt primarily with the economic factors that affect conservation; there remains for consideration the possibility of checking the waste of resources due to careless, negligent, or deliberately wasteful exploitation, by use of the legal powers of the States.

The great mineral-producing States should have the deepest interest in preventing waste of the resources which are the basis of their leading industries; otherwise they may find their natural endowment dissipated after it is too late for remedial action. Indiana awoke to the waste of natural gas after much of her original supply had been burned in open flambeaux or blown into the air. Yet the waste of gas in Indiana was small compared with the enormous quantities now being dissipated in the Texas Panhandle, where a billion cubic feet is being blown off daily, with no use made of it except stripping for natural gasoline. In this case the gasoline recovers barely 5 percent of the total energy in the gas and the other 95 percent is simply blown away.

Prevention of this and similar wastes elsewhere is a complex problem. It requires use of the States' police powers. It also requires modifying the present judicial interpretation of the common law which makes oil and gas subject to "the rule of capture" by a statute which will establish the principle of the equitable share in the common reservoir. Difficult as is the problem facing the States, the stakes are worth the effort. The yearly waste of gas in the Panhandle is now sufficient to supply all domestic consumers in the State of Texas for a period of 17 years. It is nearly enough to supply every householder, every store, hotel, and office in the United States now using natural gas for a period of 12 months.

Under the division of labor prevailing under the Federal Constitution, police powers for the direct prevention of waste in mining reside in the States, and the authority of the latter to prescribe regulative measures controlling wasteful practices is clearly established. Laws to prevent the wasteful production of oil, and to less extent of natural gas, in Oklahoma, Texas, Kansas, California, and in other States have received the sanction of the courts. In the case of Oklahoma, Kansas, and Texas, general authority for regulations promoting conservation is included in a statute which empowers some agency, such as a corporation or railroad commission, to prescribe and carry out waste-preventive measures. By specifying the distances between wells, by reducing needless dissipation of gas pressures essential to oil recovery, and by other regulations, this agency proceeds—with some limitations—to curtail wasteful practices in the oil fields.

In approving the constitutionality of the Oklahoma law, the United States Supreme Court said in *Champlin Refining Co.* v. *Corporation Commission of Oklahoma* (286 U. S., 230, 233):

"* * * There was a serious potential overproduction throughout the United States and particularly in the flush and semiflush pools in the Seminole and Oklahoma City fields; that if no curtailment were applied, crude oil for lack of demand would inevitably go into earthen storage and be wasted; that the full potential production exceeded all transportation and marketing facilities and market demands; that accordingly it was necessary, in order to prevent waste, that production of flush and semiflush pools should be restricted * * *.

"* * * Land owners do not have absolute title to the gas and oil that may permeate below the surface * * * The right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction, or waste."

With this background of experience the States clearly have the power to go further in dealing with waste of petroleum and natural gas, and likewise the power to place similar limitations on the waste of other minerals, such as coal, if they desire to do so.

Progress in this direction can go no faster than the development of public opinion in the individual States. Each State is rightly mistress in her own house, and local people have a clear sense of local needs that may not be fully appreciated by a distant Government in Washington. Yet under past conditions of cut-throat competition between one pool or district and another, a single State has often feared to act alone. In the future if mineral producers are encouraged

to cooperate in the stabilization of production, the State which husbands its resources will be less exposed to unfair competition from spendthrift neighbor States. This economic stability is a necessary first step, aiding the States to perceive how much their prosperity depends on their mineral endowment, and opens the way to more effective conservation programs.

Many of the States, however, are not greatly concerned, as the resource losses from production wastes center chiefly in the dozen Commonwealths which dominate the output of coal, oil, and gas. This fact suggests the possibility of joint action by two or more States immediately concerned, through the use of interstate compacts. The six-State compact for the development of the Colorado River illustrates the potentialities of interstate cooperation. Every encouragement should be given to similar collective action by the States to conserve their mineral resources. Thus far, however, attempts to negotiate an interstate compact to prevent excessive production of oil have emphasized the difficulties in applying the compact plan to the mineral field. The task of controlling overproduction in a few of the States is necessarily part of a larger task of balancing total national supply against total national requirements. It is one phase of the problem of economic stability, the solution of which, as we have already indicated, seems to require the assistance of the Federal Government.

The committee does not attempt to discuss the legal powers of the Federal Government to prevent waste, such as to the control of development of new oil and gas pools and direct control of production within a State, under the commerce clause or other provisions of the Constitution. It should be noted, however, that such power is incorporated in the Code of Fair Competition for the Petroleum Industry and is the chief basis of the congressional investigation now being conducted. The decision of a case now before the United States Supreme Court, involving the Federal power to regulate production under the Petroleum Code, should shed great light upon the scope of Federal authority in preventing mineral waste.

Our concern here is with the unquestioned authority of the States for action under their police powers and with the great opportunities open to the States to conserve their own resources. A review of State "conservation" laws disclose widely varied concepts. In a few cases mineral conservation comes to the front, but in many others minerals are referred to only incidentally or not at all. There are different concepts of what should be included in mineral conservation, and the meaning of conservation appears to vary from State to State. Here is an opportunity for introducing a broader and more uniform concept of conservation to include all resources. Study of these problems deserves the early attention of State planning boards. The field is one of the most productive they could enter. The Federal Government should be prepared to furnish technical advice, when called upon, in the drafting of legislation by the States, in accord with well-defined objectives and a broad national policy. Where helpful, it should lend encouragement to interstate compacts. It is recommended that the broad aspect of this problem be given continuing attention by the National Resources Board.

XII. The Scientific and Engineering Approach to Conservation

In all of the conservational steps discussed under the preceding headings, the necessity for scientific research and better engineering practice is implied, but more should be said about this group of conservational activities. In the interest of greater efficiency, which usually means lower cost, private industry in many instances has gone as far in this direction as economic conditions and the limitations of private ownership permit. However, Federal and State Governments have done classical work in this field and should do much more. The obvious needs are:

1. Extension of areal surveys (topographic and geologic mapping) and of specific studies on occurrences and mineral-bearing districts.

With the transition from general or qualitative knowledge of the mineral resources of a region to a precise or quantitative knowledge, there is constantly increasing need for better and more detailed studies of areal geology for which good topographic maps are a prerequisite. Areal geologic studies are an essential foundation to precise determination of the distribution and the quantity and quality of mineral resources.

2. The preparation of much more thorough inventories of mineral reserves than are now available.

Any policy contemplates exact knowledge of the subject dealt with. The availability of mineral resources is determined by the quantities and their distribution, and by the costs of mining, preparation, refining, and transportation

to consuming centers, and these costs vary with form, size, grade, and complexity of composition of the deposits. With increasing knowledge and improvements in the technique of discovery and of mining and treatment, periodic revisions of reserve estimates must be made.

3. Fundamental research in geology in order to improve methods of finding new mineral supplies.

Inasmuch as mineral deposits are exhaustible, there is the dual need for a critical examination of their features and of the environment under which they occur; first, that those under exploitation may be recovered fully and efficiently; second, that, so far as possible, these may yield abundant information applicable to the discovery and exploitation of new deposits. Minerals of economic importance occur widely and in diverse associations; practically all geologic processes yield, at one place or another, a concentration of valuable minerals. Experience has shown that there are limits beyond which private industry and even the universities cannot go in observing the facts and determining the laws which control the occurrence of these minerals. The State and Federal Governments have a distinct field of usefulness in this research—a field that has not been and apparently cannot be successfully occupied by any other agency

4. Improvements in the technique of exploration.

Well-informed persons generally agree that most, if not all, of the large and rich mineral deposits that crop out at the surface in the United States have been found but they also believe that valuable deposits still lie undiscovered beneath the surface and that many of these will be found by methods of examination and testing that are in process of development. Geologic interpretation is constantly becoming more skillful and several of the physical properties of minerals are now the basis of methods used in their detection. These are broadly called geophysical methods. The range of application and usefulness of these methods of search for new mineral deposits have increased greatly during recent years, and, with research, their use can be still further expanded.

5. Improvement in technique of mining and metallurgy.

Progressive exhaustion of the higher-grade mineral resources requires constant improvement in methods of mining, concentrating, and preparing mineral substances for use. As ores become less accessible and of lower grade, improvements are more difficult to attain. Further progress requires more and more research by industry and governmental agencies. Advances in technique resulting from efforts to extract and treat at a profit frequently are wasteful of the country's irreplaceable mineral resources and may be hazardous to the safety and health of the workers in these industries. Therefore, it is essential that the profit-motive research of industry be supplemented by impartial scientific and technologic research by the National and State governments from the viewpoint of conserving mineral resources and increasing efficiency with due regard to improving safety and health conditions in these industries. Governmental agencies also should conduct pioneering investigations directed toward the application of new discoveries in science to the mineral industries, and they, together with the universities, should provide industry with the fundamental data needed by it for improvement of mining and extraction methods; and, finally, Federal agencies should develop quickly applicable methods for the mining, preparation, and extraction of strategic American minerals not ordinarily mined for use in event of war.

6. Studies of changes resulting from improvement in transportation.

Many transportation projects should be given special study in relation to possible future movements of mineral traffic. The St. Lawrence waterway project raises several important questions of mineral traffic.

These activities will require the strengthening of organized research through Federal and State agencies, but, in addition, will require the coordination of public and private investigation and education and the exchange of information.

XIII. Health and Safety

Mining has long been known as an occupation more hazardous to life and limb than almost any other major industrial pursuit, and in many of its phases harmful health conditions are also encountered.

The miner carries on his occupation underground in confined places where it is difficult to maintain adequate lighting. Frequently the rock stratum overhead requires much care to prevent its crashing down on the worker, who must be on the alert also to avoid relatively small rock falls that often occur without warning. Powerful explosives—with all the risks that accompany their use—and machinery, operated under conditions usually much more hazardous than on the surface,

have a regular place in the daily tasks; in addition, some mines give off explosive or irrespirable gases or may be subject to intrusion of dangerously large volumes of water. Rock falls, fires, explosions, asphyxiation, and machines take a large yearly toll in human lives and crippled bodies. Recent statistics compiled by the National Safety Council indicate that mining has much the highest accident rate, both in frequency and in severity, of all major industrial occupations. Moreover, we are the most backward major industrial nation in the matter of mine-accident prevention, for the accident rate of the United States is exceeded only by that of Chile.

Prevention of accidents in the mining industry is a far more complicated problem than in surface industrial work, even of the more hazardous types, because the different elements which enter into possible accident hazards are much more readily ascertained above ground and action can be taken against them; also, errors in judgment causing accidents in surface industrial work usually affect but one or possibly a few persons, while in mines a human error may readily cause an explosion or other occurrence that may result in death for scores or even hundreds of persons.

In addition to the accident risk, various conditions in and around mines, usually in connection with the air which the worker breathes, have an adverse effect on health. Many deep mines have high temperatures, others have both high temperatures and high humidities, and some shallow mines are affected by outside climatic conditions. Some mines have harmful waters or gases while others are afflicted with dusts. Dust disease is the greatest health menace to the miner, whether in coal or in metal mines, and it is probable that more underground workers are incapacitated or die from breathing excessive amounts of dust than are killed by mine explosions and fires. While health is the greatest asset of any human being, it is of greater relative value to the miner because his occupation demands the possession of far more than ordinary endurance and command of faculties.

The sheer human tragedy of mine disasters with their heavy loss of life is the overwhelming case for an effective mine safety program. Those who have seen the anguish in the faces of relatives stolidly waiting at the tipple for news of husbands and brothers entombed below know the urgency of adequate Federal efforts to reduce the human toll of the mines.

The immediate effect of accident and ill health is cessation or curtailment of income with consequent economic distress in the worker's family and additional strain on relief agencies. The average age of the coal-mine worker who is killed is 35 years, and his active life expectancy and potential income would be relatively good in most other industries. Miners and their families lose between $50,000,000 and $100,000,000 in income annually due to preventable accidents and ill health. While compensation payments may be received by the victims or their dependents as a temporary aid, in general the families of the sickly, crippled, or killed miners usually become largely dependent upon the public for support for several years after an accident, sometimes indefinitely.

Aside from the question of conserving human life and preventing suffering, mine accidents and unhealthful conditions increase the cost of producing mineral raw materials. Recent data indicate that 10 or more percent of the mine cost of producing coal or ore is due to various factors entering into accident occurrence; in the bituminous-coal industry alone this amounts to between $30,000,000 and $50,000,000 per year. If already known and available improved safety methods and measures could be put into general use, the burden of accident expense could probably be reduced to as low as 1 or 2 percent of mineral production costs. The investment of a small fraction of the annual losses in workers' income and the increased mine costs in a larger program to curtail preventable accidents and ill health holds possibilities of at least a hundredfold return.

The difficulty in preventing accidents in and around the mines is well known, and most countries have rather rigid regulations protecting the safety and, to a much less extent, the health of the workers in mining and allied industries. In the United States the Federal Government, through the Bureau of Mines, has led the mine safety campaign through extensive educative and cooperative safety programs by training hundreds of thousands of miners in safety and first-aid practices, by the indirect improvement of mine machinery to exclude unsafe features, and by constant investigations and research to point the way to improved safety practices. Under the Constitution, however, the authority for enforcement of specific safety measures at individual properties resides with the States, and most mining States have laws and agencies intended for safety promotion and enforcement. The State laws and regulations are usually a skeletonized outline of some of the fundamental minimum safety requirements and are often

too general in nature to give adequate protection to the mine worker or even to the mine in terms of modern standards.

For many years progressive mining companies have not been satisfied to operate only within the meager safety requirements of the State codes and have adopted additional and more effective safety procedure of their own, although complying also with the State rules. As a result of this forward-looking policy many of these companies have made great progress in the reduction of accidents. Many examples could be given of such laudable special safety efforts by companies in all branches of the mineral industry, including bituminous and anthracite coal mines, metal mines, nonmetallic mineral mines, coking plants, milling, smelting, and metallurgical establishments, and the various activities in connection with the production and processing of petroleum.

Over a period of 23 years the threefold cooperative efforts of mining companies, the States, and the Federal Government have saved the lives of 24,300 coal miners and eliminated 50,000 annual nonfatal accidents. Organized safety work received its impetus following the 5-year period 1906–10 when there were 84 major coal mine disasters and when coal mine fatalities reached the shocking total of 13,288, or a fatality of 5.89 persons killed per million tons of coal produced. Congress reacted to this situation by establishing the Bureau of Mines in 1910, which has constantly led the pioneer work on behalf of greater mine safety. The success of this movement can be measured by the decline of the coal-mine fatality rate from the high levels of 1906–10 to 3.31 accidental deaths per million tons of coal produced in 1931, 3.36 in 1932, and to 2.69 deaths (preliminary figure) in 1933. If the 5.89 fatality rate for the early period had continued to the first of January 1934, the lives lost would have been 24,300 more than the number recorded. Similar figures as to prevention of nonfatal accidents are not available, but it is estimated that there are about 50 nonfatal accidents to 1 fatality and that about 50,000 nonfatal accidents a year have been avoided.

While much progress has been made in the operation of mines with lessened loss of life or limb, especially in the last decade, consistently exceptional safety performance at many operations indicates that there is still much to be done toward raising the general standard. Some mines, for example, have worked 25 or more years without a fatal accident, while others have worked large numbers of men a year or more without the occurrence of a lost-time accident; one surface mining operation produced upwards of 75,000,000 tons of rock without a fatality, and another underground mine produced over 15,000,000 tons of ore without a fatality; in numerous instances individuals have worked 50 or more years in mines without having sustained any accident which would prevent their working at their jobs on the next regular shift. Recent statistics show that approximately 70 percent of the mines of the United States operate without fatalities, and it is probable that at least 75 percent of the nonfatal accidents occur in 25 to 30 percent of our mines. Unquestionably, some managers now know how to hold accident occurrence to a minimum, and in so doing reap a financial reward as well as performing a humanitarian service of the highest order. Observers who have given the closest study to the subject of accident prevention in mining are thoroughly convinced that accident occurrence can be reduced at least 50 percent (possibly as much as 75 percent) from present rates if the necessary effort is made.

Research in health and safety in mining is needed now more urgently than in any other period of our mining history, as mine technology is subject to rapid changes that invariably introduce new elements (often unfavorable) affecting the health and safety of the workers. Unless study and research on these problems are continuous, little understood conditions are likely to endanger further the life of the miner. Dust diseases, particularly, are increasing and require study of causes and development of methods that will eradicate, or at least materially lessen, their effects. Air conditioning, now beginning to be utilized in other industries, calls for research in its application to the comfort, health, and safety of the mine worker; very probably its application will be found to be connected with the ventilation problem which in some form or other confronts every mine.

Knowledge of how to avoid the special hazards of the mine is not in itself enough; special efforts must be taken to make this information effective by constant education and reeducation of the operator and mine laborer. The ordinary mine worker reads but little and remains in ignorance of surrounding risks unless some central educational agency, capable of successfully reaching into hundreds of widely scattered mining camps throughout the country, is kept functioning. Education is also needed to promote closer correlation of State laws and regulations on mine safety, as well as to point out any inadequacies in present codes.

The need for accident and health work in mines is urgent and ever-pressing. The responsibility for leadership in the effort to reduce unnecessary deaths and suffering rests on the Federal Government. Neither depression nor prosperity can change the need or the responsibility; and an aggressive, effective, long-time mine safety program must function continuously, especially in maintaining frequent contacts with the mine worker. It is the judgment of the committee that reduction of field safety and health work in mining by the Federal Government is false economy threatening the entire mine safety program which must not be allowed to fail.

XIV. Federal Agencies of Mineral Administration

Any attempt to carry through a national policy for the conservation of minerals will involve some readjustment and extension of the present official agencies. At present the field is divided somewhat as follows:

1. The scientific, technical, and statistical services are performed mainly by the United States Geological Survey and Bureau of Mines, both of the Interior Department. The Geological Survey conducts fundamental studies in geology including all mineral resources, many of which bear directly upon the classification of the public domain, makes inventories of mineral occurrences, and estimates reserves. The Survey prepares topographic and geologic maps, studies surface and ground water resources, and through its conservation branch has charge of the leasing of minerals on the public lands.

The Bureau of Mines is mainly responsible for studies of methods for extraction and use of minerals, geophysical methods of prospecting, safety and health of miners, statistical information services, and research in the underlying problems of mineral economics.

2. Foreign aspects of the mineral problem are considered by the economic division of the State Department, by the Export and Import Bank; by the Bureau of Foreign and Domestic Commerce in the Commerce Department; by the Tariff Commission; and by the raw materials committee of the War Department.

3. The Bureau of the Census collects some mineral statistics, particularly as related to smelting, refining, and the burning of cement, lime, gypsum, and clay.

4. The administration of mineral codes of fair competition rests with the National Recovery Administration, except for petroleum, which is administered by the Petroleum Administrative Board under the Secretary of the Interior.

At present no one of these agencies has the authority or the personnel to consider all phases of the mineral problem and to bring about effective coordination of any national policy of conservation.

At the request of the Secretary of the Interior, the Science Advisory Board has submitted reports on the United States Geological Survey, on the United States Bureau of Mines, and on the reorganization of the statistical and economic work now divided among several organizations—the Bureau of Mines, Geological Survey, Bureau of Foreign and Domestic Commerce, Bureau of the Census, and others. Various recommendations have been made in the way of reclassification of the services of the different bureaus, the elimination of some phases of the work, and the strengthening of others. It does not seem necessary to repeat these recommendations in the present report.

However, these minor shifts are not sufficient for a concerted attack on the problem of mineral conservation. There remains to be settled the question of where the administration of codes and production controls involving minerals shall be lodged in the future and their relationship to existing agencies. There is also the problem of how all of these activities shall be coordinated and by whom.

Your committee is not now ready to make specific recommendations on these questions of organization, though we have in mind certain general principles upon which such organization should be based. It seems to us that the principal scientific, technical, and statistical services should remain where they are in the Department of the Interior where public lands are administered. This group of agencies has been in the past, and should continue to be, the central research and fact-finding group for the mineral industries. Some of the fact-finding activities of other departments, such as those in the Minerals Division of the Bureau of Foreign and Domestic Commerce, should be transferred to the Interior Department. The Departments of State, Commerce, and War, and doubtless other Government agencies, will continue to deal with special phases of mineral

trade and, in some instances, may require the services of full-time mineral specialists. In general, however, the committee feels that the needs of these agencies can best be served by developing close working contacts with the central fact-finding services in the Department of the Interior. Provision should be made for investigations abroad by men trained in mineral economics and technology, studying special problems of interest to the domestic mineral industries.

The fact-finding services should be under separate direction from the actual administration of mineral codes or production controls, in order to insure independence of scientific inquiry, yet so oriented as to be of maximum assistance in supplying the data needed for code administration.

Supervision of mineral codes involving control of production, as recommended in our consideration of the subject, should ultimately be grouped under one agency. There are problems of wasteful competition between the mineral industries as well as within them which involve administrative cooperation. Action under an oil code may vitally affect a bituminous coal code, and vice versa. Doubtless the present division of the codes between the National Recovery Administration and the Petroleum Administrative Board of the Interior Department may well continue until the expiration of the Recovery Act in June 1935. Thereafter, the decision will be largely governed by the extent to which the functions of the National Recovery Administration may be permanently continued. If it is desired to place all Government supervision of industry under a single agency, emphasizing uniformity of labor standards and trade practices, the mineral codes might be grouped under a minerals division of a permanent National Recovery Administration. If, on the other hand, it is desired to emphasize the distinctive problems of resource utilization (and the relation of production control to conservation), the mineral codes might be grouped under a mineral-industry division of the Department of the Interior. The latter arrangement has the advantage from the conservation viewpoint of permitting the fullest use of the geologic and technical services and of coordinating the operations of production control with administration of the public domain. Even should Congress consider separate enactments authorizing control of production by the coal and oil industries, it would be well to correlate their administration with other services touching the minerals as a whole.

If reorganization follows these general lines, the Secretary of the Interior would be the Cabinet member having the principal responsibility of mineral administration, and to this extent will be the principal coordinating authority. In addition, however, it would seem necessary to provide for an advisory coordinating committee made up of representatives of all the agencies of mineral administration both within and without the Interior Department, and for a representative of this committee on any more general natural resources coordinating committee that may be set up under the National Resources Board or elsewhere.

We wish to stress the fact that the support of the mineral services is utterly inadequate for the work to be done. Not only has it been impossible to take on important new problems required by changing conditions, but some of the fundamental services which have been long established and have proven their worth have been greatly impaired by recent cuts in budgets. Even such elementary service as the collection of primary statistics of production, which has been a Government function for 50 years, can no longer be adequately performed. Such figures are basic to the intelligent formulation of either emergency or long-range plans. Because of this lack, statistical services have had to be improvised by the National Recovery Administration and other emergency organizations, and the continuity of record is being destroyed.

The exhaustibility of minerals warrants special emphasis on scientific and technological investigations by the Government. The value of minerals produced annually is about 50 percent of that of agricultural products derived from the soil. Notwithstanding the importance of the mineral problem to our national welfare in comparison with agriculture, the total appropriations for Government mineral services are only a fiftieth part of the appropriations given to similar scientific and technological services in agriculture. Minerals, in short, from the standpoint of public attention have been a neglected natural resource.

International Aspects of Mineral Policy

I. INTRODUCTORY STATEMENT

Mineral reserves are unequally distributed among the nations. The principal world production is grouped around the North Atlantic, though important supplies exist elsewhere. No one nation has a complete supply of the minerals

necessary for modern industry; specialisation, reciprocity, and large-scale movements between the nations arise from in nature's unequal distribution of them. The principal sources of supply are relatively few as compared with the nations to be served—a fact that determines broadly certain natural outlines of the world flow. The world supplies of most minerals are so large that there is little need for concern about early exhaustion; but for each nation there is danger of early exhaustion of particular minerals; and all nations are concerned in the tendency of depletion to force an increase in cost, unless the growing difficulties of nature can be offset by new discoveries, cheaper transport, or advances in mineral technology.

The orderly development of these resources of the world by persons qualified by knowledge, skill, and financial strength, and the natural movement of raw materials to the centers of consumption are being somewhat impeded by a great variety of national restrictions on development, on importation, and in a few instances on exportation. Natural channels of the international flow of minerals are being deflected, with great losses to established trade and plants. In some countries high-cost and marginal units of industry not justified by the law of supply and demand are coming into existence, supported for reasons of national defense, or because of a forced or freely undertaken effort to achieve national self-sufficiency. Large world surpluses of mineral production and refining capacity are thus being created, which must be taken into account in solving domestic surplus problems. The world's few rich supplies are not being used most efficiently as cheap sources of raw materials, while the artificial stimulation of new mine capacity, displacing capacity already in existence, forces the resource waste which we have seen to be associated with premature abandonment.

The present strong trend toward nationalism and closed doors in the mineral field is the result of the natural desire for economic self-sufficiency, for self-determination, and for defense. Another compelling force has been the effort to protect currencies and international trade positions. In the present state of world affairs, perhaps the dominant motive of nationalism is fear of extortionate prices, or of being cut off from supplies, in time of war. Economic nationalism may be a conscious public policy based on political considerations or it may be merely the result of activities of special commercial groups; usually it is some combination of the two.

The accompanying chart presents a clear picture of the principal minerals which must figure in international trade either because they are pushed out by the pressure of surplus or must come in owing to a complete or partial lack of local supply. It shows for the principal minerals and for the principal industrial countries the real interdependence of nations in regard to mineral supplies.

The primary objectives of any foreign mineral policy of the United States are obviously (1) to facilitate imports, at low cost, of minerals not produced in the United States in sufficient abundance or proper grade to supply domestic needs, and (2) to secure markets for the few minerals existing in large quantities in the United States and efficiently produced in excess of its own requirements.

II. FOREIGN TRADE IN MINERALS WITH EXPORTABLE SURPLUS

Looking forward to the long life of a nation, it is doubtful whether any of our minerals can be said to exist in surplus amounts and, therefore, any long range national policy should not permanently include the encouragement of mineral exports. However, for some of our minerals, the reserves are so large as to give little concern about shortage for many decades; and capacity for production is so large that there is pressure for export. Also, in some cases there is a demand from nations lacking these resources, which ought to be met in the interest of maintaining something like equality of economic opportunity among nations, just as we expect fair recognition of our own needs of foreign supplies. The exportation of certain mineral products of the United States will almost certainly persist for some time, though the committee sees no justification for artificial stimulation.

Sound policy in regard to the exportation of such American mineral products as may find place in a competitive world market, without endangering the supply required for domestic needs, might well include the following:

(1) Give them fair place in the program of negotiation of commercial agreements.

(2) Seek to secure for them, as for other American products, fair tariff and trade treatment by foreign governments.

(3) Maintain the Webb-Pomerene Act allowing combination of activities in export trade.

(4) Permit American participation when desired in international cartels (sulphur, phosphate, nonferrous metal, etc.), with suitable safeguards of public supervision, particularly as to price.

(5) Avoid artificial stimulation by special concessions in freight rates or shipping subsidies not extended to other commodities.

(6) Discourage importations which aggravate anticonservational conditions of surplus development. The effect of cessation of imports on refining capacity, especially where there is already excess capacity, as in oil and copper.

III. FOREIGN TRADE IN MINERALS FOR WHICH THE UNITED STATES DEPENDS PARTLY OR WHOLLY ON OUTSIDE SOURCES

Dependence upon foreign sources may be due to deficiency in total domestic supply, to shortage of desirable grades, to disadvantageous location of supplies in relation to market.

In commercial and financial negotiations, American representatives should keep in mind our need for specific minerals from specific countries, as shown in the following table:

Mineral commodities in which the United States is wholly or partly deficient and principal foreign sources of supply

Commodity	Principal sources	Alternate sources
Antimony	China	Mexico.
Asbestos	Canada	Rhodesia, Union of South Africa, Russia.
Barite [1]	Germany	Netherlands.
Bauxite	Surinam	British Guiana.
China clay [1]	Great Britain	
Chromite	Rhodesia	Greece, French Oceania, Cuba, Portuguese Africa, Turkey.
Fluorspar [1]	Germany	France, Spain.
Graphite [1]	Madagascar	Ceylon.
Magnesite [1]	Austria	Czechoslovakia, Russia.
Manganese	Russia	Brazil, India, Gold Coast, Cuba.
Mercury	Spain	Italy.
Mica [1]	India	Canada, Madagascar.
Nickel	Canada	New Caledonia.
Nitrates (natural) [2]	Chile	
Pyrites [1]	Spain	Canada.
Talc [1]	Italy	France, Canada.
Tin	Malaya	Hong Kong, Netherlands, United Kingdom.
Tungsten	China	Bolivia, Burma.

[1] Adequate reserves of these materials exist in the United States but their location with reference to the centers of consumption is disadvantageous or their grades are not fully adopted to our uses.
[2] The domestic requirements for nitrate can be met entirely by synthetic production if necessary.

This group of minerals is the one primarily to be considered in reciprocal tariff discussions and other attempts to facilitate foreign trade.

For the group as a whole a reasonable policy would seem to include the following:

(1) Consideration of tariffs in the light of the extent, grade, location, and future life of domestic resources. The group includes several minerals raising debatable problems of tariff revision, such as mercury, tungsten, manganese, graphite, mica, and magnesite.

(2) Protection of American interests against any attempts to maintain excessive prices on our needed imports through the operation of cartels and intergovernmental agreements, export duties, or other restrictions on exports to the United States.

As regards the few minerals vital for national defense purposes, consideration should be given to—

(3) Restriction or regulation of export of scrap.

(4) Establishment of special reserves as discussed in IV of Section III.

(5) Maintenance of trading lines carrying these minerals.

It will be noted that the list of minerals for which we are wholly or partly dependent on foreign sources includes several which are also found in large quantities in the United States. There are cases where the domestic deposits, though of adequate size and suitable grade, are remote from centers of consumption, and where foreign supplies, moving on low ocean freight rates, can be laid

down in the coastal areas at much lower cost than domestic supplies. A familiar example is magnesite. There are other cases, where the domestic deposits do not yield all of the special grades obtainable from abroad. A familiar example is china clay. In either situation a complete stoppage of imports would heavily penalize consumers in some areas.

IV. NATIONAL DEFENSE AND IMPORTED MINERALS

The United States approaches self-sufficiency in its domestic supplies of minerals important for national defense more nearly than any other country. Furthermore, substitutes could be developed for many uses of almost all strategic minerals. In a national emergency, however, the limited domestic supplies would have to be supplemented in the case of manganese, chromium, tungsten, nickel, and tin. Mica and mercury also might present a problem.

These mineral raw materials are necessary for a balanced industrial production in peace time, and they become vitally essential in time of war. Other nations, less fortunate than we in their endowment of national resources, have been trying to guard their position. For example, France requires importers of nitrates to keep a 3 months' supply in stock, has forced the erection of petroleum refineries through her oil-import regulations, and there is reason to believe that Great Britain, Russia, Japan, Germany, and France have all imported raw materials for making ferro-alloys in quantities beyond the normal requirements. The United States has taken no direct precautionary steps to assure itself in a similar way.

This country cannot afford to risk the danger of an interruption of the steady flow of these supplies in an emergency. At such a time, if we should continue to depend on importations, part of the Navy would have to be diverted from combat duty to convoy service, patrolling the sea lanes along which cargoes of these materials would move. Reliance must rather be placed on stocks existing within the country plus possible domestic production. Therefore, to prevent enforced shortages of these essential materials in times of stress, any long-range planning by the Federal Government should include the maintenance of stocks adequate to meet emergency requirements. Our relative dependence on foreign sources for each of these critical materials is indicated in the following paragraphs:

The average domestic production of metallurgical manganese ore during the past decade has been approximately 10 percent of the total national consumption. In 1918 under the intense stimulus of high prices, about 300,000 tons of metallurgical manganese ore were produced in the United States, less than one-half of the normal yearly requirements. Since the war, tariffs have been levied on the importation of manganese ore in the hope of developing a domestic industry. Although the tariff rate of metallurgical ore is equivalent to 100 percent ad valorem, the results have been disappointing. We do not have adequate domestic supplies.

Practically all of the chromium ore for meeting the domestic needs is obtained in normal times from Rhodesia and Cuba, but it is estimated that in an emergency the United States could produce between 25 and 30 percent of its requirements. It is doubtful if Cuba could make good our domestic deficiency, even at very high prices, and adequate supplies would depend upon open lanes across the Atlantic.

China normally provides about 75 percent of the tungsten ore consumed in this country, although under the stimulus of war-time needs the United States may procure approximately one-half of its needs from domestic sources but then only at a very high cost. Alternate sources are located in Bolivia and Burma, but obviously the strategical advantages of these sources are slight.

Antimonial lead from domestic sources might supply one-half of our needs of antimony in times of stress, but under ordinary circumstances China satisfies 75 to 80 percent of our demand for metallic antimony. There is a possibility that some antimony ore might be imported from Mexico in war times without the hazard of marine transportation, but even then the solution of the problem would not be complete.

No tin is produced within the United States but with severe restriction of civilian uses the recovery from secondary sources might supply 30 percent of our war-time requirements. Tin ore is produced principally in British Malaya, Bolivia, and Netherland East Indies. No tin ore is now smelted in the United States, and more than one-half of the world's supply of metallic tin is produced in the Straits Settlements, more than one-fourth in England, and most of the remainder in Netherland East Indies. Closed sea lanes would completely shut off our supplies of this metal.

There are no primary sources of nickel in this country, and the amount of metal recovered as a byproduct or as secondary material is inconsequential. We depend almost entirely on Canada, the source of about 90 percent of the world's supply.

Under the stimulus of war demand, most of our requirements for mercury and mica could be met by domestic production. The deficit in mercury might be met by the output from Mexico. In the case of mica, however, it appears that the needs for special electrical uses can be supplied only by importations from India.

Many studies have been made concerning these minerals in which our domestic supply is insufficient, and many measures have been proposed as to how the situation might be met. But *assurance* of an adequate supply of certain of these minerals in war can be obtained best by providing physical, stock-pile reserves. For several of the minerals tariff protection has been used to stimulate domestic production but has, in general, failed in its object. Domestic production has not been sufficiently stimulated to give an assurance of an adequate supply.

Government stock pile reserves may be obtained by one or a combination of several methods:

1. By direct purchase in domestic and world markets.
2. By accepting materials in lieu of tariff-duty payments.
3. By accepting materials in partial payment of war debts.
4. By using emergency relief funds to stimulate domestic mining.

The first method, of direct purchase, is the simplest and quickest way to attain security. It would entail the expenditure of large sums, available only through direct appropriation by Congress. The cost, however, would be a small fraction of present annual appropriations for defense. In the event of a major war the investment would repay itself many times over.

The second method, of accepting tariffs in kind, might be looked on with more favor, as it would avoid the necessity of direct appropriation. The net effect, however, would be much the same, as the Treasury would be deprived of tariff revenues which it now receives. Undoubtedly such a plan would be opposed by the consumers of these materials, particularly if it should involve new tariffs on minerals that now enter free of duty.

The acceptance of materials for part payment of the war debts, now largely in default, appears as a possible method of securing needed reserves. Debtor nations reason that, lacking sufficient gold to make the payments due, they must pay in goods. Much of their goods competes directly with the products of our mines, fields, and factories. If, however, reasonable quantities of the minerals discussed above were accepted in part payment of war debts, and were then placed in a Government reserve, there would be no injurious effect on our industries. The supplies might come from stocks already above ground or new production. If the debtor governments were to acquire these minerals and transfer them to the United States, the stocks which now overload the world market and constitute a threat to the price structure, and fears that they might be dumped on the world market, to bring whatever might be offered, would no longer exist. Industry throughout the world would then feel the stimulus of demand for new stocks.

Under present unemployment conditions, when millions of dollars are being spent weekly for relief, consideration might be given to having some of the unemployed do useful work in mining ferro-grade manganese ore, chromium ore, tungsten ore, quicksilver, and mica, and placing the products in reserve against war requirements. This proposal has the grave defect of stimulating mineral development beyond the point that could be sustained under normal competitive conditions. On withdrawal of the artificial stimulus, domestic production would decrease, unemployment would again increase, the Nation would have something of value in the ores produced, but the best of its limited reserves below ground would be severely depleted.

The estimated war needs for two years are:

	Short tons
50 percent ferro-manganese ore	1,000,000
50 percent chromite ore	300,000
Metallic tin	60,000
48 percent tungsten ore	10,000
Antimony	35,000
Nickel	40,000
Mica (sheets and splittings)	3,000
Quicksilver (flasks, 75 pounds each)	25,000

It may be stated that the above quantities do not in general exceed the total importation of these materials in the year 1929. Any plan for stock-pile reserves should provide for the cost of secure and permanent storage facilities. Stock-pile reserves should be held inviolate until actually required for war needs. Under these conditions they would have no adverse effect upon peace-time markets.

In addition to stock piles to be held by the Government, consideration should be given to prohibiting the export of scrap of those metals for which the United States depends largely on foreign sources. America is the only industrial Nation that does not regulate the export of scrap of strategic metals.

National planning should take the long-range view. The Nation should seek to provide against emergencies that might threaten its existence, in the same way that business organizations protect themselves by insuring their property against fire and theft. Stocks of the strategic minerals are an elementary form of national insurance. Without raw materials, the industrial front crumbles, and the Nation cannot maintain its armies in the field.

V. TARIFFS

Tariff questions arising in connection with some of the minerals have been briefly referred to in II of Section III. Some further general observations on the nature of tariff policy in the mineral field may be in point.

It is sound and wise American policy to give reasonable protection to those branches of the American mineral industry which have adequate deposits available at reasonable prices.

Those minerals, however, of which the United States lacks adequate supplies, either in general or in certain grades, present a somewhat different problem. Efforts to develop local supplies by levying tariffs on importation and raising domestic prices have had little success. So far as they have increased production, it has been at high cost and has added to the world surplus of production capacity and has depleted our limited supplies which should be held for emergency. Importation from the great supplies of high-grade ores existing in foreign countries continue despite the tariffs. Enlightened self-interest would seem to call for a frank recognition of this situation created by nature. We suggest study of the question whether tariffs on some of these minerals may be advantageously reduced or rescinded, in return for trading advantages from the countries controlling these supplies.

It would also seem likely that in regard to some of the minerals, the interests of this country could best be served by a somewhat more selective type of trade control arrangement than our present tariff. For example, in the field of petroleum it would appear to be desirable to work out arrangements which while protecting domestic industry would still make place in our market for supplies of certain grades which are complementary to American production. If tariffs have tended to check the flow of raw materials into this country attempts should be made to devise satisfactory arrangements whereunder foreign supplies may be more conveniently available to the American refining industry which serves export markets. Arrangements of this type would, for one thing, better serve conservational interests.

Other aspects of this question which merit consideration are (*a*) whether in the case of some minerals, the problem of foreign competition cannot be most suitably handled by some form of quantitative restriction, (*b*) whether in certain fields the Government would not be warranted in giving direct subsidy or bounty to encourage domestic production. In this report we are not prepared to recommend specific measures of this kind but believe them important enough to merit further attention.

The foregoing observations apply to instances where tariffs are imposed primarily for the purpose of protecting American production. If it is desirable to consider tariffs on mineral products for revenue purposes the obvious course of action is to put a high rate on those commodities that are not produced in the United States, lower rates on those of which part of the demand is met from domestic production, and of course not any tariff on commodities not imported in sufficient quantities to yield appreciable revenue.

VI. INTERNATIONAL CARTELS AND AGREEMENTS

There exist a number of agreements with respect to minerals which cross national lines and which exercise a considerable control of the production and marketing of these minerals. In some instances, these are primarily agreements between the producers, and they create in some respects an international trust

or monopoly. In other instances, the governments of producing countries have become parties to the agreement and lend their authority to the measures of restriction and control which have been initiated.

A certain amount of unified commercial control, international in scope, is a natural consequence of the limited number of large sources of supply. For some minerals there is already an approach to world monopoly by single companies or cooperating groups of companies or cartels, as illustrated by nickel, vanadium, aluminum, potash, asbestos, mercury, sulphur, natural nitrates, bismuth, and diamonds. For others ownership is more divided, but still in sufficiently few hands to make world cooperation potentially possible. In this category may be mentioned copper, iron, lead, oil, tin, and manganese. International combinations which can be classed as cartels have from time to time been formed for raw steel, zinc, copper, pig iron, sulphur, ferromanganese, aluminum, lead, mercury, diamonds, magnesite, nitrogenous fertilizers, tin, and other semifabricated and manufactured commodities such as steel rails and tubes, portland cement, etc.

When, through a fortunate combination of raw materials, demand, competent management, and adequate capital, a thriving mineral industry develops, it is likely to become the center of an ever-widening sphere of commercial influence reaching farther and farther afield for new supplies, and eventually transcending national boundaries. In time its sphere impinges on that of other growing units, with the not uncommon sequence of intensified competition, cooperation, and finally merger. Unification has usually brought conservational advances in production, manufacturing, and distribution, although frequently higher prices to the consumer at the same time. The growth of a large unit puts smaller scattered competitors in such a disadvantageous position that they are more or less compelled to combine as a defensive measure. Concentration of commercial control has already tied up so much of the world's mineral resources that the possibilities for acquisition of reserves by new purchasers are very limited. On the other hand, there is a growing surplus of current production and capacity for production for most minerals. One of the purposes of commercial unification is the more intelligent handling of this surplus.

The international spread of unit control has been hindered and deflected by various political measures designed to preserve the local control over domestic industries. Tariffs and taxes have been freely used as defensive measures against outside commercial control. When the barriers thus set up become too high, the outside owner often finds it necessary to form separate companies and to build up local mining, smelting, or manufacturing to a greater extent than might be necessary or desirable if the political barriers did not exist. Nevertheless, there is a steady trend toward common ownership and centralized direction of the industry.

Generally speaking, your committee believes that a considerable degree of cooperative action among mineral producers in different countries is desirable and that it should be encouraged rather than hindered by the Government as a means of combating the present trend toward exaggerated economic nationalism. It offers a means of balancing world production with consumption, insuring that the cheapest and best-located supplies are drawn on, limiting overdevelopment of low-grade marginal enterprises which can yield supplies only at high cost, and insuring orderly distribution and marketing. However, it is essential that consuming interests be adequately protected. This might be achieved by giving these interests effective representation in the operation of international agreements, and by the practice of full publicity.

Competition from marginal sources will in many fields be a brake upon excessive prices, and if necessary this can be encouraged by political measures designed to promote development of local supplies. The responsibility of curbing abuses of power will obviously fall on the stronger nations with potential supplies. The elimination of selfishness in such control is probably impossible, but at least it is an objective to be striven for. If, for instance, the parties to the international tin agreement use their power to secure unreasonable prices, it should be a matter of definite public policy in any nation to encourage exploration and development of new reserves and the development of substitutes. The success of this effort being very unlikely for the near future at least, the Government might resort to other defensive measures, such as reciprocal tariffs and trades for other commodities, in order to keep tin prices within reasonable limits. It happens that tin is one of the most sparsely distributed natural resources, so far found in commercial quantities in only a few parts of the world. For most of the other commercial minerals there are far greater possibilities of control through competition of new supplies.

Executive members of the International Tin Committee are representatives of the several governments and as such act as government agents in the administration of the tin cartel. Although to date only producing countries have been represented, the Committee announced recently that it will appoint an Advisory Panel of representatives of the private consuming interests of the major consuming nations. Such a plan apparently follows that instituted by the International Rubber Regulation Committee, however, providing no vote for members of the Advisory Panel, and leaving much to be desired insofar as effective protection of the interests of consumers is concerned. Because of the limited and unsatisfactory nature of this form of international control, this Government may find reason to concern itself with the broad problems of creating a more acceptable form of international control of the production and marketing of minerals.

The Monetary and Economic Conference, meeting in London in 1933, adopted a resolution setting forth a number of principles to which international agreements relating to the coordination of production and marketing of commodities should conform. The following, 3 (d) of the resolution, lays down the agreed basis for the protection of the interests of consumers:

"It (the agreement) should be fair to all parties, both producers and consumers; it should be designed to secure and maintain a fair and remunerative price level; it should not aim at discriminating against a particular country, and it should as far as possible be worked with the willing cooperation of consuming interests in importing countries who are equally concerned with producers in the maintenance of regular supplies at fair and stable prices."

VII. EXPANSION OF AMERICAN ENTERPRISE TO FOREIGN SOURCES OF MINERAL SUPPLY

The United States has led the world in the variety-abundance, and effective development of its mineral resources. A natural consequence has been the accumulation of capital looking to investment in the mineral industries, the growth of a personnel highly skilled in exploration and development, and the projection of developmental efforts to foreign countries. Among the important minerals outside of the United States, in which American commercial interests share largely in control, are copper in Chile, Peru, Canada, and Rhodesia; vanadium in Peru; iron ore in Cuba, Chile, and Brazil; oil in Mexico, Venezuela, and other South American countries; oil in the Dutch East Indies; oil in Mesopotamia, in joint control with Great Britain, France, and the Netherlands through the Turkish Petroleum Co.; nickel in Canada; zinc in Canada, Newfoundland, Mexico, Peru, and Poland; asbestos in Canada; gypsum in Canada; manganese in Brazil; chromite in Cuba, Canada, and Brazil; bauxite in British and Dutch Guiana and in Europe. American enterprise and capital has shared with the British in the development of fully three-quarters of the world's minerals.

Since the war there has been a rapidly growing tendency the world over to restrict the mineral activities of our nationals abroad. Some countries have closed their borders, as well as those of their colonies and dependencies, entirely against such effort. Others have adopted restrictive measures which have greatly narrowed the opportunities for our activities. In some cases the movement has been accompanied by the adoption of retroactive measures which are more or less injurious in their effect on properties under foreign control. The "open door" for mineral exploration and development has been to a large extent closed. American capital still penetrates foreign fields, but American personnel is gradually disappearing from the management.

Some of these American mining enterprises abroad have served to develop mineral supplies most useful in supplementing the supplies available in this and other large industrial countries. In some instances the extension of activity at the time it was made seemed justified by indefinitely expanding American demand, e. g., in the fields of copper and oil. The relative decline in American demand has however made these enterprises dependent on markets outside of the United States rather than upon the American market. Furthermore, the marked trend in international commercial relations along lines of a direct balancing of interchange between pairs of countries has created new embarrassments for them. Their fate has become increasingly dependent upon the development of American commercial relations and the American market.

In view of the different importance of each of the mineral fields to American national interest, and the infinite variety of political and economic circumstance entering into the policies of the countries in which they are located, it will always remain advisable that American action and policy in the matter be flexible and

shaped in the light of each particular situation. However, it is suggested that wise American policy should in general observe the following directions:

(1) American influence should be exerted within the limits of equity and international law to sustain the acquired property rights of American mining enterprises abroad.

(2) The development of additional supplies from new low-priced foreign sources should in the long run serve the general interest. When such foreign supplies are competitive with domestically produced supplies a balance must be sought which takes into proper account (*a*) the situation of the domestic industry, and (*b*) the interest of the consumer.

(3) The effort of the American Government to secure equality of access to resources and equality of treatment in the development of those resources should be sustained.

(4) The development of foreign supplies of those minerals needed to supplement domestic supplies should receive more definite encouragement than the development of those minerals of which there is already domestic abundance.

(5) The enterprises located abroad should be encouraged to develop trustworthy and fair relationships with the government and people of the country in which they are located. Most of these enterprises have exerted themselves to this end and their usefulness to the foreign country in which they are located has been recognized.

VIII. ECONOMIC SANCTIONS AND BOYCOTTS

Post-war recognition of the great part played by mineral raw materials in industrial progress and in national defense, and realization of the great inequality of distribution of essential minerals among industrial nations, have led to many suggestions that control of mineral supplies by international agreement could be used to enforce the keeping of the peace and to shorten wars.

The committee has not had time to study this knotty problem but plans to discuss the question in its later report.

AFTERNOON SESSION

(The hearing was resumed at 2:10 p. m., as noted.)

Senator KING (presiding): Mr. David T. Mason.

STATEMENT OF DAVID T. MASON, WASHINGTON, D. C., EXECUTIVE OFFICER, LUMBER CODE AUTHORITY

(The witness was first duly sworn by the chairman and testified as follows:)

Senator KING. How much time do you want, Mr. Mason?

Mr. MASON. I have here, Senator, a prepared paper to place quite a lot of facts before you, and I propose to read part of it which will take 12 or 15 minutes. I do not intend to read it all, but I would like to get the whole thing in the record.

Senator KING. If you make a statement that parallels or duplicates the statement here, it will be of no advantage it seems to me. Proceed as you please. The statement may go in the record except the charts. It is impossible to get the charts in, but they will be filed with the clerk of the committee.

Mr. MASON. I think it would be convenient for the Senators to refer to them if they wish.

Senator KING. Thank you very much.

Mr. MASON. There have been some comments made on the Lumber Code here before this committee.

Senator KING. Some, yes.

Mr. MASON. And I wanted to read some of this material that deals with some of those comments.

Senator KING. May I ask whether they are trying to enforce that code now?

Mr. MASON. We are doing the best we can on what amounts to a voluntary basis. They are not doing any court enforcement at present.

Senator KING. I would like you to explain if you care to why you jumped up prices so high since you got a code?

Mr. MASON. I have a statement in here on that very subject.

Senator KING. By the way, are you a producer of lumber?

Mr. MASON. I am the executive officer of the Lumber Code Authority.

Senator KING. What is your business?

Mr. MASON. I was, before I became executive officer, the manager of the Western Pine Association, which is one of the divisions or agency for one of the divisions under the Lumber Code in Western United States.

Senator KING. Where was you home?

Mr. MASON. In Portland, Oreg.

Senator KING. You were connected with those Oregon lumber companies?

Mr. MASON. In eastern Oregon. The Eastern Cascades, yes.

Senator KING. Are you one of the code authorities?

Mr. MASON. The office of executive officer is what amounts to general manager of the Washington staff of the Lumber Code Authority.

Senator KING. Do you make the assessments?

Mr. MASON. The assessments are made by the action of the Lumber Code Authority itself, subject to budgetary approval by N. R. A.

Senator KING. What is the aggregate amount of the assessments that have been made by the Lumber Code?

Mr. MASON. The budget that was approved for last year was something over $4,000,000. That was the amount. There was about 3¼ million collected and expended.

Senator KING. Collected from the lumber dealers?

Mr. MASON. Not from the dealers; from the manufacturers.

Senator KING. And expended how? How could you expend such a large sum?

Mr. MASON. In administering the code. The theory of the code is to secure voluntary compliance just so far as practicable. In undertaking to do that, we had a staff of something over 800 persons.

Senator KING. Traveling throughout the Unitd States?

Mr. MASON. Yes; part of them were stationed in different offices of these various divisions. There are over 125 organized divisions, subdivisions, and groups under the code, and they have their own staff, some of them quite small and some of them quite a good size, and these men are to do as much as they can through persuasion to secure voluntary compliance.

Senator KING. I suppose they would assert authority or attempt to assert authority and jurisdiction over the district in which they were functioning.

Mr. MASON. Only to the extent of explaining the code itself, the requirements of the code from the different persons under it, and in an effort to secure voluntary compliance.

Senator KING. And report what were alleged to be failures to comply with the code?

Mr. MASON. Those reports are made to officers of N. R. A. where it is impossible to secure voluntary compliance.

Senator KING. What are the salaries paid to the officials of the code?

Mr. MASON. I think that my own is probably the largest; $18,000 per year.

Senator KING. Was it larger in the beginning?

Mr. MASON. No; it is the same now as it has been since I have been in Washington. Since last June.

Senator KING. What other salaries were paid to some of the officials?

Mr. MASON. I do not know of any others personally, except those on our own staff. The next highest on our own staff is $9,000.

Senator KING. What position does he hold?

Mr. MASON. The secretary-treasurer of the Lumber Code Authority.

Senator KING. What do you pay to the heads of the various regional organizations?

Mr. MASON. That varies a great deal. The different regional organizations, each one fixes the compensation of its own officers.

Senator KING. But they look to this 3 or 4 million dollar fund for their compensation?

Mr. MASON. Yes; it is paid for out of that, of course.

Senator KING. Does it have to receive the O. K. of the heads of the organization here, those salaries?

Mr. MASON. No, the salaries are left to the discretion of the divisional agencies. However, the budgets are checked in N. R. A. and approved in N. R. A.

Senator KING. Proceed.

Mr. MASON. I wanted to take up, Senator, one of the matters which has been discussed a good deal here before this committee.

When the present act was under consideration in Congress in 1933 and immediately after its passage, the President, General Johnson, Mr. Richberg, and others made frequent reference to a "partnership between Government and business", to "industrial self-government under public supervision", and so forth. Our industries took these statements at their face value. Our code as originally written provided for substantial discretion in the Lumber Code Authority. At the time the code was written no one in N. R. A. raised objections to such discretion in industry. Indeed, the language of the principal articles, namely, those relating to production control and price control, reposing discretion in industry, were written by N. R. A. to carry out the idea of industrial self-government, and were accepted by our industries as a matter of course. In view of the public statements which had been made by high Governmental officials, we expected that a substantial degree of discretion would be reposed in industry, but always exercised under Government supervision and subject to Government veto, as provided in our code.

The production control article in the code is outstanding in reposing such discretion in our industry. This discretion is definitely confined within specified limits; in effect the code authority is authorized and directed to apply the standards specifically set forth in the code. Action of the code authority in applying this limited discretion is subject to N. R. A. veto. This code article provides that the code

authority shall estimate probable future consumption for definite periods of time, shall establish a national production quota divided into production quotas for the several industry divisions to meet the requirements for consumption; it also provides that the divisional agencies shall, based on formulae definitely provided for in the code, establish individual production allotments within the limits of the divisional quotas. It is the duty of the Lumber Code authority to so establish the quotas and allotments that there shall be neither overproduction nor underproduction. The operation of production control by the Lumber Code authority during 1934 resulted in production less than 1 percent greater than consumption. The members of the Lumber Code authority and the divisional agencies have taken their responsibilities very seriously and have worked intelligently and conscientiously to secure the best results practicable.

Senator KING. Let me interrupt you there. You say they worked seriously and intelligently. Did you regard that as a very serious and intelligent action to jump up your prices as you did in the lumber business?

Mr. MASON. Senator, may I come to that a little later on? I have a clear statement on that which I think will cover what you have in mind.

Senator KING. All right.

Mr. MASON. Since the approval of the code in August 1933, in the field of production control there have been more than 160,000 actions by the Lumber Code Authority and its agencies in establishing quotas and individual allotments, in authorizing transfer of allotments, and so forth.

Senator KING. One hundred and sixty thousand?

Mr. MASON. Yes, sir.

Senator KING. That is, you were so serious and intelligent in your procedure that you made allotments to 160,000 producers?

Mr. MASON. Not that many. We make allotments, ordinarily, one each quarter, sometimes more frequently, and there have been about five quarters or more than that since the code went into effect.

Senator KING. That producer then, would have an allotment for a quarter, knowing that at the end of that quarter, no matter what the situation was, he would have another allotment?

Mr. MASON. Yes, sir.

Senator KING. And have a visit from your organization telling him how much he could produce?

Mr. MASON. No; ordinarily they would receive a statement by mail at that time. The ordinary process is for the person to make application for a production allotment and then receive one in accordance with the formula.

Not one of these actions has ever been vetoed by the representatives of N. R. A. whose duty it is to supervise operations by attending meetings of the Lumber Code Authority and its agencies at which such actions are taken, and by later reviewing the written records of such actions, copies of which are in the N. R. A. files. There have been nine appeals taken from the Lumber Code Authority to N. R. A. in connection with these actions; of these six appeals have been decided, all sustaining the L. C. A.—the other three are still pending in N. R. A. In one case the final decision by N. R. A. was taken into a United States court, where the actions of the L. C. A. and of N. R. A. were finally

sustained. Other features of our code have frequently been tested in court, but in no case has the court raised any question with regard to the discretion reposed in industry by our code.

It is this discretion-in-industry feature of the lumber code which caused the Department of Justice, according to its public statement, to move for the withdrawal of the famous Belcher case from the Supreme Court.

Senator KING. Evidently that was withdrawn because the Department of Justice could not find any validity for the action of your organization.

Mr. MASON. As I understand, the Department of Justice felt that it did not care to go before the Supreme Court with a code which conferred or reposed in the code as much discretion in industry as our code does. At least that was the statement made or implied in the public announcement of the movement of the Department for dismissal.

Senator KING. I got a letter 2 or 3 days ago from a man living in Utah, a little man down there. A little timber there would be permitted to be cut upon the allowance surveys and could not be exported beyond the limits of the county, and yet he had been so harassed that he had to quit. He was brought under the jurisdiction of your organization and he quit.

Mr. MASON. Was his difficulty in connection with the price at which he could sell, by any chance?

Senator KING. I am not sure, but he was harassed anyway. They would limit him to the amount that he could cut, and how he should cut it, and how he should sell it, so he just quit.

Mr. MASON. I would like to say, Senator, that that would be——

Senator KING (interrupting). Pardon me. That is purely intrastate. The product did not get outside of the small area, just supplying his neighbors there, and yet your organization assumed the jurisdiction over him and harassed him so much that he had to quit business.

Mr. MASON. That I think you would find is a most exceptional case. That is not at all in accordance with the usual experience. That is an extremely unusual case.

Senator KING. Proceed.

Mr. MASON. And if you would not mind letting me have the reference, I would like to look into it later on and see what can be done to straighten it out.

Senator KING. I will let you see the letter.

Mr. MASON. I would appreciate it; thank you, sir.

The original principles of N. R. A. appear clearly to have included that of industrial initiative with supervision by the Government to prevent such initiative from being carried to a point harmful to the interests of employees or of the public; this appears sound policy. The preservation of the maximum practicable degree of initiative in industry is important in order to secure abundant production at minimum cost; public supervision should be limited to the minimum necessary to protect the public and the employee interest. This policy will tend to avoid the deadening effect of bureaucratic government control, and will leave unshackled the essential life-giving principle of initiative in industry.

Senator KING. Would it not be better to have governmental control than to permit industry to form combinations in restraint of trade and to impose upon the people monopolistic prices?

Mr. MASON. I can only speak from the experience of our own code, Senator, and in our own case I am certain you would find if you had the opportunity to go into it very thoroughly that there has not been such monopolistic control.

Senator KING. Proceed.

Mr. MASON. As intended, production control under the Lumber Code has helped to prevent demoralization of the industry through overproduction, which wastes natural resources and brings destructive price cutting. It has spread work more uniformly (*a*) among individual employees, (*b*) among individual enterprises, (*c*) among communities, and (*d*) among the several forests regions. It has resulted in the reopening of many mills that were closed in 1932. Our industries had excessive capacity even in predepression times when, on the average, only about 60 percent of capacity was ordinarily used. During the period under the code lumber production and shipments have been approximately 40 percent of the predepression volume.

Production control has in general been applied in a manner which favors small enterprises at the expense of large. With only about 40 percent as much market available as in predepression times severe curtailment of production has been necessary. In theory the restriction should be so applied that each unit bears its fair share of the burden.

Senator KING. Was the 100-percent production in the predepression period—you have used that word—consumed by the people?

Mr. MASON. Yes, sir.

Senator KING. It was not wasted, was it?

Mr. MASON. No.

Senator KING. So, before the depression, you were producing, taking your figures 100 percent, all of which was necessary, and all of which was consumed?

Mr. MASON. Yes, sir.

Senator KING. And in the depression, you produced only 40 percent?

Mr. MASON. That is right.

Senator KING. And yet you curtailed production although it was 60 percent below normal?

Mr. MASON. The curtailment was in the market, not in production. The market available was only 40 percent, and the production was necessarily curtailed in order that we might not destroy the industry through producing more than the market would absorb.

Senator KING. I might say that I have received many letters from persons who wanted to build houses, some of them individual house producers, and they claim the lumber prices have been jumped up so high that they could not build, plus the increase in brick and cement and other of the what might be called "durable industries."

Mr. MASON. I am going to give some figures on that in just a moment, Senator.

Production control has, in general, been applied in a manner which favors small enterprises at the expense of large. With only about 40 percent as much market available as in predepression times severe curtailments of production has been necessary. In theory, the re-

striction should be so applied that each unit bears its fair share of the burden, giving due consideration to its ability to produce its past record of production, its timber and tax burden, its employee and community obligations, and so forth. Actually the application of the code formula devised to carry out this purpose has resulted generally in production allotments to smaller plants frequently greater than their production has ever been even in good times.

Senator, on the matter of prices about which you have inquired, I have now come to that part.

Frequently it has been erroneously stated that price fixing under the lumber code resulted in an average price increase of 40 to 50 percent. Due to the character of the industry the depression caused a fall in prices far more serious than in most other industries, and equaled in severity in few if any other industries. A depression low was reached in January 1933, when the index average price stood at 56 percent of the 1926 average. The code was approved August 19, 1933, production control first became effective for September, and cost protection minimum prices became effective in early November. For September the index average price stood at 82, or 47 percent higher than in January; in October the index price stood at 84, or 50 percent higher than in January—this was before the minimum prices had gone into effect; in December the index average price stood 88, or 57 percent higher than in January. Chart (3) in the appendix shows this graphically. Evidently neither production control nor price control were responsible for more than a small part of the increase so greatly needed.

It was stated to the Senate Finance Committee "that during the year preceding the establishment of minimum prices 18 billion feet of lumber was shipped; and that in the following year when minimum prices were in effect only 4 billion was shipped." The facts speak for themselves; minimum prices were in effect from early November 1933 to December 22, 1934; total lumber consumption was as follows: 1933, 15.1 billion feet; 1934, 15.7 billion feet.

In the case of some of our products minimum prices no doubt did tend somewhat to decrease demand. On the whole, however, especially in the case of softwood lumber, it is believed that there was no substantial decrease of demand due to such minimum prices.

Senator KING. What was the price of lumber in Oregon in December 1933 and in January 1934 to June 1934 per thousand feet?

Mr. MASON. In December 1933?

Senator KING. And in January, February, and March and up to June 1934.

Mr. MASON. This diagram gives the average price.

Senator KING. What kind of lumber does that cover; sawed lumber?

Mr. MASON. Yes; it is all sawed lumber.

Senator KING. I meant board rather than timber, such as beams and large timbers.

Mr. MASON. I cannot give you that off-hand, but in eastern Oregon, the principal species produced is Ponderosa pine and the average price of Ponderosa pine in December 1933 would have been somewhere near $22. I am speaking entirely from memory.

Senator KING. At the mill?

Mr. MASON. Yes; that is the mill price. And in January and February of the following year, it was just about the same.

Senator KING. That is, this year?

Mr. MASON. You asked for December 1933 on.

Senator KING. And to June 1934?

Mr. MASON. It was about the same price continuously during that period. I am not sure of that figure, but I am not very far from it.

Senator KING. By the way, while I have these papers before me here, you had to get permission from the code authority to operate a mill, did you not?

Mr. MASON. Yes; there had to be an allotment, otherwise the producer would be operating in violation of the code.

Senator KING. I have a telegram here from Mr. J. W. O'Shaughnessy Jones, of the O'Shaughnessy Lumber Co., of Beaumont, Tex., to the clerk of the committee, and he states among other things that he could not come up here on a certain date, and he states that the file which he sent Senator Nye might be produced and put into the record. And he further states that the file covers the lumber code authority and the Hardwood Manufacturers Institute of Memphis, which is the administrative agency of the Hardwood Lumber Code, and then states:

If Senator Nye not permitted to read openly this file then he is authorized have somebody else read it before committee, as it will show plainly the monopoly in force, the unjustness to labor and operators of hardwood sawmills on smaller basis, and what a great big racket the Lumber Code actually became through threats and force and collection of code fees from sawmills. This file will also show conclusively that the lumber code and its authorities actually retarded recovery and placed sawmill labor on starvation basis working 90 hours per month, then 60 hours per month, which also meant starvation and bankruptcy to single-band sawmill and smaller sawmill operators. We recommend that Lumber Code in its entirety and the N. R. A. be thrown out and not reenacted on any basis whatever, which will permit furnishing labor with regular employment and aid in recovery instead of retarding recovery which N. R. A. and Lumber Code actually did.

I have a number of other letters here which I shall not interrupt you to call attention to, but the purport of which is that they were prevented from engaging in business or operating in some instances their mills, and in some instances only under such restrictions and restraints as to make it impossible for them to operate.

Mr. MASON. Senator, I realize very clearly that a great many people had that feeling, but I would like to read the part of my paper dealing with that kind of a situation. There were a good many people that felt that they were being put in a straight-jacket.

When a ship sinks and the survivors put off in a boat for a distant shore with an insufficient food supply, it is a wise custom to limit the rations systematically for each, lest the strong starve the weak, and lest much of the inadequate supply be ruined in the struggle. Success in this case requires careful organization and force to restrain the greedy.

The gross income to lumber manufacturers from the sale of their product has been, roughly, as follows, in recent years (for calculation see table 2 in appendix):

Yearly average for the years 1926 to 1929, inclusive, the 4 years preceding the depression, averaged $935,000,000 per year. In 1930 this dropped to $585,000,000.

Senator KING. That is the gross receipts?

Mr. MASON. The gross receipts from the sale of lumber products.

Senator KING. Would that include the sales from the small sawmills in the rural districts?

Mr. MASON. Yes; large and small. That is the sum of all of it as nearly as we can roughly determine.

In 1931 this amount had sunk to $350,000,000; in 1932 to $210,000,000 as compared with $935,000,000 in predepression times. In 1933 it rose to $295,000,000; in 1934 to $330,000,000.

Obviously, the "rations" of the lumber industry had fallen extremely low in 1932; the "rations" were much better in 1933 and 1934, but they are still far short of the predepression average. Under the code production control and price control have aided the average price, have reduced but not eliminated losses. Production control has spread the available work and income among employees, among enterprises, among communities, and among forest regions. It could be spread only thinly because there was only about 40 percent of normal production to spread.

Operators in our industries are still in the lifeboat on short rations. They have been irked by the restraints necessary to prevent overproduction, to assist our employees, and to promote forest conservation. They have been enormously irked by the lack of effective enforcement, which has permitted the greedy to take from those who have voluntarily complied with the rules.

Senator KING. Would you say you could expect an increasing market for the purchase of your commodities when you increased the price 88 percent?

Mr. MASON. The price, Senator, was not increased 88 percent. The 88 percent is the price level as compared with 1926 average, which is the highest level our lumber prices have reached since the depression began. That was reached in December 1933.

Senator KING. Some complaints have come to me and several letters I have them here, which as I recall contended that there had been an increase in the price of lumber from the time the code went into effect until the time this information was conveyed to me, of 100 percent.

Mr. MASON. That just is not correct. There are more than 81,000 items of lumber. It may be that some few of those did have a great increase, but when you take the average of all of it, the increase was from the bottom point of—I want to get these figures correct, so I will refer back to them—the depression low in January 1933 was 56 percent of the 1926 price. Before the effect of the code was realized at all on the price, that is, the code being in effect and its operation applicable, in September this index price had risen to 82, or a 47-percent increase from the previous January. That was a very substantial increase but it was due to the economic factors prevailing during that period and not to the action of the code itself which had not really become effectively in operation.

The price went on up from 82 in September to 88, which made an additional increase but only a small part of the total increase, and even at 88, our operators were still having losses. A large share of the loss had been removed but not all of it.

The next deals with a matter which you spoke of before, Senator, of the effect of the allegedly high lumber prices on building.

In the case of some of our products minimum prices no doubt did tend somewhat to decrease demand. On the whole, however, espe-

cially in the case of softwood lumber, it is believed that there was no substantial decrease of demand due to such minimum prices. It has so frequently been erroneously stated by those unfamiliar with the facts that lumber code minimum prices were "unreasonably high and caused building stagnation" that it appears fitting to correct this error. The code prices were at their highest point in December 1933, when the index average stood at 88 percent of the 1926 average; the prices in effect from July 20 to December 22 last (when finally suspended) averaged about 82 percent of the 1926 prices; on the same (1926) basis of comparison, lumber prices were lower than most other building materials, as indicated in chart 4 in the appendix. Rail freight rates on lumber have changed but slightly since 1926. Building-trade labor rates are about 90 percent as much as in 1926. Table 1 in the appendix shows that code wage rates in the lumber industry average 109.5 percent of 1926 rates, which were approximately the same as in 1926. Labor costs make up approximately 37 percent of the cost of housing construction, lumber and millwork only about 17 percent, and other building materials the remainder.

Senator KING. Would that be true where the houses, all in many of the rural districts and small towns, are substantially all of lumber?

Mr. MASON. No; it would not. This is an average for a good many including apartment houses in the cities, but it includes houses of the kind of which you speak as well as the other.

Senator KING. In most of the cities, especially in the country in the rural districts of the United States, perhaps 80 percent or more of the houses are of lumber, are they not?

Mr. MASON. Yes. In this case, of course, the figures would be changed somewhat. Furthermore, in addition to the price received by the lumber manufacturer, which by itself is less than 10 percent of the house cost, the 17 percent——

Senator KING (interposing). I beg your pardon. That would not be true, that 10 percent, if my premise was correct, that a large part of the population are housed in wood structures?

Mr. MASON. It would not be true for that particular kind of house where the percentage would be more, but when you average the houses in the rural districts with the houses in urban districts, then according to the investigations made by the National Lumber Manufacturers Association, that would be correct.

As I say, furthermore, in addition to the price received by the lumber manufacturer, which by itself is less than 10 percent of the house cost, the 17 percent for lumber and millwork includes the retail mark-up and the transportation charges.

The next subject here, Senator, is the matter of the labor provisions of the code.

Lumber code minimum wage rates for most of western United States are higher than those set in most other codes. With respect to our minimum wage rates in the South there has been much discussion and much difficulty. Prior to the approval of the code, minimum wages in the South in our industries averaged slightly below 12 cents per hour. The lumber code when presented to N. R. A. by industry representatives on July 10, 1933, placed southern minimum wage rates at 20 cents per hour. General Johnson stated that 20 cents was wholly unacceptable. The industry then revised to 22½ cents and so stated at the public hearing beginning on July 20,

1933. In the post-hearing conferences, under pressure from N. R. A., the southern minimum was raised to 24 cents, or more than 100 percent above the previously prevailing average minimum. Even this rate, finally approved, was considered too low in many circles in N. R. A.

Senator KING. Let me interrupt you there. Were not many of the sawmills in the producing organization in the South in rural districts, and those who were employed were few in number per unit and had their homes contiguous to the mill, and many were interested in the mill itself?

Mr. MASON. Yes.

Senator KING. The proprietor and his three or four sons and his relatives would be the operators of that mill?

Mr. MASON. That would often be the case.

Senator KING. So the question of wage was quite unimportant to them?

Mr. MASON. Of course the wages only applied to those who were hired to work, and where the members of the family do the work themselves, the wage rates of the code are not applicable.

It was clearly recognized by the industry and also by responsible officers in N. R. A. that the 24-cent minimum wage would put out of business a considerable number of southern enterprises, mostly small; however, the administration stated at the time that enterprises which could live only by sweating labor should not live at all. Since the approval of the code many complaints have come that the code is oppressive and destructive of small enterprises in the South because, as is asserted, the minimum-wage rate is too high. Thus, our code has become a battleground between those who believe that the southern minimum-wage rate is not high enough and those who believe it is too high. It is this situation which has given rise to assertions that the Lumber Code is oppressing and destroying small enterprises.

Lack of effective enforcement of the minimum-wage rate in the South is the most important cause contributing to the present crisis of the Lumber Code.

The Federal Trade Commission made an investigation of the situation in the South and on May 7, 1934, reported, in effect, that the operation of the code is not discriminatory against small enterprises.

The next part deals with compliance and enforcement.

The whole code system was founded on the theory that about 90 percent of industry would voluntarily comply with their codes provided the Government enforced the codes effectively against the recalcitrant minority which, if not controlled effectively, would ruin the code system. Under the Lumber Code there was excellent voluntary compliance for many months; then as various code violators went unpunished disintegration set in.

Senator KING. What were the violations complained of? That they did not adhere to price fixing?

Mr. MASON. Those were the most numerous violations——

Senator KING (interposing). Selling below the prices fixed?

Mr. MASON (continuing). In the early part of the period of the rather rapidly increasing violations which began about the first of June. They began in May and in June a year ago.

Senator KING. Resentment against the attempt to fix prices and restrict production? Those were the principal violations? Where

it was alleged that they were failing to observe the mandate against exceeding certain limits of production and the mandate about fixing prices?

Mr. MASON. We have had extremely few violations of the production-control article. We have had a great many violations beginning in May, increasing in June, and increasing thereafter, in the price provisions of the code, and since you are interested in that, Senator, may I read the part of this which deals particularly with the reason for that?

Senator KING. The reasons you gave for prosecuting?

Mr. MASON. No; the reasons for the violations. This deals with the whole subject of price control.

When the Lumber Code was written, price-control provisions were considered essential to permit paying increased wages and to permit the industries to live and slowly regain their strength without further loss of working capital. The price-control article of the code, specifically setting standards and prescribing the discretion of the code authority, provided for minimum prices returning part, but not all of average production cost. "Cost protection minimum prices", established effective in November 1933 applied to 97 divisions, subdivisions, and organized groups through an aggregate of 613 pages of price bulletins containing prices for about 81,000 different items produced. With these prices in effect losses for establishments having average costs were much reduced but were not eliminated.

Senator KING. May I interrupt you there?

Mr. MASON. Surely.

Senator KING. Were all of those pages—how many did you say?

Mr. MASON. Six hundred and thirteen.

Senator KING. Were they devoted to the lumber code?

Mr. MASON. Yes, sir. There were about 43 or 45 different separate bulletins, each one under a separate cover.

Senator KING. Who issued the bulletins?

Mr. MASON. The Lumber Code Authority issued them.

Senator KING. Six hundred and some-odd pages?

Mr. MASON. Yes, sir.

Senator KING. And what was the other figure there?

Mr. MASON. Might I continue just a moment on the price bulletins? The price bulletins were issued by the lumber code authority up until July 16, 1934. Thereafter they were still issued by the Lumber Code Authority, but the prices themselves had previously been approved by the administrator of N. R. A.

You asked me another question, Senator?

Senator KING. There was another figure you gave there.

Mr. MASON. These 613 pages of price bulletins contained prices for about 81,000 different items produced.

Senator KING. So that there was a price fixed in those 613 pages for each of 81,000 items?

Mr. MASON. Yes, sir.

Senator KING. Proceed.

Mr. MASON. For many months—that is, after the setting up of the prices in November 1933—there was excellent voluntary compliance with such prices, but by June 1934 substantial violation of the prices had begun at certain critical points.

Senator KING. What do you mean by "critical points"?

Mr. MASON. Especially on the west coast, in northwest Washington and Oregon and in the South.

Price control for many thousands of items, sold by many thousands of producers and wholesalers, presented a highly complex and difficult problem because of the average cost determinations required; because of the need for the maintenance of fair competitive relation between lumber items, grades, species, and producing regions in various destination markets throughout the United States; because of the need for suitable price differentials allowing for varying quality of product from varying quality of timber, varying quality of manufacture, and so forth; and because of numerous other complications. These exceedingly serious technical difficulties were, however, comparatively well met. Price disintegration became serious in some of the major divisions; where it did occur, it came about primarily for the following causes:

(*a*) Although fair competition requires that wholesalers, who market more than half of the lumber produced, as well as manufacturers be under the jurisdiction of the code, the wholesalers were left out, notwithstanding unceasing efforts by the code authority since the approval of the code to have them included. This deficiency proved a vital defect.

Senator KING. If I understand you, you not only wanted the producers of lumber to be brought under the Lumber Code, but you wanted the wholesalers of lumber to be brought under your code?

Mr. MASON. Yes, sir. The reason for that is this, that the manufacturer of lumber of course is himself a wholesaler, and then there are independent wholesalers who buy the lumber from the manufacturers and also, as does the manufacturer, sell to the retailers and other customers.

Senator KING. You wanted to control the production and the prices to the wholesaler, and then you wanted to control the prices that the wholesaler sold to the retailer or to the domestic market in the respective districts where the wholesaler lived?

Mr. MASON. Yes. Just the same as in the case of the manufacturer. In other words, the wholesaler was competing with the manufacturer in selling to the retailers and others. Fair competition demanded that there be control of the wholesaler's operation just the same as of the manufacturer's operations in selling if the manufacturer was himself to be controlled.

Senator KING. You were trying to control the entire industry from the tree to the last person that handled it and used it.

Mr. MASON. Only up to the point where it was sold to the retailer or other customers. There is a retail code you know, Senator, which deals with the operation of retail lumber selling.

Senator KING. Proceed. Hasten along, as we have a number of other witnesses.

Mr. MASON. This deficiency, that is, not having the wholesaler under the code, proved a vital defect, and beginning in early 1934, and increasing in intensity throughout the year, price control under our own and other codes was under a heavy fire of criticism expressed in interviews, speeches, news releases, and so forth, by high Government officials and in general administrative policy orders.

This barrage tended to poison the minds of the general public, our customers, and of our own people under the code, with respect to the

purpose, necessity, and fairness of continuation of our prices, and this barrage demoralized our markets for months.

Senator KING. Did not the barrage, in practice, come from the strike on the part of consumers who could not afford to pay the high prices being charged by the manufacturers of lumber?

Mr. MASON. There was, of course, a movement by consumers as well as by these public officials, but there was not, I would say, a strike of any substantial proportions at all, though there might have been some.

Senator KING. They were not buying, were they?

Mr. MASON. They did buy.

Senator KING. I thought you stated the production was 40 percent of what it was in 1929'

Mr. MASON. The difficulty there was that the house building, which is our most important market, had fallen off to a point less than 15 percent of the predepression volume, and our industry, of course, has no control whatever over people building houses. We had furnished all of the product that is called for by the market, but there is nothing that we have been able to do to stimulate that market in a period of depression such as we had and still are having.

Senator KING. Did you not have a reduction in prices of products, cement, steel, and lumber, that would stimulate business and encourage building?

Mr. MASON. The prices actually were substantially below the 1926 prices as to lumber. I cannot speak for the other products, because I do not know, but in the case of lumber, we were losing money at the highest price point, that is, when the prices were on the average at 88 percent of the 1926 level, our enterprises were losing money, and we did not feel it was fair to cause still heavier losses, because that would automatically react against labor as well as against the employer.

You asked for the reasons for the price violations, and I will say the third major reason was that the enforcement efforts of the N. R. A. were ineffective.

Considering the gravity of all of these difficulties price control was surprisingly effective and did much to stabilize our industries. Small enterprises generally benefited more than did the large from price control.

Following a public hearing in December on price control under our code, the N. I. R. Board by its order of December 22 suspended all prices under our code.

Since the suspension of price control prices have been gradually stabilizing on the basis of supply and demand. The present average price is only slightly below the December average. (See chart 3 on file with committee.)

I would like to speak some more on the enforcement effort, and there is just a little more I have to present.

It has been pointed out that one of the most important fields of code violation was in this price field and that was important in the summer and fall of 1934.

Senator KING. That is, there was violation of the minimum prices which the industry fixed?

Mr. MASON. Yes; and those prices were suspended during December 1934, but during part of that time, there was considerable

violation in some parts of the South of the wage provisions, and from that time on there has been an increased amount of violations of the code wages in the South.

I would like to say this with regard to compliance and enforcement in general.

N. R. A. enforcement action in the case of our code became aggressive in August 1934, a year after the approval of the code. This effort soon resulted in conflicting district court decisions. Most persons under the Lumber Code were hanging on desperately in the face of most damaging unfair competition from code violators while awaiting the Supreme Court decision in the *Belcher case*. The public announcement of the Department of Justice of its withdrawal of the *Belcher case* primarily because of alleged faults in the Lumber Code precipitated a desperate crisis. Efforts are being made to overcome this crisis, but there is grave doubt whether these efforts will be successful.

Senator KING. You believe in price fixing, and tried to have that carried out?

Mr. MASON. Our industry did.

Senator KING. I am speaking of the industry, and you must not imply any criticism in the questions I ask, because I am trying to get facts. You never believed in open prices?

Mr. MASON. No; we never considered open prices. That is a system that would be practically impossible to operate under our code, because it requires the filing of prices, and you can see that the 613 pages and 81,000 items would make it practically impossible to use an open-price system.

Senator KING. Did you attempt to establish a policy of cost accounting, as that was formulated by some of the codes?

Mr. MASON. No; we did not. We had provided in the code for a formula for arriving at cost, but not a standardized cost accounting system.

Senator KING. When you attempted to fix prices for your commodities, you must have had some basis of cost accounting.

Mr. MASON. We did. We collected data on costs, that is, actual costs, from just as many mills as we could get it. You understand that there are about 20,000 of these mills—most of them are very small, and without any accounting records whatever, and we could not get their cost records when they did not have any. However, we did get records from the more substantial mills, which in point of volume produced 75 or 80 percent of the entire production.

Senator KING. I suppose you approved the code when you believed you could fix prices and limit production, and you would not favor a code that did not permit price fixing and limiting of production?

Mr. MASON. I would say we were never put to that test. We always considered that in order to meet this emergency, and to not only provide for the minimum wages which demand in our industry a very substantial increase in the cost, and also to provide for conservation features, which were also put in the code at the President's request—that in order to meet this increased cost, we had somehow to get away from cutthroat prices, and price cutting, and the ways that were selected and approved by the N. R. A. were production control and price control.

We considered those two were essential.

Senator KING. I would assume from that, and from what you have stated heretofore, if there were to be a continuation of the code, or any other measure that might be adopted continuing the code provisions, you would want in the code the authority to limit production and fix prices.

Mr. MASON. We would undoubtedly want the authority to control production; that is, to produce enough, but not too much.

Senator KING. To control production?

Mr. MASON. Yes.

Senator KING. And that means you are to determine how much will be produced?

Mr. MASON. Yes; under public supervision.

Senator KING. And you would want authority to fix prices?

Mr. MASON. I am speaking of that separately, because there has been, I would say, a very substantial change in sentiment in our industry. We recognize now the very great difficulty in managing price control. We think it may be necessary in the case of some divisions which cannot use production control, but I would say they would advocate using it only to prevent destructive price cutting.

Senator CONNALLY. A good deal has been said about antitrust provision violations. Is it not a fact that production control and price control are the very heart of the monopoly or trust evil?

Mr. MASON. I am not an attorney, but as I understand, they would be so considered, if it were not for the present act and the code being contrary to the antitrust laws.

Senator CONNALLY. Regardless of whether they are contrary to law or not, are not those the evils, the monopoly we are all striking at; if you turn over to somebody the power to control the output of an article, and then on top of that control the price of the article that the public must buy, do not those two things comprehend the great evil of the trust?

Mr. MASON. I think Dr. Hamilton brought out this morning three different classes of industry. Some were without any code, and the industry itself is of such a nature, a few relatively large units, perhaps, that they apparently had no difficulty about prices.

There is a certain group, and those are the ones where the public probably needs to watch out for a monopoly, so to speak; and there is another great group where competition will take care of the public interest with respect to a monopoly.

There is a third group, our own industry, and the coal industry being examples, where there is such a tremendous pressure for production that there is a constant tendency to overproduction, which results in unfairly low prices which in effect amount, as Dr. Hamilton pointed out this morning, to a subsidy to the consumer at the expense of the industry, and especially at the expense of the labor in the industry.

Therefore, we feel in our own industry, it is in the interest of the public, in the long run, the interest of the consumer as well as our own employees, to control production to a point where there is not excess production, bringing excessively low prices.

Senator CONNALLY. If you control production that would do away with that. If you control production, why would it be necessary to go further and control prices? Why not let it be controlled competitively?

Mr. MASON. It may be necessary to be under control. There might be a very abrupt change where it might be temporarily desirable in the case of the lumber industry for instance, where we carry in stock a volume of lumber equivalent to about one-half of the annual demand.

If the demand suddenly falls off, then stock becomes excessive, and a burden upon the market, and it might be desirable, while the stock is being readjusted in order to prevent destructive price-cutting, to have price control temporarily.

The Lumber and Timber Products Code, second set for public hearing, was approved August 19, 1933. It includes four major and a dozen minor national forest using and wood working industries, the names of which are given in the organization chart (1) in the appendix. These industries altogether embrace approximately 35,000 establishments, located in every State of the Union, with approximately 400,000 employees, averaging 11.5 employees per establishment. In predepression times our employees numbered approximately 600,000. Our industries constitute the principal industrial activity in many parts of the country, especially in the more important forest regions.

In this brief statement it is practicable to deal only in a general way with some of the problems and experience of our lumber-producing divisions, which employ about two-thirds of all of the employees under our code.

For many years prior to the beginning of the present depression the huge quantity of standing timber, constituting more than 50 years' supply of raw material, bearing heavy property tax and other burdens, pressed for liquidation so strongly that many sawmills existed primarily to liquidate timber rather than to serve market demands for lumber. This situation caused excessive plant capacity, chronic overproduction, and resulted in slight profits on the average and heavy losses to many lumbermen in the years immediately preceding the depression. At the beginning of the depression intensified overproduction greatly increased the normally large stocks of lumber (see chart (2) in appendix); in 1932 and early 1933 lumber sold much below not only the full cost of production but even much below the cash-out-of-pocket cost of production.

Markets for lumber products have fallen off seriously since the war, due to continued encroachment of substitutes, to the general agricultural depression, and to the difficult situation of the railroads in late years. The building industry constitutes the chief market for lumber; in the years 1932, 1933, and 1934 house-building has been at less than 15 percent of the 1926–29 volume. Great quantities of timber pressing for liquidation, greatly excessive stocks of lumber, and grave need for ready cash, all resulting in destructively low prices, brought excessively low wages to employees. The severe financial losses to owners are indicated by United States Treasury Department statistics of income of the lumber corporations (sawmills and planing mills) which show that, as compared with gross income, there was a net income in 1926 of 2.93 percent, in 1929 of 2.21 percent; net income was turned in 1930 to a deficit of 7.01 percent, in 1931 a deficit of 19.2 percent, and in 1932 to a deficit of 32.24 percent. No later statistics from this source are available; undoubtedly, however, when available such statistics for 1933 and 1934 will still show heavy deficits, but smaller in percent than in 1932.

These cold statistics indicate only faintly the distress of our industries in the depths of the depression.

Limitation of hours under the code increased the number of persons employed to produce a given quantity of lumber by about 20 percent. The code was approved August 19, 1933; between July and September 1933 the average hours of employment per employee per week decreased by about 25 percent.

The special code provisions relating to hours are on the whole adequately flexible to meet seasonal or other unusual conditions; such flexibility is essential.

The hour limitation taken entirely by itself has tended to decrease weekly and yearly employee earnings; however, the hourly wage rate increase has in greater proportion tended to increase the weekly and annual earnings; in other words, 20 percent increase in the number of employees required for operation is less than the 45 percent increase of average hourly wages.

The general principle applied in the code was to restore 1929 minimum hourly wage rates. This standard was followed, excepting in certain parts of the country where such 1929 wage rates were below 30 cents per hour, in which cases the code wage rates were established at rates higher than those of 1929. The result for the whole group of industries is an average minimum wage rate higher than at any time since 1920.

From July 1933 to October 1934, our average hourly wage rate advanced approximarely 45 percent, and weekly wages advanced 16.5 percent; weekly wages would have advanced still more if there had been sufficient demand for our products to furnish work for the full 40 maximum hours per week allowed by our code. In 1934 employment averaged 31 hours per week, to meet demand for 41 percent as much lumber as was produced in 1929. The cost of living advanced from its lowest point for the depression in April 1933, to a 13.3 percent higher figure in September 1934, the high month for that year.

Article X, embodying the forest conservation features of the code requires the industries under it to adopt forest practice rules and to set up machinery to secure effective protection against fire and other destructive agents, to secure effective protection of seedlings and immature trees at the time of logging, and to secure reproduction on cut-over lands. Appropriate steps have been taken to carry out these requirements. Also steps have been taken to promote sustained yield forest management as an essential step toward stabilization of the industries and of communities dependent upon the industries. Much progress has been made in this forest conservation work but further progress is hampered by the lack of effective enforcement of the code in general and by lack of certain public measures recognized by the code as essential in the fields of State tax reform, and of publicly organized credits similar to the Federal Farm Credit System for the support of necessarily long time sustained yield forest enterprises.

The whole code system was founded on the theory that about 90 percent of industry would voluntarily comply with their codes provided the Government enforced the codes effectively against the recalcitrant minority which, of not controlled effectively, would ruin the code system. Under the Lumber Code there was excellent volun-

tary compliance for many months; then as various code violators went unpunished disintegration set in.

That is all, I think, Mr. Chairman.

Senator KING. Thank you very much, Mr. Mason.

I want to read into the record a letter from Harry S. Gordon, real-estate agent, addressed to the chairman of the committee, of date April 12, 1935, reading as follows:

Having followed your activities with much interest, and feeling that I know you personally, I am taking the liberty of writing to you in connection with the Construction Code of the National Recovery Administration.

It is my opinion and, I believe, the opinion of practically all those who are not in the business of constructing large buildings, selling materials, architects et al., that there should be no code for the residential builder, residential construction, and land development; however, if it is the opinion of Congress that there should be a code, I do not believe it should be under the Construction Code.

One of the troubles now is that it costs too much to build homes, and with costs so high there are but few who can afford to buy.

Enclosed please find statement of the National Association of Real Estate Boards which I trust you may find time to read, for I am sure you desire to know all the facts.

Thanking you for you cooperation and for better laws, I beg to remain,

Sincerely yours,

H. S. GORDON.

Senator KING. Attached to the foregoing letter is a statement from the National Association of Real Estate Boards, signed by the secretary, and that statement may go into the record.

(The statement is as follows:)

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS—STATEMENT REGARDING APPLICATION OF NATIONAL RECOVERY ACT AND CODES TO RESIDENTIAL CONSTRUCTION AND LAND DEVELOPMENT

To the Members of the Finance Committee of the United States Senate:

The National Association of Real Estate Boards is a federation of 426 local real-estate boards situated in 426 cities, towns, and counties throughout the United States, and including all of the States of the Union except three. There are approximately 11,000 real-estate offices holding membership in the association. Of this number, more than 2,000 companies and individuals are engaged in the business of developing building sites and the building of homes for the market. These companies and individuals in a normal year build or cause to be built approximately 35,000 homes for the market, most of them costing less than $10,000. This constitutes from one-third to one-half of the total number of single-family dwellings commercially built and sold in the country under normal conditions.

This association desires to protest to your committee against the application of the Construction Code to the business of development and selling of building sites and to the business of building and selling of residential accommodations.

To protect the interests of its members the association has filed a special code for land development and home building and has received from the National Recovery Administration a stay with respect to the provisions of the Construction Code except those having to do with child labor, minimum wages, and maximum hours. If the Construction Code is continued, the business of land development and home building can only survive if granted its own code entirely independent of the Construction Code.

We object to the Construction Code on the following grounds:

1. *The development of land and the construction of building is not interstate commerce.*—Certainly these activities are by their very nature local in character, if anything is. The fact that certain objects and materials used in the building of a house may have been transported from one State to another does not make the process of building the house itself interstate commerce as contemplated by the National Recovery Act. If the words "interstate commerce" can be expanded to include an activity of this kind, the term will have lost its meaning and all business must be classified as interstate commerce.

2. *The Construction Code seeks, by definition to control activities not commercial in character.*—Under the definition in the Construction Code, any construction in the United States costing more than $2,000 is subject to its provision. This means that the farmer who undertakes to build a barn is subject to the code. So is the man who undertakes to build his own house with his own hands. So is the man who desires to build an addition to his home and employs for this purpose a local carpenter or small contractor. It seems to us questionable whether such persons, of whom there are millions, can be said to be engaged in either commerce or industry in preparing such facilities for their own use or enjoyment. Nevertheless, the Construction Code now requires that all such citizens, located on farms, in villages, and in cities, must report their intentions and activities to the code authority of the Construction Code in Washington, and must conduct their operations under regulations so detailed and complex that they cannot be understood by a layman. We believe that such activities are of such private and personal character that it was never contemplated by Congress or by the law that they be classified either as "industry" or as "interstate commerce."

3. *Construction is not an Industry.*—The Construction Code seeks to define all construction costing $2,000 or over as a part of the so-called "construction industry." We believe that this defines a function but not an industry. In the field of construction there are a great number of varied lines of business, often highly competitive, seeking to sell goods and services to the public. These various lines of business have no common purpose, no common policy, no common management. In fact, they have few common problems. To seek to group all these lines of business, of which there are scores, as a coherent unit which might be called an industry is contrary to all fact and all experience. All efforts to organize the construction field through voluntary association in past years have failed. The Construction Code will fail to do so because the attempt is illogical. The attempt to group all construction activities under one heading as an industry is just as illogical as it would be to attempt to set up a code governing all machinery and the activities concerned with all machinery under one heading and to seek to designate this grouping as an industry to which a code should be applied.

4. *The code authority of the Construction Code is not representative.*—The National Recovery Act requires that any code authority be truly representative of the group which it seeks to govern. The present Construction Code was formulated by a group of architects and contractors.

The code authority of the Construction Code consists today largely of similar persons. The business of land development and home building is not represented in the code authority; the business of building homes for the market is not represented; and the millions of farm and urban citizens who from time to time undertake to build for themselves are not represented. Only a few of those engaged in handling contracts for public works and big building projects are represented. If the code authority of the Construction Code is to be truly representative, all those whom it seeks to govern, including millions of citizens, must be given a voice in its selection which has hitherto been denied to them.

5. *The Construction Code levies forced contributions on those not represented in the code authority.*—Millions of citizens and small business men are forced under the Construction Code, which is now law, to contribute for the support of the code authority to administer the Construction Code as follows:

"In order to collect the information for the Administration called for, it (code authority) may require, either directly or through any divisional code authority, the registration, in such manner as it may deem appropriate, of all construction work or services of or in excess of $2,000 in value, and in order to defray the expenses of such registration and of the administration of the code may apportion such expenses on the basis of the value of the work or services so registered, but in no case shall the charge be less than $2."

That millions of citizens should be constrained to make such contributions to a code authority in whose selection they have had no voice and of whose plans and purposes they have no knowledge, or else be in violation of Federal law, is repugnant to all American tradition and usage. We must look to the Congress to protect us from such exactions.

6. *The Construction Code is impractical because it cannot be administered.*—In addition to the General Construction Code, there are a number of supplementary codes, governing in detail various phases of the process of building. All of this constitutes a mass of material, having legal effect, which it would require weeks of study of well qualified lawyers to understand. To seek to apply this mass of regulations to the activities of millions of citizens and small business men, most of them unsympathetic with the objects sought, is an undertaking beyond the power of any administrative body, and possibly of any government.

While millions in money and an army of inspectors might be employed in the attempt, it is our belief that such an attempt cannot succeed.

7. *The Construction Code is decreasing employment.*—Early in 1933 there were some evidences of recovery in home building. In the fall of 1933 when a construction code seemed assured, and prices of building began to increase rapidly, home building immediately began to decline again. As a result, in 1934, new family accommodations erected dropped to a new all-time low point. Those who undertake to build homes do not at present feel they can make the long-time commitments which are necessary, as long as they have no assurance as to what future costs may be. There is attached hereto a chart showing increases in cost of construction following the adoption of the codes and showing also the present relative volume of residential building. It is our belief therefore that the Construction Code, instead of aiding employment, has been a positive factor in deterring it.

8. *The Construction Code is adverse to the public interest.*—The Federal Government has repeatedly declared that home ownership and the building of homes is desirable. To aid home ownership and home building, the Congress has passed a number of important measures, including the Home Loan Bank Act, the Home Owners' Loan Corporation Act, and the National Housing Act. The effects of these acts, which were welcomed by the Nation at large, have been nullified by price increases due to codes which have placed home ownership out of the reach of the average citizen. The average cost of a small home today is approximately 30 percent greater than it was 2 years ago. In the home-building field, price increases do not stimulate activity, if such price increases merely result in placing home ownership out of the reach of the average man.

In the National Recovery Administration three advisory boards, namely, the Consumers Advisory Board, the Industrial Advisory Board, and the Research and Planning Board, have recognized that home building should not be subjected to the costs and innumerable regulations which the Construction Code seeks to impose, and have recommended that land development and home building be not included under the Construction Code.

For the above reasons, we respectfully request that your committee report to the Congress:

First, that the Construction Code should be abrogated;

Second, that in any event, land development and home building should not be included under the Construction Code.

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS,
H. U. NELSON, *Secretary.*

Senator KING. The next witness is Mr. Houston.

Mr. DAVIS. Mr. Chairman, Mr. Houston cannot be here, and I am the witness following him, and I have his authority to take his place.

Senator KING. You are from the same association.

Mr. DAVIS. Yes; I am.

Senator KING. You are John P. Davis?

Mr. DAVIS. Yes, sir.

Senator KING. Then you may come forward and make your statement.

TESTIMONY OF JOHN P. DAVIS, WASHINGTON, D. C., REPRESENTING THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

(The witness was duly sworn by Senator King.)

Senator KING. How much time do you want?

Mr. DAVIS. If the chairman will allow me to introduce into the record three items, two short magazine articles and a carefully prepared statement presented at the employment provision hearings in the Department of Commerce before the N. R. A., I can conserve the time of the committee considerably.

Senator KING. May I see those?

(The papers were handed to Senator King.)

Senator KING. You have handed me an article purporting to be written by John P. Davis. That is yours?

Mr. DAVIS. Yes, sir.

Senator KING. Appearing in The Crisis?

Mr. DAVIS. Yes, sir.

Senator KING. And also an article appearing in the New Republic under date of November 14, 1934, entitled "Blue Eagles and Black Workers", under your signature?

Mr. DAVIS. Yes, sir.

Senator KING. You want those inserted in the record?

Mr. DAVIS. Yes, sir; and the statement which I have also handed you.

Senator KING. I do not know whether those are pertinent, but they may be received.

(The articles referred to by the witness will be found at the end of his testimony.)

Mr. DAVIS. I am sure it is pertinent, and I can now save your time by talking between 15 and 20 minutes.

Senator KING. I will give you 15 minutes in view of all of this written matter.

Mr. DAVIS. An indication of what the N. R. A. has meant to the Negro can be secured from the statistics of the Federal Emergency Relief Administration. A comparison of those statistics shows in October 1933, approximately 6 months after the N. R. A., there were 2,117,000 Negroes in families receiving relief, or 17.8 percent of our total Negro population as of the 1930 census.

In January 1935, a year and a half after the N. R. A. had been in operation, there were in Negro families receiving relief 3,500,000, or 29 percent of our total Negro population.

Senator KING. That is an increase in the unemployed.

Mr. DAVIS. And a definite increase in the number of persons and families receiving relief, which will furnish a fair indication of the amount of unemployment created for Negroes by the N. R. A.

I say it will furnish a fair indication, fully cognizant of the fact that it might be said by the uninformed that many of those families are accounted for by the operation of the triple A program; but it so happens in getting up these figures the Federal Emergency Administration was careful to point out the disproportionate increase in the number of Negroes in urban industrial centers as contrasted to the Negroes in the rural areas, the lack of rural increases being due to the greater degree of discrimination on the part of rural relief officials.

Senator KING. Your contention, I assume from your statement, is that the N. R. A. has not increased employment of the Negro, and that there are more colored families now on the relief than there were in 1933?

Mr. DAVIS. There are a million and a half more persons in those families after 18 months of shorter hours and higher wages.

The reason for the deepening of the economic prices for Negroes under the N. R. A. can be found in an analysis of the procedure taken by the National Recovery Administration in the code-making process, the economic process to which it gave weight in making decisions concerning persons in codes and the subsequent enforcement of the code once it went out to be the law of the industry for both employer and worker.

In the N. R. A. we have not had Negro representation on any board. This has made it very difficult for us to avail ourselves of the present fiction known as "partnership table" and "the goldfish bowl." Especially has it been difficult for us to avail ourselves of the opportunity to be represented in the code-making processes, because of the very small number of Negro workers who are represented in any type of organized labor union.

Hence, it was that the very first code, the Cotton Textile Code, contained a discrimination against Negroes in the occupational differential, which excluded from any minimum wage or maximum hours outside crews and cleaners, thereby excluding 10 out of every 13 Negroes in the textile industry.

This occupational differential was soon extended to more than a hundred codes. Then came the geographical differential which was supposed to be based upon such factors as cost of living, efficiency of workers, and their living in rural areas. We find for example, in the lumber code, a geographical differential was drawn, and the previous witness made the statement that in many instances that the lumber in the South, the people involved in the wages were the people who were in some way connected with the factory or sawmill, or had some interest in the business.

That, it seems to me, overlooks the 90,000 Negro workers in the South affected adversely by that Southern differential, who own neither stick nor stone, and who, for the most part, are the most exploited group in the entire Southern industries.

These are the ones for whom there has been no compliance in the South.

That geographical differential extended to a considerable number of codes, and the reason given for it was that it was based on the cost of living, which is not a fact, but that is simply a fake reason given for it.

It would appear most inconsistent when we study the movement of the economic Mason and Dixon line up and down to satisfy the needs of a particular industry. For example, we have in the fertilizer industry, on the theory that it cost less to live in the South than in the North, Delaware placed in the southern area and given a lower adverse wage scale because the majority of the workers in Delaware in that industry are Negroes.

Yet, Delaware, where it cost the fertilizer workers less to live, does not cost the workers in 670 other industries less to live, therefore, it is placed in the North in those other industries.

In addition to that type of differential we have the economic grandfather clause in the construction industry, for instance, and many of the wage provisions are based upon a wage of a date prior to the code. The workers who received a rate below 30 cents an hour, for example, are to get 30 cents an hour, and those who received above 30 cents an hour are to get 40 cents an hour. That is typical of that situation.

In that way, that Negro worker was exploited prior to the code and given a lower standard of living. Thus we have the N. R. A. codifying the wage slavery and treating the Negro workers adversely.

Not satisfied with this process of decreasing the standard of living of the entire Negro industrial working population, the N. R. A. has in the last 6 months finally accepted the petitions and allowed ex-

emptions in instances where only Negro workers are involved, where there is no question of efficiency of workers, where there is no question of the inability of the company to pay a decent living wage.

For example, in the Reliance Manufacturing Co., one of the largest shirt manufacturers in the country, making a profit of three-quarters of a million dollars a year, one of their plants employed all Negro workers in Montgomery, Ala., and it was allowed to operate on a substandard wage for the simple reason, and no other reason, than that all of the workers involved in the granting of this exemption were Negroes. There were no questions of efficiency, because that was a question raised by the industry. The National Recovery Administration then sent down Mr. Oppenheim, one of its deputy administrators, and he came back with a report which is contained in the record of the hearing in that case, pointing to the fact that rather than being inefficient, the Negro workers if anything were more efficient, because of the fact they were required to work with inferior machinery and less efficient plant organizations.

It is hard for the Negro workers to understand why the effect of the labor provisions of the N. R. A. codes result in a lessening of their wages. I want to read to you this letter which we have received from 250 employees of the R. J. Reynolds Tobacco Co., because it is typical of the thousands of letters we receive.

This is from 250 employees of the R. J. Reynolds Tobacco Co. at Winston-Salem, N. C., and is dated October 25, 1933. It states:

First we want to tell you we will get $11.20 a week under National Recovery Administration. We were making $14.70 a week before it went into effect. The National Recovery Administration was to shorten hours and give more pay. It has shortened the hours all right but cut our pay and has not put any more at work with R. J. R.

We do not know just how you feel, but it looks to us that the real thing that should be done is to cut the speed of the machinery just half to what it is at present. Here at R. J. R. now cigarette machines make 48,000 to 50,000 cigarettes an hour and 5 years ago they were making 25,000 an hour and the pay was much higher than it is at present. So you see we are doing two times as much work for less pay than we were doing 5 years ago * * *.

We are writing to you from the hearts of the "250 men" of the R. J. R. Tobacco Co. that the National Recovery Administration has shortened their hours and cut their pay from $3 to $11 a week.

You may think that we are Communists trying to stir up something, but we are everyone of us born here in North Carolina and Virginia, and we voted for beloved Franklin D. Roosevelt and believe in him and his policy, but two things, the way the war veterans' compensation has been cut and the wage scales of labor. So we are full-fledged American citizens. Please do something beside getting our wages cut. We would sign our names but it would harm us to do so.

I made an investigation of the tobacco industry in November of last year, but I have not time to present to you a detailed account of that investigation, except to say that every care was taken to see and have personal interviews with several hundred workers connected with five of the principal plants in the tobacco industry.

They testified constantly to the question of speed-up, and the question of stretch-out, and the question of intimidation if they attempted to join a union.

For example, this will be typical of the type of statements given. One worker says:

Factory 60, R. J. Reynolds Tobacco Co.: Negroes cannot let it be known that they belong to the union. If so they will find something wrong to send you out of the factory and the Negro is afraid to join or to say anything about the union.

Another statement says that under the pretense of looking to see if rules against bringing lunch into the plant had been broken, the lockers are searched for union books, and this is the reason at least one worker has not joined the union.

So much for the tobacco industry, for which a thousand other things might be said, even to the extent officials of the Reynolds Co. of having the community chest and the chamber of commerce at Winston-Salem, N. C., call up a certain organization in the community chest and tell them if they allowed the workers of a union to meet at their hall they would be removed from the community chest.

Not only have the speed-ups and stretch-outs and the high cost of living lowered the living standard of workers, but part time and irregular work have done the same thing.

It is perfectly senseless to have all of the ballyhoo about minimum wage rates, when they are computed on a 50- or 52-week basis, and consider that is what the workers will get as the result of the N. R. A. That is a great deal of foolishness which has no reason behind it.

As a matter of fact, in the case of the longshoremen, many of whom are Negroes on the South Atlantic coast, the wage rate in the Shipping Code is something which amounts to about 37½ cents an hour. They do not say that, but they compute it on what the rate was in 1929, and they expect the worker to avail himself of a mass of statistical references to learn what he is entitled to receive. When it is realized these workers have from 10 to 15 weeks' work in the year, and they have to report day in and day out to the dock, you can see the wage rates in the Shipping Code have no meaning at all so far as any annual labor income is concerned. When you further realize the tremendous increase in the cost of consumer goods which has been placed on these workers in particular the type of commodities they are forced to buy, you can see that any attempt to relate the annual wage rate to any real income is wholly mythical, as was attempted to be done in the Department of Commerce.

Senator KING. Is that true with respect to Negroes in the North who are in the shipping industry?

Mr. DAVIS. That is true except to this degree, that where there has been even the slightest possibility of their organizing, there has been a slightly better condition, but certainly the N. R. A. is not responsible for that. Insofar as there is organization among the Negro workers, then just so far are their conditions better.

Senator KING. What I had reference to particularly was the statistical data of those who compiled those statistics showing the earnings of the employees, whether they took into account only the factors to which you have referred, or whether they were fair and gave all of the facts, namely, that they only work 8 or 10 weeks or 4 or 5 or 6 months in the year at shorter hours and higher wages.

Mr. DAVIS. The Shipping Code certainly did not do that. The Shipping Code seemed rather ashamed of itself for, if after the Shipping Code is adopted, you can determine what the wage shall be for each class of workers in it, in each geographical area; then, if that can be done, you ought to be able certainly to do that before the code is adopted, and it would be much simpler to state in plain language that the workers in such-and-such an area will get so much per hour. But, seemingly ashamed of the wage and the variety of wage differentials of more than 125 percent, for example, between workers in

Charleston, S. C., and workers in Tacoma, Wash., where there is a much higher degree of organization, as contrasted with practically no organization at Charleston, the Shipping Code resorted to this subterfuge to mask the true facts.

They seemed rather ashamed of that, and ashamed to put it in bald English, and they simply left it to this type of hypothesis.

Now, I suppose it does not matter because they have pretty much control of the N. R. A., and I do not suppose they would be ashamed at this time to write in plain English that they do not intend to pay these Negro workers any more than they feel like paying them.

The most significant thing is the way in which compliance has broken down completely in the South, and I am being very complimentary to N. R. A., because as a matter of fact, it never existed in the South.

In January of 1934, just to give you an example of how compliance works, I filed 22 cases of various types of violations of the N. R. A. affecting Negro workers to the extent of something like several thousand. I want just to take the time of the committee sufficiently to follow through what happened in one of those cases, and one which is the most favorable to the N. R. A.

The Maid-Well Garment Co. is a garment company in Forrest City, Ark., which, prior to the effective date of the code, November 27, 1933, employed about 200 Negro women and about 200 white women, making cheap garments, paying the white women something like $7 per week, and paying the Negro women about $6.16 per week, with a few cents differential in favor of the white women.

From November 27, the date the Cotton Garment Code took effect until January 30, 1934, according to a careful investigation, 143 of these Negro women were employed at wages below the code, with no exemption in existence at all, and in absolute violation of the code, they being paid wages of $6.16 per week.

Complaint was made January 13, 1934, about that plant and nothing was done except that a formal letter was written by the N. R. A. to the violator, and to the compliance officials out there, saying they had been accused of violation. Whereupon, the 143 Negro women were fired.

Three months elapsed and no action was taken in the case. Finally, after a great deal of pressure had been brought on this particular case, we were told that an investigation of the records for 1 week's pay showed that the owners of the company had violated the code, but that they had to wait until they could get an interpretation of the meaning of a letter that Earl Dean Howard, N. R. A. deputy administrator, had written to them, to see whether that should entitle them to an exemption, whereupon there was another elapse of time, about 2 months.

Finally it was decided this letter did not confer an exemption upon this company, whereupon, we asked why they ought not then to proceed to get back the wages. Then we were told that the violator was in Syria visiting a sick grandparent and would be gone 2 or 3 months, and when he came back they would see something was done.

The grandparent got well, and this man came back from Syria, and about the last of October more pressure was brought. Finally the compliance officers in Little Rock, Ark., said they did not know how much was due, and we asked them why they did not find out, and they

said, well, on going back in this case they found that the violator had destroyed all of the records of their employees, and therefore, there was no way of finding out how much was due.

After a great deal more pressure, and each time I say pressure, gentlemen, that means 6 or 7 weeks red tape running around to 20 or 30 people in the N. R. A., and so I say after a few more applications and more pressure, the case was brought before the regional council some 560 miles away from the site of the crime.

I went to Forrest City, Ark., and saw most of the women involved, more than a hundred of them, including white workers who had been treated in this same way, and then I went to Dallas in March of this year after nothing had been done by the labor compliance officials in Arkansas, and presented the affidavits which I and my associates had secured, which resulted in an order, and that order stated the "blue eagle" should be taken away, and that prosecution should be brought. That would seem to point that the N. R. A. really means business, but it points to quite the contrary, for this reason:

After the case had been brought before the grand jury, after the proceedings had been brought to the point of the grand jury, Washington decided that they would have the case dropped, at least temporarily, and have it transferred to the Industrial Appeals Board, and I want to read at this time a part of a letter from Mr. Robert S. Keebler, who is regional attorney of the Dallas council. He states:

On March 18, a telegraphic notice was sent to the Cotton Garment Code Authority at New York, giving notice that the Maid-Well Garment Co. had been found in violation of the code; and that 5 days having elapsed since telegraphic notice of violation had been forwarded to the respondent and no certificate of compliance having been executed, the code authority should forthwith suspend the issuance of labels to this company.

On the same day, the Maid-Well Garment Co. filed an injunction suit in the said District Court of Little Rock, seeking to enjoin the National Recovery Administration. Arkansas State officials from further action in the matter, and preliminary injunction was denied.

It seems that Judge S. H. Mann, representing the Maid-Well Co., thereupon went to Washington, and by using pressure there was able to have the proceedings instituted by our litigation division dismissed, and the entire controversy transferred to Washington for a rehearing before the Industrial Appeals Board.

I am not informed when this rehearing will take place; but I would suggest that you get in touch with the Secretary of the Board, to find out when the case is scheduled, and be prepared to testify at the hearing and to present the same affidavits which you presented to our regional council.

This was done despite the definite rules in the Board procedure which prevents the Board of Industrial Appeals from taking a case in which litigation has been started, and even in a case in which litigation is even imminent.

In this case the district attorney had called witnesses to Little Rock and had them ready to appear before the Federal grand jury to seek an indictment in this case.

Directly responsible for that act was Mr. Sol J. Rosenblatt and Mr. L. J. Martin.

I had an interesting conversation with the head of the litigation section of N. R. A. here. It is not my fault that I happen to be executive secretary of an association called the "Joint Committee on National Recovery", which is sometimes mistaken for a governmental organization. So, when I called to find out why there had been a holdup in this case, Mr. Phillip Buck and I am under oath and realize it when I state this to you.

Senator KING. Who is Mr. Buck?

Mr. DAVIS. He is head of the litigation section. He said to me, don't you realize that Mr. Rosenblatt and Mr. L. J. Martin wanted this case stopped. I said, "no, I did not realize it." He said, "Well, they have transferred it to the Industrial Appeals Board." I said "Don't they realize this case is before the Grand Jury", and I got a little angry about it. Then he said, "Who are you, aren't you connected with the Government?" and when I told him I was not, he told me I could not quote him. But I did not promise I would not quote him.

That is not the end of this case, because another investigation has been ordered by the Industrial Appeals Board, and it has now taken this form.

I want to call your attention to the fact that Forrest City is a small southern town in eastern Arkansas where, as you may have read in the papers, there is a great deal of feeling between employers and workers at the present time because of share-cropper difficulties. We risked our lives in attempting to get these affidavits. The chief of police, among others, was hounding us the entire time we were in Forrest City to prevent us from seeing these workers. Realizing that fact, a labor compliance officer went to Forrest City on April 11 and on days subsequently with 6 investigators, and called first 25 Negro women and the next day 35, into a room in which there were Ed Ash, the man accused of violating the code, and his lawyer, Mr. S. H. Mann, who is not only his lawyer, but who also was in charge of N. R. A. compliance in Forrest City during the entire period.

In front of these people these witnesses were asked not only as to the question of their wages, the amount due them, but they were also asked to tell the name of a woman whom they are trying to trace as the one who instigated the complaint in the first instance. That woman, a day or so ago, had to leave Forest City because she was afraid her life had been placed in jeopardy by the N. R. A.

In the meanwhile, this company is still sewing "blue eagle" labels on their cheap cotton dresses.

There is no question certainly now, as to the attitude of the N. R. A. toward the Negro, and it is little wonder the Negro press has claimed that the N. R. A. is another way of saying "Negroes robbed again."

Senator KING. Were those Negro women who were discharged reemployed?

Mr. DAVIS. No; they were not reemployed. They have been without work or relief for 18 months, with no restitution, and many of them are in a condition of absolute destitution.

Senator KING. Were others placed in their places?

Mr. DAVIS. No; no others have been replaced. There has been a curtailment of the factory. I might bring out, though I have only a short time and cannot discuss all of the problems in the 15 minutes, but I might have brought out another investigation made by Frank R. Allen of the Arkansas emergency relief administration, it was pointed out in the event the "blue eagle" was taken away from this company, that the nephew of the man was going to take the machinery and start another company and nothing could be done about it; also, as a matter of fact, they did incorporate after the investigation was started in this matter.

I did not mention this case to dwell upon it, but because it is typical of the state the N. R. A. has come to in making an effort at enforce-

ment so far as Negro workers are concerned, and in my experience, so far as white workers are concerned also.

I have no panacea to remedy the evils I have pointed out, but certainly so long as the law is administered as in the past, there can be no hope of improvement in the standard of living for Negroes.

That should be of great concern to this committee, because of the fact that there can be no recovery as long as a large segment of the Southern section are absolutely unable to buy the consumers' goods produced in other sections of the country.

Senator KING. Is that not true in other parts of the United States that there are segments of the population unable to buy because of lack of purchasing power?

Mr. DAVIS. I expect the most of the population are unable to buy because of lack of purchasing power. However, I am talking about the standard of living, and certainly the standard of living of the American worker is low enough, but the standard of the Negro worker is lower than that.

Without making formal recommendations, because if I had to have my choice between the N. R. A. as it is or the N. R. A. as it cannot help but being, under the present bill as written, and no N. R. A. at all, I am frank to confess I would have, though in no spirit of choice, to be on the side of the sweatshop and say there should be no N. R. A. whatever.

However, I respectfully submit the following suggestions for strengthening the N. R. A. if it is to continue:

1. Section 7 (a) should be strengthened to outlaw company unions—and guarantee prompt criminal prosecution for employers seeking to defeat its purpose.

2. Compliance should be taken out of its present hands and placed in charge of a board on which there is labor representation. Such board should be given power to reach all documents and necessary witnesses, and punish with criminal-contempt prosecution any person seeking to withhold evidence or coerce witnesses.

3. Labor ought to be given the right to propose codes, or amendments and public hearings on such proposals ought be made mandatory.

4. Minimum wage provisions ought be made to depend on the annual labor income of the workers, with power given to N. R. A. to increase wages in direct proportion to increase in cost of living.

5. Occupational, geographical, and other differentials within a code ought be abolished—and a national minimum wage for the industry established.

6. The new bill ought to expressly prohibit any differential based on race.

Senator KING. Have you completed your statement?

Mr. DAVIS. Yes, sir.

(The articles referred to by the witness at the beginning of his testimony are as follows:)

BRIEF PRESENTED BY JOHN P. DAVIS, EXECUTIVE SECRETARY JOINT COMMITTEE ON NATIONAL RECOVERY

Mr. CHAIRMAN: I am representing the Joint Committee on National Recovery, composed of 24 national organizations, vitally concerned in the treatment of Negro industrial workers by National Recovery Administration. From the first public hearing ever held by National Recovery Administration until the present

we have presented evidence seeking to point out to National Recovery Administration officials its basic needs. Today I am here again to offer such evidence.

It has never been our contention, nor is it now, that Negro industrial workers are any differently affected by economic forces than any other group of workers. Thus, at no time have our representations taken the form of special pleading. We have contended, however, that Negro workers because of their industrial history have been more exposed to the effect of full economic exploitation than have whites; and that the National Recovery Administration was obligated to give that fact the honest and open recognition it deserved.

Evidence that I have to present may be divided into two types: (1) That designed to indicate the validity or invalidity of National Recovery Administration's stated policy as promulgated in the formal notice of this hearing, and (2) that designed to show in what way special burdens have or have not been imposed on Negro workers, in addition to the ordinary effect which National Recovery Administration employment provisions generally have on any group of workers.

In offering evidence, we find ourselves severely hampered by what seems to us a most arbitrary and illogical exclusion from discussion at these hearings of section 7 (a). Although section 7 (a) has been placed outside the jurisdiction of the Board, it is clear that analysis of the effects on National Recovery Administration in relation to compliance, labor income, employment, and other factors affecting labor is emasculated by such a circumscription. Many suggestions which could be made of a constructive nature cannot be made if discussion is thus circumscribed. However, I shall try to avoid mentioning section 7 (a).

Any honest analysis of the first six paragraphs of the National Industrial Recovery Board's statement of policy must lead to the conclusion that these paragraphs, although variously stated, have a single dominant meaning. That meaning reduced to its plainest terms is: That there exist in industry differentials which must be maintained for the purpose of operating a so-called "competitive system," and, the pious hope or wish that these differentials are socially beneficial.

That meaning is implied in paragraph 1 when the Board speaks of the minimum-wage structure, instead of a minimum labor income holding for every worker in the country. President Roosevelt quite clearly recognized a distinction between wage rates, or hourly rates, or both, and annual labor income when, in signing the National Industrial Recovery Act, he defined minimum wages as the "wages of decent living." We submit, however, that a decent standard of living is not the same as the Board's proposal to maintain differentials in wage rates.

In paragraph 2 the meaning already referred to is implied in the Board's statement concerning inequities in wages above the minimum. Paragraph 3 explicitly refers to "geographic, population, and other wage differentials;" it apologizes for these as concomitants of our industrial development to be considered as significant realities. It cautions against any treatment which would violently disrupt production and employment conditions.

Since hours and wage rates are but different phases of the same thing, namely, labor income, talk of preserving differentials applying to hours of work, leads to the same conclusion already noted, namely, that of preserving differentials on labor income. And paragraphs 5 and 6 may be reasonably taken as repetitions of the general theme noted in the preceding sections. The only conclusion to be drawn is that National Recovery Administration, rather than being interested in securing a decent standard of living for every industrial worker, is concerned solely with maintenance of the status quo.

The logic of these first six paragraphs of the Board's statement of policy result is confusing and contradictory. The National Recovery Administration can hardly claim consistency when it speaks of maintaining a competitive system. Our national experience prior to the National Recovery Administration showed us that the competitive system was rapidly breaking down. National Recovery Administration itself has contributed to the break-down of the competitive system. Among its specific and easily recognizable contributions to this development have been (1) its consolidation and extension of industry control, through industry code authorities, trade associations and the like; (2) its regulation of prices through the "open price" and other price-fixing provisions; (3) its control of production through provisions restricting weekly hours of operation of productive machinery; (4) its restriction of production through prohibitions in codes against introduction of new machinery into industrial plants. The effect of these and other similar National Recovery Administration devices has been seriously to impair the already tottering competitive system.

As misleading and conservative as most Government indices of business and economic conditions are, even these—though not truly reflecting the degree—show as a result of the National Recovery Administration's activity: (1) higher prices; (2) no reduction in unemployment; (3) no increase in real wages when referred to labor income; (4) decline in that part of national income affected by the National Recovery Administration, accompanied by an appreciable increase in profits; and, finally, (5) no sustained increase in production.

Latest available index figures of retail food prices as given in the Federal Reserve Bulletin for January 1935 show an increase of 11 percent. Wholesale prices for all commodities are shown by this same source to have increased from an average index figure of 66 for 1933 to that of 75 for the 11 months of 1934, for which data is given. Commodities, other than farm products and foodstuffs, representing almost wholly manufactured goods, jumped from the index figure of 71 in 1933 to an average of 78.4 for the first 11 months of 1934. Since the major price increases occurred in the latter half of 1933, the above figures considerably minimize the effect of the National Recovery Administration in increasing prices and thereby restricting production.

On the basis of Bureau of Labor Statistics indexes of employment and these are the most favorable indexes from National Recovery Administration's point of view—we may estimate that unemployed in private industry numbered 10,700,000 in December 1933, while the figure increased to 10,800,000 in December 1934. This latter estimate does not count as employed the estimated 700,000 in Civilian Conservation Corps camps and Public Works Administration construction projects, since such employment was in no way occasioned by National Recovery Administration. Thus National Recovery Administration cannot even on the basis of these very conservative Government estimates make good its claim of reemployment. Further proof of this fact is afforded by the Federal Reserve Board's index of factory employment which shows a decline from the index figure of 79.6 for October 1933 to that of 78.6 to October 1934.

Even Bureau of Labor Statistics figures which exaggerate the workers' position show no significant movement in real wages. Money wages for employees in all manufacturing go from 47.2 for June 1933 to 59.5 for November 1934. These dates are taken to compare with the Bureau of Labor Statistics index of cost of living, which is given only for June and November of 1934. The cost-of-living index increased from 128.3 for June of 1933 to 138.9 for November of 1934. These data indicate that increases in the cost of living have wiped out whatever increases are alleged in money wages.

Industrial production instead of increasing as a result of National Recovery Administration's activities has been frozen. According to the index of industrial production of the Federal Reserve Board the general index for October 1933 stood at 78 and for October 1934 dropped to 75. For manufactures alone the index dropped correspondingly from 76 to 74; and for minerals from 88 to 87. To be sure there was a speculative flurry in the middle of 1933; but the point to be noticed is that production not only receded thereafter but has since failed to reach the height that it attained in that flurry.

Without a significant and sustained increase in production the well-being of the workers cannot be improved. Without such an increase, it cannot be held that the real earnings of the workers are being raised. If one divides national production not by the pre-National Recovery Administration employees, but by that number plus 3,000,000 which some optimists hold to have been reemployed, it is apparent that the position of the workers instead of being bettered would be even worse. In short the attempt to justify reemployment contradicts the attempt to prove sustained advances in real wages. Any reasonable theory as to what the true situation is can certainly not be favorable to the National Recovery Administration.

In its initial stage the National Recovery Administration seemed to hesitate in deciding whether to base recovery measures on increased wages or on increased profits. Business men forced the policy of increasing profits. This policy met exactly the same failure as the old policy of extending Federal Reserve credit to member banks, for business men just like member banks refused to part with these profits or funds once they secured them. The only difference was that instead of securing the additional funds from the Federal Reserve as banks did, the business men secured them by quasi-monopolistic means, mainly by increasing prices and thus restricting output. The National Recovery Administration failed to supply any organization for forcing profits out in the form of higher purchasing power, and this means higher annual labor income as distinguished from a simple increase in wage rates, which is offset by part-time employment and speed-ups.

That appreciable increases in profits have gone into the hands of industry and have not been forced out of industry's hands into the hands of workers will be seen from the following data. One of the most profitable industries is the tobacco industry. We find that production in this particular industry has increased from the index figure of 118 in November 1933 to that of 168 in November 1934, a jump of 50 points. Naturally we would expect this jump in production to be accompanied by a corresponding increase in factory employment and pay rolls. Instead we find that because of speed-ups, fewer workers at lower total money wages (which become even lower in terms of real wages) have been used to create this increased production. Thus factory employment in the industry shows a decline from 63.1 in November 1933 to 61.1 in November 1934; and factory pay rolls show a decline from 50.1 in November 1933 to 48.8 in November 1934. The data just given for this industry epitomizes the effect of National Recovery Administration upon profits, wages, and employment.

For further confirmation of the National Recovery Administration's failure to spur business recovery, one need only turn to available indexes of freight-car loadings. The Federal Reserve Board's index stood at 66; and, for October of 1934 it dropped to 64. The average of car loadings for the last 6 months of 1933 was 63.5; whereas the average for the first 10 months of 1934 for which data were available was 62.6.

For important industries there have been marked declines in car loadings. For example, coke dropped from 53 to 45 between October 1933 and October 1934; ore fell from 49 to 30. Tin deliveries dropped from 95 to 58. The production of lumber declined from 34 to 30, and iron and steel dropped from 59 to 40.

To test the soundness of the Board's stated policy from yet another angle, we must determine what is meant by "socially beneficial." It is obvious what industry means by social benefit. Industry considers that which maintains profits as socially beneficial. Industry is willing to make profits even though it involves such social sabotage as the reduction of production.

Industry is willing to maintain profits even though it means the reduction of the standard of living of the worker. Thus when we see throughout the Board's stated policy that wages are made dependent on profits, it is obvious that they are accepting industry's definition of what is socially beneficial. And when there is so definite effort made by National Recovery Administration to maintain profits, it is not surprising that wages are kept so low. For the minimum wage then becomes the maximum wage industry can pay if it is to maintain its profit's level.

But labor cannot accepts such a definition of "socially beneficial." Labor's natural desire is to create the maximum possible amount of real income, under conditions of a high and continuously expanding level of production. Only when there is no mandate to maintain profits at an unyielding level may we expect to have any appreciable reduction in unemployment or any appreciable increase in real income.

In the light of what has been said it must be clear that the first six paragraphs of the Board's statement of policy are a studied assurance to business that the status quo will be maintained. This means that the tens of thousands of differentials now in codes will continue without significant change. But paragraph 7 of the Board's statement of policy admits that increased production is the only way in which we can hope to secure improvement. This paragraph completely cancels the tenets noted in the first six, since the dependence of increased protection on increased buying power necessarily means, not maintenance of the status quo, but a drastic change from meaningless wage rates created by differentials to meaningful labor income for all workers, especially those in the most disadvantaged groups. The administrative difficulties of increasing wages, while trying to maintain differentials intact, precludes any real increase in labor income.

So far the evidence presented has dealt with all of the industrial workers taken together. It is my purpose now to focus attention on the peculiar problems which the National Recovery Act has raised for Negro workers. It will be obvious from what has already been said that Negro workers could certainly not expect any better treatment than has already been shown to have been the lot of all industrial workers. In fact it requires no proof to show that since Negro workers in industry are unorganized, unskilled, and in the vast majority of cases immobile and marginal workers, their condition under the National Recovery Act would be no more advantageously affected.

I wish now to repeat what I have been saying in season and out in National Recovery Administration circles for nearly 2 years: The most pressing problem and that which must first be solved is the problem of the Negro worker. This

statement is based not on special appeal for Negro workers, because they are Negro. Rather it reflects an inescapable economic truth.

It seems obvious that in dealing with mass unemployment, declining real wages, and stagnant production, the National Recovery Administration could have had only one of two reasonable objectives. On the one hand it might have purposely intended to modify our profits system to give wage earners a more equitable proportion of the national income, i. e., a larger slice of the pie, or it might have had the objective of increasing the size of the pie.

Either one of these objectives, without action on the part of the National Recovery Administration to eliminate the untypical condition of Negro labor, cannot be achieved. The first possible objective means drastic limitation of so-called "laissez-faire" industry. It renders meaningless any attempted justification of differentials to the effect that Negro workers have always received less than white workers, that Southern industrialists have a divine right to enjoy as a concomitant of their development the same benefits of the exploitation of labor that come in our period of early industrialism. The immobility of capital and labor in the South is exactly the vicious economic condition which such an objective would seek to cure. It is, therefore, precisely among Negro workers that effort at cure should be first begun, because they are the group receiving the smallest parts of the national income and the group most easily to be preyed upon by employers. Thus the true meaning of paragraph 3 of the Board's statement of policy is that it recognizes as a significantly realistic necessity the continued brutal exploitation of Negro industrial labor, especially in the South. This, of course, negates the first objective.

But even the second possible objective open to the National Recovery Administration, namely, enlarging the pie by the smoothing out of obstructions in the way of the smooth flow of profits into the hands of employers, makes it of prime importance that geographical, occupational, and other essentially Negro differentials be eliminated. A properly organized profits economy does not indefinitely permit an immobile and, in this sense, excessive supply of unorganized workers. It envisions the relatively quick removal of illiteracy and low standards of living, realizing that such factors must impede production and the flow of purchasing power into the hands of the buying public. Such an objective, if honestly pursued, would recognize the inevitability of cutthroat competition through the inversion of profits-seeking, in that industrialists, unable to compete on a free and competitive basis would seek to take advantage of the unprotected wage slaves of the South. Such an inversion means the perpetuation of socially inferior organization and production methods, as now exist; for the competitive exploitation of a large part of the population tends to keep down the whole population. In short, the existence of wide-spread Negro poverty must sooner or later contradict white prosperity.

It is clear then that for either humanitarian or for the purely selfish reasons of the profit-seeker, National Recovery Administration's first task was and is to guarantee to Negro industrial workers real wages sufficient to meet a decent living standard over a definite period of time. This National Recovery Administration has not done.

There is little relationship between the minimum wage rates set in codes and real labor income at best even for white workers. For Negro workers there is none at all. Let us now have some examples of this fact. Hourly wage rates or rates per unit of output multiplied by the hourly maxima found in a code certainly do not give us even the actual money wage of the worker whom the code covered. In the tobacco industry—to cite but one of many examples—average hours are far below those established in the National Recovery Administration under which the industry now so proudly operates. For Negro workers, chiefly found in stemmeries, the average work week as shown by a complete study in November 1934 was well under 30 hours instead of the 40-hour maximum established. Thus a false and misleading picture of the actual effect of the National Recovery Administration code in this industry will be gotten from an attempt to use paper minima and maxima to be found in the codes, because of the well-established part-time nature of the industry. Nor is this the whole story. Not only do tobacco companies maintain a large artificial surplus of Negro man power which they import from the deep South. Not only do they prevent workers from working more than 2 and 3 days a week, but as well during many weeks there is no work for any of the workers. And thus paper minima and maxima in codes become even more mythical as reflections of the actual money wages of workers when annual income is sought.

And these same traits of part-time work, and irregularity of work are especially true for other industries where Negro labor predominates in the South. The construction industry, the lumber industry, the bituminous coal industry, the steel industry, the fertilizer industry—all having high percentage of Negro labor in the South—have the same characteristics just noted for the tobacco industry. For longshoremen at south Atlantic and Gulf ports, who are largely Negroes, these same traits in the shipping industry serve to destroy any presumptive relationship between code rates and labor income.

Further occupational differentials directed in hundreds of significant instances at occupations predominantly manned by black labor further nullify any meaning National Recovery Administration may be presumed to have for Negro labor. Again equitable adjustment clauses, clauses basing code minima and rates above the minima on previously prevailing wage rates, nullify any meaning that could possibly exist in them.

Even before the code leaves Washington to be administered by an industry-controlled Code Authority, supplemented by a cumbersome National Recovery Administration compliance division, meaning has become so emasculated out of code rates that they bear no relationship whatsoever to labor income. And for Negroes the multiplication of differential upon differential makes the result for them just about 50 times as muddled, than it is for white workers.

Let me at this time present a kind of evidence which will answer the often repeated apology of National Recovery Administration so far as Negro workers are concerned: Namely, that bad as things are for Negro workers under National Recovery Administration, they are better than in pre-National Recovery Administration days. In short, the argument that differentials have been narrowed between Negro and white workers, between the North and the South, between large and small political subdivisions.

Even so great an optimist as Gen. Hugh S. Johnson had to confess that the 14-cents-an-hour minimum rate established in the Laundry Trade Code for the Southern area was not a decent living wage. But he insisted that this wage substantially improved the wage existing prior to National Recovery Administration. But for the laundry industry and for the rest of the service trades representing an employment of over 2,000,000 workers, representing in the South principally Negro employees, even the compliance division of National Recovery Administration admits there has been virtually no compliance. Thus alleged narrowing of differentials is shown to be a mere paper shibboleth.

Nor may we find any different compliance experience for Negro workers in other manufacturing industries. As indicative of a more general experience which the Joint Committee on National Recovery has had when seeking compliance in scores of cases under National Recovery Administration codes, let me cite our experience in attempting to secure some $4,000 in back wages for about 143 Negro women formerly employed in a cotton garment concern in Arkansas. On January 13, 1934, we filed formal complaint with the National Recovery Administration. About 4 months later we were advised to refile our complaint with the State compliance director. We did so 2 days later. After 6 weeks we finally heard from the State director telling us that investigation would soon be completed. Three weeks later we were told in Washington that investigation of one week's pay rolls showed a code violation unless the women were to be classified as learners. This statement could not have been based on any investigation, or even an analysis of our complaint, since the wages we charged as being paid by the violater were beneath even those for learners, and since even cursory investigation would have disclosed the fact that the women involved had been employed beyond the learner period. But to aid National Recovery Administration, we furnished them with the names and addresses of more than half of the employees. In addition we made a field study of the case to further substantiate our charges. Six weeks later we were told that delay was caused because the State director was erroneously under the impression that the code violator was entitled to an exemption, but that he had been corrected and that there would be no further delay. Six weeks later the State director informed us that orders for restitution had been entered, but that payment must await the return of the code violator from Syria where he was visiting his parents. This was in September. The workers had been fired shortly after they complained. They had been jobless for 9 months, but they had to wait until their ex-employer cam back from a pleasure trip. October passed. The code violator came back. He refused to make restitution. In January of this year, more than a year later, National Recovery Administration advises us that the code violator has destroyed the records and National Recovery Administration cannot therefore find out how much is due in

back wages. The case is now supposed to be before the regional compliance board in Dallas, Tex. It will be heard there, several hundred miles away from the scene of the violation. Perhaps we shall have another year of investigations. But today the nearly 150 women involved are without jobs. The $12 a week in the Cotton Garment Code has never meant anything to them. They know much better than a National Recovery Administration economist that a worker can't eat a code wage rate or even spend it.

The regional board has yet to act. When it does, what will happen? Perhaps the "blue eagle" will be taken away.

The following letter from a Federal Emergency Relief Administration investigator to his chief will reveal what is going to happen in this case.

EMERGENCY RELIEF ADMINISTRATION,
Little Rock, Ark., December 15, 1934.

Mr. NELS ANDERSON,
Advisor on Labor Relations Federal Emergency Relief Administration,
Washington, D. C.

DEAR SIR: The attached file was returned to me this morning with instructions to forward to you.

The inter-office letter attached immediately hereto does in some degree duplicate the inter-office letter attached to the file and is also enclosed herewith.

Since writing the attached letters, I have learned that a relative of Mr. Ash proposes to open another garment factory in Forrest City not later than January 1, in which low-priced dresses will be manufactured. My personal inclination is that this is simply a make-shift arrangement probably of no value to you but at the same time my personal feeling in the matter is such that I think if there is any manner in which a National Recovery Administration investigation can be conducted, you will find violations which will probably enable you to take definite action. Also, I am thoroughly convinced that this particular operation is an exceedingly dark blot on industry and is in actuality a liability to the community instead of an asset.

Please pardon the personal comments. I will appreciate your acknowledging receipt of the file.

Yours very truly,

EMERGENCY RELIEF ADMINISTRATION,
By FRANK R. ALLEN,
Director Division of Research and Statistics.

If National Recovery Administration desires to know what it has done for Negro workers, it needs only analyze Federal Emergency Relief Administration figures for relief. In October of 1933 roughly 2,117,000 Negroes were in families receiving relief. This was 17.8 percent of the total Negro population as of 1930. Today the same source shows 3,500,000 Negroes in families receiving relief or 29 percent of our 1930 population. Nor can this increase be passed by National Recovery Administration to the shoulders of the Agricultural Adjustment Administration to any great degree, for in releasing these figures Federal Emergency Relief Administration analysts were careful to state, that the proportion of Negroes on relief in proportion to total population in urban centers is greater than corresponding proportions for rural areas.

A careful estimate of the number of Negroes unemployed has been made by the Joint Committee on National Recovery. We estimate that today 3,000,000 Negro workers are jobless. Not the least contributor to this mass unemployment has been National Recovery Administration.

Repeatedly we have been told that southern wage rates have been kept low in order to protect Negro workers from displacement. These figures of an increase in unemployment of Negro industrial workers show that no such result has occured. They show clearly how National Recovery Administration's fear of doing nothing which will disrupt employment is another way of saying that it desires to maintain the status quo. Thus we find in paragraph 3 of the statement of policy the tacit admission that National Recovery Administration will do nothing to improve the condition of Negro labor in the South. Claiming to be acting for their best interests it leaves them under the sweat-shop conditions, which for other labor it pledged itself to abolish.

The interest of Negro labor is now and has always been identical with the interest of all labor. Speaking with authority for a substantial body of Negro public opinion, I wish to repeat that we ask of National Recovery Administration no special favors, especially when those special favors come in the form of discriminatory differentials. Like most workers we are wary of philanthropy offered by

either industry or the National Recovery Administration. Like most workers we know that improvement of our condition can come only through collective action, and that any discussion of National Recovery Administration policy becomes practically meaningless when we exclude section 7a from consideration.

THE MAID-WELL GARMENT CASE

(By John P. Davis)

CRISIS MAGAZINE

Since the beginning of the "new deal", and especially of the National Recovery Act codes, the question has been asked often about the displacement of Negro industrial workers. Here is a case study from Arkansas.

The materials presented in this brief study were derived from letters, answers to questionnaires, and personal interviews with persons about whom this study is concerned. Complete information is presented here for only 33 of about 120 families involved, but letters from and personal contact with many of the families for whom complete information is not available indicate that this sample of 33 families is typical.

The purpose of the study is to present in brief form accurate factual material concerning the economic and social conditions of a number of Negro families in Forrest City, Ark. These families were chosen because at least one member of the family was formerly employed as a needleworker in the Maid-Well Garment Factory at Forrest City.

Problems of displacement of Negro workers as a consequence of industrial codes of fair competition, of the seeming break-down of National Recovery Administration compliance machinery, of the slowness and inadequacy of relief machinery in meeting pressing conditions of need, and of the need for some type of social planning to correct a trend of unemployment in a segment of population now industrially stranded are raised in this study. But no attempt has been made to find the answers to problems raised or to relate facts here given to the larger national problems, of which the cases studied may or may not be typical. We seek here simply to focus attention on a particular situation which ought to commend itself to administrative officers of the proper bureaus in our Federal Government for remedial action.

HISTORY OF THE CASE

The Maid-Well Garment Co. produces cheap cotton dresses. It has been subject to the Code of Fair Competition for the Cotton Garment Industry since the effective date of that code, November 27, 1933. Under this code it was required to pay its productive labor a minimum of $12 a week for a 40-hour week from the effective date of the code (Nov. 27, 1933) until January 30, 1934—the period under discussion in this study. Under the code also it was allowed to classify 10 percent of its employees as "learners" and to pay such employees 80 percent of the code minimum, provided that no such employee could be so classified who had been employed longer than 6 weeks. The plant operated at the time of the code with a personnel of about 450 persons, of whom more than 200 were Negro women.

The Negro employees had worked at the factory for several years and most of them had service records of over 1 year. Only a very small percentage had worked at the plant as short a period as 6 weeks at the time the Code for the Cotton Garment Industry took effect. These Negro women were engaged in all of the operations involved in the manufacture of cotton dresses. They occupied the upper floor of the factory segregated from the white women doing the identical work. The quarters for the white workers, factory conditions, and machinery were notably superior to similar facilities for the Negro employees. The women prior to the code did not work on a piece-work basis. They were required to make four "stacks" of dresses a week, with 24 dresses to each "stack." For this they received $6.16 a week of which 10 cents was deducted for doctor's fee. The women were skilled operators. One of them reported that she was placed in class A (the highest rating given by the employer) and that in 11 years' employment at the plant she was never late for work or absent. Of course, she was the exceptional worker. The general run of Negro workers, however, compared favorably with her.

After the effective date of the code the Maid-Well Garment Co. continued to pay its Negro employees on a flat rate of $6.16 a week for a 40-hour week or

$5.84 below the minimum weekly wage set by the code. The new 40-hour week represented a reduction in hours, but the employees were required to make the same weekly average number of dresses as had been required prior to the reduction in hours. Inasmuch as practically none of these women had been employed less than 6 weeks prior to the effective date of the code, the company was manifestly violating the labor provisions of the code. The company paid subcode wages to at least some of its Negro employees for most of the time between the effective date of the code and January 30, 1934, at which later date practically all of the Negro women were dismissed. The exact number of women thus affected is in doubt, since there were frequent lay-offs and reemployments of the Negro workers during this period.

ACTION TAKEN IN THE CASE

In January 1934 one of the Negro women employed at the plant wrote a letter to the Secretary of the United States Department of Labor complaining of the code violation. This letter was referred to the Women's Bureau of the Department of Labor and by them referred to the Joint Committee on National Recovery. The complainant was written to and on the basis of further information thus received, the Joint Committee on National Recovery filed a complaint with the proper compliance officer of the National Recovery Administration on January 13, 1934. On January 30, 1934, all of the Negro employees at the plant were dismissed. Statements of the employer as quoted by the dismissed employees indicate that the reason for dismissal was the lodging of the complaint with compliance officials of National Recovery Administration. The reason given by the employer to National Recovery Administration investigators was the inefficiency of the Negro workers.[1]

Attempts to secure restitution of back wages, claimed by the dismissed workers to aggregate several thousands of dollars and admitted by National Recovery Administration compliance officials, on the basis of only a partial study of payroll records to amount to several hundred dollars, have thus far proved abortive. At first National Recovery Administration compliance officers claimed that the company had operated under a stay of code provisions and was therefore, exempt from them. This was proved groundless and admitted by the officials to be so. Next these same officials claimed they were unable accurately to determine the amount of restitution due the dismissed workers because the owner of the plant "was in Syria visiting his parents." Thus nearly 200 workers saw the normal processes of the law held in abeyance to await the return of a code violator from a parental visit to foreign shores. A month ago he returned. Yet, now, 10 months later, there has been constant malingering on the part of both local and national compliance officials entrusted with the enforcement of the National Industrial Recovery Act. Meanwhile the employees, jobless and without relief, are still waiting final settlement of their claims.

SOCIAL CONSEQUENCES NOTED

This factory offered Negro women in Forrest City their only outlet for industrial employment. Even the low weekly wage of a little more than $6 represented a higher income than is obtainable for Negro women in any occupation in the city, and a higher income than is obtainable for most Negro men there. It is not surprising, therefore, that when employed, the Negro women who worked at the Maid-Well Garment Factory were the mainstays of their family income. It is obvious, however, that such small weekly wages made accumulation of any substantial savings impossible. Thus loss of employment meant two things: (*a*) loss to at least 100 families of the major portion of the family income; (*b*) the creation of a need among these families for immediate relief.

Another factor apparent from the materials available is the absolute lack of job opportunities for the Negro women displaced from industrial employment in this case. Of 41 who answered questions as to present employment as of the last 2 weeks in September 1934, only 16 were employed. Seven of these were then employed picking cotton on nearby plantations; work which lasted only

[1] No evidence can be adduced to support this contention for workers at this plant or for Negro workers in the industry. For reasons already noted, a study of comparable efficiency could not be made at the plant because of differences in equipment of Negro and white workers there. Moreover, the only detailed study of comparative efficiency of Negro and white workers in the cotton-garment industry shows Negroes equal to whites. See report of Burton E. Oppenheim on Southland Manufacturing Co. noted in transcripts of hearing on *Southland case* before National Recovery Administration Board of Industrial Appeal Oct. 9, 1934.

a few weeks and which is now ended. The range of pay for these woman was from 60 cents to 75 cents per hundred pounds of cotton. At this rate they could earn from $3 to $3.50 a week. One of these women reported a wage of $5.50 a week weighing in cotton as it was picked, but as she stated, she could "only work when the weather was good." Four were employed in domestic service: One as "cook and maid in a beauty shop" receiving $3.50 for 63 hours' work a week; one as "nurse, cook, and house cleaner" receiving $3 for 60 hours of work a week; one as a cook receiving $2 a week; and one as a house cleaner receiving $1.50 a week and working irregularly. Two had work as family laundresses at $1.50 and $1.75 a week. One worked 22 hours a week in a steam laundry at $2 a week. One worked 36 hours a week in a cafe at $2.50 a week. And one was employed as janitress of a lodge hall at $4.50 a month. Except in the cases noted, the hours worked by these women exceeded 60 a week. Experience of the writer with many of the workers who did not answer questionnaires, coupled with information given above is the basis for the statement that probably an even smaller percentage of those not answering questionnaires have found gainful employment of any sort. Thus there exists in Forrest City a large number of Negro women with a needle-trades background and training now industrially stranded in an agricultural community in which there are for them no job opportunities.

The plight of the families of these workers is made more apparent when information on their relief problems is surveyed. Despite the small family incomes of most of the families, only 6 out of 33 families for whom complete information is available, have received any relief. Five other families which had no member of their family employed in any way, reported that they were unable to secure relief. The highest amount of relief given was to a family of six. The head of this family was on work relief at $5.40 a week. This amount was required to serve all the needs of four adults over 20 years old and two infants under 10, in addition to a monthly rental of $4.50. Another family of two adult persons received $5.75 monthly, the head of the family being given 27 hours' work a month as a carpenter at 25 cents an hour. (This is probably a violation of work relief regulations in that skilled work is required to be paid for at a higher rate than that indicated.) An unmarried adult woman, living with another family reported that she received weekly food orders valued at $2.50. Another woman, whose mother (70 years old) earned $1.50 weekly stated that she received food orders valued at $3 monthly. A family of two adults reported receipt of $7.40 in cash monthly, the head of the family (64 years old) being employed on work relief. Another family of two adults reported having received food orders valued at $6.60 from March 1 to September 21. Nothing else was received from relief and there was no member of the family receiving income from any source during this period. Aside from the instances detailed above, no other relief in any form was given to any of the 33 families.

Turning to those families which had one or more members of the family employed, it is seen that the highest combined income of any family was $21.60 monthly; and the lowest 75 cents weekly. The combined incomes of only 8 of the 33 families was in excess of $5 a week. The table attached to this study will indicate the occupation and weekly wage of individual wage earners in the families. In most cases the combined weekly incomes in excess of $5 a week are occasioned by a larger number of wage earners in the family.

There are 126 persons in the 33 families covered by questionnaires. Of these 80 were female and 46 were male. Age and sex distribution was as follows:

	Male	Female	Total
Under 10 years	6	12	18
10 to 21 years	11	17	28
22 to 50 years	21	46	67
Over 50 years	8	5	13
All ages	46	80	126

Of the 126 persons in these 33 families, 37 were engaged in some form of gainful employment during September; but as has already been noted, at least 7 of these (engaged in cotton picking) have since become unemployed. Nine families had no member employed by any private employer.

Housing conditions of these families reveal facts of interest. Of the 33 families, 6 were buying homes. One single woman lived in a rented apartment of two rooms with electricity, bath, and lavatory facilities. The family of a

preacher lived in a parsonage for which no rent was paid. Three families lived on plantations where houses were furnished by the plantation owner. The other families lived in rented dwellings of from 2 to 6 rooms, paying rentals of from $1.50 to $10 monthly. Most of the homes rented at not less than $8 monthly. None of the homes (except the apartment) had a bath. Only four of them had electricity. Only seven had inside lavatory facilities. In all instances a low standard of house facilities is to be noted. In several instances there is overcrowding. On the basis of personal inspection of many of these houses, it seems fair to state that rental prices are exorbitant in most cases.

CONCLUSION

There seems little need for writing a conclusion to such stark facts as these. Forrest City is a town of 4,594 inhabitants, of whom 1,967 are Negroes. The principal source of employment for these Negro citizens has been taken from them. They are left stranded in an otherwise agricultural community with little hope of any change of condition. There are no jobs for them in the needle trade—the type of work to which most of them are accustomed. They have almost given up hope of ever receiving restitution of thousands of dollars in back wages justly due them. They know as the result of bitter experience that they need not look to relief agencies to solve either their immediate problems of food and fuel for winter, or their ultimate problem of rehabilitation.

That such facts as these confront hundreds of similar Negro communities in the South there can be no doubt. Nor is there doubt that while such conditions persist, the new administration can lay no claim to bringing about recovery.

"Blue Eagles" and Black Workers

[New Republic, Nov. 14, 1934]

On the eve of the code-making process, more than 20 percent of Negro workers normally attached to industry were without jobs. Underpaid Negroes were a burden on prosperity in the South. They constituted 28 percent of the population of the South Atlantic, 26.9 percent of the East South Central, and 18.7 percent of the West South Central sections of the country. As long as these large segments of the southern population remained impoverished and unable to buy consumers' goods, the South was destined to lag in recovery. Moreover, even a slight rise in retail prices in southern communities, unaccompanied by a rise in the wages of Negro workers and the reemployment of at least a portion of the unemployed Negro industrial workers, would prove catastrophic, because their consumption would sink below the starvation level to which it had fallen in the last 4 years.

Taken as a group, Negro industrial workers were helpless to defend themselves against demands made, especially by representatives of southern industry, for longer hours and lower wages for those occupations, industries, and geographical divisions of industries in which the predominant labor supply was Negro. Except for a few exceptional groups, such as the miners of West Virginia or the longshoremen on the South Atlantic seaboard, they were unorganized and without any perceptible power to bargain collectively. In nearly 600 code hearings fewer than a dozen Negro representatives of organized labor have appeared.

Thus there was little hope of obtaining by any process of collective bargaining labor conditions better than those prescribed by law in the codes of fair competition drawn up by the National Recovery Administration. What hope there was lay in the keeping of the Administrator and those to whom he entrusted some of his powers. The measure of improvement of labor conditions among Negro workers depended entirely on the amount of betterment created for them under the codes.

In the face of a problem as grave as has been indicated, officials of the National Recovery Administration met the appeals of those seeking the integration of Negroes into this part of the recovery program with an unpardonable sophistry. They dealt out technicalities in answer to cries for bread. Rather than face boldly what any intelligent person was willing to admit to be a highly complex problem, they engaged in misleading dialectics and pseudoscientific ballyhoo.

The first opportunity for a solution of the problem came in the Cotton Textile Industry Code. In this industry Negroes had been crowded out of all skilled occupations and were employed, if at all, in outside crew gangs and as cleaners. In addition, the wholesale shutting down of plant operations had occasioned widespread unemployment among Negro cotton-textile workers, out of proportion to

their percentage ratio in the textile industry. The situation faced by these workers was this: They were wholly unorganized, they were barred from skilled occupations, they were the lowest-paid group in the industry. Their only hope of reemployment was a substantial shortening of hours of work in the occupations of outside crews and cleaners. Their only possibility of greater buying power lay in an increase of the wage rates in these occupations.

The code, as effective on July 17, 1933, made no provisions for reduction of hours or increase in wages of outside crews and cleaners. It was not until January 1, 1934, that any consideration was given to those occupational groups into which practically all of the Negro workers fell. Meanwhile, the price of flour, cornmeal, lard, and other like commodities sold at company-owned stores increased by an average of 30 percent. The group most in need of consideration was put off to the last.

January 1, 1934, was set by the President as the date when the cotton-textile industry should propose a wage-and-hour scale for these exempted classes. The repeated assurances of National Recovery Administration officials that every act would be done in a "goldfish bowl" led to the belief that these scales would be made the subject of a public hearing, at which time evidence of conditions among these workers could be presented. Those who held this belief were mistaken. Without public hearing, without affording the opportunity to labor representatives to present data of this issue, the National Recovery Administration issued an Executive order creating scales which provided that outside crews and cleaners should get 75 percent of the minimum wage already set and should work 4 hours in excess of the maximum weekly hour scale then in operation. Thus for the group that contained the largest proportionate number of unemployed, the reduction in hours was materially less than for those groups where the proportion of unemployed to employed in the industry was less. Also this group, which has suffered starvation wages 6 months longer than any other class, which was being paid a rate much lower than that paid to any other group, and to whom the established minimum wage—because of inadequacy or nonexistence of collective-bargaining power—meant the maximum wage to be received, the Executive order provided a subnormal wage.

Now the reasoning of high officials of the National Recovery Administration ran something like this: Negroes were not alone affected, for all outside crewmen and cleaners were treated in the same fashion; further, the labor provisions established by the Executive order of January 1 marked a substantial improvement in the wage rates and hourly maxima for these classes. There was a half-truth in all this. Those white workers so unfortunate as to be in the exempted classes were affected in the same way as the Negro workers. But for them there was also the twofold opportunity of escape into a better paid occupation, and improvement of conditions through collective bargaining. For the Negro textile worker neither of these was even a bare possibility. Moreover, the brunt of the discrimination, while not cast in terms of race, was none the less borne by Negroes. It was true also that the $9-a-week minimum did mean an increase in the wages obtaining in some mills. For others—especially those employing Negroes in large numbers, as the four Cone Mill units near Greensboro, N. C.—this minimum was actually less than the minimum existing during the worst period of the depression. Even on the basis of a weighted average of the wages of this group of workers in the industry before and after the Executive order took effect, it is doubtful if any substantial wage increase could be demonstrated. And, furthermore, when the upward surge of commodity prices in company stores is considered, wage increases in terms of increased buying power amounted to practically nothing. If National Recovery Administration officials did not know this to be the economic consequence of the "secret" Executive order, it was because they had been unwilling to listen to positive proof of these facts at a public hearing.

The Cotton Textile Code served as a precedent for the remainder of the textile industries. Thus the unfavorable conditions established for Negro labor in that code were used to the disadvantage of an additional 20,000 Negro workers in other branches of the textile industry. The device of singling out for differential treatment those occupations in which Negro workers predominated was used to the advantage of the employer group in more than 30 other codes of fair competition where such a method could be successfully employed.

It is only when the varying geographical differentials of a number of codes are analyzed that the argument in terms of cost-of-living difference used in support of them is shown to have no bearing. If cost of living accounts for a differential of 2 or 3 cents an hour in one industry, why is there a differential of from 17 to 30 cents an hour in other industries? If low prices in Delaware occasion low-

wage rates in the Fertilizer Industry Code, why is it that those same low prices are not used to place Delaware in the category of "South" in codes for other industries? The basic reason for these inconsistencies can be found in the occupational figures for these industries. Wherever the predominant labor supply of a geographical section is Negro, that section is called "South" and given the lowest wage rate. Thus, the "economic Mason-Dixon line" has a way of extending itself to prevent Negro workers from receiving high wage minima. Moreover, admission that the presence of Negroes in an area occasions a lower wage rate for that area has been openly made by proponents of the North-South differential in numerous code hearings. The attempt of the National Recovery Administration economists to attribute the differential to variances in cost of living between the two regions is the sheerest casuistry.

That the geographical differentials are based on inefficiency of industrial workers in the South—and by this is meant inefficiency of Negro workers—is a reason seldom expressed by a well behaved National Recovery Administration economist, but one that is uppermost in his mind. Although unsupported by any single respectable piece of research, and although controverted at least in part by studies of reputable economists, there still persists in National Recovery Administration circles the belief that Negro labor inherently is less efficient. They have been shown that low wages breed low efficiency, that the whole theory of the National Recovery Administration is not to grade workers on the basis of efficiency, but rather to establish a minimum-wage rate for all workers, regardless of the issue of relative efficiency. They continue their discrimination.

Numerous other devices are used to thrust Negro workers into low-wage groups. Some codes provide a wage rate based on the rate paid in 1929. Those who were paid in excess of a certain amount in 1929 are given 10 cents an hour more than those who received less than that amount in 1929. This "economic grandfather clause" enables employers to pay white workers 10 cents an hour more for doing the same work in the same locality than is paid Negro workers, simply because Negroes are certain to have received less than the standard wage in 1929. Other codes provide for a percentage increase over the wage for June 15, 1933. In the Hotel Code, Negro bellboys in many hotels in the South received a 20-percent increase on a salary of $15 a month, while white clerks received a 20-percent increase on salaries of $80 and $100 a month. Again, a provision in some codes allowed that a certain percentage of the employees—generally 1 out of 5—may be paid 80 percent of the code minimum. Thus it is possible to single out Negro workers for abusive treatment.

Not only has the formation of codes left huge gaps through which nearly all the benefits that should go to Negro workers have seemed to fall, but the compliance machinery has been so constructed and so enforced as to deny to Negro workers in the South any guarantee whatsoever of equitable treatment. In the beginning, enforcement of the codes was placed in the hands of local compliance boards made up of members of chambers of commerce, many of whom were themselves code violators. There was no guarantee that the individual making the complaint would be protected from discharge. In one case an employer in the cotton-garment industry in Arkansas fired 194 Negro girls because he could not find out the name of the person who complained of his paying only $6.16 a week instead of the code minimum of $12. Yet these workers have not received any of their back pay and there has been no action taken by the National Recovery Administration against the employer.

In recent months, compliance has been placed in the hands of paid employees of the National Recovery Administration. This has done little to correct loose enforcement of the codes so far as Negroes are concerned. A complaint was sent in against a fertilizer plant. The complainant was a Negro who got 10 cents an hour instead of 25 cents, who worked 78 hours a week instead of 40 provided by the code. An investigator from the National Recovery Administration visited the city where he lived and had him come to the lobby of a white hotel, where Negroes were not allowed. The man came in overalls. Then, in the lobby of the hotel, in the presence of strangers, the National Recovery Administrator investigator proceeded to question the complainant. Obviously, the man was not free to give testimony. The investigator reported the case closed and gave the company a clean bill of health. The complainant lost his job.

There are thousands of such cases throughout the South. It is useless to complain. Nothing is ever done. But certainly National Recovery Administration officials cannot plead ignorance of these cases. Nearly every week for over a year, Negro organizations have asked that qualified Negroes be appointed to positions in the National Recovery Administration in an effort to adjust the

difficulties faced by Negro workers. Up to last May no Negro had been appointed above the rank of messenger except for one Negro woman, who was speedily dismissed on the ground that there was nothing for her to do. Constant pressure finally produced the appointment of Dr. Abram Harris to the Consumers' Advisory Board. Dr. Harris resigned in disgust September 10.

Negro industrial workers had the right to hope that their already inferior economic status would not be aggravated by the National Recovery Administration. There is not a section of the country where Negroes have not suffered because of the Blue Eagle. That bird has become for them a black hawk, a predatory bird which makes prices go up but not their wages, which makes them lose their jobs, which weakens their economic position. To them the National Recovery Administration has but one meaning: "Negroes Ruined Again." They see the growth of a trade-union movement in the hands of the American Federation of Labor—a movement which discriminates against them and drives them out of skilled jobs. They see southern employers arrogantly thumbing their noses at National Recovery Administration compliance machinery and declaring that they won't pay Negroes code wages. As one Negro said, "Before the Blue Eagle we was just one-half living, but now we is only one-third living."

JOHN P. DAVIS.

Senator KING. The hearing will recess until tomorrow morning at 10 o'clock.

(Whereupon, at 3:50 p. m., the hearing was recessed until 10 a. m., Wednesday, Apr. 17, 1935.)