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 III

PAGES 2161 TO 3003

APRIL 17 AND 18, 1935

GENERAL INDEX IN VOLUME IV

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

119782

COMMITTEE ON FINANCE

PAT HARRISON, Mississippi, *Chairman*

WILLIAM H. KING, Utah
WALTER F. GEORGE, Georgia
DAVID I. WALSH, Massachusetts
ALBEN W. BARKLEY, Kentucky
TOM CONNALLY, Texas
THOMAS P. GORE, Oklahoma
EDWARD P. COSTIGAN, Colorado
JOSIAH W. BAILEY, North Carolina
BENNETT CHAMP CLARK, Missouri
HARRY FLOOD BYRD, Virginia
AUGUSTINE LONERGAN, Connecticut
HUGO L. BLACK, Alabama
PETER C. GERRY, Rhode Island
JOSEPH F. GUFFEY, Pennsylvania

JAMES COUZENS, Michigan
HENRY W. KEYES, New Hampshire
ROBERT M. LA FOLLETTE, Jr., Wisconsin
JESSE H. METCALF, Rhode Island
DANIEL O. HASTINGS, Delaware
ARTHUR CAPPER, Kansas

FELTON M. JOHNSTON, *Clerk*

CONTENTS

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

WEDNESDAY, APRIL 17, 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, presiding.

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

The CHAIRMAN. The committee will come to order. Mr. Hinrichs.

STATEMENT OF A. F. HINRICHS, CHIEF ECONOMIST, BUREAU OF LABOR STATISTICS, LABOR DEPARTMENT

A. F. Hinrichs, having first been duly sworn by the chairman, testified as follows:

The CHAIRMAN. You are down here in place of Mr. Lubin, as I understand?

Mr. HINRICHS. Yes.

Senator KING. Mr. Hinrichs, you have before you a series of tables which were prepared at our request by the Federal Trade Commission, based upon data furnished by the Bureau of Labor Statistics?

Mr HINRICHS. Correct.

Senator KING. Have you examined those documents to which I have just referred?

Mr. HINRICHS. Yes.

Senator KING. And do you find them to be correct, substantially?

Mr. HINRICHS. Yes; without having checked each single figure, and assuming no clerical errors, they have been using figures which are ours, under the headings which are here, in general. There would be certain exceptions to that.

Senator KING. They are figures which were assembled by the Department of Labor?

Mr. HINRICHS. In the first instance; yes. The tables were not prepared by us.

Senator KING. No; but the data which are found in the tables were prepared by your organization?

Mr. HINRICHS. That is correct.

Senator KING. Briefly state just what the tables are and what they show, so that it will be in the record?

Mr. HINRICHS. There are two sets of tables here. The first in this folder under the caption "Tables of employment, pay rolls and wages, building materials, chemicals, and so forth", which consists of six tables indicating employment in the groups of industries, giving the

aggregate employment in the years 1923 to 1934, inclusive, the average weekly pay rolls in those same years, in each case an index of employment and pay rolls based on the years 1923 and 1925 as 100 percent. For comparison with a general manufacturing index of the same base.

Then a per capita weekly wage in these groups of industries in each of the years. Finally an adjustment through the cost-of-living index of that weekly monetary wage to the so-called "real wage" based on 1926 dollars.

Senator KING. Does that show substantially all industries?

Mr. HINRICHS. It omits certain rather large classifications of manufacturing industry which we cover. It shows nothing except manufacturing employment. The omissions are rubber, paper and printing, machinery, transportation equipment, railroad repair shops, and tobacco products. Other than that, it summarizes the materials which we have.

Senator KING. Could there be superimposed upon these tables these other features to which you referred, very easily?

Mr. HINRICHS. Yes; and I should be rather glad if I might, to leave this record which appears monthly in the Monthly Labor Review, because of the fact that there are certain combinations made in this table by the Federal Trade Commission working with our figures which we would not have made had we been asked to make the compilation. That is particularly true with reference to the first two of the tables which I think are somewhat misleading.

The first table refers to building materials and brings a combination of two of our so-called "groups of industry" which we had, lumber and allied products, and the second one, stone, clay, and glass products. We do not attempt nor have we attempted to make a tabulation for building materials as such. We could do it, but included in both of these categories are lines of manufacture which ought to be regarded as building materials, that is, under lumber and allied products we include furniture and also turpentine and resin, which is a small and unimportant group and would not affect the whole.

Senator KING. You would break-down some of those figures, then as I understand it? Or subdivide them?

Mr. HINRICHS. If you had been interested in a tabulation of building materials employment we would have effected a different kind of combination, from our own intimate knowledge of what went into these group figures, which the Federal Trade Commission could hardly have been supposed to have.

Senator KING. They took your figures for the basis of their finding there?

Mr. HINRICHS. Yes; the figures of lumber and allied products are our figures, and the stone, clay, and glass is our figure. It excludes entirely rather important elements which ought to be taken from our so-called "iron and steel" and other products classification. For example, nothing relating to structural steel is here, and plumbers' supplies are not included and there are perhaps 3 or 4 other little classifications there that are also to be regarded as building materials.

I do not know whether the Senator happens to be interested in building materials as a peculiar or particular classification.

Senator KING. I wanted all of the industries in those tables, which I want later after you have examined them, shall I say consolidated or put into the record, and a brief summary of the findings with respect to the tables.

Mr. HINRICHS. Yes.

Senator KING. I think with the permission of the chairman I will ask you to take those figures with you and then supplement them by such other figures as you deem proper, conferring with Mr. Whiteley on the subject.

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

Mr. HINRICHS. Yes sir, very easily.

The CHAIRMAN. Thank you very much.

Senator KING. We will call you a little later.

(The witness is excused.)

The CHAIRMAN. Mr. Choate.

STATEMENT OF JOSEPH H. CHOATE, JR., CHAIRMAN OF THE FEDERAL ALCOHOL CONTROL ADMINISTRATION

(Having first been duly sworn by the Chairman, testified as follows:)

The CHAIRMAN. You are the Chairman of the Federal Alcohol Control Administration, and I understand that you wanted to make a suggestion to the committee?

Mr. CHOATE. Gentlemen, I do not know whether it ought to be said that I wanted to make a suggestion at all.

The CHAIRMAN. We have asked you to come down.

Mr. CHOATE. You have asked me to come down, and I have come with as much preparation as I could make in a couple of days, to answer such questions as you wanted to ask me.

I have a suggestion to make only to this extent, that if you find that the Federal Alcohol Control Administration is worth preserving, that it will be desirable as a temporary measure to preserve it by a specific section in the bill, adopting the existing codes, and thereby taking away any possible doubt as to the congressional authorization of the general system.

The CHAIRMAN. Have you such a section prepared?

Mr. CHOATE. I have, but I did not bring it with me because I did not anticipate that that would be asked about today.

The CHAIRMAN. Send it to the committee, and we will have it inserted with your testimony. It is a continuation or extension of the present code?

Mr. CHOATE. Yes; it is a continuation or extension of the six Alcoholic Beverage Codes for the same length of time that you may determine to continue the National Industrial Recovery Act—a frank adoption of those codes and a finding by Congress that the industry is one which requires that sort of treatment.

The CHAIRMAN. You have no views for those codes?

Mr. CHOATES. Yes.

The CHAIRMAN. They work fairly well?

Mr. CHOATE. They work fairly well. There is this to say, that that is a question as to which the head of an organization is perhaps least able to answer, like the head of the family who is the last to hear the scandals that are rumored, but as far as I know, there is remarkably little friction. For example, we have now under permits which are revocable and suspendable, approximately 14,000 or 15,000 firms. Only three suits have ever been commenced against the F. A. C. A. All three of those were abandoned before they got anywhere, before the F. A. C. A. was even compelled to file an answer. So that the

only situations in which the F. A. C. A. and its works are now in court are the prosecutions which we have brought for code violations under the Brewers' Code, which contains no permit system. I take it from that that there is no wide-spread dissatisfaction; I may be wrong.

Senator KING. You are not subjected to the kind of codes that the other industries—if you denominate yourself an industry—are subjected to. You do not have price fixing, you do not have rules regarding production, the prices at which the commodities may be sold, cost filings, and all of those provisions and devices that we find numerous in so many of the codes, do you?

Mr. CHOATE. Senator, the codes are all different in that respect. They all contain, with an exception, provisions for the open price-posting system. They all make it a code violation to sell at a price which you have not posted. They all provide that a posted price may be declared ineffective so as to prevent a person selling at that price, and therefore from selling at all if the price is so low as to be destructive or so high as to be oppressive to the consumer, but no price has ever been declared destructive and no price has ever been declared oppressive.

The fact has been that in most of the industries, the mere posting of the price has had a stabilizing effect upon prices and has postponed or diminished the intensity of price wars without, I think, keeping prices up at any unfortunate point.

The CHAIRMAN. There has been a good deal of talk about liquor being too high?

Mr. CHOATE. I think that talk has been confined almost exclusively to the very expensive types, the types that are very scarce of American whiskies.

The CHAIRMAN. It is your opinion that they are going to come down later on?

Mr. CHOATE. Oh, yes. There are only a few hundred thousand gallons left in the world of fully aged American whiskies, and they have a scarcity value which it is almost impossible to deal with.

The CHAIRMAN. The committee will give consideration to this suggestion of yours about this additional provision, and if you will supply us with the proposed section, we will consider it. It may be that later on we may want to bring you before the committee again.

Mr. CHOATE. I have a short statement giving a sort of a general résumé of the F. A. C. A. and its origin.

The CHAIRMAN. I wish you would give it to us so that we may put it in the record.

(The statement referred to will be found at the end of Mr. Choate's testimony.)

Senator KING. Do you administer the code?

Mr. CHOATE. It is administered by a board of six, of which I am the chairman. This board was appointed by the President. In certain matters I have certain powers. The chairman, for instance, issues permits in all but the Brewers' Code which has no permits. The chairman also, with the approval of the board, revokes permits.

Senator KING. Permits for what? Permits for manufacture?

Mr. CHOATE. To engage in business as distillers, rectifiers, wholesalers, wine growers, and importers.

It is a very extraordinary situation. It ought to be understood much more fully than it is, gentlemen. The Distillers and Rectifiers

Codes required permits at the outset, permits for all persons to engage in the industry. They limited not only the people who would come in, but the amount which each could produce.

Senator KING. Was that with respect to beer also?

Mr. CHOATE. No. No permits in the Brewers' Code industry.

Senator KING. And there are none now?

Mr. CHOATE. None now and never has been any. The limitations on the persons who could go in and the quantities they could produce, in the Distillers' Code have been recently relaxed to almost the point of extinction by a code amendment signed by the President last week. A similar amendment is pending in the Rectifiers' Code.

But the extraordinary thing was that in the Wholesalers' Code, which provided that the wine and liquor wholesalers could be put under permit when the F. A. C. A. found it necessary, and the Wine Code, which had the same provision, we, desiring nothing less in the world than to put those people under permits, found ourselves met by a practically unanimous demand from the industry that they be placed there. That went so far that the brewing wholesalers, of whom there are 9,000 and who have 22 regional boards of their own, unanimously demanded that their code be so amended that they could be put under permits.

Finding that demand unanimous, the code was amended that way without an objection, and they were all placed under permits, and under permits they remain today, and apparently they like it.

The CHAIRMAN. There seems to be a good deal of unanimity with reference to it?

Mr. CHOATE. There is about that.

The CHAIRMAN. As I recall, in the beginning there were some suggestions made with reference to the organization of a corporation under Federal charter to take over all of this, or to go under the codes and to sort of see that the prices did not go wild, and this latter method was adopted?

Mr. CHOATE. Precisely.

The CHAIRMAN. Which I thought was the better scheme.

Mr. CHOATE. I thought so so much that I would not have come here for a moment unless I had been assured that the corporation scheme would be abandoned.

Senator KING. Senator Clark is not here and I know he wanted to ask you some questions. Who pays the expenses of your organization?

Mr. CHOATE. The expenses are paid by an appropriation from the original N. R. A. fund. I will give you the technical name of it in a moment.

Senator KING. Do you assess the manufacturers and the vendors?

Mr. CHOATE. The members of the industry are assessed for the support of their own code authorities, their own industry organizations, which are really their own, in those industries, because they were organized not by existing association, which might or might not be representative, but organized by us. The industries were so new that they had no associations except the brewers.

Senator CLARK. Mr. Choate, you may have gone over this before, but I would like to ask you to explain how the Federal Alcohol Control Administration came into being in the first place. Do I understand that that exists purely by virtue of the provisions of the code?

Mr. CHOATE. No; it exists by virtue of an Executive order of the President. The first code was drafted with provisions for an administrative body of this kind. It was then found, as I understand, because these codes were framed by the President's Special Committee for the purpose before I came into the picture, that this proposed body, the F. A. C. A. would be a pretty good form of administrator for the other codes as they came along, so the other later codes provided that the administration should be in such a body, and then it was set up by an Executive order of the President appointing the members and describing their duties.

Senator CLARK. What I am trying to get at is this. I understood that the members of this administration had been appointed by the President, but is there any authority of law for the control and the authority exercised by the F. A. C. A. other than the N. R. A.? In other words, have you any authority of law to issue distillers' licenses or to refuse distillers' licenses other than that contained in the N. R. A.?

Mr. CHOATE. None at all. The N. I. R. A. is the basis of authority which the F. A. C. A. exercises.

Returning to your question, Senator King, my organization has run from the beginning, on the first appropriation which was made, on the theory that it was going to carry the organization through until Congress would have a chance to legislate last year. That would have been for the period of about 90 to 100 days. The expenses of the organization were provided for in the Executive Order No. 6474 of December 4, 1933, by an allocation of $500,000 from the appropriation authorized by the National Industry Recovery Act, and met by the fourth deficiency act of 1933, Public 77, Seventy-third Congress.

Of this sum we have expended to date a little over $400,000, so that we are still running on the original appropriation that was supposed to carry us only until a year ago.

Senator KING. How long has your organization been in existence?

Mr. CHOATE. The first meeting was December 4, 1933, so that we have been in existence about a year and 4 months.

Senator KING. How many employees have you?

Mr. CHOATE. We now have about 165, of whom 20 were recently taken on for the emergency job in the label enforcement section. We have been running on an average of about 140 this year, and that would be the normal after the peak period has passed, unless we have to do more than we are doing now.

Senator KING. What are really the functions of your organization, Mr. Choate; I have had a number of criticisms and a number of inquiries, and I have been unable to answer them.

Mr. CHOATE. The function of the office is purely that of Code Administrator, and the function of the codes can be roughly divided into seven heads. The first is protection to the consumer against deception by false advertising, misbranding, and so forth. I am listing these, not in the order of importance but simply as they come handy.

Senator CLARK. I do not want to interrupt you, but I just want to clear up one thing. Do you exercise the same relationship to the code authority that Deputy Administrators of the N. R. A. ordinarily exercise to other code authorities?

Mr. CHOATE. I would say so, subject to considerable ignorance as to exactly what the Deputy Administrators do to their code authorities.

Senator CLARK. The reason I ask you that is that we have been more or less familiar here with the procedure of having the Deputy Administrator representing the N. R. A., and its relationship to the code authority, but I do not think anybody on the committee—at least I am certain that I am not—has ever understood exactly what the relationship between the F. A. C. A. and the code authority was.

Mr. CHOATE. My impression is that the F. A. C. A. has a stronger position with reference to its code authorities than the N. R. A. Administration has with reference to its; that is, in the first place, because the industries were new, they had no associations of their own, except the brewers, and accordingly they had to be organized; and in the case of some of the industries, such as the wholesalers, of whom there were 11,000 scattered about the country, who did not know each other and had no associations whatever, there was a fearful task which had to be performed by us in order to get representative code authorities.

Under our codes, the code authorities practically require confirmation of any important act by us.

Returning to the list of the functions of the F. A. C. A. under the code:

First, protection to the consumer against deception by false advertising, misbranding, and so forth.

Second, prevention of improper trade practices, such as commercial bribery, control of retail outlets by manufacturers or wholesalers, guarantees against price decline, and the purchase of business by offers of premiums and the like.

Third, prevention and control of excess productive capacity and excess imports. That applied chiefly to the distillers, and rectifiers' groups, and is mostly out now in the recent code amendments, the purpose of it having been fulfilled, but there is retained in the Distillers' Code a power in us to allocate and limit production if and when dangerous excess production appears.

Senator KING. May I say that a number of complaints have come to me that there has been, I will not say discrimination or favoritism——

Mr. CHOATE (interposing). You might well say so, because that is the nature of the complaint generally. I want to speak about that.

Senator KING. That a certain element in the community had been favored, and that certain sections, notably Illinois, had been favored in the allocation or in the granting of permits to manufacture of distilled liquors.

Mr. CHOATE. I am very glad you asked that. If I may finish with these seven functions, I will go into that immediately.

The next is the protection of State liquor laws. Now, of course, the permit system gives a tremendous hold upon all of the legitimate industries, and any violation of the State liquor law is a violation of the code, so that the restraint on legitimate dealers has been very marked in that respect.

Senator KING. May I interpose a question there? Do you work in harmony and in close contact with the Treasury, growing out of the fact that the Treasury Department is interested in the collection of taxes and obtaining revenue?

Mr. CHOATE. Decidedly; we are constantly working with them. They do an enormous amount for us; and we, I think, do things that please them.

Senator KING. Could not all of the functions of your organization be performed by the Treasury? I ask you for information.

Mr. CHOATE. I would say "no", and for this reason: The Treasury is bound to have its attention fixed on collecting revenues. There are a great many functions of the F. A. C. A. which are directly to the benefit of the consumer, the public, and the country. I do not believe that those functions could be as efficiently performed by anybody whose primary duty was the collection of revenue.

Senator KING. The Treasury Department has the enforcement of the law.

Mr. CHOATE. It has the enforcement of the tax law.

Senator KING. It has nearly 2,000 employees engaged in preventing the manufacture illegally of liquors, and that would mean, I would assume, looking after the infractions of the code.

Mr. CHOATE. No. Ordinarily speaking, the Treasury would have no present jurisdiction over most of the code matters; and if you want them to do these things, you would have to have a very elaborate, carefully prepared piece of legislation which would set up, as a separate Treasury bureau, an alcohol-control administration.

My own personal view is that no human being knows enough today to set up such an institution, and the only way in which a satisfactory Federal control can ever be developed is by the continuation of some such flexible body as this, which can, by trial and error, gradually find out what the Federal Government can and should do.

Senator KING. You do not have the enforcement of the law?

Mr. CHOATE. We have the enforcement of the codes. We have nothing to do with the enforcement of the tax law except that any violation of the tax law would be a violation of the code. If we cannot catch them on anything else, we catch them on that.

The next function of the codes is limitation of bulk sales as a necessary protection to all regulative measures. That is a measure which the Treasury and the State authorities consider of great importance, and which was put in the codes for that purpose; and we think it is important, and it is there yet in spite of——

Senator CLARK (interposing). What is the purpose of that? And my reason for asking that question is the testimony here last week by the cooperage interests that the glass blowers had succeeded in slipping a provision into this code for the purpose of putting the cooperage people out of business in the interests of the glass blowers.

Mr. CHOATE. I must have written 70 letters to Members of Congress and Senators in response to requests for information by them about letters to them from the cooperage makers fellows. The fact is, those limitations were placed in the codes, as I say, by the President's special committee, at the request of the Treasury and the State authorities. The idea was that once you permit free general sales in bulk, you make it impossible to trace the ensuing bottled goods, either for purposes of tax collection or for purposes of control.

The complaints of the cooperage gentlemen have seemed to be to be very much exaggerated and supported by entirely inaccurate statements of fact. Mind you, my mind is entirely open on the subject. They may be right in their general contention, for all I know. They can at any time ask for code amendments on this subject, and if they ask it, there will be a hearing at which everybody from the Treasury and the State control authorities down can have a chance to say what he thinks.

Senator CLARK. They are not parties to the code, are they? That is precisely their contention.

Mr. CHOATE. They do not have to be.

Senator CLARK. It is their contention that the glass blowers have slipped this provision into the code, which puts them almost out of business.

Mr. CHOATE. The glass blowers had absolutely nothing more to do with it than the newsboy in the street. The thing was put in without, so far as I know, a request from the glass blowers. The limitations were put in the codes before the Treasury regulations which now limits the sales really to bottles of a particular kind were thought of, and the joker in the thing is that the limitations have no great effect on the total market for cooperage except in one respect. When spirits are made, all of them except a negligible fraction, go into barrels anyhow, they are transported about the country in barrels, they are sold to rectifiers in barrels, and under the codes they are sold to State-store systems in barrels. The makers never could use any more barrels for those particular quantities of liquor that are manufactured than they do now, no matter how they were sold, excepting in one respect. They could sell to saloons, if I may use the discredited word, they could sell as they used to—half barrels, quarter barrels, and eighth barrels. Those three small categories of small cooperage would make the only addition to their manufacturing and it is those that are prevented by the codes, but they are also prevented by the Treasury regulations and by the regulations of practically every State. So the cooperage makers would not be any better off if they got the code amendment through than they are now.

The real basis of their disappointment is that they compare their present sales of cooperage with the sales they had before prohibition, when the legal consumption was twice what it is now.

Senator KING. Is that true; that it was twice what it is now?

Mr. CHOATE. More than twice what it was in 1924.

Senator KING. Taking into account——

Mr. CHOATE (interposing). I say the "legal consumption." Of course the bootleggers never use cooperage; at least, not often.

Senator KING. From your investigations, are you able to determine whether before prohibition there were many barrels or wooden containers for those smaller units?

Mr. CHOATE. I have never been furnished the facts on that. That is one of the things that the cooperage makers ought to furnish at our hearings.

The CHAIRMAN. At least, they can apply for a hearing?

Mr. CHOATE. They can apply for a hearing at any time. In fact, I think they came around to see my general counsel yesterday with the idea perhaps of doing that. I hope they do. They may have much more of a case then they have ever made to appear.

The next code purpose is price control to the extent of the open-price system, and the final one is just the acquisition of information about reports and so forth.

The CHAIRMAN. Thank you very much.

Senator LA FOLLETTE. Just a moment. You did not respond to Senator King's suggestion.

Mr. CHOATE. I knew that I had forgotten something. What was it?

Senator LA FOLLETTE. Concerning the alleged discrimination in the issuance of permits.

Mr. CHOATE. I am very glad you asked me that. Every applicant who did not get a permit, every applicant immediately rushed out and shouted "Discrimination", because he did not get a permit for a distilling plant. The fact is the F. A. C. A. could make no discrimination, they had no discretion. The code was perfectly clear. We had to grant a distilling permit to every man of respectable character who had a plant in existence or in process of construction the day the code went into effect.

Senator CLARK. You mean that was under the provisions of the code?

Mr. CHOATE. The code itself required it. So that there was a mass of people to whom we had to give permits no matter from what State they came, and no matter what they were like, provided they were respectable. The idea was that there was danger of a tremendous rush into the industry as repeal took effect, and the people who framed the code thought that the only safe way of dealing with that situation was to freeze the industry more or less solid at the start. There was enough distilling capacity in existence or under way when the code took effect to take care of the needs of the country, and they wanted to make sure that there would not be any more than was necessary. That froze the industry, with one exception, which was that if we found after notice and opportunity for hearing that the capacity for any class of distilled spirits was insufficient to meet the consumptive demand, we could grant additional permits for that purpose.

We held such a hearing in February of 1934 a year ago, and we then found that the capacity for beverage alcohol and gin was certainly excessive, that the capacity for whisky was possibly inadequate. Giving them the benefit of the doubt, we decided to issue permits for about 40,000,000 gallons a year more whisky capacity, and hat was done. We took in about 45 additional applicants, all the qualified ones who were then before us. Since then we have issued no more whisky permits except to those who had a plant in existence or under construction before November 27, 1933. We found that the capacity for fruit brandy and rum was inadequate and more permits were granted for those.

Senator LA FOLLETTE. How much of that capacity approximately was there, if you remember?

Mr. CHOATE. Which one?

Senator LA FOLLETTE. For the brandy?

Mr. CHOATE. I do not recall. There is no more difficult thing in the world than to figure the annual capacity of a distillery. It is almost impossible. The best guess we could make was, by the time we got through with it, that the distilleries of the country if they had all run every day they possibly could and had had no difficulties of any kind, might have produced 300,000,000 gallons of whisky in the course of a year. That of course was the theoretical capacity and was entirely beyond anything that they would ever have reached in practice.

As a matter of fact, they did produce last year about 108,000,000 against tax-paid sales of about 40,000,000, the rest going into storage to build up the depleted stocks in storage for ageing which used to amount to 240,000,000 gallons.

So you see, Senator, there was thus nothing we could do if a man came within the classification as one who had had capacity in existence or in process of construction on the code day, we had to give him a permit. If he did not have that we could not, after the issue of the permits granted as a result of the February hearing, give him a permit. That is how it happened that a great many distillers came into existence in Kentucky where the old ones still existed, and a number in Maryland, and in Pennsylvania, and quite a few in Indiana and Illinois. Those States were the only places where distillation had taken place to any extent before prohibition, and that is why there were so few in Senator Clark's State and so few in other parts of the country, and why there were so many people who wanted to go into the business in those parts of the country, and were disgusted that they could not.

Senator CLARK. Who adopted these codes?

Mr. CHOATE. Who adopted these codes?

Senator CLARK. In most of the industries that we have had here before there was some trade association or some established businesses which at least went through the form or purported to come in to form a code. Who could form the code, for instance, for the distillers?

Mr. CHOATE. You have a very curious situation there. Of course, there was no distilling industry worth mentioning, any more than there was a wholesale industry or a wine industry or any of the rest of them. There was a brewing industry, and the brewers did present their own code and get it adopted with certain modifications.

The rest of the codes were prepared as best they could by the special committee nominated by the President for that purpose, a committee of extraordinary ability. It called hearings and sat down with all of the people who were intending to go into the industry who came to these hearings and framed these codes in a manner that met the views of the persons who attended and the persons whom they were in touch with.

Senator CLARK. That meant that the fellows that were already in according to the definition, the fellows that already had distilleries constructed or in process of construction?

Mr. CHOATE. No. In the case of the distillers, it was a very curious situation. Of course there were legitimate distillers operating under prohibition permits.

Senator CLARK. And they had been granted permits by Dr. Doran?

Mr. CHOATE. And they were granted permits afterward under our codes. But the curious fact about that was that the distillers were the only people who protested violently against the code finally drawn for them by the President's committee. They protested with the utmost vehemence and said they would never sign it, or play ball with us at all, but in a very short time they had entirely changed their minds, and they now rather enthusiastically support the code.

Senator CLARK. Is this the point then, Mr. Choate, going back a little bit and prior to the repeal of the eighteenth amendment, there had been certain distillers who had been granted permits under the then existing law through the agency of Dr. Doran, who was in charge of that matter?

Mr. CHOATE. Whether through the agency of Dr. Doran or not, I am not in a position to say.

Senator CLARK. As a matter of fact, it was through his agency, was it not?

Mr. CHOATE. It was by the predecessor of the present Alcohol Tax Unit, but he was an important officer.

Senator CLARK. Dr. Doran was a member of this committee?

Mr. CHOATE. I do not recall. I hope he was.

Senator CLARK. I recall that he was present with you when you testified before the joint session of the Ways and Means Committee in that hearing.

Mr. CHOATE. Maybe. Remember, I was not a member of the President's committee.

Senator CLARK. He was a member of it when this code was drawn up and the people to whom Dr. Doran had hitherto issued permits adopted a code, set up a code authority of which Dr. Doran became the head, and also at the same time provided for the creation of the Federal Alcohol Control unit, which exists purely by virtue of the code provisions, but which is supported by public funds?

Mr. CHOATE. No; that is not very accurate. Of course, the existing distilling industry was, as you say, those who had obtained permits before the repeal of the eighteenth amendment. It is also true that they attended the code hearing and protested violently against the code they got. They did not want the permit system.

Senator CLARK. They adopted the code, did they not?

Mr. CHOATE. They did not adopt it; they protested, as I say. They never adopted it in any form, and their position now is entirely different.

Senator CLARK. Do I understand that there was any authority in the President's committee under the law to impose a code on the industry unless the industry adopted it?

Mr. CHOATE. That is a question you will have to ask my general counsel and the other lawyers, but I think there was.

Senator CLARK. I know you are a very excellent lawyer.

Mr. CHOATE. But I am not here as a lawyer. There is an old adage, "When you have a dog, don't do your own barking." [Laughter.]

Senator CLARK. You are familiar with the law. Do you know of any authority whatever in the law authorizing the President's committee to impose a code upon an industry?

Mr. CHOATE. There is no authority authorizing the Presidential committee to impose a code, but there was an authority in the President to adopt the code.

Senator CLARK. Yes, there was. Am I to understand that this code was imposed on the industry by the President under that provision, that provision of the law? I had understood that that had never been done in the case of any code.

Mr. CHOATE. I would say that all of the alcoholic codes except the Brewers' Code were in a sense imposed, because there was no industry, strictly speaking, capable of adopting a code at that time. There again you are taking me out of my field and into my dog's field. I have a darn good dog.

Senator CLARK. You are too good a lawyer to be calling your lawyer a dog, are you not? [Laughter.]

Mr. CHOATE. I am very fond of dogs.

Senator BARKLEY. Pretty soon they will be calling dogs lawyers. [Laughter.]

Senator CLARK. But there was this authority existing purely by virtue of that set-up, and you re exercising authority under it?

Mr. CHOATE. The authority of the F. A. C. A. does not exist by virtue of the codes. It exists by virtue of the President's Executive order setting it up as a code administrative agency under the direct authority of the National Industrial Act.

Senator KING. And with the President's authority, it set you up as a code authority——

Mr. CHOATE (interposing). Not as a code authority.

Senator KING. Set you up for any purposes or for any sort of an organization. That rests exclusively in the National Industrial Recovery Act?

Mr. CHOATE. I understand so.

Senator CLARK. I do not know whether you were present or not—I know you were present during those hearings and testified—but did you hear the testimony before this committee and the Ways and Means Committee a year ago last December of the various witnesses, including the present chairman of the rules committee of the House of Representatives, Mr. O'Connor?

Mr. CHOATE. I did not hear it. I read it.

Senator CLARK. That there was a whisky trust in existence in the country, which was going to grab control of the whole liquor industry in the United States?

Mr. CHOATE. I read that testimony of Mr. O'Connor's.

Senator CLARK. Have you had an opportunity in your experience to form an opinion as to whether there are a few companies engaged in the distilling business who are in control and in fact do completely dominate the industry in the country?

Mr. CHOATE. I think that I have a perfect opportunity to form an opinion.

Senator CLARK. I would be glad to have you express that opinion.

Mr. CHOATE. I know from that experience that there is no industry more fiercely competitive than the distillery industry and few in which one group or individual company exercises so little control. I got some figures out on that the other day. While they are reported to us and supposed to be confidential, they are available to you, of course, if you want them.

Mr. CLARK. I will be glad to get your views.

Senator KING. While you are looking for that record, I recently received a number of communications, about the time the Senator speaks of, I should say, claiming that very large quantities of liquor which had been smuggled into the country, some of which had been held over from the pre-Volstead days, and some of which had been manufactured and brought into the United States illegally, and which had gotten into the control of a limited number of individuals, and that they were going to make enormous profits out of the sale, that they were going to do a great deal of blending or had done it or were prepared to do it, and rectification, and the matter was going to be handled in such a way that the Government was going to lose millions of dollars. I was interested, being a member of the Finance Committee, in trying to save the Government, if we could, some taxes.

Mr. CHOATE. There was a persistent rumor during the first year after repeal that there existed in the country enormous stocks of whiskies distilled illegally during prohibition. The usual story was

that that had been diverted from legal distilleries, which was almost impossible under the supervision that they then had. Various groups of lawyers have come to me and the Treasury at various times and said, would we let them legalize these immense stocks, pay taxes on them, and thus enable those people to make immense profits. We found that the stories that went around were that the people who presented these ideas had contracts, the lawyers had contracts which would have netted them enormous commissions on the thing.

That whole subject was discussed at the Treasury by us and by everybody else interested, and finally taken to the White House and it was there decided that it was not good policy to condone the offenses of the bootleggers during prohibition, and to place in their pockets enormous profits which would have resulted from the legalization of these illegal stocks, and therefore the project was frowned upon, and nothing has been done about it since. If the stocks existed, they still exist so far as they have not been drunk up.

Senator KING. I suppose if those stocks did exist, and doubtless there were some that did exist, they have found their way into the trade, have they not, legally or illegally?

Mr. CHOATE. They have or they still exist and have not been discovered, one or the other. My guess is that no very large stocks could remain undiscovered for any very great length of time.

The CHAIRMAN. Are there any other questions?

Senator CLARK. Mr. Choate, my question about the concentration was recalled to me by reading this list of permits granted distillers. I find here the American Commercial Alcohol Corporation, 1 permit in California, 1 in Cleveland, 1 in Granton, N. Y., 1 in New York, 1 in Boston, 1 in Chicago, 1 in Pekin, Ill., 1 in Baltimore, 1 in Kansas City, Mo., 1 in Detroit, 1 in St. Louis, 1 in Cincinnati, Ohio. And the American Distilling Co., with 1 at Greater Louisiana, 1 in Philadelphia, 1 in Boston, 1 in Pekin, Ill., 1 in Minneapolis, 1 in Detroit, 1 in Philadelphia, 1 in New York, 1 in St. Louis, 1 in Chicago, and another one in Pekin, Ill. The Commercial Solvent——

Mr. CHOATE (interposing). Those are almost all warehousing permits.

Senator CLARK. They are included in a list of distillers.

Mr. CHOATE. Distillers permits. The warehouse people come under the code for the purpose of warehousing. That is very misleading.

Senator CLARK. The same thing with the Commercial Solvents Co. Two pages of them.

Mr. CHOATE. They hardly produce any beverage stuff at all. Neither does the American Commercial.

Senator KING. What are they? Warehouses?

Mr. CHOATE. They are commercial alcohol producers who do not produce beverage alcohol and they have warehouse permits for other purposes.

I have here a list of the percentages of the 1934 production made by the nine largest units. Unless you ask for them, I won't disclose it, because they are supposed to be confidential, but I would like you all to see them, and I may say that these represent units which to my certain knowledge are bitterly hostile and competitive; that whenever anything is done by the F. A. C. A. that affects any one of them the rest all come up and tell us that we are turning over the

whole industry to the one that is affected. They become very much annoyed about it.

Senator CLARK. I won't ask you to include the names of the companies here, but you would have no objection to putting in the record the total of the percentage of the industry?

Mr. CHOATE. Twenty-two companies manufactured during 1934 89.61 percent of what was manufactured.

Senator KING. That was alcohol or whisky?

Mr. CHOATE. That is whisky; whisky alone.

The top 9 companies produced about 80 percent, but the bottom 50 produced nearly 11,000,000 gallons of whisky between them.

There are only 72 companies which actually produced appreciable quantities of whisky during the last year. There are, of course, a great many more since August. A lot of permittees came into operation only toward the end of the year. For instance, the seventh plant here which produced only 5.45 percent of the whisky produced in 1934 was only in operation about half of last year, so that if they had operated all through the year, they would have been right up among the top.

Senator CLARK. This question is not strictly on the line of the N. R. A. investigation, but it is within your jurisdiction and also of that of this committee. What is your opinion on the subject of whether we have the tax too high on liquor for the practical operation of your enforcement?

Mr. CHOATE. Senator, I am sorry that you asked me that, because I could talk about it for about a week. Furthermore, there is this difficulty: The question of what the tax should be is a composite problem for the entire Government of the United States. What the recommendation of the executive department should be is a composite problem for the President. In making that recommendation, he should take into consideration the Treasury's views, our views, and the views of everybody else affected by all of the factors in that problem I therefore hesitate to express my own personal views.

Senator CLARK. I say it is strictly not within the purview of this investigation.

Mr. CHOATE. I have expressed my views in public many times before the question became acute and before I had concluded, as I have of late that probably it was improper for me to emphasize views which should be a mere part of the composite.

Senator CLARK. I will not press you on it.

Senator KING. I want to ask a question, coming back to the question that I propounded a moment ago. Was it not a fact that persons who obtained permits, some of them at any rate, had erected their distilling plants during the days of prohibition?

Mr. CHOATE. Oh, yes; well, I do not know that of my own knowledge.

Senator KING. So that while they might be called respectable, they had erected distilling plants which perhaps were in violation of the law?

Mr. CHOATE. I do not think so. I do not think any permit has ever been received by anyone who built a plant illegally during prohibition.

Senator BARKLEY. Illegal manufacturing of liquor was not done by distillers out in the open. You could not build a recognized distillery and operate it against the law without being discovered.

Mr. CHOATE. I do not think any bootleg distillery was ever converted into a legal one.

Senator BARKLEY. There were only three or four—some of them, it is my recollection, for a number of years were not permitted to operate at all. Then later, the Treasury or the appropriate authority authorized a few to begin operations in order to supply a limited supply for probably an increasing demand.

Mr. CHOATE. When prohibition came along, most of the distilleries were shut down, and half of them were absolutely dismantled, and some of them actually razed to the ground by their owners. The rest of them remained dormant until the production of whiskey for medicinal purposes was authorized again, and then a lot of them started up making whisky in very limited quantities, as allowed by their permit and operating 6 weeks or 2 months in the course of a year.

Senator BARKLEY. Can you tell from memory how many permits up to this time have been issued for the manufacture of whisky?

Mr. CHOATE. Yes; I have it here.

Senator KING. You mean since this organization?

Senator BARKLEY. Yes.

Mr. CHOATE. There are 192 permits for spirits other than brandy.

Senator BARKLEY. How many for brandy?

Mr. CHOATE. One hundred and sixty-nine for brandy. Fruit-brandy plants are little plants dotted about here and there where the fruit grows.

Senator BARKLEY. Are there any permits for both whisky and brandy?

Mr. CHOATE. The 192 may contain some people who are authorized to make brandy. Of course, under the new code amendment our permits will be general for any form of distillation that a man wants to undertake, excepting that there is a special permit for brandy only, which is exempt from some limitations which are imposed upon the general permits.

Senator GERRY. Why is there a special permit for brandy?

Mr. CHOATE. Because the Treasury was anxious not to have the general distilling permits issued without limitation, to very small plants. They did not feel that they could properly supervise and collect the revenue from a great number of miscellaneous small distilleries for whisky, rum, and so forth. They did feel that they could deal with the small fruit-brandy man who has a small seasonal operation while the fruit is in condition to use for distillation, and so no limitation was necessary in those cases. That is the reason why a special permit for brandy distillation was devised.

The figures now handed to me show that there are 151 permits for the distillation of whisky in existence now.

Senator CLARK. Could you have filed with the committee and put into the record a list by States of the number of licenses granted and the list of the States as to applications?

Mr. CHOATE. Of permits?

Senator CLARK. For permits; yes.

Mr. CHOATE. For distillers permits?

Senator CLARK. Yes.

Mr. CHOATE. Certainly. I don't think it will be very enlightening, because as I say, there was no discretion in us about what we could do.

(The following data was subsequently submitted by Mr. Choate.)

FEDERAL ALCOHOL CONTROL ADMINISTRATION DISTILLERY PERMITS

The Code of Fair Competition for the Distilled Spirits Industry, prior to its amendment on April 5, 1935, limited permits to plant capacity in existence or under actual process of construction or equipment on the date it took effect, November 27, 1933; except that the Federal Alcohol Control Administration, if it found, after hearing, additional capacity necessary to supply the consumptive demand for any type of distilled s irits, might grant a permit for such capacity.

In explanation of the application forms shown in this report, form AP–1 was used in applying for plant capacity in existence on the effective date of the code; form AP–2, plants in process of construction or equipment on such date; and form 3, new plant capacity, the construction of which was commenced after November 27, 1933. The permits to distill whisky granted on form 3 applications, were all issued in pursuance of applications filed before the hearing of February 5, 1934, and were granted as a result of the determination made on the basis of the evidence at that hearing that a limited amount of additional capacity for whisky was needed. The ordinary whisky permits granted upon later applications were all issued to applicants who, having proved that they had capacity in existence or in process of construction on November 27, 1933, were entitled to permits as of right.

The list does not include permits covering warehousing only, or permits issued to persons operating the plants of other permittees on leases. Such leases, being entirely within the control of the lessor-permittees, represent privileges granted by them rather than the allowance of additional capacity by the Federal Alcohol Control Administration to the lessees.

Distillery permits

Name and address	Form no.	Kind of spirits
ARIZONA		
Dudley Pitts & H. J. Karns: Office, Nogales, Ariz.; plant, same...	3	Tequila.
John F. Burns [1]: Office, 1916 Tompkins Avenue, Douglas, Ariz.; plant, same.	3	Brandy.
ARKANSAS		
Nelson Wine & Distilling Co., Inc.: Office, Springdale, Washington County, Ark.; plant, same.	3	Do.
CALIFORNIA		
Harry Adalian: Office, 1481 West 28th Street, Los Angeles, Calif.; plant, 1631½ West Jefferson Street, Los Angeles, Calif.	3	Do.
Alba Grape & Fruit Co.: Office, 901 Battery Street, San Francisco, Calif.; plant, 2 miles northwest of Escalon, San Joaquin County, Calif.	3	Do.
Alta Winery & Distillery: Office, rural route no. 2, box 197, Dinuba, Calif.; plant, 2½ miles east of Dinuba, Calif.	AP–1	Do.
American Commercial Alcohol Corporation of California: Office, 369 Pine Street, San Francisco, Calif.; plant, Alamo Street, near Sausalito, Calif.	AP–1	Alcohol.
Mansoor Anton: Office, 1101 North Los Angeles Street, Anbeim, Calif.; plant, same.	AP–1	Brandy.
K. Arakelian, Inc.: Office, Madera, Calif.; plant, same.....	AP–1	Do.
Associated Farmers Winery, Inc.: Office, Mills, Calif.; plant, Mills, Sacramento County, Calif.	AP–1	Do.
Baldocchi Bros.: Office, ro··· 2, box 672, Santa Rosa, Calif.; plant, same.	3	Do.
Bear Creek Vineyard Association: Office, box E, Lodi, Calif.; plant, near Lodi, Calif.	3	Do.
Frederick W. Becker: Office, 8512 Hays Street, Culver City, Calif.; plant, same.	AP–2	Whisky.
Bisceglia Bros.: Office, Monterey Road, San Jose, Calif.; plant, same.	AP–2	Brandy.
Louis E. Brown: Office, 6193 Roy Street, Los Angeles, Calif.; plant, 146 North San Jose Avenue, Burbank, Calif.	3	Do.
E. P. Caln, doing business as Henrietta Rancho Products Co.: Office, box 2203, Fresno, Calif.; plant, Peach Avenue, near California Avenue, Fresno, Calif.	3	Do.
California Fruit & Brandy Co.: Office, 319 Mills Building, San Francisco, Calif.; plant, Northeast corner Baber Lane and Tulley Road, Linden District, San Joaquin County, Calif.	3	Do.
California Grape Products Co., Ltd.: Office, 85 2d Street, San Francisco, Calif.; plant, Ukiah, Calif.	AP–1	Do.

[1] Permits canceled.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
CALIFORNIA—continued		
California Growers Wineries, Inc.: Office, 417 Patterson Building, Fresno, Calif.; plant, Wahtoke, Fresno County, Calif.	AP-1	Brandy.
California Mission Vintage Co.: Office, 330 North Mission Road, Los Angeles, Calif.; plant, same.	AP-1	Do.
California Products Co.: Office, Butler and O Streets, box 1339, Fresno, Calif.; plant, Butler and O Streets, Fresno, Calif.	AP-1	Do.
California Wineries & Distilleries, Inc.: Office, 315 15th Street, Oakland, Calif.; plant, Clovis Avenue, Tarpey Station, 9 miles northeast of Fresno, Calif.	AP-1	Do.
California Winery, Inc.: Office, 1711-1719 North Spring Street, Los Angeles, Calif.; plant, same.	AP-2	Do.
Cameo Vineyards Co.: Office, Fresno, Calif.; plant, Clovis Road, box 2337, Fresno, Calif.	3	Do.
Citrus Juice & Flavor Co., Ltd.: Office, Orange, Calif.; plant, Los Angeles Boulevard and Bakery Street on United States 101, Orange, Calif.	3	Do.
Cognac Wineries, Inc.: Office, 4900 San Fernando Road, Los Angeles; plant, same.	3	Do.
Colonial Grape Products Co. of California: Office 700 Minnesota Street, San Francisco, Calif.; plant, Elk Grove, Calif.	AP-1	Do.
Commercial Solvents Corporation: Office 230 Park Avenue, New York City; plant, near the village of Agnew, Calif.	AP-1	Alcohol.
Carlo Coppo: Office, Mira Loma, Calif.; plant, east side of Pauline Avenue, ¼ mile south of Marley Avenue, Decier District, San Bernardino County, Calif.	3	Brandy.
B. Cribari & Sons: Office, 100 East San Fernando Street, San Jose, Calif.; plant, Madrone, Calif.	AP-1	Do.
B. Cribari & Sons: Office, 100 East San Fernando Street, San Jose, Calif.; plant, Las Palmas, Calif.	AP-1	Do.
Cucamonga Pioneer Vineyard Association: Office, Cucamonga, San Bernardino, Calif.; plant, Haven Avenue, southeast of Cucamonga Calif.	3	Do.
Tom Davis: Office, 2325½ East 114th Street, Los Angeles, Calif.; plant, same.	3	Do.
Samuel Dewood: Office, 416 North Commercial Street, Inglewood, Calif.; plant, 418 North Commercial Street, Inglewood, Calif.	3	Do.
Earl Fruit Co.: Office, 85 2d Street, San Francisco, Calif.; plant, 4½ miles northeast of Delano, Calif	AP-1	Do.
East-Side Winery: Office, Lodi, Calif.; plant, on Victor Road, 2 miles south of Lodi, Calif.	3	Do.
Ehrlich Wineries: Office, 921 Chapman Building, 756 South Broadway, Los Angeles, Calif.; plant, Cucamonga, Calif.	AP-1	Do.
Elk Grove Fruit Growers Association: Office, Elk Grove, Sacramento County, Calif.; plant, same.	3	Do.
Elk Grove Winery, Inc.: Office, 714 Capital Bank Building, Sacramento, Calif.; plant, Elk Grove, Calif.	AP-1	Do.
Eliena Bros.: Office, south side of Bass Line Building, ½ mile west of Etiwanda, San Bernardino, Calif.; plant, same.	3	Do.
Jos. L. Fainer, doing business as Magoon Vintage Co.: Office, 1621 East Atlantic Street, Los Angeles, Calif.; plant, same.	AP-2	Do.
Florin Winery Association: Office, Florin, Calif.; plant, same	3	Do.
Fruit Industries, Ltd.: Office, 1248 Palmetto Street, Los Angeles, Calif.; plant, Guasti, Calif.	AP-1	Do.
Fruit Industries, Ltd.: Office, 1248 Palmetto Street, Los Angeles, Calif.; plant, Lodi, Calif.	AP-1	Do.
Fruit Spirits Corporation: Office, 1341-43 East 17th Street, Los Angeles, Calif.; plant, same.	3	Do.
Garden Vineyards Winery & Distillery Co.: Office, route 1, box 83, Fowler, Calif.; plant, same.	AP-2	Do.
Gate City Distillery, Inc.: Office, R. F. D. 1, box 287, San Bernardino, Calif.; plant, same.	AP-2	Whisky.
Golden Gate Distilleries: Office, care of Nathan Goldberg, 1025 Washington Building, Los Angeles, Calif.; plant, 2820 Redondo Beach Boulevard, Redondo Beach, Calif.	3	Brandy.
James J. Gorman: Office, Sunnyvale, Calif.; plant, same	3	Do.
Jefferson James Graves: Office, 890 Bush Street, San Francisco, Calif.; plant, Oakhurst, Fresno County, Calif., box 797, route 2, Sanger, Calif.	3	Do.
The Haigh Distillery: Office, 68 Front Street, Healdsburg, Calif.; plant, same.	3	Do.
Hedgeside Distillery: Office, care of Pierre de la Montanya, 705 Sansome Street, San Francisco, Calif.; plant, Napa, Calif.	AP-2	Whisky.
Michael E. Horeth: Office, box 108, El Cajon, Calif.; plant, same	3	Brandy.
Fremont Distilleries, formerly Hermovita Corporation: Office, 424 Battery Street, San Francisco, Calif.; plant, 7 miles southwest of Stockton, Calif.	AP-2	Whisky.
Italian Swiss Colony: Office, 781 Beach Street, San Francisco, Calif.; plant, Asti, Calif.	AP-2	Brandy.
John Johnson: Office, Escondido, Calif.; plant, same	AP-2	Do.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
CALIFORNIA—continued		
Kearney Winery Co., Inc.: Office, rural route no. 8, box 47, Fresno, Calif.; plant, same.	AP-1	Brandy.
Peter Khoury: Office, 221 H. W. Hellman Building, Los Angeles, Calif.; plant, Los Angeles, Calif.	3	Do.
F. Korbel & Bros.: Office, Guerneville, Calif.; plant, Korbel Station, 2 miles southeast of Guerneville, Calif.	AP-1	Do.
John J. Kovacevich: Office, Arvin, Calif.; plant, same	3	Do.
Lacquer Chemicals, Inc.: Office, 624 California, Street, San Francisco, Calif.; plant, Stege Station, Richmond, Calif.	3	Whisky, alcohol.
Peter H. Lint: Office, route 3, box 73, Los Gatos, Calif.; plant, same.	AP-1	Brandy.
Livermore Winery, Inc.: Office, Third and Church Streets, Livermore, Calif.: plant, same.	AP-1	Do.
Los Angeles Brewing Co.: Office, 1920-2026 North Main Street, Los Angeles, Calif.; plant, same.	AP-1	Alcohol.
Lucerne Winery, inc.: Office, room 912 Griffith-McKenzie Building, Fresno, Calif.; plant, northeast corner Shaw and Winery Avenues, 8 miles northeast of Fresno, Calif.	AP-1	Brandy.
Romeo Malatesta: Office, 529 West Broadway, New York City; plant, Sanger, Calif.	AP-1	Do.
Chas. N. and Barney Calliano Marietta, doing business as Marietta Distillery: Office, box 23, Mira Loma, Calif.; plant, on Belgrave Avenue, 1½ miles south and 1 mile west of Mira Loma, Calif.	3	Do.
Matias B. Martinez (Cucamonga Valley Wine Co.): Office, 1101 East A Street, Ontario, San Bernardino County, Calif.: office, same.	AP-1	Do.
L. M. Martini Grape Products: Office, Kingsburg, Calif.; plant, same.	AP-1	Do.
Andrew Mattei: Office, 1104 Mattei Building, Fresno, Calif.; plant, Malaga, Calif.	AP-1	Do.
John McClure Estate, Inc.: Office, Seventh floor, 724 South Spring Street, Los Angeles, Calif.; plant, West Sixth Street, Burbank, Calif.	AP-1	Do.
Mount Tivy Winery, Inc.: Office, 600 Rowell Building, Fresno, Calif.; plant, Lac Jac, Calif.	AP-1	Do.
Napa Valley Wine & Brandy Co.: Office, 700 Minnesota Street, San Francisco, Calif.; plant, Elk Grove, Calif.	AP-1	Do.
Nick D. Nicassio: Office, 231 South Central Avenue, Los Angeles, Calif.; plant, 614 J Street, Colton, San Bernardino County, Calif.	3	Do.
George Norcia: Office, 1008 San Diego Boulevard, Escondido, Calif.; plant, same.	3	Do.
Pacific Brandy Co.: Office, box 474, San Jose, Calif.; plant, Santa Clara County, Calif.	3	Do.
Pacific Coast Wineries: Office, box 267, Fresno, Calif.; plant, east corner Ventura and Peach Avenues, Fresno, Calif.	AP-1	Do.
Pacific Wines, Inc.: Office, 218 North Avenue 19, Los Angeles, Calif.; plant, same.	3	Do.
Padre Vineyard Co.: Office, 845 North Alameda Street, Los Angeles, Calif.; plant, East Eighth Street, between Archibald and Turner Avenues, Cucamonga, Calif.	AP-1	Do.
Angela Pagani: Office, Glen Ellen, Calif.; plant, same	AP-1	Do.
Frank Palamara: Office, box 111, Roscoe, Calif.; plant, 9325 San Fernando Road, Los Angeles, Calif.	AP-2	Do.
Edward C. Pettibone: Office, 303 West E Street, Colton, Calif.; plant, same.	AP-2	Alcohol.
Prima Vista Wine Co.: Office, 731 Bryant Street, San Francisco, Calif.; plant, corner Front and Hudson Streets, Healdsburg, Sonoma County, Calif.	AP-2	Brandy.
Puenta de Madera Winery: Office, 400 North Sixteenth Street, Sacramento, Calif.; plant, Woodbridge, Calif.	3	Do.
Roma Wine Co.: Office, Lodi, Calif.; plant, same	AP-1	Do.
Roma Wine Co.: Office, Lodi, Calif.; plant, Manteca, Calif.	AP-1	Do.
San Gabriel Vineyard Co.: Office, 636 South Putney Avenue, San Gabriel, Calif.; plant, same.	AP-1	Do.
Santa Fe Winery & Distilleries, Inc.: Office, 312 Pershing Square Building, Los Angeles, Calif.; plant, northwest quarter, lot 150, Temecula Ranche, Riverside County, Calif.	3	Do.
Santa Lucia Wineries, Inc.: Office, Church and East Avenues, Fresno, Calif.; plant, same.	3	Do.
Samuele Sebastina: Office, Sonoma, Calif.; plant, Sonoma and Woodbridge, Calif.	AP-1	Do.
Luigi Severini: Office, 242 Fresno Street, Fresno, Calif.; plant, same.	3	Do.
Shewan-Jones, Inc.: Office, Woodbridge Road, Lodi, Calif.; plant, same.	AP-1	Do.
Southern California Distilleries, Ltd.: Office, 11420 Briggs Avenue, Hawthorne, Calif.; plant, same.	3	Do.
Southern California Winery, Inc.: Office, 4101 Whiteside Avenue, Los Angeles, Calif.; plant, same.	3	Do.
Southern Foundation, Ltd.: Office, 1209 East Fourteenth Street, Los Angeles, Calif.; plant, 1300 Goodrich Boulevard, Los Angeles, Calif.	AP-2	Whisky.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
CALIFORNIA—continued		
Spanish-American Wines, Inc.: Office, 820 Bank of America Building, San Diego, Calif.; plant, El Cajon, Calif.	AP-2	Brandy.
Speas Manufacturing Co.: Office, 2600 Front Street, Kansas City, Mo.; plant, McKinley Street and Brown Avenue, Sebastopol, Calif.	3	Do.
St. George Winery: Office, lot 34, Tulare Avenue, 4 miles east of Fresno, Calif.; plant, same.	3	Do.
St. Joseph Winery Co.: Office, Fresno, Calif.; plant, 5 miles east of Fresno, Calif.	AP-2	Do.
Standard Wines, Inc.: Office, San Fernando Road at Elk Street, Los Angeles, Calif.; plant, same.	3	Do.
A. G. Steiber: Office, 2216 Arlington Street, Bakersfield, Calif.; plant, 1 mile south of Southern Pacific R. R. tracks on Fairfax Road, Kern County, Calif.	AP-2	Whisky.
Sunset Brandy Co.: Office, Alviso, Calif.; plant, same	3	Brandy.
Three G Distillery Corporation: Office, 5335 Melrose Street, Los Angeles, Calif.; plant, corner of Ontario and San Fernando Boulevard, Burbank, Calif.	AP-2	Whisky.
Tulare Winery Co., Inc.: Office, Tulare, Calif.; plant, same	AP-1	Brandy.
United Vineyards, Inc.: Office, route 2, box 187, Kerman, Calif.; plant, same.	3	Do.
Verdemont Fruit Products Corporation, Ltd.: Office, box 292, route 1, San Bernardino, Calif.; plant, Verdemont, San Bernardino, Calif.	3	Do.
West Coast Winery, Inc.: Office, 11240 Peoria Avenue, Roscoe, Calif.; plant, same.	3	Do.
Woodbridge Vineyard Association: Office, Lodi, Calif.; plant, Elk Grove, Calif.	AP-1	Do.
Grant Alba Young: Office, 490 South Santa Fe Street, Hemet, Calif.; plant, same.	3	Do.
Donlevy Distilling Corporation: [1] Office, 3933 Goldfinch Street, San Diego, Calif.; plant, Rough and Ready Island, Stockton, Calif.	3	Whisky.
Pietro Ferro Vintage Co.: [1] Office, 4101 Whiteside Avenue, Los Angeles, Calif.; plant, same.	3	Do.
R. Martini Wine Co.: [1] Office, 643 Front Street, San Francisco, Calif.; plant 8 miles northwest of Santa Rosa post office, Sonoma County, Calif., on Vineville Road.	3	Brandy.
Louis Fashauer, Sr., & Sons: [1] Office, Elk, Mendocino County, Calif.; plant, same.	3	Do.
Henry A. Jacobs: [1] Office, 111 Sutter Street, San Francisco, Calif.; plant, 2½ miles southwest of Orange Cove, Fresno County, Calif.	3	Do.
A. G. Anticevich: [1] Office, 2690 Park Avenue, Santa Clara, Calif.; plant, same.	3	Do.
Scatena Bro. Wine Co.: [1] Office, Healdsburg, Calif.; plant, ½ mile northwest of Healdsburg post office, Sonoma County on Grove Street, Healdsburg, Calif.	3	Do.
Jack I. Dragna: [1] Office, box 138 Puente, Calif.; plant, Dragna Ranch and Vineyard, Puente, Calif.	3	Do.
Abraham Schorr & Philip Levin: [1] Office, 812 Buchanan Street, San Francisco, Calif.; plant, St. Helena, Calif.	AP-2	Do.
A. G. Stolber: [1] Office, 2216 Arlington Street, Bakersfield, Calif.; plant 1 mile south of Southern Pacific Railroad tracks on Fairfax Road, Kern County, Calif.	AP-2	Whisky.
Georgie H. White: [2] Office, Mountain View, Calif.; plant, same	AP-2	Distilled spirits.
James Stafford: [2] Office, rural route 2, box 581, San Marcos, Calif.; plant, same.	3	Whisky, brandy.
Southern California Distilleries, Ltd.: [2] Office, 11420 Briggs Avenue, Hawthorne, Calif.; plant, same.	3	Brandy.
John T. Basom: [2] Office, 8512 Hays Street, Culver City, Calif.; plant, same.	AP-2	Whisky.
Angelus Wine & Distillery Corporation: [2] Office, care of S. Santilli, 129 West Second Street, Los Angeles, Calif.; plant, 2700 San Fernando Road, Los Angeles, Calif.	3	Brandy, tequila.
COLORADO		
Black Wolf Distillery: Office, 309 Wilda Building, Denver, Colo.; plant, same.	3	Whisky.
Colorado Alcohol Co.: Office, Johnstown, Colo.; plant, same	AP-1	Do.
International Distilleries: Office, 1961 Kearney Street, Denver, Colo.; plant, Arvada, Colo.	3	Do.
Frank Mortellaro or Mile High Distillery: Office, corner West Arkansas Avenue and Jason, Denver, Colo.; plant, same.	3	Do.
Western Distilleries, Inc.: Office, Penrose, Colo.; plant, same	AP-2	Alcohol.
Adolph Coors Co.: Office, Golden, Colo.; plant, same	AP-2	Do.

[1] Permits canceled. [2] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
CONNECTICUT		
Ernest C. Alderman: Office, R. F. D. Unionville, Conn.; plant, Burlington, Conn.	3	Brandy.
Joseph C. Chotl: Office, Wallingford, Conn.; plant, same.	3	Do.
Connecticut Distilleries, Inc.: Office, Nashs Corners, Westport, Conn.; plant, same.	AP-1	Do.
Haddam Distillers Corporation: Office, Moodus, Conn.; plant, same.	AP-2	Whisky, alcohol.
David Hayes: Office, Anston, Conn.; plant, same.	AP-2	Gin.
Stephen J. Reynolds: Office, Scribner Avenue, R. F. D. 1, South Norwalk, Conn.; plant, same.	AP-2	Brandy.
Joseph C. Chotl[1]: Office, Wallingford, Conn.; plant, same.	3	Do.
W. I. Sutcliff[1]: Office, 176 Broadway, New York City; plant, Gaylordsville, Conn.	3	Do.
DELAWARE		
Delmar Distilleries Corporation: Office, 70 Morlot Avenue, R. F. D. 1, Fairlawn, N. J.; plant, Deemer Heights, Del.	3	Do.
Diamond State Distilling Co., Inc.: Office, 75 West Street, New York, N. Y.; plant, Dover, Del.	AP-2	Do.
Interstate Distillers, Inc.: Office, 800 Citizens Bank Building, Wilmington, Del.; plant, 3d and Greenhill Avenue, Wilmington, Del.	AP-2	Whisky.
Delmar Distilleries Corporation[1]: Office, 70 Morlot Avenue, R. F. D. 1, Fairlawn, N. J.; plant, Deemer Heights, Del.	3	Brandy.
HAWAII		
California Packing Corporation: Office, 101 California Street, San Francisco, Calif.; plant, Honolulu, Hawaii.	AP-1	Alcohol.
Hawaiian Fine Liquors, Ltd.: Office, 82 Merchant Street, Honolulu, Hawaii; plant, Kapiolani Boulevard, Honolulu, Hawaii.	3	Okolehao.
Hawaiian Okolehao Distilleries: Office, Quinn Lane, Honolulu, Hawaii; plant, same.	3	Do.
Maui Pineapple Co., Ltd.: Office, Paia, Maui, Hawaii; plant, Kahului, Maui, Hawaii.	AP-1	Do.
ILLINOIS		
The American Distilling Co.: Office, 135 East 42d Street, New York City; plant, between South Front Street and Illinois River, Pekin, Ill.	AP-2, 3	Whisky, alcohol, gin.
Century Distilling Co.: Office, Erie and Crowell Streets, Peoria, Ill.; plant, same.	AP-1, 2	Whisky.
Commercial Solvents Corporation: Office, 230 Park Avenue, New York City; plant, foot of Darst Street, Peoria, Ill.	3	Alcohol.
Jo Daviess County Distillery: Office, 2170 Central Avenue, Dubuque, Iowa; plant, Galena, Ill.	AP-2	Whisky
Kapantais & Co., Inc: Office, 715 South Halsted Street, Chicago, Ill; plant, same	3	Brandy
Penn-Maryland Corporation: Office, 52 William Street, New York, N. Y.; plant, Clark Street, Peoria, Ill	AP-1	Whisky
Rock River Distillery, Inc: Office, Dixon, Ill; plant, same.	3	Do
Frank Sampson: Office, 310 Columbia Avenue, corner West Locust Street, Belvidere, Ill.; plant, same	AP-2	Whisky, alcohol
Hiram Walker & Sons, Inc.; Office, 510 Jefferson Hotel, Peoria, Ill; plant, 3108-3116 North Adams Street, Peoria, Ill.	AP-1	Whisky.
Hiram Walker & Sons, Inc.; Office, 510 Jefferson Hotel, Peoria, Ill.; plant, foot of Edmund Street, Peoria, Ill.	AP-2	Do.
Harry H. Graham: [1] Office, 857 First National Bank Building, Chicago, Ill.; plant, same.	AP-2	Do.
Edwin Lehmann: [1] Office, 701 Lehmann Building, Peoria, Ill.; plant, Peoria, Ill.	AP-2	Do.
INDIANA		
Commercial Solvents Corporation: Office, 230 Park Avenue, New York City; plant, 1331 South 1st Street, Terre Haute, Ind.	AP-2	Alcohol.
Kapantais & Co., Inc.; Office, 105 West Monroe Street, room 1121, Chicago, Ill.; plant, northwest corner Carroll and Holliday Streets, Michigan City, Ind.	3	Brandy.
Krogman Distilling Co., Inc.: Offices, Tell City, Ind.; plant, same.	3	Do.
Merchants Distilling Corporation: Office, 1535 South First Street, Terre Haute, Ind.; plant, same.	AP-2	Whisky.
The Old Quaker Co.: Office, Lawrenceburg, Ind.; plant, Greendale, Ind.	AP-1	Do.
Thomas P. Roth: Office, 126 Franck Avenue, Louisville, Ky.; plant, 4½ miles south of Paoli, Orange County, Ind.	3	Brandy.
Lawrence Schmitt: Office, 717 South Clinton Street, Fort Wayne, Ind.; plant, same.	3	Brandy, rum.
Joseph E. Seagram & Sons, Inc.: Office, Chrysler Building, 405 Lexington Avenue, New York, N. Y.; plant, Mill and Main Streets, Lawrenceburg, Ind.	AP-2	Whisky.

[1] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
INDIANA—continued		
James Walsh & Co., Inc.: Office, Greendale, Lawrenceburg Post Office, Ind.; plant, Probasco Avenue and Big Four R. R., Greendale, Lawrenceburg Post Office, Ind.	3	Whisky, alcohol.
Hammond Distilleries, Inc.: Office, 5099 Calumet Avenue, Hammond, Ind.; plant, same.	AP-2	Whisky.
KENTUCKY		
Allied Brewing & Distilling Co., Inc.: Office, 192 Kind Street, Brooklyn, N. Y.; plant, "Old Hermitage Distillery", Frankfort, Ky.	AP-2	Do.
The American Medicinal Spirits Corporation: Office, Seventh and Bernheim Lane, Louisville, Ky.; plant, ¼ mile south of city of Louisville, Ky.	AP-1	Do.
The American Medicinal Spirits Corporation: Office, Seventh and Bernheim Lane, Louisville, Ky.; plant, Twenty-eight and Broadway, Louisville, Ky.	AP-2	Do.
Bardstown Distillery, Inc.: Office, 100 West Tenth Street, Wilmington, Del.; plant, 2½ miles northwest of Bardstown, Ky.	AP-2	Do.
J. A. Barry Distillery Co.: Office, 26th Street and Tyler Avenue, Louisville, Ky.; plant, Ekron, Meade County, Ky.	3	Brandy.
James B. Beam Distilling Co.: Office, Clermont, Ky.; plant, same..	AP-2	Whisky.
Bernheim Distilling Co.: Office, 17th and Breckenridge Streets, Louisville, Ky.; plant, same; registered distillery no. 1	AP-1	Do.
Bernheim Distilling Co.: Office, 1701 West Breckenridge Street, Louisville, Ky.; plant, 17th and Breckenridge Streets, Louisville, Ky., registered distillery no. 2.	AP-1	Do.
Blair Distilling Co.: Office, 603 Fox Theatre Building, Detroit, Mich.; plant, Chicago, Marion Co., Ky.	AP-2	Do.
Bonnie Bros.: Office, 26th Street and Tyler Avenue, Louisville, Ky.; plant, same.	AP-2	Do.
The Brown Forman Distillery Co.: Office, 1003 Howard Street, Louisville, Ky., plant, same.	AP-1	Do.
Buffalo Springs Distilling Co.: Office, Stamping Ground, Ky.; plant, Stamping Ground, Scott County, Ky.	AP-2	Do.
Churchill Downs Distillery Co.: Office, Louisville, Ky.; plant, Smithton Station, Nelson County, Ky.	3	Do.
Combs Distilling Co., Inc.: Office, Frankfort, Ky.; plant, Taylorton, Woodford County, Ky.	AP-2	Do.
Cummins Distilleries Corporation: Office, 322 West Main Street, Louisville, Ky.; plant, Athertonville, Ky.	AP-2	Do.
The Dant Distillery Co.: Office, Dant, Marion County, Ky.; plant, same.	AP-2	Do.
Dant & Head Distilling Co.: Office, 520 Republic Building, Louisville, Ky.; plant, Gethsemane, Nelson County, Ky.	AP-2	Do.
Daviess County Distilling Co., Inc.: Office, Owensboro, Ky.; plant, same.	AP-2	Do.
Dowling Bros. Distilling Co.: Office, Burgin, Ky.; plant, same.....	AP-2, 3	Do.
Frankfort Distilleries, Inc.: Office, Fifth Floor Columbia Building, Louisville, Ky.; plant, Dixie Highway, Louisville, Ky.	AP-2	Do.
Frankfort Distilleries, Inc.: Office, Fifth Floor Columbia Building, Louisville, Ky.; plant, 1033 Story Avenue, Louisville, Ky.	AP-2	Do.
W. A. Gaines & Co.: Office, 60 Broadway, New York, N. Y.; plant, on Glenn Creek, Woodford County, Ky.	AP-2	Do.
General Distillers Corporation of Kentucky: Office, Louisville, Ky.; plant, Mellwood and Frankfort Avenues, Louisville, Ky.	3	Do.
Glencoe Distillery Co.: Office, 723 South 26th Street, Louisville, Ky.; plant, same.	AP-2	Do.
Glenmore Distilleries, Inc.: Office, 711 Brent Street, Louisville, Ky.; plant, Hardinsburg Road, Owensboro, Ky.	AP-1	Do.
Ralph Greenbaum Distillery Co.: Office, Frankfort, Franklin County, Ky.; plant, Midway, Woodford County, Ky.	AP-2	Do.
Hoffman Distilling Co., Inc.: Office, Lawrenceburg, Ky.; plant, same.	3	Do.
Independent Distillers of Kentucky, Inc.: Office, Bardstown, Ky.; plant, same.	AP-2	Do.
Kentucky Products: Office, 120 South La Salle Street, Chicago, Ill.; plant, Hobbs, Ky.	AP-2	Do.
Kentucky Products: Office, 120 South La Salle Street, Chicago, Ill.; plant, Greenbrier, Ky.	AP-2	Do.
Kentucky Valley Distilling Co., Inc.: Office, Commercial Building, Louisville, Ky.; plant, Chapeze, Bullit Co., Ky.	AP-2	Do.
Labrot & Graham: Office, R. F. D. 3, Frankfort, Ky.; plant, same...	AP-2	Do.
Little Pepper Distillery, Inc.: Office, 105 South La Salle Street, Chicago, Ill.; plant, 1200 River Road, Louisville, Ky.	AP-2	Do.
McCulloch's Green River Whiskeys, Inc.: Office, Owensboro, Ky.; plant, Daviess Co., Owensboro, Ky.	AP-2	Do.
H. McKenna, Inc.: Office, Fairfield, Nelson Co., Ky.; plant, 11 miles from Bardstown and 4 miles from Bloomfield, Ky., on State Highway No. 48.	AP-2	Do.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
KENTUCKY—continued		
Tom Moore Distillery Co.: Office, Bardstown, Ky.; plant, same	AP-2	Whisky.
C. P. Moorman & Co.: Office, 505 West Liberty Street, Louisville, Ky.; plant, 15th Street and Bernheim Lane, Louisville, Ky	AP-2	Do.
New England Distilling Co., Inc.: Office, 115 Pike Street, Covington, Ky.; plant, same	AP-1	Rum.
Old Joe Distilling Co.: Office, Lawrenceburg, Ky.; plant, same	AP-2	Whisky.
Old Kennebec Distillery Co.: Office, Frankfort, Ky.; plant, Kennebec Station, Franklin County, Ky.	3	Do.
Old Kentucky Distillery: Office, Columbia building, Louisville, Ky.; plant, 18th Street Road, Louisville, Ky.	3	Do.
Old Lewis Hunter Distillery Co.: Office, 112 Esplanade, Lexington, Ky.; plant, Lair, Harrison County, Ky.	AP-2	Do.
James E. Pepper & Co., Inc.: Office, Lexington, Ky.; plant, ¼ mile west of city of Lexington, Ky.	AP-2	Do.
H. E. Pogue Distillery Co.: Office, 8 South Michigan Avenue, Chicago, Ill.; plant, Maysville, Ky.	AP-2	Whisky.
The John Poindexter Distilleries Co.: Office, Cynthiana, Ky.; plant, Poindexter, Ky.	AP-2, 3	Do.
Ripy Bros. Distillers, Inc.: Office, Lawrenceburg, Ky.; plant, Tyrone, Ky.	AP-2, 3	Do.
T. W. Samuels Distillery: Office, 1212 Keith Building, Cincinnati, Ohio; plant, Deatsville, Nelson Co., Ky.	AP-2	Do.
Geo. T. Stagg Co.: Office, Frankfort, Ky.; plant, Leestown Turnpike, 1 mile north of Frankfort, Ky.	AP-1	Do.
Stitzel Weller Distillery, Inc.: Office, 1033 Story Avenue, Louisville, Ky.; plant, between Madison Drive and Tucker Lane, Shively, Ky.	AP-2	Do.
K. Taylor Distilling Co., Inc.: Office, 216 West Main Street, Frankfort, Ky.; plant, Forks of Elkhorn, Franklin Co., Frankfort, Ky.	AP-2	Do.
Taylor & Williams, Inc.: Office, Yellowstone Gardens, Louisville, Ky.; plant, 7th Street Road, 4 miles from Louisville, Ky.	AP-2	Do.
Thixton Distilling Co., Inc.: Office, Henderson, Ky.; plant, same	3	Brandy.
Waterfill & Frazier, Inc.: Office, Lawrenceburg, Ky.; plant, Tyrone, Ky.	AP-2, 3	Whisky.
John A. Wathen Distillery Co.: Office, 326 South 6th Street, Louisville, Ky.; plant, Lebanon, Ky.	AP-2	Do.
John P. Dant Distillery Co., Inc.: Office, 901 West Broadway, Louisville, Ky.; plant, Meadowlawn, Jefferson Co., Ky.	AP-2	Do.
Nick Bobick & Orville Blair:[2] Office, Cumberland, Ky.; plant, same.	3	Brandy.
LOUISIANA		
American Commercial Alcohol Corporation: Office, 405 Lexington Avenue, New York, N. Y.; plant, Gretna, La.	AP-2	Alcohol, rum.
Commercial Solvents Corporation: Office, 230 Park Avenue, New York, N. Y.; plant, River Road, Harvey, La.	AP-1	Alcohol.
Commercial Solvents Corporation: Office, 230 Park Avenue, New York, N. Y.; plant, Westwego, La.	AP-2	Do.
Florida Fruit Wine & Distilling Co.: Office, 2462 North Palafox Street, Pensacola, Fla.; plant, Houma, La.	3	Brandy.
Penn-Maryland Corporation:[1] Office, 52 William Street, New York City; plant, Broadway and Coliseum Streets, New Orleans, La.	AP-2	Alcohol.
Cuban-American Distilleries, Inc.:[1] Office, 100 Poydras Street, New Orleans, La.; plant, 3200 Chartres Street, New Orleans, La.	3	Rum.
Sterling Sugars, Inc.:[1] Office, Franklin, La.; plant, same	3	Do.
Great Southern Distilling Co., Inc.:[2] Office, Chartres and Piety Streets, New Orleans, La.; plant, same.	AP-2	Alcohol, rum, gin.
MARYLAND		
American Medicinal Spirits Corporation: Office, Seventh and Bernheim Lane, Louisville, Ky.; plant, Russell and Alluvion Streets, Baltimore, Md.	AP-1	Whisky.
Baltimore Pure Rye Distilling Co.: Office, Sollers Point Road, Dandalk, Md.; plant, same.	AP-2	Do.
Elk Forge Distillery, Inc.: Office, Elk Mills, Md.; plant, same	AP-2	Do.
Frankfort Distilleries, Inc.: Office, Fifth floor Columbia Building, Louisville, Ky.; plant, 200 Kresson Street, Baltimore, Md.	AP-2	Do.
Frankfort Distilleries, Inc.: Office, 200 North Kresson Street, Baltimore, Md.; plant, same.	AP-1	Do.
Charles N. Gale: Office, Salisbury, Md.; plant, same	AP-2	Do.
Golden Rossell Co.: Office, Picardy, Md.; plant, same	AP-1	Brandy.
Harford Pure Rye Distillers, Inc.: Office, 1008-9-10 Garrett Building, Baltimore, Md.; plant, Havre de Grace, Md.	AP-2	Whisky.
Hunter Gwynnbrook Distilling Corporation: Office, 642-4-6 West Pratt Street, Baltimore, Md.; plant, Gwynnbrook Station, Owings Mills, Md.	AP-2-3	Do.
James Distillery, Inc.: Office, 807-811 Key Highway, Baltimore, Md.; plant, same.	AP-2	Do.

[1] Permits canceled. [2] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
MARYLAND—continued		
Maryland Distillery, Inc.: Office, 1400 Mercantile Trust Building, Baltimore, Md.; plant, Relay, Md.	AP-2	Whisky.
Monumental Distillers, Inc.: Office, 100 West Fayette Street, Baltimore, Md.; plant, Monumental Avenue, Lansdowne, Md.	AP-2-3	Do.
Old Maryland Rye Distilling Co.: Office, 725 Investment Building, Washington, D. C.; plant, Laurel, Md.	AP-2	Do.
Owings Mills Distillery, Inc.: Office, Owings Mills, Baltimore County, Md.; plant, same.	AP-2	Do.
Trimble Distilling Co.: Office, 1420 Walnut Street, Philadelphia, Pa.; plant, Westminster, Carroll County, Md.	AP-2, 3	Do.
Thomas Ward Distilling Co.: Office, Westminster, Md.; plant, same.	AP-2	Do.
Frank L. Wight Distilling Co.: Office, Gillet Building, Light and Redwood Streets, Baltimore, Md.; plant, Lorely, Md.	AP-2	Do.
Winand-Pikesville Distillery Co.: Office, 214 Fidelity Building, Baltimore, Md.; plant, Winans Road, Pikesville, Md.	AP-2	Do.
Palmer Lee Hall:[1] Office, South Boston, Va.; plant, Sandy Hook, Md.	3	Brandy.
Big Four Distilleries, Inc.:[1] Office, 2500 Baltimore Trust Building, Baltimore, Md.; plant, Dundalk, Md.	AP-2	Whisky.
Westminster Distillery Co. of Maryland, Inc.:[1] Office, Equitable Building, Baltimore, Md.; plant, Tannery, Carroll County, Md.	AP-2	Do.
MASSACHUSETTS		
A. & G. J. Caldwell, Inc.: Office, 735 Exchange Building, Boston, Mass.; plant, Merrimac Street, Newburyport, Mass.	AP-3	Rum.
Clinton Distilleries Corporation: Office, Clinton, Mass.; plant, same.	AP-2	Whisky.
Felton & Son, Inc.: Office, 516-36 East Second Street, South Boston, Mass.; plant, same.	AP-1	Rum.
C. H. Graves & Sons Co.: Office, 35 Hawkins Street, Boston, Mass.; plant, same.	AP-1	Whisky, alcohol.
New England Alcohol Co.: Office, Everett, Mass.; plant, Avenue A off Chemical Lane, Everett, Mass.	AP-2	Alcohol.
New England Distillers, Inc.: Office, Clinton, Mass.; plant, same	AP-2	Rum.
Old Medford Rum Distillery, Inc.: Office, Box 252, Wakefield, Mass.; plant, Wakefield, Mass.	AP-2	Do.
H. Porter Distilling Co., Inc.: Office, 1341 Main Street, Agawam, Mass.; plant, same.	AP-2	Whisky.
Readville Distilleries, Inc.: Office, Metropolitan Theater Building, 260 Tremont Street, Boston, Mass.; plant, 40 Sprague Street, Readville, Mass.	AP-2	Do.
MICHIGAN		
Frank H. Burkhart: Office, 327 Allen Street NW., Grand Rapids, Mich.; plant, Benton Harbor, Mich.	3	Brandy.
R. Cummins & Co., Inc.: Office, 1980 Penobscot Building, Detroit, Mich.; plant, Angell Street and N. C. R. R., Battle Creek, Mich.	AP-2	Whisky.
Plymouth Distilleries, Inc.: Office, Plymouth, Mich.; plant, same	3	Whisky, alcohol.
Trenton Valley Distillers Corporation: Office, 584 Penobscot Building, Detroit, Mich.; plant, Trenton, Mich.	AP-2	Whisky.
MINNESOTA		
Northwestern Distilleries, Inc.: Office, Shakopee, Minn.; plant, same.	AP-2	Whisky, brandy.
MISSOURI		
Appleton Distilling Co.: Office, Old Appleton, Mo.; plant, same	AP-2	Whisky.
Geo. W. Johnson & Chas. L. Grover:[1] Office, 1¼ miles north and west of Edgerton, Mo.; plant, same.	AP-2	Do.
McCormicks Mercantile & Distillery Co.:[1] Office, Waldron, Platte County, Mo.; plant, same.	3	Do.
Missouri Liquor Corporation: Office, 1509-11 Franklin Avenue, St. Louis, Mo.; plant, same.	3	Brandy.
Old Franklin Distillery, Inc.: Office, Labadie, Mo.; plant, same	AP-2	Whisky.
Old Holladay Distillery Co.: Office, Weston, Mo.; plant, same	AP-2, 3	Do.
Riley F. Robertson: Office, Robertson Apartments, Joplin, Mo.; plant, southeast of Joplin, Mo.	AP-2	Do.
Israel Teitelbaum:[1] Office, 5530-a Easton Avenue, St. Louis, Mo.; plant, same.	3	Brandy.
Jack Daniel Distilling Co.:[1] Office, room 1001, 506 Olive Street, St. Louis, Mo.; plant, 4050-4-60 Duncan Avenue, St. Louis, Mo.	3	Whisky.
Stoddard County Distilling Co.:[1] Office, Kinder, Mo.; plant, same.	AP-2	Do.
Old Valley Distilleries, Inc.:[2] Office, 116 South 2d Street, St. Louis, Mo.; plant, 113-121 Elm Street, St. Louis, Mo.	3	Do.

[1] Permits canceled. [2] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
MONTANA		
Yellowstone Distilleries, Inc.: Office, 501-511 Broadway, Red Lodge, Mont.; plant, Red Lodge, Mont.	AP-3	Whisky.
NEW JERSEY		
Baldwin Dew Distilling Co.: Offices, 1½ miles from Sparta, Sussex County, N. J.; plant, on road from Sparta to LaFayette, 1½ miles from Sparta, N. J.	3	Brandy.
Abe C. Barker: Office, Vincentown, N. J.; plant, same	3	Do.
Barker Distillery, Inc.: Office, 7-9-11 Evergreen Avenue, Neptune, N. J.; plant, same.	3	Do.
Brandy Distillers, Inc.: Office, 838 Broad Street Bank Building, Trenton, N. J.; plant, Kuser Avenue and Kuser Road, R. F. D., 7, Trenton, N. J.	AP-2	Do.
James D. Courtney: Office, R. F. D. 2, Hightstown, N. J.; plant, Applegarth and Prospect Plains Road, Hightstown, N. J.	AP-2	Do.
Distilled Liquors Corporation: Office, 265 Greenwich Street, New York, N. Y.; plant, Broad and Church Streets, Flemington, N. J.	AP-2	Do.
Eagle Distillery Co., Inc.: Office, 420 George Street, New Brunswick, N. J.; plant, 345-347 Delevan Street, New Brunswick, N. J.	AP-2	Do.
Fairfield Production Corporation: Office, 41 Atlantic Street, Bridgeton, N. J.; plant, Upper Deerfield, N. J.	AP-2	Do.
Freehold Distilling Co.: Office, Freehold, Monmouth County, N. J.; plant, east side Manalapan Avenue, Freehold, N. J.	AP-2	Do.
John A. Guhl: Office, rural route no. 4, Trenton, N. J.; plant, same.	AP-2	Do.
Isaac Corwin Harvey & Frederick Levi Harvey: Office, Mount Freedom, N. J.; plant, Northeys Corner, Mount Freedom, N. J.	3	Do.
Laird & Co., Inc.: Office, Scobeyville, Monmouth County, N. J.; plant, Scobeyville, N. J. and Hazlet, N. J.	AP-1	Do.
Lord Stirling Distilleries, Inc.: Office, Pittstown, N. J.; plant, Kings, N. J.	AP-2	Do.
Morris County Distillery, Inc.: Office, 282 Main Street, Orange, Essex County, N. J.; plant, Millbrook Road, Dover, N. J.	3	Do.
New Jersey Apple Growers, Inc.: Office, residence of Herbert Cottrell, rural route no. 1, Matawan, N. J.; plant, Browntown, N. J.	3	Do.
New Jersey Distillers: Office, 110-111-112 Pennington Street, Newark, N. J.; plant, same.	3	Do.
Old Bergen Distillerier, Inc.: Office, Thirty-first Street, North Bergen, N. J.; plant, same.	AP-2	Do.
Oldetyme Distillers, Inc.: Office, 122 East 42d Street, New York, N. Y.; plant, 2323 Blanchard Street, Newark, N. J.	AP-1	Whisky.
Manning Patrick: Office, Patrick's Corner, New Brunswidk, N. J.; plant, same.	3	Brandy.
Rancocas Distilleries, Inc.: Office, 508 Broadway, Stevens Building, Camden, N. J.; plant, intersection of Marne Highway, Route S. H. S. 41 and Pennsylvania R. R., Maple Shade, N. J.	3	Do.
Read Applejack Distillery: Office, 80 Park Place, Newark, N. J.; Plant, Blairstown, N. J.	AP-2	Do.
Rockland Distilling Co.: Office, 74 Hudson Avenue, Tenafly, N. J.; plant, same.	3	Do.
Clarence Smith: Office, Phillipsburg, N. J.; plant, Ridge Road, Harmony Township, N. J.	AP-2	Do.
Sussex County Distillery Co., Inc.: Office, 9 Main Street, Sussex, N. J.; plant, Quarryville, Wantage Township, Sussex County, N. J.	AP-2	Do.
St. Croix Distilling Co., Inc.: Office, 25 West 43d Street, New York, N. Y.; plant, Garwood, N. J.	AP-2	Whisky, alcohol.
Van Derveer Distillery Co.: Office, State Highway 33, Township Manalapan, Monmouth County, N. J.; plant, same.	AP-2	Brandy.
Wickner-Dall Vechia Distilling Co., Inc.: Office, Haskell, N. J.; plant, same.	AP-2	Do.
Glen Gardner Distilling Corporation: [1] Office, care of Petersen, Steiner & Kahan, 11 West 42d Street, New York, N. Y.; plant, Changewater, Warren County, N. J.	3	Whisky.
Abbott's Brandy Co.: [1] Office, Cape May City, N. J.; plant, Lower Township, Cape May County, N. J.	3	Brandy.
Bryant Distilleries: [1] Office, 24 Branford Place, Newark, N. J.; plant, Main Street, Succusanna, N. J.	3	Do.
R. E. Zimmerman, Arthur W. Magee and Edward J. Hannon: [1] Office, Glassboro, N. J.; plant, Railroad Avenue, Williamstown, N. J.	3	Do.
NEW MEXICO		
Hobbs Distilling Co.: Office, Hobbs, N. Mex.; plant, Hobbs and New Hobbs, N. Mex.	AP-2	Whisky.
Baird-Daniels Co., Inc.: Office, 36 Front Street, New York, N. Y.; plant, same.	AP-2	Gin.
Distilled Liquors Corporation: Office, 265 Greenwich Street, New York, N. Y.; plant, 143 Water Street, Lyons, N. Y.	AP-2	Brandy.

[1] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
NEW MEXICO—continued		
Duffy Malt Whiskey Corporation: Office, 23 Naylon Building, Buffalo, N. Y.; plant, Waterloo, N. Y.	AP-2	Whisky.
Dutchess County Cider Corporation: Office, village of Pleasant Valley, N. Y. plant, West Road, Pleasant Valley, N. Y.	AP-2	Brandy.
Fleischmann Distillery Corporation: Office, 595 Madison Avenue, New York City; plant, Charles Point, Peekskill, N. Y.	AP-2	Alcohol, gin
Green County Fruit Distillery, Inc.: Office, Depot Street, Catskill, N. Y.; plant, same.	AP-1	Brandy.
Hendrick Hudson Distilleries, Inc.: Office, 22 East Fourtieth Street, New York, N. Y.; plant, Valatie, N. Y.	3	Do.
Harry D. Morgan: Office, Amenia, N. Y.; plant, North Street, Amenia, N. Y.	AP-1	Do.
John F. McMullen: Office, Pigeon Hill Road, Middle Hope, N. Y.; plant, same.	3	Do.
New York Distillers Corporation: Office, 7 Van Brunt Street, Brooklyn, N. Y.; plant, same as above and 247 Park Avenue, New York City.	AP-2	Alcohol.
O-Neh-Da Vineyard & Distillery, Inc.: Office, "Bishop Farm", Conesus, N. Y.; plant, Academy Street and West Avenue, Naples, N. Y.	3	Brandy.
Georges Rouelet Wines Corporation: Office, Hammondsport, N. Y.; plant, Hammondsport, N. Y. and Forty-second Street, New York.	3	Do.
Syrup Products Co., Inc.:[1] Office, 82 Wall Street, New York City; plant, Yonkers, N. Y.	AP-1	Alcohol.
Old Haviland Distillery, Inc.:[1] Office, 2898 Grand Concourse, Bronx, N. Y.; plant, 2323 Haviland Avenue, Bronx, N. Y.	AP-2	Whisky.
H. M. McCord Corporation:[2] Office, 100 East 42d Street, New York City; plant, Afton, Chenango County, N. Y.	AP-2	Do.
H. M. McCord Corporation:[2] Office, 100 East 42d Street, New York City; plant, Afton, Chenango County, N. Y.	AP-2	Brandy.
OHIO		
The American Vineyards Corporation: Office, 2626 Hamilton Avenue, Cleveland, Ohio; plant, same.	3	Do.
Bedford Distilling Co.: Office, Wenso Drive, Bedford, Ohio; plant, south end of Wenso Drive, Bedford, Ohio.	AP-2	Whisky.
Clifton Distilling Co.: Office, 2500 West 25th Street, Cleveland, Ohio; plant, same.	3	Brandy.
Lynchburg Distillery Co.: Office, 630 Sycamore Street, Cincinnati, Ohio; plant, Lynchburg, Ohio.	AP-2	Whisky, alcohol.
Middletown Distilling Corporation: Office, 1200 Mahoning Bank Building, Youngstown, Ohio; plant, Four Mile Run Road, Youngstown, Ohio.	3	Whisky, brandy.
Penn-Maryland Corporation: Office, 7818 Anthony Wayne Avenue, Cincinnati, Ohio; plant, same.	AP-1	Alcohol.
The Salmar Co.: Office, 2185 East 14th Street, Cleveland, Ohio; plant, 1829-1833 Central Avenue, Cleveland, Ohio.	3	Brandy.
Siegfried Loewenthal Co.: Office, 101 High Street, Cleveland, Ohio; plant, 2480 Canal Road, Cleveland, Ohio.	AP-2	Whisky.
Virginia Distilling Co.: Office, 526 Cherry Avenue, Canton, Ohio; plant, 745 Ross Avenue NE., Canton, Ohio.	AP-2	Brandy.
The Great Northern Distilleries, Inc.:[1] Office, Fostoria, Ohio; plant, same.	3	Whisky.
Ohio Distillery Co.:[1] Office, Chesapeake, Ohio; plant, same	3	Brandy.
OREGON		
Columbia Distilleries, Inc.: Office, Salem, Oreg.; plant, same. (Present mailing address, 484 Pittock Block, Portland, Oreg.)	3	Do.
Hood River Distillers, Inc.: Office, Hood River, Oreg.; plant, same.	AP-2	Do.
H. L. Peake and E. J. Hoover: Office, 932 Southeast Morrison Street, Portland, Oreg.; plant, Carver, Oreg.	3	Do.
PENNSYLVANIA		
American Distilling Co.: Office, 135 East Forty-second Street, New York, N. Y.; plant, Delaware and Tasker Avenues, Philadelphia, Pa.	AP-1	Alcohol.
Bridgewater Distilling Co.: Office, Mulberry Street and Wolf Lane, West Bridgewater, Pa.; plant, Bridgewater, Pa.	AP-2	Whisky.
Continental Distilling Corporation: Office, 260 South Broad Street, Philadelphia, Pa.; plant, Snyder and Swanson Streets, Philadelphia, Pa.	AP-1	Whisky, rum.
The Empire Distilling Corporation: Office, 347 Madison Avenue, New York, N. Y.; plant, Eighty-second and Bartran Avenues, Philadelphia, Pa.	AP-2	Alcohol.
Joseph S. Finch & Co.: Office, Schenley, Pa.; plant, same	AP-1	Whisky.

[1] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
PENNSYLVANIA—continued		
Foust Distilling Co.: Office, Glen Rock, Pa.; plant, Springfield Township, York County, Pa.	AP-2	Whisky.
Foust Distilling Co.:[1] Office, Glen Rock, Pa.; plant, same	AP-2	Do.
Frantz Distillers, Inc.: Office, 2720 Penn Avenue, Pittsburgh, Pa.; plant, Meyersdale, Pa.	AP-2	Do.
Fry & Mathias, Inc.: Office, Manor, Pa.; plant, same	AP-2	Do.
Hamburger Distillery: Office, 541 Wood Street, Pittsburgh, Pa.; plant, Brownsville, Fayette County, Pa.	AP-1	Do.
Hickory Town Distilling Co.: Office, Hanover, York County, Pa.; plant, Railroad Street, Hanover, Pa.	AP-2	Brandy.
Highspire Distillery Co.: Office, Highspire, Pa.; plant, Railroad Street and Lusk Alley, Highspire, Pa.	AP-2	Whisky
Kinsey Distilling Co.: Office, 1520 Locust Street, Philadelphia, Pa.; plant, Linfield, Pa.	AP-2	Do.
Lebanon Valley Distilling Co.: Office, 410 Berks County Trust Building, Reading, Pa.; plant, R. F. D. 1, Schaefferstown, Lebanon County, Pa.	AP-2	Do.
Meadville-Pennsylvania Distilling Co., Inc.: Office, 202 Trust Co. Building, Meadville, Pa.; plant, Race Street, Fifth Ward, Meadville, Pa.	AP-2	Do.
Mid-Valley Distilling Corporation: Office, 398 Main Street, Archbald, Pa.; plant, same.	AP-2	Do.
Old Orchard Distillery, Inc.: Office, room 312, 1600 Walnut Street, Philadelphia, Pa.; plant, Elverson, Chester County, Pa.	3	Brandy.
Old Sam Distilling Co.: Office, Lemon, Pa.; plant, same	AP-1	Do.
Overholt & Co., Inc.: Office, Broad Ford, Pa.; plant, same	AP-1	Whisky.
A. Overholt & Co., Inc.: Office, Broad Ford, Pa.; plant, Large, Pa.	AP-2	Do.
Penn Alchemy Corporation: Office, 1501-1509 North 31st Street, Philadelphia, Pa.; plant, same.	AP-1	Alcohol.
Pennsylvania Alcohol Corporation: Office, Shackmaxon Street, east of North Delaware Avenue, Philadelphia, Pa.; plant, 1015-1027 Penn Street, Philadelphia, Pa.	AP-1	Do.
Pennsylvania Distilling Co., Inc.: Office, Kelly Station, Logansport, Pa.: plant, same.	AP-1	Whisky.
Publicker Commercial Alcohol Corporation of Delaware: Office, 200 South Broad Street, Philadelphia, Pa.; plant, Pier 103 South Wharves, Philadelphia, Pa.	AP-1	Alcohol.
Riverview Distilling Co.: Office, 383 Union Trust Building, Pittsburgh, Pa.; plant, plant no. 2, New Eagle, junction of route 88 and Mingo Creek, Carroll Township, Pa.	AP-2	Whisky.
Riverview Distilling Co.: Office, 383 Union Trust Building, Pittsburgh, Pa.; plant, plant no 1, Arensburg Ferry, East Millsboro, Fayette Township, Pa.	AP-2	Do.
Ruffsdale Distilling Co.: Office, Ruffsdale, Pa.; plant, Ruffsdale, Westmoreland County, Pa.	AP-2	Do.
Sam Thompson Corporation: Office, West Brownsville, Washington County, Pa.; plant, same.	AP-2	Do.
United Distillers Corporation: Office, 5599 Hudson Boulevard, North Bergen, N. J.; plant, Carrolltown, Pa.	AP-2	Do.
Uniontown Distilling Syndicate:[2] Office, 30 East Fayette Street, Uniontown, Pa.; plant, same.	AP-2	Whisky, gin.
PUERTO RICO		
Compania Ron Romaguera, Inc.: Office, Ponce, P. R.; plant, Villa Street corner to Moline Street, No. 43, Ponce, P. R.	3	Rum.
Puerto Rico Distilling Co.: Office, Arecibo, P. R.; plant, Barro Miramar, Arecibo, P. R.	AP-2	Alcohol, rum.
Sucesion J. Serrales: Office, Central Mercedita, Ponce, P. R.; plant, Central Boca Chica, Municipal District of Juana Diaz, P. R.	3	Do.
Potrero Distillers, Ltd.:[2] Office, 120 Wall Street, New York City; plant, Central Juanita, Bayamon 8 miles by road from San Juan, P. R.	AP-2	Rum.
UTAH		
Springville Commercial Alcohol Corporation:[1] Office, Box 2010, Salt Lake City, Utah; plant, Springville, Utah.	AP-1	Alcohol.
VIRGIN ISLANDS		
Bornn Distilling Co., Inc.: Office, St. Thomas, Virgin Islands; plant, 78 Main Street, St. Thomas, Virgin Islands.	AP-2	Rum.
The Diamond Rum Co.: Office, Diamond, Fredericksted, St. Croix, Virgin Islands; plant, Estate Diamond, Fredericksted, St. Croix, Virgin Islands.	AP-1	Do.
A. H. Riise (operated by Isaac Palewonsky): Office, 6 and 7 Dronningens Gade, St. Thomas, Virgin Islands; plant, 6 and 7 Dronningens Gade and 35 and 36 Dronningens Gade, St. Thomas, Virgin Islands.	AP-1	Do.

[1] Permits revoked.

Distillery permits—Continued

Name and address	Form no.	Kind of spirits
VIRGIN ISLANDS—continued		
Santa Cruz Distillers: Office, Christiansted, St. Croix, Virgin Islands; plant, Estate Hermon Hill, Christiansted, St. Croix, Virgin Islands.	AP-1	Rum.
The Virgin Islands Co.: Office, Christiansted, St. Croix, Virgin Islands; plant, same.	AP-2	Do.
VIRGINIA		
Belle Meade Products Co.: Office, Belle Meade, Va.; plant, same	AP-2	Whisky, brandy.
A. Smith Bowman: Office, Sunset Hills, Va.; plant, same	AP-2	Do.
The Blue Ridge Mountain Distilleries, Inc.: Office, Front Royal, Royal, Va.; plant, same.	3	Brandy.
Hickory Town Distilling Co.: Office, Hanover, York County, Pa.; plant, Charlottesville, Va.	AP-2	Do.
L. V. Kite: Office, Stanley, Va.; plant, same	3	Do.
Kolner Distilling Co.: Office, on Hermitage Road and R. F. & P. R. R., Richmond, Va.; plant, same.	AP-2	Whisky.
R. P. P. Meclewski: Office, Charlottesville, Va.; plant, Dale Street, Charlottesville, Va.	3	Brandy.
Old Dixie Distilling Co.: Office, Richmond, Va.; plant, 5 miles south of Richmond, on Richmond-Petersburg Pike, Chesterfield County, Va.	3	Whisky.
Pomell, Inc.: Office, care of F. Vernon Foster & Co., 50 Broadway, New York City; plant, Ridgewood Orchard, Winchester, Va.	AP-2	Brandy.
Shenandoah Valley Distilling Co.: Office, Timberville, Va.; plant, same.	3	Do.
Virginia Distillery Corporation: Office, Dumbarton, Va.; plant, same.	AP-2	Whiskey.
Virginia Fruit Brandy Distilling Corporation: Office, Toler Street, South Richmond, Va.; plant, Crozet, Va.	AP-2	Brandy.
Waynesboro Cold Storage Corporation: Office, Short Street and C. & O. tracks, Waynesboro, Va.; plant, same.	3	Do.
Wheeling Ice & Storage Co.:[1] Office, Wheeling, W. Va., plant, Winchester, Va.	3	Do.
Wheeling Ice & Storage Co.:[1] Office, Wheeling, W. Va.; plant, Waynesboro, Va.	3	Do.
Wheeling Ice & Storage Co.:[1] Office, Wheeling, W. Va.; plant, Harrisonburg, Va.	3	Do.
C. C. Furr and J. N. Kerr:[1] Office, Broad Run, Va.; plant, same	3	Do.
T. H. Maddax:[1] Office, Marshall, Va.; plant, near Markham, Va.	3	Do.
Mr. V. S. Bushong:[1] Office, Leesburg, Va.; plant, near Leesburg, Va.	3	Do.
Ole Virginny Fruit Distilleries:[2] Office, Waynesboro, Va.; plant, same.	3	Do.
WASHINGTON		
Gilmak Brewing & Distilling Corporation: Office, 1006 Securities Building, Seattle, Wash.; plant, 2501 Elliott Avenue, Seattle, Wash.	AP-2	Whiskey.
Golden Pine Distilling Co.: Office, Port Hadlock, Wash.; plant, same.	AP-2	Do.
Barney B. Lustig: Office, 751 20th Avenue, North Seattle, Wash.; plant, Everett, Wash.	3	Brandy.
Northwest Distilleries, Inc.: Office, 1522 Northern Life Tower, Seattle, Wash.; plant, 1733 Westlake Avenue, North Seattle, Wash.	AP-2	Whisky.
F. B. Wright, sole owner of Wright Winery: Office, 3317 Colby Avenue, Everett, Wash.; plant, same.	3	Brandy.
P. Livingston Barnes:[1] Office, 2328 10th Avenue, N., Seattle, Wash.; plant, Everett, Wash.	3	Do.
WISCONSIN		
Cedar Creek Distillery, Inc.: Office, Grafton, Wis.; plant, Hamilton, Wis.	AP-2	Whisky.
Hall's Distillery, Inc.: Office, Green Bay, Wis.; plant, Preble, Brown County, Wis.	AP-2	Whisky, brandy, gin.
Plymouth Rock Distillery, Inc.: Office, Plymouth, Wis.; plant, same.	AP-2	Whisky.
Red Star Yeast & Products Co.: Office, 325 North 27th Street, Milwaukee, Wis.; plant, 221 East Buffalo Street, Milwaukee, Wis.	AP-1	Alcohol.
St. Lawrence Distilling Co.: Office, Hartford, Wis.; plant, St. Lawrence, Wis.	AP-2	Whisky, gin.
George Visias:[1] Office, 111 West Superior Street, Duluth, Minn.; plant, Superior, Wis.	3	Brandy.

[1] Permits canceled.
[2] Permits revoked.

FEDERAL ALCOHOL CONTROL ADMINISTRATION DENIED APPLICATIONS FOR DISTILLERY PERMITS

The Code of Fair Competition for the Distilled Spirits Industry, as originally written, limited permits to plant capacity in existence or under actual process of construction or equipment on the date it took effect, November 27, 1933; except that the Federal Alcohol Control Administration, if it found, after hearing, additional capacity necessary to supply the consumptive demand for any type of distilled spirits, might grant a permit for such capacity. A hearing on this subject was held on February 5, 1934, as a result of which a few additional permits were issued in pursuance of applications on file and under consideration at the hearing. Applications filed after February 5, 1934, for permits covering new plants for alcohol, gin, and ordinary whiskys were necessarily denied, because the Board, having found that further additional capacity was not necessary to supply the consumptive demand, had no power to grant them.

In explanation of the application forms shown in this report, form AP–1 was used in applying for plant capacity in existence on the effective date of the code; form AP–2, plants in process of construction or equipment on such date; and form 3, new plant capacity, the construction of which was commenced after November 27, 1933.

Denied applications for distillery permits

Name and address	Form no.	Kind of spirits
ARKANSAS		
Mountain Valley Springs Distillery Co., Hot Springs, Ark	3	Whisky.
ARIZONA		
J. J. Goodman, Nogales, Santa Cruz County, Ariz	3	Tequila.
CALIFORNIA		
Caliwest Distilleries Corporation, 5325 Stewart and Gray Road, Southgate, Calif.	3	Alcohol.
Edward G. Cummings, 6 miles west of Tehachapi, Calif	3	Whisky.
Harold Fisch, 1445–1451 East 57th Street, Los Angeles, Calif	3	Alcohol.
Harry Adalian, 1631½ West Jefferson Street, Los Angeles, Calif	3	Whisky, gin.
William Wahl Co. Ltd., 4310–4334 East Washington Boulevard, Los Angeles, Calif.	3	Whisky.
Universal Distillers, Inc., 842 South West Street, Anaheim, Calif	3	Distilled spirits.
Sacramento Valley Distilleries, Inc., Ltd., Red Bluff, Tehama County, Calif.	3	Whisky.
Rudolf William Pedersen, Sunnyvale, Calif	3	Whiskey, alcohol, gin.
Old Mission Distilleries, 1st and C Streets, Benecia, Calif	3	Whisky.
M. J. Nolder, west side of Walnut Street, South Congress Street, southerly part of Colton, Calif.	3	Do.
Joseph Daniel Murphy, Murce, Calif	3	Do.
A. R. Meade & N. W. Curson, Woodland, Calif	3	Distilled spirits.
Louis E. Brown, 1417–19 Commercial Street, Burbank, Calif	3	Whisky.
Kern Distilleries, Ltd., Bakersfield, Calif	3	Distilled spirits.
Fenley W. Crawford, Pomona, Calif	AP–3	Whisky, alcohol.
George F. Beldam, between Searchlight, Nev., and Nipton, Calif	3	Do.
COLORADO		
International Distillery, 3111–13–15 Walnut Street, Denver, Colo	AP–2, 3	Whisky.
CONNECTICUT		
Charles L. Portman, Farmington, Conn	3	Distilled spirits.
Eastern Distilleries, Inc., 2–4 Center Street, Shelton, Conn	3	Whisky.
FLORIDA		
J. F. Jaudon, Ochopee, Fla	3	Rum, brandy, gin.
Florida Fruit Wine & Distilling Co., North Palafox Street, Pensacola, Fla.	3	Brandy.
Don P. Shockney, Daytona Beach, Fla	3	Distilled spirits.
Florida Cane Products Corporation, 2650 Southwest 28th Lane, Miami, Fla.	3	Alcohol.
Santiago Distilling Co., Northwest 22d Street, between 11th and 12th Avenues, Miami, Fla.	3	Rum.
HAWAII		
Hawaiian Fine Liquors, Ltd. Kapiolani Boulevard, Honolulu, Hawaii.	3	Do.

Denied applications for distillery permits—Continued

Name and address	Form no.	Kind of spirits
ILLINOIS		
Graham Distillery Co., Rockford, Ill	AP-2	Whisky.
Belleville Distillery Corporation, South 29th Street, Belleville, St. Clair County, Ill.	AP-2	Do.
D. B. Adkisson, Vienna, Ill	3	Brandy.
Winnebago Distilling Co., 1724 Woodruff Avenue, Rockford, Ill	3	Whisky.
Streator Distillery Co., Streator, Ill	3	Do.
Chillicothe Distillery Co., Chillicothe, Ill	3	Do.
Gibson Canning Co., Gibson City, Ill	AP-2	Distilled spirits.
INDIANA		
Richard Lieber Brewing Corporation, 1254 South West Street, Indianapolis, Ind.	3	Whisky.
Dubois County Distillery, Inc., Jasper, Ind	3	Do.
Madden-Stewart, Inc., 42 South Capitol Avenue, Indianapolis, Ind.	3	Distilled spirits.
IOWA		
Charles J. Crawford & Sons, north fractional quarter, section 2, T. 88 N., R. 26, Hamilton County, Iowa.	3	Whisky.
KENTUCKY		
Old Blue Ribbon Distillers, Inc., Vine Grove, Ky	AP-2	Do.
Nick Bobick and Orville Blair, Cumberland, Ky	3	Do.
Wiedemann Brewing & Distilling Corporation, 7th and Columbia Streets, Newport, Ky.	3	Do.
Old Camp Nelson Distilling Co., Camp Nelson, Jessamine County, Ky.	3	Do.
Green River Distilling Co., Owensboro, Ky	3	Do.
R. H. Edelen, near Bardstown, Nelson County, Ky	3	Do.
J. T. B. Brown's Son Co., Early Times, Ky	3	Do.
Richard E. Bray Distillery, R. R. 1, Claryville, Ky	3	Do.
Felix W. Blair, Anneta, Grayson County, Ky	3	Do.
L. A. Pachoud, L. E. Pachoud, and H. A. Pachoud, Latonia, Ky	3	Distilled spirits.
Old Times Distillery Co., Louisville, Ky	3	Do.
Old Hackley Distilling Co., Anderson County, Lawrenceburg, Ky.	3	Do.
Kentucky Richland Distilling Co., Carrollton, Ky	AP-2	Do.
Glencoe Distillery Co., 1908 Howard Street, Louisville, Ky	3	Do.
John Bond Distilling Co., Lawrenceburg, Ky	3	Do.
Edmon H. Dick, Cumberland City, Clinton County, Ky	AP-2	Corn whisky.
Old Mountain Spring Distillery, Inc., Greenbrier, Nelson County, Ky.	AP-2	Whisky.
Anderson County Distilling Co., Lawrenceburg, Ky	3	Do.
Sewell B. Williams, Jackson, Ky	3	Do.
Old Hawkins Bros. Distilling Co., Inc., Wiley Searcy Turnpike, Anderson County, 7 miles southeast of Lawrenceburg, Ky.	3	Do.
The Lebanon Distilling Co., Lebanon, Ky	3	Do.
American Wrecking & Salvage Co., New Hope, Nelson County, Ky.	3	Do.
American Wrecking & Salvage Co., Eminence, Ky	3	Do.
LOUISIANA		
Vermillion Sugar Co., Inc., Abbeville, La	3	Distilled spirits.
David S. Meyer, Monroe, La	3	Whisky.
Marcus H. Goldberg, Natchez, La	3	Distilled spirits.
F. J. Alderson, 5 miles from New Iberia, La	3	Do.
Kennelworth Distilling Co., Inc., Braithwaite, La	3	Do.
MARYLAND		
John Joseph Martin, Woodensburg Road, Glen Falls, Md	3	Whisky.
The Straus-Gunst Distilling Co., 20 S. Eutaw Street, Baltimore, Md.	3	Distilled spirits.
Palmer Lee Hall, South Sandy Hook, Md	3	Whisky.
MASSACHUSETTS		
Francis R. Henderson, doing business as Green Mountain Distillery, Inc., Boston, Mass.	3	Rum.
Universal Distilleries, Inc., Brockton, Mass	3	Whisky, gin.
F. Howard Jackman, 160 Washington Street, North Boston, Mass.	3	Whisky.
MICHIGAN		
Riverside Distillers & Brewers, Inc., Marine City Mich	AP-2, 3	Whisky, alcohol, gin.
Irish Hills Distilleries, Inc., 820 Book Tower Building, Detroit, Mich.	AP-2	Whisky.
MINNESOTA		
Crex Carpet Co., Front and Mackubin Streets, St. Paul, Minn	3	Do.

Denied applications for distillery permits—Continued

Name and address	Form no.	Kind of spirits
MISSOURI		
Cape Girardeau Distilling Co., R. F. D. 2, Cape Girardeau, Mo.	3	Whisky.
Phoenix Springs Distillery, 1710-18 South 18th Street, St. Louis, Mo.	3	Distilled spirits.
Nieburg Sausage Co., Inc., Washington, Mo.	AP-2, 3	Whisky.
Wagner Distilling Co., Missouri Avenue and Missouri Pacific tracks, Sedalia, Mo.	AP-2	Distilled spirits.
Ozark Distilling Co., Billings, Mo.	3	Whisky, brandy.
Old Franklin Distillery, Inc., Labadie, Mo.	AP-2	Distilled spirits.
Orville E. Jennings, 1½ miles south west of Marshfield, Mo.	AP-2, 3	Whisky.
Abraham Goruch, Jacob Schultz, Mrs. Esther Wasserstein, Leib Altman, and Jacob Boxerman, 1711 Carr Street, St. Louis, Mo.	3	Vodka.
A. M. Jones, Linden, Clay County, Mo.	AP-2, 3	Whisky.
Grandview Distillery Corporation, Pacific, Franklin County, Mo.	3	Do.
Gasconade Distillery Corporation, 3½ miles from Arlington, Pulaski County, Mo.	3	Whisky, gin.
Wagner Distilling Co., Missouri Avenue and Missouri Pacific tracks, Sedalia, Mo.	3	Whisky.
Jessie B. Smith, Liberty, Mo.	3	Do.
Joseph Reisdorf, on Tanner Bridge Road, 5 miles south of Jefferson City, Mo.	3	Do.
Old Franklin Distillery, Inc., Labadie, Mo.	3	Do.
V. L. Leonard, Worthington, Mo.	3	Do.
W. A. Kirkpatrick, Joplin, Mo.	3	Distilld spirits.
Honey Creek Distillery, Southwest City, Mo.	3	Whisky.
Harry B. Goldberg, 1313 Vine Street, Kansas City, Mo.	3	Do.
Edward H. Gill, H. T. Fisher, and F. C. Buchanan, Waverly, LaFayette County, Mo.	3	Do.
Excelsior Chemical & Manufacturing Co. (Charles Hootman), Lamine and St. Louis Streets and Missouri Pacific tracks, Sedalia, Mo.	3	Distilled spirits.
MONTANA		
William D. Ramey, Milligan Spring, Gallatin County, Mont.	3	Whisky.
E. K. Johnson, 11th Avenue and 10th Street, N., Great Falls, Mont.	3	Do.
Joseph Houben, Valier, Mont.	3	Whisky and gin.
NEW JERSEY		
Quentin Distilleries, Inc., Quentin Avenue, New Brunswick, N. J.	3	Whisky.
NEW YORK		
Rochester Distilling Co., Inc., 928 Exchange Street, Rochester, N. Y.	AP-2, 3	Do.
OHIO		
Clarence K. Bowman, R. D. 2, Wooster, Ohio.	3	Do.
The Penn-Ohio Distilling Corporation, East Indianola Avenue, Youngstown, Ohio.	3	Do.
OREGON		
E. P. Osberg, Bandon, Oreg.	3	Distilled spirits.
PENNSYLVANIA		
Gingrich Brothers, Inc., Kutztown Road, Bernharts, Berks County, Pa.	3	Alcohol.
Thomas Kehoe, 99 Towpath Road, Pittston, Pa.	AP-2	Whisky.
Keystone Distilling Co., Bowmansdale, Pa.	3	Do.
Mountain Spring Distilling Co., Inc., Railroad Borrough, York County, Pa.	AP-2	Distilled spirits.
Philadelphia Pure Rye Whisky Distilling Co. of Pennsylvania, Ltd., Eddington, Bensalem Township, Bucks County, Pa.	AP-2	Whisky.
PUERTO RICO		
Jorge Lucas Valdivieso, Central Pellejas, Adjuntas, Puerto Rico.	3	Rum.
Jose Moises Colon, Georzetty Street, Comerio, Puerto Rico.	3	Do.
Mario Mercado e Hijos, Guayanilla, Puerto Rico.	3	Alcohol, rum.
VIRGINIA		
J. S. Witherow, Fabers, Va.	3	Distilled spirits.
Shenandoah Valley Distilling Co., Inc., Timberville, Va.	3	Whisky.
Richmond Distilling Co., Inc., Nine Mile Road, Henrico County, Va.	3	Do.
W. J. Lindsay & J. H. DeHart, Stuart, Va.	3	Distilled spirits.
E. L. Knight, Ridgeway, Va.	AP-3	Corn whisky.
C. C. Furr and J. N. Kerr, Broad Run, Va.	3	Do.
Philpott Distilling Co., Philpott, Henry County, Va.	3	Whisky.
Ivery D. Mullins, near Wise and Norton, Virginia, on N. & W. Railroad line, Wise, Va.	3	Do.

Denied applications for distillery permits—Continued

Name and address	Form no.	Kind of spirits
VIRGINIA—continued		
Old Virginia Distillers, Inc., Norfolk & Western Railroad and Billings Street, Norfolk, Va.	3	Corn whisky.
Wheeling Ice & Storage Co., Harrisonburg, Va.	3	Whisky.
J. St. George Bryan, William Gray, John R. Thomas, Peter C. Warwick, Jr., J. A. Bass and R. B. Jones, Genito Mills, Clayville, Va.	AP-2, 3	Whisky, gin.
James Bryant Worsham, Sr., Powhattan, Va.	3	Whisky.
R. P. P. Meclewski, Charlottesville, Va.	3	Do.
A. L. Jones, Near Virgilina, Va.	3	Do.
Arthur Breeding, near Skeggs, Va.	3	Distilled spirits.
Beguiristain & Bresler, Portsmouth, Va.	3	Do.
WASHINGTON, D. C.		
Charles George Comert, rear of 900 Quincy Street NW., Washington, D. C.	3	Brandy.
WASHINGTON		
Mount Adams Distilleries, Bingen, Wash.	3	Do.
John Issler, Route 4, Box 253-L, Vancouver, Wash.	3	Do.
WISCONSIN		
Lac La Belle Waukesha Distilling Co., Oconomowoc, Wis.	3	Distilled spirits.
Central Distilling Co., corner of Capital Drive and Lisbon Road, Wauwatosa, Wis.	AP-2	Do.
Adolph J. Brandt, Louisburg, Wis.	3	Whisky.
Wisconsin Distilleries, Inc., Cudahy, Wis.	3	Do.
W. B. Gambill, Crandon, Forest County, Wis.	3	Do.
R. C. Dieterich, G. L. Kraatz, and W. Winter, Jr., Oconomowoc, Wis.	3	Whisky, gin.
American Black Granite Co., Ashland, Wis.	3	Do.
Milwaukee Distillery Co., 3844 North Third Street, Milwaukee, Wis.	AP-2	Whisky.
WYOMING		
Dahiel Shickich, 401 Ruby Street, Kemmerer, Lincoln County, Wyo.	3	Whisky, alcohol.

Senator CLARK. I am not blaming you; I am trying to find out what these people did under the code.

Mr. CHOATE. There was no distillation in the country of whisky before prohibition except in 5 or 6 States. It had not been found practical for some reason.

Senator KING. I beg your pardon. Were you through?

Mr. CHOATE. I have finished.

Senator KING. One question. The evidence before us indicates that the other codes make assessments upon the members of the industry and they are not to a very large extent a charge upon the Government. Your organization has gotten $400,000 up to date from the Treasury of the United States. Why do you not make the industry pay for the operation?

Mr. CHOATE. I do not think the expenses of the direct administrative office have ever been paid by the industries. Mr. Blackwell Smith can probably tell us that.

Senator KING. They have had nearly $15,000,000 or $16,000,000 out of the Treasury to run the N. R. A., but the administration——

Mr. CHOATE (interposing). The administration of the code authorities and the many regional boards is paid for by assessment on the industry.

Senator KING. I was wondering why you did not impose assessments.

Mr. CHOATE. We did not see any particular way of doing it, and it did not occur to us as especially desirable. After all, the function of the F. A. C. A. is only secondarily for the benefit of the industry. Primarily, it is for the benefit of the country at large, and the consumer.

The CHAIRMAN. All right, Mr. Choate. Thank you very much.

(Mr. Choate's statement referred to in the testimony is as follows:)

The Federal Alcohol Control Administration was set up to administer the codes of the six alcoholic beverage industries—the distillers, rectifiers, brewers, wholesalers, wine producers, and importers. These codes, which cover every section of the field except that of retail sales, omit the usual labor provisions, which are contained in separate codes administered by the National Recovery Administration.

The main purposes of the six Federal Alcohol Control Administration codes, numbered without reference to their relative importance, were as follows:

(1) Protection to the consumer against deception by false advertising, misbranding, and so forth.

(2) Prevention of improper trade practices, such as commercial bribery, control of retail outlets by manufacturers or wholesalers, guarantees against price decline, and the purchase of business by offers of premiums and the like.

(3) Prevention and control of excess productive capacity and excess import.

(4) Protection of State liquor laws.

(5) Strict limitation of bulk sales as a necessary protection to all regulative measures.

(6) Price control, by establishing open price posting, preventing sales at prices not posted, and declaring ineffective posted prices which are oppressively high or destructively low.

(7) Acquisition, by required reports, etc., of accurate information.

The intent of the codes, as we have understood it, was that these purposes should be attained, as far as possible, by the action of the industries themselves, self-policed by their own code authorities.

The primary task of the Administration accordingly was the organization of the code authorities. This was of extraordinary difficulty because the six industries were virtually new, and had attracted into their ranks vast numbers who, without real knowledge of any of the businesses, thought of them as a certain means to swift enrichment. Few, if any, well-established trade associations existed, except among the brewers. The distillers, rectifiers, and importers, being relatively few, were organized with relative ease, and began to function comparatively soon. The wholesalers presented extreme difficulties. The sales of tax stamps indicated that there were 20,000 of them, which fortunately turned out out to be an overestimate. The wholesalers who dealt in brewing products were at swords points with those who sold wines and liquors. Alleged associations, purporting to be national, sprang up on every side, and submitted plans for organization. None seemed to have substantial following, and many were suspected of being racketeers. It was finally found necessary to send out in circuits throughout the United States seven teams of representatives from this office, who, after consultation with advisers selected from the known respectable wholesalers in each wet State, held separate conventions for the beer dealers and liquor dealers in each, and thus secured the fair election of really representative regional boards, and through them of an adequate code authority.

This campaign of organization took many weeks of careful planning. The setting up of the Wine Code Authority presented almost equal difficulties, because of the wide separation in locality, and diversity of interest, between the western and eastern producers. These difficulties also have been overcome, and the Wine Code Authority and regional committees are now functioning.

All of this, and indeed all the work of the Federal Alcohol Control Administration was seriously delayed by the operation of the import quota system. Under that system, in order to import, the importer had to receive not only the general permit to engage in the business required by the importers code, but also a specific permit, issued under the importers marketing agreement, allowing him to import particular goods up to an amount allotted him as his share of the total import allowed from each country. The quotas from each country, set by the Secretaries

of the Treasury and of Agriculture, had thus to be divided among the applicants in accordance with their needs. This task was committed, by the marketing agreement, for the first period, to a committee of two composed of the Director and Mr. Ray Miller, and thereafter to the Federal Alcohol Control Administration. It proved an impossible undertaking. More than a thousand persons (as against a few score preprohibition importers) sought permits, stating needs exceeding all previous imports many times over. The statements were pure guesswork, none having business experience to base them on. The hopeless attempt to do justice in this distribution occupied nearly all the time of the director and much of the time of the whole staff during the first 4 months. Throughout that time the office was swamped daily with hundreds of exasperated importers and their representatives. The system produced infinite complaint and satisfied no one. It is my belief that no system can ever be devised under which quotas can be justly divided. The system, however, did prevent the enormous excess import which would otherwise have undoubtedly resulted from the initial rush into the business, but the suspension of the quota system, announced only as temporary, stimulated a flood of imports, which filled the bonded warehouses with a mass of products which has ever since plagued the industry with distress sales. Much of this will probably never be withdrawn.

A fundamental task which has occupied the time of the Federal Alcohol Control Administration from the outset has been the organization of the permit system. Permits to engage in the industries were originally required by the codes for the distillers, rectifiers, and importers, were not required for the brewers or for the wholesalers of brewery products, and were required for the wine and liquor wholesalers and for the wine producers only when the Administration should so order. For several months, it was expected and hoped that this power to require the issuance of permits would never have to be exercised. After the code authorities for the wholesalers and for the wine industry became active, however, an insistent demand developed from both for the application of the permit system to both industries. Resolutions expressing this desire were received from nearly all the regional boards of both the wholesalers of wine and liquor and those of brewery products, and from both western and eastern committees of the wine producers. To comply with the request of the brewery wholesalers required a code amendment. A hearing on this was accordingly set, and no serious opposition having been manifested, an amendment was recommended to the President, and signed by him. In view of this surprising and practically unanimous demand, the Federal Alcohol Control Administration directed that permits be required, and neither then nor since has any substantial objection been expressed.

To bring the industry members under permits without hardship, it was necessary, in each case, to issue blanket general permits to all, expiring on set dates. While these were in force, the wine producers were required to file applications, giving information from which their character could be determined. These applications were then checked with the records of the Alcohol Tax Unit and the Department of Justice, in order to catch bootleggers. Permanent permits were issued to those whose records were clear. This system was simple enough in the wine industry, whose members were identifiable by their bonding, under the Internal Revenue Law. The wholesalers, however, nobody could identify. The Federal occupational tax stamps had been taken out by thousands who were in no sense wholesalers. It was thus necessary to have the regional boards identify the real members of the industry and to limit the temporary wholesalers' general permits to those thus identified, to each of whom his regional board furnished an authenticated copy. These will be replaced by permanent permits as the applications are received and examined.

The permit holdings, in all the industries, are under constant revision. Monthly reports indicate activity, and those which show unexplained inactivity for 3 months are revoked. Complaints of code violations, investigated by the code authorities and regional boards, and those received from other sources are examined, and when well supported, are made the subject of hearings. These, because of the smallness of our staff are necessarily held in Washington, except at intervals when hearing officers and counsel are sent to distant points to hear cases of those who prefer to wait for this convenience. The hearing officers are lawyers who act judicially, and ordinarily take no part in any other work. After receiving their recommendation, the board suspends or revokes the permit, refers the case to the Department of Justice or to the State authorities for prosecution, or dismisses the complaint. The figures of these actions, as of March 15, are as follows:

Distillers:	
For spirits other than brandy	192
Lessees (to operate some of the plants of the above)	55
For brandy	169
Warehousing only	69
Total permits in force	485
Revoked for inactivity	18
Revoked for violations	0
Revoked for erroneous issuance	3
Suspended	0
Prosecutions recommended	1
Rectifiers:	
Total permits in force	464
Revoked for inactivity	12
Revoked for violation	21
Revoked for erroneous issuance	5
Suspended	3
Prosecutions recommended	1
Importers:	
Total permits in force	1,290
Revoked for inactivity	234
Revoked for violations	0
Revoked for erroneous issuance	4
Suspended	0
Prosecutions recommended	0
Beer wholesalers:	
Total permits in force	9,542
Revoked for inactivity	0
Revoked for violations	1
Suspended	202
Prosecutions recommended	1
Wine and liquor wholesalers:	
Total permits in force	2,219
Revoked for inactivity	0
Revoked for violations	1
Suspended	47
Prosecutions recommended	0
Wine growers:	
Total permits in force	1,183
Revoked for inactivity	0
Revoked for violations	0
Suspended	0
Prosecutions recommended	0
Brewers:	
Prosecutions recommended	42
Indictments obtained	2
Injunctions obtained	1
Pleas of guilty obtained	1
Decrees obtained	3
General:	
Permit hearings held	112
Revocation hearings held	89

A remarkable fact in connection with these permit activities is that in only one case has the permittee affected brought suit to test the validity of the action taken, and that suit was promptly withdrawn. Indeed, no other litigation has ever been commenced against the Federal Alcohol Control Administration, except two suits questioning actions taken on the constitution of regional boards, and both of these were also immediately withdrawn. The only litigation now pending in which the validity of any of the codes or of any of the Federal Alcohol Control Administration's regulations or actions thereunder are at issue, are one or two of the prosecutions brought against brewers.

During the formative period, the office organization of the Federal Alcohol Control Administration evolved. It has been the fixed determination of the Director that it be kept as small as may be consistent with efficiency. It now consists of approximately 140 persons, divided as follows:

Office of the Director		2
Office of the Assistant Director		3
Office of the technical adviser		2
Administrative Division		54
Legal Division:		
Attorneys	16	
Clerical and stenographic	29	
		45
Code Enforcement Division:		
Code enforcement advisers	12	
Stenographic	6	
		18
Permit Division		11
Reports and statistics		9
Public relations		2
		146
Weekly average for past 4 weeks		140

The expenses of this organization were provided for, in Executive Order No. 6474, of December 4, 1933, by an allocation of $500,000 from the appropriation authorized by the National Industrial Recovery Act, and made by the

Fourth Deficiency Act, 1933 (Public, No. 77, 73d Cong.). Of this sum, during the 15½ months of operation, there has been expended approximately the sum of $400,000.

The only section of the organization which appears to call for special comment is the Code Enforcement Division. In this, special advisers have been appointed, each of whom has familiarized himself with the personnel and special problems of one of the industries and has established contact with its code authority. Members of the Legal Division are detailed to each of these. Other members of the Legal Division are detailed to conduct the hearings which have to be held on the granting, suspension, and revocation of permits. Regulations carefully prescribing procedure in these matters have been prepared and adopted.

The board meets frequently, and passes upon all questions of policy and such matters of detail as, under the codes, it is required to decide. It gives real and careful consideration to all questions, and operates smoothly and with substantial unanimity.

In general, I find it difficult to praise highly enough the devotion and efficiency of both the board and the staff. Politics has played no part in the action of either, and both have worked, often for excessively long hours, effectively and without complaint.

What has been accomplished in furtherance of the several purposes of the organization above may best be discussed under separate headings for each.

(1) PROTECTION AGAINST DECEPTION

In this field the older established code authorities have rendered effective service. Those of the brewers, distillers, and importers particularly have suppressed many objectionable advertisements and labels, a number of which were not directly within the code prohibitions. An example was the beer labeled, "The President's Choice", and adorned with pictures of the White House. This was suppressed within 36 hours of the receipt of the complaint. The board has prepared and promulgated regulations governing labels, standards of fill (including bottle sizes) and revised regulations governing labels and standards of identity for distilled spirits, labeling regulations for beer, and advertising regulations for beer and distilled spirits, and standards of identity and quality, and labeling regulations for wine. In the case of each of these, proposed regulations, prepared with great labor and care, were submitted at public hearings, discussed with code authorities, State representatives, and all other interested persons, rewritten again and again, and issued only after exhaustive study of all arguments presented. They appear to have been generally accepted and to form the basis for a uniform system of informative marking, acceptable to the various States.

When the first labeling regulations were issued, it was believed by many that they would prove unenforceable without the aid of an enforcement force such as it is hoped this office may never have to employ. A system has now been devised, however, which with the aid of the Treasury, should be immediately effective. It is now in operation only in the case of the importers but will shortly go into effect for the distillers, brewers, and, probably, the wine makers. Imports will not be allowed to leave the bonded warehouses except on production of a photostat of a certificates showing previous approval by the Federal Alcohol Control Administration of the labels on the bottles. In the same way, the storekeeper-gaugers in the distilleries and rectifying plants and Treasury agents in the breweries will permit labeling only when the products labeled comply with labels similarly shown to have been approved. This system should be almost impossible for any legitimate importer or producer to evade.

The advertising regulations have shown immediate results. Most advertising is submitted in advance for approval, and most of it requires little criticism. The Federal Alcohol Control Administration cannot, of course, control advertising by retailers, and it can punish only false and misleading advertising. It can and does, however, exert considerable influence against offensive and antisocial advertising, and in this it has had excellent cooperation from the code authorities, periodicals, and advertising agencies.

(2) PREVENTION OF IMPROPER TRADE PRACTICES

In this field, the code authorities of the distillers and importers have again been successful. Those of the wholesalers and wine-producers have been too recently organized to show important results as yet. That of the rectifiers, having exceptionally difficult problems owing to the newness and rapid growth of the industry, and the character of some of its members, is, nevertheless,

beginning to attain success. That of the brewers has accomplished less. The fact that brewers require no permits, so that nothing can be done to a code violator except to prosecute him criminally or sue him for an injunction, has rendered it difficult to cope with the effects of fierce competition in inducing brewers to buy business by giving forbidden inducements, and to seek control of retail outlets. The code authority has passed upon innumerable complaints, a number of which have been approved by the Federal Alcohol Control Administration for prosecution. A notable improvement in code observance was observable from the moment when the first conviction was obtained.

In the industries which are subject to permits, complaints appear to produce prompt effects.

(3) PREVENTION OF EXCESS CAPACITY

This purpose, applicable to the distillers and in a less measure to the rectifiers, was largely accomplished when the codes were formulated. Each code required a permit from all engaged in either industry. To prevent the expected rush into distilling, the Distillers Code limited permits to plant capacity in existence, under construction, or in course of equipment on the date when it took effect, (November 27, 1933), except that the Federal Alcohol Control Administration if it found after hearing, additional capacity necessary to supply the consumptive demand for any type of distilled spirits, might grant a permit for such capacity. A hearing on this subject was held on February 5, 1934, as a result of which permits were denied for new capacity for gin and beverage alcohol, but granted in limited number for whisky, fruit brandy, and rum. Each permit was limited not only to the use of particular equipment but also to a specified daily production. The present authorized capacity appears adequate, and no dangerous excess seems to have developed.

The Rectifiers' Code contains no direct limitation as to capacity, but gives the right to a permit only to applicants whose product can be absorbed by the probable market demand. The F. A. C. A., after issuing several hundred permits, concluded that the existing rectifying capacity was so large as to make it certain that further applicants for permits to produce blended whiskies and other ordinary products were not likely to be potential legal producers of products which could be absorbed by the market. It accordingly, pending consideration of the desirability of eliminating the restrictions from the code, ceased to issue further permits except for specified products and to applicants who showed that they could find a market for those particular products. In spite of the large authorized capacity, no excessive production of rectified products has developed.

The restrictions on the issue of rectifiers' and distillers' permits have been the subject of bitter complaint among those excluded, and they have undoubtedly caused much apparent injustice, particularly among the inhabitants of States whose prohibitory laws, now repealed, were still in force during the time when applications for permits might have been successful. They also prevented the enlargement of a number of small plants which had been successful enough to be able to sell more than they can make. The board having tentatively come to the conclusion that the restrictions had served their purpose and were no longer needed, set for hearing code amendments which intended to remove them and to give a permit to a any respectable, properly financed applicants whose plant would produce taxes enough to cover the cost of the necessary Treasury supervision.

The amendments to the Distillers Code have been signed by the President, and those to the Rectifiers Code will be submitted to him shortly. In the case of the distillers, the code will retain the provisions which give the F. A. C. A. the power, if and when overproduction develops, to limit and allocate production. This power may be essential in 2 or 3 years, when the warehouses are restocked with whisky stored for aging. Till then, no real overproduction is expected, or is likely to have serious effects. In the case of the rectifiers, it is thought that overcapacity can have no ill effects, because the industry is not properly a producer but a mere intermediate processor of goods produced by others and because it habitually produces only as demand appears.

As to imports, excess was prevented, as already stated, by the operation of the quota system. No danger from this source now exists, as the excessive number of importers has effectively diminished the attractiveness of the business to newcomers, while the large stocks remaining in bond are an effectual deterrent to rash commitments for the future.

(4) PROTECTION OF STATE LAWS

Each of the codes forbids sales in violation of State law. This, in the industries subject to permits, adds to the force of State legislation, the powerful sanction of permit revocation. This has proved so effective that complaints on the subject have been few.

In support of the Government's established policy of sustaining State control, the F. A. C. A. has consistently opposed all efforts to impose code control upon the retailers. Adequate control is administratively impractical for the Federal Government in the retail field and is contrary to the policy of the twenty-first amendment. Attempts at Federal participation in this field would necessarily fail and might well result in State inactivity or resentment, either of which would be productive of most injurious consequences.

(5) LIMITATION OF BULK SALES

This again was accomplished by the codes themselves, which appear to have been largely self-enforcing in this respect. The policy, adopted on the theory that if bulk sales were allowed to be made freely the States would be helpless against the bootlegging retailer, has been criticized as accounting for a part of the high price of wines and liquors; but is understood to be considered, both by the Treasury and by almost all of the State liquor authorities, to be necessary both for revenue collections and for control.

(6) PRICE CONTROL

The F. A. C. A. has supervised the setting up of the open price-posting system in each industry, requiring the use of forms which make postings comparable, and approving regulations issued by the code authorities. It made a preliminary study of distillers' costs for which, however, the data proved so unsatisfactory that the study was suspended; and the prices of new whiskies, in regard to which alone the costs were deemed important, have since fallen to a point which indicates that profits cannot be excessive. After the receipt from various regional boards of the Brewers Code Authority of many complaints that certain posted prices were so low as to be destructive within the meaning of the code, a hearing was held and extensive consideration was given to the construction of the provisions in question. After thorough examination of this subject with the aid of the Federal Trade Commission and of N. R. A., an interpretation of the destructive price provisions was issued, which it is hoped may restrain predatory prices without preventing normal competitive offerings. No price can be condemned as destructive except by the Administration, and none has yet been so condemned. No fixing of minimum prices or minimum mark-ups has been attempted.

The work immediately in contemplation is mainly devoted to code enforcement, which, with the increasing number of complaints received from the code authorities, is becoming daily more exacting. In general, it may be said that the organization stage of the work is complete and the operating stage is under way.

The main difficulty in our enforcement work and the main obstacle to success is that the available sanctions are either too mild and too slow, or too severe. Prosecution resulting in a possible fine, perhaps finally imposed only after years of delay, is an ineffective deterrent to the brewers. On the other hand, in the industries subject to permits, revocation or suspension is often too stern a penalty to be even considered. It throws out of work, temporarily or permanently, perhaps large numbers of workers and they are the chief sufferers from the punishment. Sometimes, moreover, even a suspension may ruin the business of the permittee. Revocation, indeed, is a death penalty, useless and inappropriate for small offenses. It does not even act as a deterrent, the offender in small violations knowing well that it will not be imposed.

Some form of punishment less stringent than revocation and much speedier than criminal prosecution is imperatively needed. To accomplish this, the Administration should be authorized to approve compromises of complaints of violations, under which the person complained against could voluntarily, if he preferred to do so rather than be proceeded against criminally or for revocation of his permit, pay a moderate so-called "civil penalty" into the Treasury. It is our opinion that the plan, if provided for by legislation continuing the F. A. C. A., would probably produce immediate and effective code enforcement.

The CHAIRMAN. Mr. Howard Jones, representing the Distilled Spirits Institute and the Association of Distilled Spirits Industries.

(The witness, being duly sworn, testified as follows:)

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

Mr. JONES. Senator, I am here by request. I have no statement to make. I am merely here to answer questions.

Senator CLARK. Mr. Chairman, I asked to have Dr. Doran called, and I understood Mr. Jones came to substitute for him, but I think Mr. Choate's testimony has cleared up the question.

The CHAIRMAN. Dr. Doran has sailed for some place, I understand.

Senator CLARK. I think Mr. Choate's testimony covers the same things that I wanted to ask Dr. Doran. Thank you, Mr. Jones.

Mr. Vose, Senator King desires that you wait until he gets some information from the Labor Department.

Next is Mr. Titus.

STATEMENT OF LOUIS TITUS, WASHINGTON, D. C., REPRESENTING THE PETROLEUM CODE AUTHORITY

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

The CHAIRMAN. How much time, Mr. Titus?

Mr. TITUS. Not to exceed 20 minutes; perhaps much less.

The CHAIRMAN. Try to get through in 15 minutes if you can. You represent the Petroleum Code Authority?

Mr. TITUS. Yes, sir. My purpose in appearing here is merely to present or call to the attention of this committee some features of Senate bill S. 2445, which is an amendment to title I of the National Industrial Recovery Act. Those features have disturbed us a bit, and we thought that they should be presented to you before this hearing closed.

Under the present law, industry largely wrote the codes, which were approved by the President and which are now in effect. I do not mean to say that industry wrote them entirely, because they were gone over very thoroughly by the President and by many of his assistants, but largely the codes as they now exist were written by industry.

Senator KING. Mr. Richberg stated that; did he not? He said that the codes were written by the industries.

Mr. TITUS. Well, they were written and presented to the President, and he made some modifications which were accepted by the industry. But largely that is the way, Senator, that the codes were written by industry.

Under this present bill, all authority in industry to participate in code writing is practically abolished. I say that because of the sections which are contained in this bill. It is true that the bill provides that industry may present a code and apply to the President for approval. The bill provides something which the old bill did not provide, that the President may amend it in any manner which he pleases. True, the industry does have 20 days, the group which has presented the code may within 20 days withdraw the code, and thereupon the President shall cancel the code unless he finds some other group which may sponsor that code, but then in the event no code is written, assuming it is not acceptable to the industry as written by the President, the bill provides that the President may write a limited code.

I think the word "limited" is a misnomer, because in effect it is a full and complete code which the President may write. It applies particularly to labor, it provides that there may be maximum hours and minimum wages beyond the general labor provisions, prohibits child labor, and then it contains a provision that he may also write into the code which he may impose upon industry, any prohibition against trade practices which are generally recognized as being unfair.

That is a tall order—any practice which is generally recognized as being unfair.

Of course, it is perfectly obvious that the President himself cannot write even one of those numerous codes, but he must depend upon his assistants, upon the agencies perhaps which he now has, which have been set up and which are operating, so what that really amounts to and means is, that any trade practice which this particular committee for an industry thinks is unfair, shall be written into that code irrespective of whether the industry approves it or not, and that code may be imposed upon the industry and the industry have nothing whatever to say about it.

And finally in the last section of this new bill, there is a provision which seems to me to state directly, although I confess that the language is a little confusing, that all present codes as they now exist, shall be continued for 90 days, and in the meantime they shall be reviewed by the President and they shall be revised by the President to make them conform to the standards set up in this new bill.

It then says, in this provision, that no code that now exists shall be continued beyond the 90 days unless it has been revised and approved by the President, which seems to indicate, stating it in a negative way, that every code which now exists may be entirely rewritten by the President and extended for the life of this bill. So much for that.

The next feature I wish to call attention to is the method of administering the codes under the new bill as compared with the old. Under the old act, industry was largely self-governing. It is so stated repeatedly by all the administration authorities having to do with codes, I think, and is a fact, because under the present codes, the code authorities set-up are composed almost entirely of members of the industry.

Perhaps that is not entirely true, but it is true substantially. Under this new bill, the code authorities must be composed entirely of people not connected with the industry, if that code authority is to have any authority whatever.

That is a rather startling thing, but we find in section 2 (c) of this bill on page 5, a provision which is as follows:

> There shall be no delegation of any final discretionary power under this title to any such authority, committee, or other organization which is composed in whole or in part of persons in the trade or industry or subdivision thereof affected.

Well then, we might have a code authority upon which there would be members of the industry, but it would have no power of any kind, it could do nothing, take no action, it would have no discretion, it would have absolutely nothing to say except possibly to act in an advisory capacity.

So that under this new bill where the codes are to be written by these authorities, there can be no code authority upon which even a single member of the industry is appointed. So that no industry under this new act can be considered as being self-governing or practically having nothing to do with the government of its own industry.

Senator KING. Has it not been felt, Mr. Titus, that there was not an element of justice or fairness in permitting code authorities to be judge and jury of their own controversies and in which they were parties, and indeed the parties, aside from the public?

Mr. TITUS. I have no doubt that that is what prompts this. I am merely calling it to the attention of the committee because I am sure that it has not been generally known that this violent revision, a complete about-face from allowing industry to be self-governing, is now about to take place, apparently if this bill should be passed in its present form.

I do not wish to debate that, Senator, because I do not have time to debate it, but I am merely pointing to the fact that that situation does exist in this new bill.

Senator BLACK. Are you pointing it out as an argument against the bill?

Mr. TITUS. I am against certain provisions of the bill.

Senator BLACK. You are referring to that as an argument against this provision?

Mr. TITUS. Yes.

Senator BLACK. You favor letting industry make its own rules to govern itself with relation to the public?

Mr. TITUS. I think it has worked very well in the last 2 years, from my contact with it. Whether it works in every industry or not, I am not competent to say, because I am not familiar with any other except the petroleum industry.

Senator KING. Were your contacts with all branches that can be denominated as the oil industry, the producer, the refiner, the pipeline operator and the wholesale dealers in petroleum products, the retail dealers in petroleum products, including gasoline, and of which there are hundreds of thousands? Just where have your contacts been?

Mr. TITUS. My contacts have been with all of those which you speak of excepting the pipe lines. I have nothing to do with the pipe-line situation. I have had quite a bit to do with all of the other branches of the industry.

Senator KING. With the distributors?

Mr. TITUS. With the distributors; yes, sir.

Senator KING. And with the persons who sell gasoline along the road?

Mr. TITUS. Yes, sir.

Senator BLACK. And the consumers?

Mr. TITUS. I have had nothing to do with the consumers; no. It is with the industry.

Senator BLACK. What part do you think they ought to play in the control?

Mr. TITUS. I think the consumers are absolutely protected under the present set-up, because the President has full power to withdraw his approval of a code at any time and put it out of existence if he finds the consumers are being imposed upon.

Senator BLACK. As I understand—I will give you an illustration and I want to see if that is your idea of self-government. A complaint was made in Birmingham, Ala., against certain unfair practices of the Oil Code which caused them to raise the price in Birmingham above

the prices anywhere else in the State, and I sent a complaint down to the code authorities and they informed me that they had sent a representative of the code authority over to straighten it out, and it developed that he was an employee of the company against whom the complaint was made. Is that your idea of self-government in industry?

Mr. TITUS. No, sir; I would not say that that was a fair way of treating a problem at all. There are undoubtedly mistakes that have been made and maybe some abuse. I would not say that it has been 100 percent perfect.

Passing that feature, I desire to call attention to the tremendous authority which this new bill gives to these codes authorities. Under this bill these code authorities will have the broadest kind of powers. Some of them almost startling to contemplate.

First, one of the important powers given to any Federal agency appointed by this bill is the right to make use of sections 9 and 10 of the Federal Trade Commission Act, with all of the powers granted to the Federal Trade Commission under those two sections. Sections 9 and 10 of the Federal Trade Commission Act are the sections which provide that any agency of the Federal Trade Commission may subpena witnesses in any part of the United States, compel them to bring books, records, papers, and documents of any kind, compel them to testify and give their evidence, provides for the keeping of accounts in certain ways, and that a corporation must make any reports which are required, and many things of that character.

This bill provides that all of those functions are to be available to the Federal agency. It means that a large number—it is impossible to say how many, but a very large number of boards will be set up in Washington—they are now set up for that matter and will have the power to subpena witnesses all over the United States to bring to Washington their records and papers and books, and there is a very heavy penalty both by fine and imprisonment for disobedience of the order.

It means this: That instead of one Federal Trade Commission, you are going to have a great number of commissions with exactly the same power that the Federal Trade Commission now has.

Senator KING. Does it not mean more than that? Does it not mean that the present Federal Trade Commission is reduced to a condition of incompetency, stripped of all vitality and power?

Mr. TITUS. That may be a logical conclusion, Senator. I had not thought of it in exactly that way. It simply sets up a great number of other boards with the same powers that the Federal Trade Commission has. Whether they would take away some of the authority—perhaps it would. Perhaps you are right about that.

Senator KING. Does it not state in effect that the Federal Trade Commission may do nothing in contravention of anything conferred upon the code authority?

Mr. TITUS. I do not think there is anything like that in the bill. It just grants these powers conferred in sections 9 and 10 of the Federal Trade Commission Act. That is on page 23 of the bill.

Senator KING. Proceed.

Mr. TITUS. It is a very short paragraph:

(f) The provisions, including penalties, of sections 9 and 10 of the Federal Trade Commission Act, as amended, are made available to any agency of the

United States established or utilized under section 2 (a), 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.

That is all it says, Senator.

Senator KING. Did you read section 3, paragraph (g), to restrict the powers of the Federal Trade Commission to the exercise thereof in a manner consistent with the provisions of that section?

Mr. TITUS. I do not know exactly. I have not studied that to know exactly what that means.

The next extraordinary power, as I think, which this bill grants to the code authorities is the power to levy contributions upon industry. This code authority, which as we have already seen will be composed entirely of governmental employees and upon which code authority there will not be a single member of the industry, under this bill has the power to levy unlimited contributions upon industry, and the payment of those contributions is compulsory. That money never goes into the Treasury of the United States, it is not paid out in the ordinary manner by appropriation of Congress, the Comptroller General has no control over it.

These code authorities set up here in Washington for all of the industries which are covered, some 400 in number, can, under this bill, levy practically any amount of money which they think it is appropriate for them to expend. It is true, of course, that the President has control all the time over that situation, but it is obviously impossible for the President to investigate and determine how much money each one of the code authorities are to spend. That would be a superhuman task. And he must depend upon the code authority which he appoints.

Moreover, this code authority can assess each individual what he thinks is his proper and proportionate share of the total contribution. The individual has no remedy, the individual must pay. That code authority may say to a member of the industry, "You pay this, this is your proportion", and he must pay.

There is no limit upon the expenditure of this money; there is nothing provided. It may be expended in enforcing the code. In a Nation-wide industry, doubtless there would be agents of this code authority all over the United States; probably rightly so. There might be representatives or committees or agents in any town of any size in the United States of the code authority located here in Washington. The enormous number of contributions which must be collected, of course, it is impossible to calculate. Whether a code authority should think it necessary to have $50,000 or $50,000,000 to enforce a code, is entirely within its own views and the industry has nothing to do with it and Congress has nothing to do with it. Here is set-up: You are setting up these code authorities with the power to levy taxes, with power to collect money, and the money does not go into the Treasury of the United States. It is their money to spend as they please. That is an extraordinary power which, so far as I know, has never been before contemplated to be given to any other bureau or body of any kind.

Senator BLACK. Do I understand that you are opposing authority to levy assessments here, at least by the code authority, selected by the members of that code?

Mr. TITUS. Yes; if I understand your question correctly. I think it an extraordinary thing that a code authority which is not representing industry, which is representing the Government entirely——

Senator BLACK (interrupting). The code authority as I understand it is, strictly speaking, representing industry because it is elected by industry.

Mr. TITUS. I just pointed out that under this bill that situation is entirely changed. Under the present law, the code authorities are members of the industry. They are appointed by the President, but he must appoint them from the industry. The industry does not select them. The code authorities are composed of members of the industry but appointed by the President.

Senator BLACK. How do you favor getting the money to operate? Out of the general treasury if the N. R. A. is continued?

Mr. TITUS. If this is a proper governmental function, if what the code authorities do is a proper governmental function, then it should be paid for by money out of the Treasury of the United States.

Senator BARKLEY. What you said about the code with respect to oil leads me to ask you this: Do you think there is any special condition in the oil industry that requires a little different treatment from that in most industries?

Mr. TITUS. Yes, I do; because oil is a natural resource, necessarily limited in amount, we do not know what the amount is but it is obviously limited in amount; it is a resource that should undoubtedly be conserved, it should not be wasted, and it is a vital necessity not only for peace times, but also absolutely vital in war times. I think the Government of the United States has a great interest in conserving the oil supplies of the country.

Senator BARKELY. The industry as a whole has not been able to impose much self-government upon itself.

Mr. TITUS. Not upon production. It never has because there are tens of thousands, perhaps many more than that, producers, and oil is entirely different from any other commodity because it is a commodity where even the smallest individual with only one well may strike a great pool that will produce an enormous amount of oil per day and he may do that on very little capital. That very frequently happens. Fresh pools come in, enormous production exists for a short time, prices go to nothing, vast amounts of oil and gas are wasted, the gas being blown into the air, the oil is put in bad storage because there is no market for such a tremendous amount of oil at the time, and it must go in storage. Those are abuses and grievous conditions in which the Federal Government undoubtedly is interested.

Senator BARKLEY. How can any control be exercised over that sort of a situation produced by overproduction if it is left to those who are in the industry alone? Does not the Government have to superimpose some sort of arbitrary authority in order to regulate it in a way that will prevent that very thing?

Mr. TITUS. I think you are correct but I do not believe that we will ever have satisfactory control of production through the medium of these codes. Maybe I am wrong about that. It may be that we will work out some plan for controlling production under the code, that will be satisfactory, but I think you are quite correct that so far as the production group of petroleum is concerned, it is a matte r which the Federal Government ought to take a very firm hand in .

Senator BARKLEY. Does that not offer a reason, if there is a reason—I am not saying there is—but does that not offer a reason or reasons why the appointment of these code authorities should be more in the hands of the Government than in the hands of the industry?

Mr. TITUS. That only applies, as I see it, to only one industry, and that is petroleum, and to only one branch of the petroleum industry, and that is production. The great bulk of code committees' work is not with production at all. It is with the distribution of gasoline and other petroleum products. That is the great bulk of the work.

Senator BARKLEY. How can we get away from the charge that the big people in any industry are going to make codes to suit themselves or their interests if we do not set up a sort of independent body representing the public, including everybody interested, including the consumers?

Mr. TITUS. I think that perhaps some change in the present set-up should be made, but to take away industry's entire representation, give it no voice in this matter, and also give it no voice in the amount of money that is to be raised from itself, and the amount of money that is to be expended, it seems to me that is going beyond the bounds of any reasonable application of sound principles to this industry.

Senator BARKLEY. I understand that you favor the continuation of the N. R. A.?

Mr. TITUS. Oh, yes. I am sure the code has operated very well as far as the petroleum industry is concerned. I do not pretend to speak for anything else.

The CHAIRMAN. You think it has been helpful?

Mr. TITUS. I am sure it has been very helpful, Mr. Chairman. The Petroleum Code as operated has been very helpful, and if this bill were to continue the codes as they are, or the set-up as it is, or with minor modifications, I would not be here at all, but it seems to me that you are taking away most of the virtues of the present act by this new bill.

Senator BLACK. You are a lawyer?

Mr. TITUS. Yes.

Senator BLACK. Do you practice in Washington?

Mr. TITUS. Yes.

Senator BLACK. Whom do you represent here?

Mr. TITUS. I represent what is called the "Petroleum Code Authority".

Senator BLACK. Are you their regularly retained attorney?

Mr. TITUS. Yes, sir.

Senator BLACK. Did you represent them before they formed the code?

Mr. TITUS. No, sir.

Senator BLACK. You have been employed since then?

Mr. TITUS. I was employed by the code committee after the President appointed it.

Senator BLACK. You represent the producers then, and not the Government? What I am trying to get at is your employment.

Mr. TITUS. I do not represent the Government in any sense.

Senator BLACK. You represent the trade association?

Mr. TITUS. Yes.

Senator BLACK. For production only?

Mr. TITUS. Oh, no. I represent what is called the planning and coordination committee, which is a committee set up in the Petroleum Code for the administration of the code. That committee was appointed by the President and is composed, with two exceptions, entirely of members of the industry selected by the President. That committee appointed by the President has retained me as counsel.

Senator BLACK. Are you speaking their views in connection with this bill?

Mr. TITUS. I think I am so far as I can determine. There has been no meeting and I have only seen a few of them individually since this bill was available.

Senator BLACK. Do you represent any other code authorities?

Mr. TITUS. No, sir.

Senator BLACK. Are all of these domestic producers of oil?

Mr. TITUS. Yes, sir.

Senator BLACK. So that you are representing here in your capacity as a lawyer, you do represent only domestic producers of oil in America?

Mr. TITUS. Yes; but I do not——

Senator BLACK (interrupting). You do not represent any that import oil?

Mr. TITUS. In this sense. I do not represent any individual companies at all. I am not the attorney for any one of these companies that are represented on this code committee. I am the attorney for the group and only as a group.

Senator BLACK. Are you engaged in the general practice outside of that?

Mr. TITUS. Yes.

Senator BLACK. So that this is just one of your representations?

Mr. TITUS. Yes, sir.

Senator KING. You have represented the oil interests for many years?

Mr. TITUS. I have represented some of the oil interests, Senator.

Senator BARKLEY. You practiced here generally for a number of years?

Mr. TITUS. For about 15 years.

Senator KING. Here and in California?

Mr. TITUS. Yes, sir.

Senator KING. What salary do you get?

Mr. TITUS. $22,500 a year.

Senator BLACK. That is from this code authority alone?

Mr. TITUS. Yes, sir.

Senator KING. Then you have your practice besides?

Mr. TITUS. Yes, sir.

Senator BARKLEY. Is that an individual employment or is it the employment of your firm?

Mr. TITUS. No; it is an individual; I have no firm.

Senator BLACK. Did you represent them when they got the tariff on oil?

Mr. TITUS. I represented an entirely different group at that time. I represented a group of what are called "independent producers."

Senator BLACK. Did you participate in the efforts to pass the tariff bill?

Mr. TITUS. I wrote a brief which I think was printed in the record at the hearings. Yes, sir; I did to that extent.

Senator KING. Who are the members of the Oil Code Authority to whom you referred?

Mr. TITUS. I am sorry I did not bring a list. There are 22 or 23 of them.

Senator BLACK. Are they representatives of the Standard Oil Co., the Shell Oil Co., the Gulf Oil Co., and those large units in the oil industry?

Mr. TITUS. The committee is about equally divided between members representing what we might call major companies and independents——

The CHAIRMAN (interrupting). Who was the first chairman of that committee?

Mr. TITUS. Wirt Franklin.

The CHAIRMAN. Mr. Franklin is one of the leading independent oil people in the country?

Mr. TITUS. Yes.

The CHAIRMAN. As I recall it, he has been before the committees all the time fighting for the independents.

Mr. TITUS. Yes. He is still a member of the committee; he is no longer chairman.

Senator BARKLEY. Does the tariff do the oil industry as much good as the codes have done it?

Mr. TITUS. I could not compare the two. I believe they have both done good.

Senator KING. By that you mean they have increased the profits of the oil companies or made it possible for them to increase their profits?

Mr. TITUS. The profits of the oil companies have certainly not been unduly high.

Senator KING. We have evidence of some of the dividends of the Standard Oil Co. of New Jersey, the Indiana Oil Co., and the Gulf Oil Co., and so forth.

Mr. TITUS. The profits of the oil companies, except possibly those engaged very largely in production, have been very meager for the past several years. Prior to that time I think their profits were very large.

The CHAIRMAN. The general oil situation has improved has it not?

Mr. TITUS. It has very much improved.

Senator BLACK. When you say improved, do you mean improved as to profits or consumers' prices?

Mr. TITUS. It has improved in many ways. It is not an advantage to the consumer to get his gasoline below the cost of production. It might be an advantage to him at the moment the day he buys it, but every time a consumer buys gasoline below cost, somebody has got to pay for it sometime, somewhere in the long run.

Senator BLACK. You recommend of course that this code continue having a provision fixing a price below which you cannot sell.

Mr. TITUS. We have no such provision in the code and are not asking for any such provision. We have had no price fixing under our code.

Senator BLACK. Then of course the oil companies do not fix prices?

Mr. TITUS. No; they do not.

Senator KING. Has not the Oil Institute for years practically dominated the petroleum industry or the Petroleum Institute?

Mr. TITUS. Do you mean the American Petroleum Institute?

Senator KING. Yes.

Mr. TITUS. I do not think so. The American Petroleum Institute is composed of several thousand members of the industry. It is concerned with research work, with statistical work, with scientific work. It does not engage in any way in business. It does not dominate. As I understand it, it does not dominate at all. I am a member of the American Petroleum Institute and I get their statistical bulletin every month or so.

The CHAIRMAN. Is it made up of independents as well as major companies?

Mr. TITUS. Very largely independents. In fact, the great majority of members of the American Petroleum Institute are independents.

Senator KING. What is the total amount of assessments levied upon the producers or upon the oil industry for the enforcement of the code?

Mr. TITUS. I could not give you any idea. I would be glad to if I knew, but I do not know anything about it. I know they pay my salary; that is all I know.

Senator BLACK. That salary is the only one that you get from any oil company or any one group?

Mr. TITUS. Yes, sir.

Senator BLACK. You report on legislation from time to time, do you not, to the members?

Mr. TITUS. I think this is the only thing I have ever made a report on, this particular bill. I do not recall any other legislation that I have reported on.

Senator BLACK. You did not make reports on the progress of the tariff legislation?

Mr. TITUS. Oh, yes; I might have done that.

Senator BLACK. From day to day?

Mr. TITUS. Yes; but that has nothing to do with this code authority. There was no code authority at that time.

Senator BARKLEY. You of course report to your employers whenever there is anything to report.

Mr. TITUS. I conceive that to be my duty; yes, sir.

There is one other provision which I must take the time to call attention to, and that is the provision with regard to the antitrust laws and agreements which again reverses the whole policy as set forth in the present act. There is a provision in this bill that is found in section 5, page 13, of the bill that nothing in the title shall be construed to amend or repeal any provision of the antitrust laws.

It is provided that agreements between members of the industry may be made, and if the President finds that those agreements do not tend to create monopoly, do not tend to oppress or discriminate against small enterprises and do otherwise tend to effectuate the policy of Congress as set forth in this bill, then he may approve such agreements. That provision is almost exactly similar so far to the provision in the present law, but the present law goes further and says that when such agreement has been approved by the President and after he has made those findings that the agreement does not tend to create monopoly and does not tend to discriminate against small enterprises and when he has found that it tends to effectuate the policy of Congress and therefore has approved the agreement, then the signers

of the agreement shall be exempt from prosecution under the antitrust laws.

In other words, there are certain kinds of agreements which may tend to restrain trade, but which have nothing to do with monopoly and which may be of benefit to everyone including the public. For instance, we believe—there may be people who disagree with us—we believe that where there is a vicious price cutting, away below the cost of production, we believe that that is an injury to everybody, including the public, and agreements in the industry to prevent that extreme price cutting below the cost of production do not tend to create monopoly. On the other hand, they tend to prevent monopoly, because if price cutting below the cost of production, continues long enough, the small companies are necessarily wiped out and only the bigger companies can survive.

Senator BLACK. I understood you to say that these people had no such agreements?

Mr. TITUS. I say we have had no price fixing under the code, and I do say also that so far as I know there is no agreement about price fixing, but there might be such an agreement made.

Senator BLACK. You think that the fact that all of these companies sell gasoline at the same price when you drive up to their stations, is merely a fortuitous accident?

Mr. TITUS. That is a long discussion. It is like anything else; it is like most anything else. You buy meat in a butcher shop and when you go across the street it is generally the same price in the two butcher shops. You buy the same brand of a suit of clothes, one in one store and another in another store, and you will probably find the same price on the two brands.

Senator BLACK. On different brands of clothes you do not usually find the same price in different stores.

Mr. TITUS. If they are the same quality; yes. If the gasoline is of the same quality, the price ought to be the same, otherwise one company would do all of the business.

It is perfectly obvious that if one company cuts the price of gasoline materially, that every other company must go down to that price.

Senator BLACK. And if one of them raised it, the others must go up to it accidentally?

Mr. TITUS. They do not have to go up to it, but if they did not go up to it, the other would have to put his price back, he would have to drop his price immediately. It could not last a single day.

Senator BLACK. Therefore you think it is accidental that they all sell at the same price?

Mr. TITUS. I do not say it is entirely accidental.

Senator BLACK. If it is not by design it must be accidental?

Mr. TITUS. It is not by agreement. Let us put it that way.

Senator BLACK. You mean it is not by an agreement signed on the dotted line?

Mr. TITUS. It is not by an agreement signed or unsigned, verbal or written.

Senator BLACK. Just simply an accident of the trade?

Mr. TITUS. Well, I do not like the word "accident." However, I am not really prepared to discuss that entire question; it is a long subject. The fact of the matter is that the prices of gasoline throughout the United States have been, under the code, extraordinarily low.

The companies have lost money on the average in selling gasoline. All of the reports will show that.

Senator BLACK. Have you ever had an accountant go over their reports to see what they are charging up as expenses?

Mr. TITUS. No, sir; I have not.

Senator BLACK. What they were charging up to subsidiaries?

Mr. TITUS. No, sir.

Senator BLACK. What they were charging up to affiliates?

Mr. Titus. No, sir.

Senator BLACK. What they were charging up for bonuses and salaries?

Mr. TITUS. No, sir; I have not.

The CHAIRMAN. Was there something else, Mr. Titus?

Mr. TITUS. I just want to finish this one thought about the antitrust laws. Whether it was wise or not—I do not want to debate it because that will take all day—but the present N. R. A. does amend the antitrust laws; it does do that. It provides that agreements may be made which would restrain trade and which would be in violation of the antitrust laws provided the President approved them after finding that they do not tend to create monopoly and do not otherwise injure the public. So that there is a direct amendment to the antitrust laws in the law as it exists now.

It may be wise to take that out. I do not want to argue that at all, but there it is. The bill provides that the President may approve agreements, just the same as the present act, after he makes these findings, but then it provides that if he does approve the agreement, the persons signing the agreement are subject to prosecution just the same as if he had never approved it.

In other words, you are doing something here which ought not to be done. If it is the policy of the Congress to allow the President to approve agreements, as now under the present law, if it is the policy of Congress that that kind of agreement after thorough investigation ought to be permitted, then it ought to be a complete clearance to the people who sign it. They ought to be able to rely upon the President's approval that it is a valid agreement.

Under this bill, the President's approval amounts to nothing whatever. It is just exactly as if he had never signed it.

So that that provision ought to be changed to correspond to the present law or else taken out. There is no point putting in anything about the President approving agreements if his approval means nothing after he has done it.

There is just one more point and that relates to the question of production. Without arguing the matter, the viewpoint I think generally of the industry, and I think the viewpoint of the committee is that the production of oil must be under some kind of control. The provisions in this bill for control of crude-oil production, are, in our opinion, entirely ineffective. Without taking the time to point out, which I could readily do, why they are ineffective, I would like to submit to this committee a memorandum in writing showing the necessity of control of crude-oil production and why the provisions in this bill are not adequate.

The CHAIRMAN. You can put in your memorandum or you can elaborate on any of your statements here that you desire to.

STATEMENT OF HON. ROBERT L. OWEN, FORMER UNITED STATES SENATOR FROM THE STATE OF OKLAHOMA

Senator Owen wanted to make a statement to the committee and he had an amendment he wanted to suggest. You may do it right from where you are, Senator. I think the committee can hear you.

Mr. OWEN. Mr. Chairman, I would like to suggest to the committee this very short suggested amendment. I would be glad to have it read to the committee.

(The same is as follows:)

Proposed amendment to Senate bill (S. 2445) on page 7 after line 11:
"Members of the trade codes and other citizens shall have the right to cooperate in protecting themselves against practices declared unfair or deceptive by any code or which have been held unfair or deceptive in principle by the Federal Trade Commission."

The CHAIRMAN. Very well, Senator.

Mr. OWEN. The antitrust law as administered had a case go before the Supreme Court of the United States known as the *"Beechnut Bacon case"*, in which the Beechnut Co. had fixed an arbitrary price for the retail trade of their product. The Supreme Court held that while they had a right to refuse to sell their product to any wholesaler, they had no right by cooperative methods to fix a price to the retailer. That became the basis of the actions taken by the Federal Trade Commission in which complaints would be filed against any company using cooperative methods to sustain a fixed price which might be and probably was injurious to the public interest; but out of that decision and out of that practice has arisen another evil in this, that the companies having their own product to sell, would buy wholesale from the manufacturer a product which had a Nation-wide reputation based upon advertisement and based upon the public approval, and they would sell that product at below the cost at which it was sold wholesale to the retailer; and in that way, having a competitive product of their own, by selling below the cost at which the retail distributor of the product could afford to sell it, they would break down the distributive processes of the manufacturer.

It is an unfair practice. The codes have pointed out that that was an unfair practice and a number of them have made provisions declaring it an unfair practice. The Federal Trade Commission, I am sure, would hold that that was an unfair or deceptive practice, because the public is deceived by selling a product below the cost of production or below the cost at which the manufatcurer could fairly sell it to the retailer.

This matter has been considered by the Department of Commerce and a report has been made upon it in another bill, but I would venture to suggest, Mr. Chairman, if I might, that this item be sent to the Secretary of Commerce for a specific report so that the Department itself might give the reasons why such a provision is justified.

The CHAIRMAN. Senator, I have given instructions to the clerk to get that report from the Department of Commerce, Assistant Secretary, Mr. Dickinson.

Mr. OWEN. I thank you, sir.

The CHAIRMAN. Thank you very much.

I understand that Mr. Stuart has to catch a train and that his statement will be very brief. Mr. Stuart, we will hear from you now.

TESTIMONY OF G. S. STUART, PHILADELPHIA, PA., REPRESENTING THE MASTER PAINTERS AND DECORATORS ASSOCIATION OF PENNSYLVANIA

(The witness was first duly sworn.)

Mr. STUART. Gentlemen, I represent the Master Painters and Decorators Association of Pennsylvania, a subdivision of the International Society of Master Painters and Decorators, Inc., covering the United States and Canada.

The business of our members is painting, paper hanging, and decorating, the largest subcontracting branch of the second largest industry in the United States, the construction industry. There are more than 54,000 members of our industry in the United States, employing upward of 400,000 journeymen mechanics, doing a volume of business in excess of $200,000,000 per year. Of these, 6,900 members of the industry are located in Pennsylvania, employing 62,000 journeymen and doing an annual business of $22,000,000.

Representing this industry I appear before your honorable committee to urge the extension of the National Industrial Recovery Act for an additional 2 years or longer. My reasons for such contention may be best authenticated by appealing to the record of conditions.

When the National Industrial Recovery Act was enacted into law June 16, 1933, business conditions in this industry were deplorable, if not chaotic. The volume of business was at the lowest ebb in the history of the industry. Journeymen mechanics habitually following the pursuits of this trade, were without employment in vast numbers. Those fortunate enought to be employed were forced by economic conditions to offer their services at greatly reduced wage rates. Competition among employers was of the most vicious variety, the trade was without standardization, specifications were more honored by their breach than by their observance. What business there was, was auctioned off by skilled purchasers to greedy competitors seeking to hold together the semblance of an organization with scarcely the remotest chance of profit.

The industry was chaotic, capital invested was greatly reduced by stupendous losses, property owners were victimized by job skinning, and skilled journeymen dependent for their livelihood upon this industry were left to walk the streets in desperation. Such a sad picture not only menaced the well-being, but threatened the very foundation structure of an industry representing a large volume of business and giving steady employment to a large number of deserving mechanics.

The advent of the National Industrial Recovery Act resulted in the formulation, establishment, and approval by the President, of the Code of Fair Competition for the Painting, Paper Hanging, and Decorating Industry. A national code authority truly representative of the industry was speedily appointed and approved by N. R. A. Stabilizing processes outlined in our code of fair competition started to work. The members of this industry supported that code as their only salvation, and while I cannot say that these first 2 years have resulted in a completely stabilized job for the painting, paper hanging, and decorating industry, I can report that there has been very substantial improvement. Property owners can now be assured of jobs being executed in strict conformity with specifications, a condition

which did not formerly prevail. Services and materials are now offered to owners at prices at least covering costs. Secret rebates, refunds, and commissions have been outlawed. Lumping or contracting the labor services of a job have been eliminated. Employment has definitely increased, wage levels have risen, the property owner is now assured the workmanship and materials he bargained to receive. Materials are furnished as offered without substitution or dilution, which was quite a common practice in the old days of vicious competition. General business in the industry has definitely improved with the devastating depression securely checked and under control for the first time.

The stabilization program embodying fair trade practices among the employers of this industry has by no means been completed. It has been effectively started. We are on our way to satisfactory business conditions. Results from the industry will substantiate the better feeling among competitors that there is at least some security in the belief that all competitors are subject to the same conditions. It will require at least an additional 2-year period to make the operations of the stabilization of practices for both employers and labor reasonably effective. For this reason we appeal to your honorable body to recommend an extension of the National Industrial Recovery Act in order to allow the members of this industry to carry out their cherished desires.

The most feasible and expedient method of relieving unemployment is to limit maximum hours by legislation. Purchasing power can only be maintained under depressed economic conditions by fixing through legislation, an irreducible minimum below which skilled wage levels may not go. Fair competition can only be established in depression times by legislation which forbids the unfair, unscrupulous practices to which desperation drives competitors in industry. Assurances that materials and workmanship will be delivered to the property owner and the general public as bargained for, can only be guaranteed when competitive conditions are reasonably standardized. Surely that legislation is in the public interest which aims to inculcate in industry, the principles of fair trade practice through honest competition, that aims to improve the working conditions of labor through the payment of livable wages and that assures the property owner an honest job at a fair price.

Should the National Industrial Recovery Act not be extended, it is this industry's firm conviction that business conditions in this trade will relapse into an even worse chaotic state than that in which it was found in June 1933. We exhort you to prevent any such disaster by continuing the National Industrial Recovery Act.

The CHAIRMAN. Thank you very much.

Mr. STUART. Thank you for hearing me.

Senator BARKLEY. Does your statement show the increase in employment since June 1933 in your industry, by numbers?

Mr. STUART. It does not in this brief. But we have noticed a marked increase. We have figures to show a marked increase there.

Senator BARKLEY. Will you be able to supply that with your statement for the record?

Mr. STUART. Yes.

The CHAIRMAN. Send it down to the clerk.

Mr. Javits, you are the first one to be taken on this afternoon. It is now 12 o'clock. The committee will recess to meet at 2 o'clock in the District of Columbia Committee room.

(Whereupon, at 12 o'clock noon, the hearing is recessed until 2 o'clock of the same day as noted.)

AFTER RECESS

(The hearing was resumed at 2 p. m. as noted.)

Senator KING (presiding). The committee will be in order.

I offer for the record a letter from Mr. Hartley G. Ward.

REMINGTON WARD,
Newport, R. I., April 9, 1935.

COMMITTEE INVESTIGATING NATIONAL RECOVERY ADMINISTRATION,
United States Senate, Washington, D. C.

GENTLEMEN: I presume you are besieged with complaints and reports on National Recovery Administration activities, and for this reason I have refrained from writing earlier, but if you have not already given consideration to the Graphic Arts Code, I believe you will find therein one of the finest examples of the code in oppressing small business.

I have a mass of correspondence in this regard between this office, and the code authority, the Rhode Island Typothetae, and various departments in Washington. I have gone into the matter in detail with the National Recovery Administration authorities. They have been extremely polite in the matter, but have never given a definite answer to the many points brought up. The code authority are arbitrary, and show little sympathy for anyone not in favor of their methods. We ended a very interesting correspondence by their referring me to the President of the United States, as being the one who wrote the code, and therefore responsible for it.

Outstanding in unfairness, was the fact that unless one belonged to the United Typothetae of America, one could not be represented on the code authority. In other words, the typothetae ran things just to suit themselves, and the independent printer (large and small) had no say in his own code administration. There were many other points almost as unfair—such as complicated cost-finding systems; high hourly costs; code assessments; unnecessary code overhead; etc.

I have always felt that a code for printers would be acceptable, and desirable. But every printer should have representation of some kind, and it should not be left to any one group of printers to foist their pet plans on the industry as a whole.

I would be pleased to go more into detail in this matter if it will be of any help to you, but I don't wish to burden you with anything, if you already have the facts at hand. The code in its present form is entirely unworkable, and provokes a great hardship on the industry as a whole.

Very respectfully,

A. HARTLEY G. WARD.

Senator KING. I offer for the record a letter addressed to the chairman of the committee by the New England Jobbers & Manufacturers Millinery Association, stating that at a meeting of the association representing all of those engaged in manufacturing and marketing millinery in New England, that there was great concern over the ever-increasing cost of conducting business due to the expense and restrictions imposed in the code.

NEW ENGLAND JOBBERS & MANUFACTURERS
MILLINERY ASSOCIATION,
Boston, Mass., March 7, 1935.

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

DEAR SIR: 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, expressly 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 National Recovery Administration 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 their 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 code director, salary, $20,000 per year; code secretary, $10,000 per year; code author, $10,000 per year.

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 workrooms 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, other than 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 this any honest-thinking man will agree to), 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 & MANUFACTURERS MILLINERY ASSOCIATION,
A. R. COOK.

Senator KING. I offer for the record also a letter from Mr. Frederick J. Weider, treasurer of the Barr & Creelman Co., plumbing and heating contractors of Rochester, N. Y.

APRIL 9, 1935.

Senator KING,
Senate Office Building, Washington, D. C.

DEAR SIR: It is with deep appreciation that I learn of your interest in the present investigation of the National Recovery Administration and I do trust that you will keep up the fight against the renewal of this act for it takes little imagination to realize how detrimenal the National Recovery Administration has been to small business interests, as practically no small business has gained anything through the codes brought about by National Recovery Administration.

I believe that it is generally understood that when this act was first made a law, it was brought about by big interests feeling that the small business firms offered them too much competition and the only means of correcting it was to bring about an evil such as this act, to throttle the little fellow and thereby eliminate competition so that the profits of the monopolies could be further increased. This is proved by the large profit shown by a great many of the larger interests since this act was made a law.

Any one who takes the time to read the various codes written by these selfish interests can readily see that none are written with the interest of the small business man in mind, when one realizes that over 40 codes have restrictions and limitations as to any individual starting in business covered by these codes, it is readily understood that their intent is to kill any incentive, initiative, and ambition that one might have in order that the field of these respective businesses could be reserved for themselves. This one point alone is anything but American-like.

As to the 17 points offered by Mr. Richberg for correction of the existing law, surely these are the most vague and confusing generalities that anyone could imagine.

Most small business men realize that Mr. Richberg does not know what it is all about, for in the first place not having had business experience he cannot see it from a small business man's viewpoint.

Mr. Richberg also mentioned that 3,000,000 jobs have been created by National Recovery Administration. This is imaginary and the writer doubts if he can prove this number of jobs being caused by improved conditions brought about by National Recovery Administration. Undoubtedly what he means is that there are this number of new jobs created under the bureaucracy of National Recovery Administration, those of paid clerical help, secretaries and so-called "brain trusters" who have secured positions on National Recovery Administration boards at the expense of the small business.

Where Mr. Richberg or his cohorts expects the small business man to keep getting funds to keep paying for the expense of the National Recovery Administration is more than one can understand.

As to his stating that there has been less business failures during the past 2 years, the records possibly would bear this out but he does not realize that it is no longer necessary to file petition in bankruptcy to become a business failure for all one has to do today is to fold up, settle for so much on the dollar and start over again, thereby eliminating the expense of bankruptcy. The writer knows of many concerns in Rochester who have gone through this process, and are now continuing to operate in business.

The writer believes from personal experience, having served on code committees, both State and local, that the best thing for business would be to eliminate the National Recovery Administration, which has put so much fear and discouragement into all successful business men, and which has accomplished nothing but a great deal of additional expense to business, running into the billions with absolutely no results whatever to show for this expenditure, other than increased profits for the monopolies.

Most business men feel that regulation is all that would be necessary to properly conduct any business successfully and that were these regulations applied on the part of the Federal Government under a law enacted covering control of the following:

Minimum wages, maximum hours for each industry.

The omitting of child labor.

The classifying of business in such a manner that no one type of business interest could be operating under more than one classification unless they establish individual operating companies for the conducting of the business classified, thereby eliminating one of the greatest evils that exist today, of everyone in the other fellow's business, and the cause of so much price cutting by those who are in all types of business carried on under one company. This would also provide a means of bringing in additional taxes to the tax authorities as there would be more individual companies required to report both on capital stock, franchise, and profit tax.

The terms of credit and discount should be universal throughout the Nation, governing the payment of accounts, and not to be governed by codes, each having its own idea on this subject.

That each person or corporation in business should be forced to keep a set of books covering their costs, and that the bookkeeping system be as laid down under a regulation subject to Federal inspection.

That no one should be restricted from starting in any new business he desires, providing he complies with the regulations for the operation of that business.

The above are a few of the regulations that might be suggested.

Again I urge you to do your utmost to cause the elimination of the present National Recovery Administration Act when it expires, and to do what is possible to bring about regulation of business methods that would be fair to all, which is all that would be necessary today to eliminate the unfair competition that exists, and when regulations are drawn the large interests or monopolies would not have so much to say as in the past, for it is the likes of this type of business that wish to do the dictating at the expense of the small business man.

This is further evidenced by a statement recently made by Mr. Johnson when he stated that "All small business would have to go", and that it was apparently his intention to seek the Government's aid to assist in the accomplishment of this narrow and selfish viewpoint.

More and more each day the writer notices the increased attitude on the part of the voters to demand their rights, which have been taken from them under the "new deal" in the guise of laws of the National Recovery Administration, which laws were written by the big interests for the big interests. It is time that the interests of big business and capitalist is set aside, otherwise we will soon face a revolution in this country, as the people are getting more and more incensed over some of the conditions that have been brought about under the "new deal", for they have come to realize that Mr. Roosevelt has not accomplished what he promised, and that what has been accomplished has been for big business interests, at the expense of the little fellow.

The writer believes that if there is any intent on the part of the committee holding the hearings on the National Recovery Administration, before favorably reporting the reenactment of National Recovery Administration, that hearings should be held, if possible, in the various sections of the country to get the opinion of the public who are suffering from the effects of the present act.

Very truly yours,

FREDERICK J. WEIDER, *Treasurer.*

Senator KING. I offer also for the record a letter from the president of the Northern Coal Co. of Detroit, Mich.

APRIL 8, 1935.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

MY DEAR SENATOR: The publicity being given impending labor troubles, the extension by compromise until June 16 of the bituminous coal labor controversy and the forestalling of a possible and at this time embarrassing Supreme Court decision by the discontinuance of the *Belcher Lumber case*, are grim reminders of efforts, bordering on coercion, to secure passage of the National Recovery Administration extension bill.

To "conserve" a natural resource, the known supply of which will last upward of 1,500 years at the present rate of consumption, it is proposed to solve "today's" problems by perpetuating a "monopoly" of our plenitude of bituminous coal through the continuance of price fixing which, as costs continue to rise, serves but to influence consumers uses of substitute fuels, such as oil, the duration of our supply of which is less definitely known.

Therefore we again request your kind attention to the phases of National Recovery Administration that are ruining small business, a few of which were outlined in our letter of January 10, and repeat our hope, through your advocacy, of the definite abolition of price and commission fixing either in National Recovery Administration or any other form, that commercial enterprise may be improved at least to the extent of its being purged of legalized persecution, bootlegging and hi-jacking.

Yours very truly,

NORTHERN COAL CO.,
E. C. CROWLEY, *President.*

Senator KING. I offer also a communication from Mr. Walter Mitchell, Jr., the secretary of the Furniture Code Authority, who states that it was understood that he might submit a supplemental statement

to his testimony, and pursuant to that understanding he has submitted the following, which may go into the record:

APRIL 6, 1935.

The Honorable WILLIAM H. KING,
United States Senate, Washington, D. C.

DEAR SENATOR KING: In accordance with your request as to the Finance Committee hearing on the National Recovery Administration yesterday, I am attaching herewith a brief, dealing with price-fixing in lumber, specifically, and with price-fixing in general as filed by the Furniture Code Authority on October 12, 1934.

My telephone number and address are given on this letterhead and I shall be glad to try to be of service to the committee in any way.

Very truly yours,

(Signed) WALTER MITCHELL, Jr. *Secretary.*

FURNITURE CODE AUTHORITY,
1700 EYE STREET NW.,
Washington, D. C., October 12, 1934.

Re: Lumber Code Prices and Price Fixing on Items used by Furniture Manufacturers.

Mr. A. C. DIXON,
Deputy Administrator National Recovery Administration,
Washington, D. C.

DEAR SIR: The attached brief, supplementary to the testimony presented by representatives of the furniture industry at the public hearing on September 19, is filed in accord with the permission of the presiding deputy administrator as given at that hearing.

A list of the items used by furniture manufacturers, and against which this protest is directed, is attached hereto as exhibit A.

Comparisons of prices paid for specific items of lumber, with prices scheduled under the Lumber Code, are shown in exhibit B. In connection with the plywood prices there is a particularly interesting set of figures on the manufacturer's own costs as compared with his selling price and code price. The committee for this code authority does not, however, wish to be interpreted as suggesting these purchase prices or any other specific prices for use as minimum specified prices.

Opinions of a large sample of furniture manufacturers regarding price fixing and its enforceability are summarized in exhibit C.

We further wish to protest that the requirement of the deputy administrator that specific suggestions be made as to the prices of specific items is an impossible request in view of our basic position that prices cannot successfully be determined by mass arithmetic. The limitation of the hearing to such specific information constituted a denial of our request for hearing in that it denied permission to present the only arguments we can properly present.

The brief, as submitted, contains the broader background and consideration of the commercial aspect of price fixing in hardwoods and other items used by furniture manufacturers. Consideration of these aspects, we believe, is necessary to a proper appraisal and decision on the problem.

We contend that the limitation of the hearing and any attempt to limit or disqualify consideration of the attached brief is contrary to the purposes of the recovery act, the policy of the Recovery Administration and contrary to our understanding in applying for the hearing. It is admitted that the writer, as representative of this industry, verbally agreed with you that the protest could rightly be limited to the items used by furniture manufacturers; but it was clear from our correspondence and conversations on the subject that this industry's protest clearly applied to price fixing in those items and not merely to the prices.

In the hearing on September 19, when Deputy Administrator Selfridge stated that we could obtain a hearing on the broader aspects of lumber price fixing if we should request it, we made clear to him that such a request was contained in my letter of August 16, which protested against Executive Orders 9-46A and 9-47A—the amendment to the code as well as the order declaring emergency prices (p. 105 of the record). We do not consider that the Deputy Administrator has made a satisfactory reply to our question as to why a hearing was not held on the broader aspect of this question when we had so requested.

We believe that the objections to dealing with this aspect in public hearing—that other interested parties were not represented—is not applicable to the consideration of a brief and that the error involved in the above limitation of hearing may in part be mended by the careful consideration of the attached brief.

In accordance with the notice of hearing, which requested that witnesses present specific suggestions and wordings of revisions proposed, we respectfully submit the following suggestions. We realize that they are made at the risk of seeming to meddle with the problems of the Lumber Code Authority, but they are ventured to avoid the risk of seeming purely destructive:

1. That the portions of article IX of the Lumber and Timber Products Code, which imposes fixed price schedules, be rescinded with respect to hardwood and plywood items or at least with respect to the items listed in the specific summaries or prices in the attached brief and closely related items.

2. That the Lumber Code be amended to apply to these items and any other appropriate items a prohibition that "no manufacturer shall offer, sell or exchange * * * products * * * at less than their cost to their manufacturer, except to meet existing competition of lower cost producers on products of the same or equivalent quality and/or specification."

3. That the existing minimum cost protection price schedules on these items be revised downward to at least 10 percent below prevailing market prices as offered by reputable producers and that such schedules then be made an informal yardstick of probable minimum cost, a basis for challenging individual producers to show cost figures, and not a basis for prosecution.

4. That a modified plan of price filing be considered as a method of keeping these yardsticks up to date and sensitive to changing conditions.

Respectfully submitted.

FURNITURE CODE AUTHORITY,
WALTER MITCHELL, JR., *Secretary.*
NATIONAL ASSOCIATION OF FURNITURE MANUFACTURERS, INC.,
A. P. HAAKE, *Managing Director.*
SOUTHERN FURNITURE MANUFACTURERS ASSOCIATION,
J. T. RYAN, *Secretary.*

EXHIBIT A

With the limited exceptions noted elsewhere in this brief, the furniture manufacturing industry protests the Lumber Code price of all items used by that industry, on the ground that said prices are excessive and damaging to our interests as users of lumber; and, furthermore, that the fixing of prices on the items listed below is of doubtful legality under the terms of the National Industrial Recovery Act.

We specifically protest the following items as listed in the Lumber Code Authority Bulletins of July 16, 1934:

No. 27–A—Appalachian section

Appalachian and southern hardwoods:	
Firm white ash	5/8" to 10/4"
Basswood	4/4" to 12/4"
Beech	5/8" to 8/4"
Birch	4/4" to 8/4"
Chestnut	3/4" to 8/4"
Black gum	4/4" to 8/4"
Hard maple	4/4" to 10/4"
Soft maple	4/4" to 10/4"
Plain red oak	5/8" to 10/4"
Quartered red oak	5/8" to 6/4"
Plain white oak	5/8" to 10/4"
Quartered white oak	4/4" to 8/4"
Plain poplar	5/8" to 10/4"

No. 27–S—Southern section

Appalachian and southern hardwoods:	
Firm texture ash	5/8" to 8/4"
Ash squares	4/4" to 12/4"
Basswood	4/4" to 8/4"
Beech	5/8" to 8/4"
Beech squares	8/4" to 10/4"
Plain red gum	3/8" to 10/4"
Plain red gum—figured	4/4" to 6/4"
Quartered red gum	4/4" to 10/4"
Quartered red gum—figured	4/4" to 8/4"

No. 27–S—Southern section—Continued

Appalachian and southern hardwoods—Continued.	
Plain sap gum	3/8" to 10/4"
Quartered sap gum	5/8" to 12/4"
Sap gum squares	4/4" to 12/4"
Soft maple (worm holes no defect)	4/4" to 12/4"
Soft maple (worm holes a defect)	4/4" to 8/4"
Mapel squares	8/4" to 10/4"
Plain red oak	5/8" to 12/4"
Quartered red oak	5/8" to 6/4"
Plain red oak squares	8/4" to 10/4"
Plain white oak	5/8" to 12/4"
Quartered white oak	5/8" to 8/4"
Plain white oak squares	5/4" to 12/4"
Poplar	5/8" to 12/4"
Poplar	1/2" to 12/4"
Plain sycamore	5/8" to 6/4"
Plain tupelo	5/8" to 8/4"
Quartered tupelo	4/4" to 12/4"
Tupelo and/or black gum	4/4" to 12/4"

No. 14.—Philippine mahogany in all sizes and grades used by furniture manufacturers.

No. 20.—All furniture plywood as listed on pages 6, 7, and 8.

No. 16.—Species and sizes equivalent to those listed in nos. 27–A and 27–S above.

No. 29.—Species and sizes equivalent to those listed in nos. 27–A and 27–S above.

No. 17.—Species and sizes equivalent to those listed in nos. 27–A and 27–S above.

No. 33.—All items of commercial veneer commonly used by furniture manufacturers in all of the woods listed on pages 4 and 5, together with such other items on pages 8 and 9 as are not specifically construction or public-seating materials.

Apparently the code prices for hard maple and American walnut have been fixed sufficiently low in the Lumber Code schedules so that the majority of current transactions are taking place above the code level, hence a normal and satisfactory market appears to be characteristic in most of the transactions in these species. It should be called to attention that these prices must be lower than the weighted available costs or the above conditions would not prevail.

EXHIBIT B

DATA ON QUANTITIES AND PRICES OF HARDWOOD PURCHASED

None of the prices quoted below is suggested by the Furniture Code Authority for publication and enforcement at minimum reasonable cost for the items concerned. They are quoted simply to show the degree to which the prevailing market has fallen below code prices. To the best of our knowledge the seller in all of these instances alleged that he was making a profit on supplying the lumber at the prices mentioned.

Comparison of purchases made in the spring months of 1933 and 1934, late spring

	1933	1934
Fort Smith, Ark.:		
4/4 no. 1 common plain sap gum (mill price)	$12.00 to 14.00	$28.00
5-ply oriental walnut	125.00	260.00
9/8 inch 3-ply gum	15.00	27.00
Jamestown, N. Y.:		
1 common sap gum, plain 4/4	30.00	45.00
1 common sap gum, quartered 5/4	35.00	52.50
1 and 2 common sap gum, quartered 8/4	43.00	63.00
1 common maple 4/4	35.00	52.00
2A commen popular 4/4	25.00	37.50
1/24 popular crossbanding	2.75	5.05
1/20 poplar crossbanding	3.00	5.85
1/12 gum centers	5.00	9.35
1/8 gum centers	7.50	13.00
3/16 gum centers	10.50	19.40

As an example of the irregularity of prices at any one moment under price fixing (see item 1–C in the brief) the following compares prices on three different dates and two or more producers, on identical quality of lumber delivered at the same point.

Bought in Gardner, Mass., under code, from following:

	Mill A	Mill B	Mill C
Kiln-dried yellow birch, f. o. b., Gardner, Mass.:			
4/4	$74	$75	$82
6/4	80	81	.....
8/4	84	.....	93

Prices on Cuban mahogany which is not produced under a code were raised to excessive levels, apparently in order to maintain or improve the competitive position of other woods. Manufacturers in this industry report practically no purchases at code prices.

	April 1933	F. & S.	Code (select)	L. Com.
Cuban mahogany (Grand Rapids):				
4/4	[1] $145	$220	$200	$160
5/4	[1] 150	230	210	170
6/4	[1] 150	235	215	175
8/4	[1] 155	245	225	180

[1] Pre-code log run.

McConnelsville.—Mahogany people put prices up to a wild level. Examples of price increases which we believe to be excessive in relation to the increased labor cost are as follows:

	April 1933	Code
Birch (Milwaukee) 4/4 1 common and select	$19.00	$30.00
Tupelo (Tippecanoe 4/4 F. & S. City, Ohio)	28.00	49.50
4/4 sap gum (f. o. b. Marietta, Ohio)	25.00	43.50
4/4 F. & S. basswood (Chicago)	38.00	63.75
1/20 cross banding veneer (Evansville, Ind.)	2.45	5.35
4/4 1 C. & S. birch (Wisconsin)	19.00	30.00
Gum 4/4 (Hagerstown, Md.)	26.00	44.50
Gum 6/4 (Hagerstown, Md.)	30.00	48.50
Gum 8/4 (Hagerstown, Md.)	31.00	52.00
Plywood: [1] 5-ply striped mahogany face	.13½	.22

[1] 100 percent increase in plywood in Ohio.

A typical example of evasion of the code by delivery of greater quantity is cited below from the questionnaires of two manufacturers:

Mill billed 18,000 feet; delivered 20,000 feet.

Mill billed 15,000 feet; delivered 18,000 feet, in car.

COST FIGURES ON PLYWOOD

The following information should not be interpreted as a declaration by the Furniture Code Authority that the cost figures quoted are reasonable costs or should be made the basis of revision of scheduled prices. They are exhibited simply to show that the costs of representative, responsible, and well-informed producers fall far below the alleged reasonable costs. Plywood price schedules have allegedly been reduced somewhat since the following was written but we have ascertained the viewpoint of this and other plywood producers remains the same.

(Abstract of letter of May 11, 1934, from plywood manufacturer to association:)

"Several of these furniture manufacturers that have for many years bought plywood now take the position that they cannot compete with the furniture

manufacturers that operate a veneer and plywood department in their factory and that unless the protective code prices in the Plywood Manufacturers' Code are adjusted, that because of the discrimination against them that they have a choice of doing one of two things; that is, install a plywood plant as a part of their factory or to quit business. This condition seems to be general throughout this southern section and I believe that it is a matter of a very serious nature.

"Since getting this definite reaction and statements from the various buyers of plywood in the furniture industry I have figured carefully into the costs of various items of plywood as set up in the cost protective price list under the Lumber Code Authority Bulletin No. 56, and I am inclined to believe that the prices on many of the items are out of line certainly ranging from 2 to 3 cents above the prices that should be asked by the plywood manufacturers. For your information, I am quoting herewith several of the items based upon my cost figures showing the cost, the suggested selling price, and then the code prices:

	Cost	Suggested selling price	Carload code price
Rotary cut gum face	$147.39	$162.12	$178.28
Sliced comb grain oak face	169.82	186.60	216.18
Plain striped mahogany face	169.16	186.07	211.45
Sliced walnut face	186.33	204.96	225.67

"From the above schedule of cost and suggested selling prices you will note that I feel the plywood manufacturer should have 10-percent profit, but adding on the 10 percent still leaves the cost-protective prices on carload lots considerably above the selling prices. It is true that this is simply four items, but these are items that run into a heavy footage and there is a larger variation than this in certain items that are not as stable as these four items. * * *

"In talking with two or three of my competitors they take the position that the prices are too high, ranging from 2 to 6 cents per square foot as published in Bulletin No. 56. If this is so, then the plywood manufacturers are entirely wrong to be tied up to such prices and attempt to force the furniture manufacturers to pay these prices. * * *

"A number of the heavy plywood manufacturers have in the South advised that they seriously complained about these prices when they were established and ordered put into the code, but the Northern manufacturers and the thin-gum manufacturers outvoted these plywood manufacturers that did object and the prices went in, not as actual cost prices but prices that were more or less to be considered as selling prices with a good profit included for the plywood manufacturers. * * *"

EXHIBIT C

OPINIONS OF FURNITURE MANUFACTURERS REGARDING PRICE FIXING AND ITS ENFORCEABILITY

In preparation for the hearing of September 19, a questionnaire was sent out to all members of the furniture industry asking their opinion on the desirability and the workability of price fixing in lumber. It proved impossible to obtain a full reply, since many manufacturers returned the questionnaire untouched or partially filled out with a comment that exploration of the subject was not worth while because price fixing had already collapsed and was a dead issue. However, the answers from some 600 as tabulated show the following: 76.8 percent opposed price fixing by definite published prices; 44.6 percent opposed the protection of individual cost as well; 55.4 percent favor individual cost protection as workable and reasonable expense; 23.2 percent favor the theory of price fixing as proposed under the Lumber Code, but a number of these express belief that it cannot be enforced.

In answer to the question regarding enforceability: 64.3 percent believe Lumber Code prices cannot be enforced; 21.4 percent believe they can; 14.3 percent are doubtful.

In answer to a further question as to whether the prices could be enforced if reduced to a lower reasonable cost basis: 58.9 percent still believe they could not be enforced; 26.8 percent believe they could be; 14.3 percent are doubtful.

Brief of the furniture manufacturing industry before the National Recovery Administration concerning the fixing of prices of hardwood plywood, and other items used by furniture manufacturers, as scheduled under the administrative orders of July 10, 1934. Pertaining to amendments of article IX of the code of fair competition for the Lumber and Timber Products Industry Approved Code No. 9, and to the declaration of emergency minimum prices thereunder. Hearing held September 19, 1934. The sections of this brief cover—

1. The commercial aspect of price fixing as shown by such figures and other facts.
2. Lumber Code price fixing in the light of the recovery act and N. R. A. policy.
3. Difficulties of computing valid reasonable cost figures.
4. Basic economic considerations as applied to hardwood lumber price fixing.

THE COMMERCIAL ASPECT OF PRICE FIXING AS SHOWN BY SUCH FIGURES AND OTHER FACTS

A. *Furniture manufacturers' hope of stabilization disappointed.*—To begin with, furniture manufacturers, although believing that the lumber price increases were out of line with commodities generally, hoped and believed that lumber prices would be stabilized at the code level and that the resulting gain in business confidence might outweigh the handicap of added cost. The above figures dealing with purchases of important staple items of hardwood, show that the code prices have not been enforced; in fact, have been applicable to a minority rather than a majority of the volume of purchases by this industry.

B. *Prices subject to rumor and panic.*—The public has been robbed of the knowledge of true prices at which transactions take place, because the publication of real prices exposes the seller to persecution or prosecution.

C. *Not a solid market.*—A canvass of the situation showed that instead of uniformity in the prices paid for lumber by competing manufacturers, wider differences have existed in the prices actually paid than was the case prior to price fixing. The plan has contributed to cause a diversity of selling prices and has fostered unequal competition in the furniture industry, because of the disparity in prices paid for the same grade of lumber.

D. *Curtailed consumption because of high prices.*—Because lumber represents anywhere from 25 to 45 percent of the cost of case goods in the furniture field, the sudden and excessive rise in the price in the fall of 1933 caused sharp rises in the price of furniture. Although this persuaded retailers to make large purchases, the furniture failed to move forward to the consumer. In contrast to this, as pointed out at the hearing, Mr. Lane found cedar chests, made largely of lumber not subject to code prices, went to the dealers at prices which appealed to the general public. The same was true of certain types of upholstered goods and modern metal furniture.

E. *Substitution of other materials.*—The furniture industry can and will participate in the substitution of other materials and suffer only the inconvenience of capital outlay and experiment; but the lumber industry is permanently injured in most instances by such shift. The sudden rise in plywood prices caused many furniture manufacturers to resume operation of long unused or semiobsolete plywood facilities. Previous to the code, for 12 or 15 years, these same people had found plywood cheaper to buy than to make because of the efficiency and specialization of plywood factories; but they now find it distinctly cheaper to make plywood in the furniture plant. One manufacturer, who purchased new machinery, found that he could amortize its entire cost in 2 years, by the saving in comparison with present code prices.

F. *Price floor below market apparently beneficial.*—In a few instances code prices were set sufficiently low so that the prevailing market for those items has been above the code price and only occasional sales have been made at the price floor. Certain items of maple lumber in certain districts illustrate the point; and the producers of these items have been benefited by the tendency of manufacturers to escape the excessive plywood prices in some instances by substituting solid maple suites for veneer construction. If all the minimum cost protection prices shared the character just described, the present large expense of enforcement and widespread opposition would undoubtedly not have been incurred.

G. *Confidence damaged by collapse of code prices.*—The collapse of the Lumber Code price schedule, when it was found unenforceable, damaged the furniture industry probably as much as the sudden rise. It broke down the confidence of retailers and consumers regarding the future prices of furniture.

H. *Proposed enforcement would cause sudden price rise.*—As is evidenced from the above records of purchases below code prices, a complete enforcement of the schedules of July 16, if such were possible, would cause a sudden and sharp rise from the prevailing levels at which business has been transacted, and expose this industry to another cycle of damage. Under present conditions the public would be even less inclined to absorb furniture at increased prices than it was in the fall of 1933, when the first sudden increase of lumber prices forced a corresponding change in furniture.

I. *Efforts to make other industries support Lumber Code enforcement.*—N. R. A. enforcement officials have intimated that buyers of lumber are under obligation to assist in enforcement of the price schedules by giving information regarding their purchases and the names of suppliers. It has been suggested that some decree be issued making buyers of lumber at less than code prices guilty of violation of the Lumber Code. Salesmen for lumber companies have threatened customers with law suits, as punishment for purchases from other lumber companies at less than code prices. These occurrences indicate an unhealthy condition wherein an industry is unable to enforce its own code even with tremendous expenditure, and is asking the entire industrial structure of the Nation to assist.

LUMBER CODE PRICE FIXING IN THE LIGHT OF GENERAL N. R. A. POLICY AND EXPERIENCE

A. *Labor compliance stronger than price fixing rather than dependent upon it.*—It has frequently been argued that the price-fixing arrangement is necessary to the support and protection of the labor provisions and wage rates in the lumber industry. This does not accord with the experience of other industries nor with the plain fact that every worker will assist the code authority and the Administration in the enforcement of labor provisions without charging a penny for his enforcement services; whereas price fixing must be enforced by high-class executives and field men who are expensive in salaries and are constantly under pressure of commercial bribery.

The lumbermen who filed a petition for exemption from the price-fixing plan and who are now reported to be suing for an injunction in the Federal court, unanimously stated that they were able to maintain the wages of the Lumber Code on their sales at a free market. Likewise, the purchase price figures, quoted in this brief, show 60 to 80 percent above the low point of 1933, reputed by many reliable lumbermen more than ample to cover the wage increases resulting from the code.

B. *Lumber industry not properly notified of renewal of price fixing.*—Many lumber men declared that they never received notice of the code amendment and the Executive order proposed on July 16, and would have protested if they had been so notified. Deputy Administrator Selfridge admits in the record that the deputy's office does not know whether the administrative agencies of the Lumber Code Authority took proper steps to notify the members of the industry.

C. *Emergency declared for indefinite period.*—It was emphasized in the early days of the National Recovery Administration that the organization acknowledged no precedents and would feel free to experiment in different manner with different industries. Evidence of the passing of that day has come with the crystallization of experience from these experiments in the form of policy memoranda. Office order no. 228 specifically mentions a 90-day limit on a price emergency, with the idea that the matter would automatically become subject to reinspection at the end of 90 days. In the public interest anything so drastic and subject to abuse as price freezing should be reexamined frequently.

D. *The nature of an emergency.*—National Recovery Administration officials and the Research and Planning Division constantly emphasize to the industries who apply for a price emergency that said emergency must meet several specifications:

1. Must hold a promise of successful stabilization by means of price fixing.
2. Must have some more permanent solution in sight at the end of the 90-day period.
3. Must not contain the possibilities that price freezing will operate unfairly to any important parts of the industry.
4. Must be an immediate emergency and not a long-standing economic illness.

These and several other criteria do not seem to us to be satisfied by the emergency in the lumber industry. Even in the prosperous years of 1928 and 1929 that industry was suffering from the basic economic illness of overcapacity and the substitution of other materials. The immediate emergency which aggravated this long-time economic trend was undoubtedly one of code administration

based on the fact that the previous price-fixing arrangement was found unenforceable.

DIFFICULTIES OF COMPUTING VALID REASONABLE COST FIGURES

The Furniture Code Authority contends that in a number of respects the method of figuring these prices is unfair and detrimental to the users of lumber as well as to large portions of the lumber industry itself.

A. *Impossibility of joint cost allocation.*—It is reasonably possible to figure the cost of sawing a log, but the allocation of this cost to the various grades of lumber produced from that log is, of necessity, arbitrary and based upon previous market values of these various grades. It is significant that the phase of the lumber price schedule which has received practically no criticism among furniture manufacturers is the set of differentials designated for various grades and thicknesses. It is our understanding that most of these were based upon practical experience and market relationship.

B. *Lumber prices permitted to contain excessive interest and overhead.*—Even after the changes made last winter in the method of allocating depreciation and similar charges, the lumber price schedule still contained interest charges on capital. It is beyond the power of our economic system, or any system, to guarantee interest charges to all investors, wise and unwise, and the National Recovery Administration has wisely refused such guaranties in other cost formulas. Yet stumpage, which is frequently mentioned by National Recovery Administration officials as a prime cost in lumber and as an unfair advantage possessed by farmer mills in a free market, consists largely of accumulated interest on timber tracts. Lumbermen frequently cite the tremendous accumulated burden of delinquent interest on bond issues among some of the large lumber producers, but this condition is no different than in many other industries which must wait upon better business conditions to recoup accrued carrying charges.

C. *Alleged determination of prices by the Administrator.*—Although the administrative order states that the Administrator and the Research and Planning Division shall determine reasonable prices, such a work would be impossibly long and expensive if attempted by anyone other than the lumber industry. It is is our understanding that the Lumber Code Authority not only supplied the price schedules but that they were declared in effect by the Administrator long before the Research and Planning Division had completed the minimum checking of the computation. This impression was confirmed in the record by the representative of the Research and Planning Division.

D. *Average cost for industry not reasonable.*—The administrative order requires reasonable costs, yet the prices are figured on average costs for the entire productive capacity in each division of the industry, in many instances reputed to be four or five times the capacity necessary to supply the 1929 peak demand. If the productive capacity of any division, particularly hardwood, were arranged in order of its efficiency at any one time, these average costs would supposedly lie at the half-way point. If, however, cost calculations were based on the cost figures of the most efficient quarter of the production capacity, they would supposedly fall half-way between the zero and 25 mark or on the scale which we have described 37½ points away from the present price computation.

BASIC ECONOMIC CONSIDERATIONS AS APPLIED TO HARDWOOD LUMBER PRICE FIXING

The considerations below, applicable to all price fixing, have been emphasized by the chairman of this code authority at conferences of the durable goods committee and by other public protests from members of this industry.

A. *Fair share of national income for durable consumer goods.*—When price fixing is permitted to industries making basic raw materials and necessity goods, it gives them a preferred claim upon the national income and permits them to take a larger proportion than they would obtain in free trade. Conversely, less of the national income remains for purchases of durable and capital goods which can be delayed. This is particularly true of durable consumer's goods, and shows concretely in the price and profit figures for the furniture industry. The following information from the brief presented by Mr. J. T. Ryan at the hearing on September 19 shows that the furniture industry was not able to raise its prices in proportion to the increase in lumber costs because public demand would not stand for such increases. This is reflected in increasing losses for the furniture industry at a time when other industries are picking up. The furniture industry is squeezed between fixed prices for its materials and a sensitive elastic demand for its product.

"An investigation made by us shows that for each $1 of sales of cheap and medium-priced bedroom and dining-room furniture, the producer spends from 25 to 32 cents for lumber and veneer. In other words, in cheap and medium-priced furniture, the lumber and veneer cost is from 25 to 32 percent of the selling prices. Obviously, this item of lumber and veneer cost is the major item of cost in the production of cheap and medium-priced furniture, and, therefore, any change in lumber and veneer prices has a direct bearing on the selling prices of furniture. An analysis of the operations of southern furniture factories for the first 6 months of 1934 shows that for each $100,000 of sales, the cost was as follows:

Direct and indirect pay roll	$28, 508
Factory burden, not including indirect labor	11, 134
Administrative and selling expense	18, 418
Materials	46, 422
Total	104, 482

"It will be observed that on an average there was a loss of 4½ percent on sales. Materials represented 46.4 percent, of which lumber and veneer represented more than 50 percent, as lumber and veneer represented from 25 to 32 percent of sales prices.

"In order to illustrate the effect of lumber cost on the selling prices of furniture, I desire to offer an exhibit showing the cost and selling prices of a cheap, plain walnut dining-room suite consisting of a buffet, china closet, serving table, and dining-room table. This statement shows the principal item of cost at the low point in January 1933, the high point in September 1933, and the present cost. The costs are separated, showing direct labor, lumber, veneers, other materials, factory burden, selling and administrative expense, and the total cost contrasted with the selling price. We show the percentage each item represents of the total cost and the relationship of the cost at each date to the January 1933 cost. It will be observed that the direct labor cost represented 16.8 percent of the total cost in January 1933, 19.2 percent of the cost in September 1933, and 21.9 percent of the cost as of this date. Lumber and veneer combined represented 25.7 percent of the cost in January 1933, which increased to 33.6 percent of the cost in September 1933, and declined to 25.8 percent of the cost as of this date."

B. *Trend toward Government control and socialism.*—Price fixing, if it works, is a step toward socialism and complete Government control of business. Production control is commonly desired or attempted in connection with price control and it is becoming increasingly apparent that the two must go together. In addition, artificial control or stimulation of demand is necessary to the success of the other two types of control. A supply and a price are of little value if there is no demand.

C. *Result adverse to conservation.*—Price fixing in lumber has worked in opposition to the timber conservation program so widely publicized and desired. It has been reported that, since the Lumber Code went into effect, 4,000 new mills have gone into operation to enjoy the privilege of selling at alleged cost prices. Excess stocks are piling up and deteriorating in many branches of the lumber industry.

D. *Suggested workable cost protection plan.*—Cost protection prices must be low enough to constitute a "last line of defense" against price panic. If they are set higher, they encounter commercial pressure so great that they have been broken down and are morally useless at the moment when most needed. The safe point for this last line of defense is that at which the most efficient producers of the industry are willing to sell. Properly administered it need never gravitate to the cost level of these "most efficient" producers.

Senator KING. A report has been submitted by the Research and Planning Division entitled, "Movement of Paper Prices Under the Paper and Pulp Industry Code." The assistant to the committee, Mr. Whiteley, has marked a number of pages which will go in the record, but there are a number of other pages and graphs which I am advised it will be difficult to have printed in the record because of the cost and also because it will delay the printing, so this matter will be filed as an exhibit to be considered by the committee in any way they desire.

(Following are the portions of the above as marked to be inserted:)

THE MOVEMENT OF PAPER PRICES UNDER THE PAPER AND PULP INDUSTRY CODE

I. SUMMARY

This report undertakes a statistical study of paper prices under the Paper and Pulp Industry Code. The industry was assigned for study because price complaints against it were especially numerous and because analysis was wanted of a mass of price materials obtained from the Paper Industry Authority. Although examination disclosed that the prices thus obtained were probably defective in certain respects, particularly in not representing the full extent of the rise during 1933–34 in prices of writing, book, and all code papers combined, yet it proved feasible, on the basis of price indexes constructed monthly 1926–34 for all papers together and for the important groups separately, to establish certain conclusions respecting price changes.

The points established are:

1. Prices of papers coming under the Paper and Pulp Industry Code rose in 1933–34 more and faster than prices of industrial products in general, though commonly they have lagged behind such prices.

2. A large part of the total rise took place during the period of code formation, increase being particularly abrupt in July 1933, when the code was first drafted.

3. Having reached a high level in the spring of 1934, prices as a whole were substantially maintained through September (the latest month covered by the date), though it was said that in the interim buying declined and production dwindled to record lows.

4. The movements recorded by the general index were concerted in character among the major code divisions. Book, writing, kraft wrapping, sulphite wrapping, tissue, and miscellaneous papers all alike joined in the sharp rise of prices in July 1933; all shared substantially in the total recovery to the spring of 1934; and all except writing and tissue papers displayed continued firmness into the next autumn.

5. Price inflexibility characterized by lack of price change over periods of months made its appearance. In the comparatively close-knit book and writing paper groups similar inflexibility had obtained in more prosperous years, but had been largely dissipated in the later stages of depression. In the kraft wrapping and sulphite wrapping indexes it was a new development.

6. Partial data also suggest, though they are too meager to establish a tendency for price spreads to narrow and prices to become uniform at the higher levels of late 1933 and early 1934.

All these developments coincided in time with the formation and operation of the Paper and Pulp Industry Code, the price clauses of which repose large powers with the Paper Industry Authority and put detailed restraints upon individual producers. It is submitted that the statistical evidence furnishes a strong presumption that the code has been used as a means of furthering rigid price control within the industry.

* * * * * * *

Price rise, initiated in May, assumed larger proportions in July than in any other single month. Of the total increase from the low of April 1933 to the high of April 1934, 60 percent occurred in the 5 months July to November. It will of course be recalled that the summer and fall of 1933 was a period of spontaneous increase in prices of many commodities. Yet the fact that the rise in paper was above the average, and coincided in time with significant stages in code formation, suggests that the latter played a part in it. Certainly it can hardly be laid to increased costs, since at its abrupt inception there had been no increase in labor costs under either the National Recovery Administration or the President's reemployment agreement, and apparently little if any increase in raw material costs.

After the code came into effect, prices continued to advance until they reached a high in April and May 1933, when a rapid decline of purchasing set in.

The numerous complaints leveled against paper prices both before and after the general code became effective charged not only excessive increase but also price collusion evidenced by uniform quotations.

A price index is not adapted to disclose uniformity in pricing. The continued high level of the price index through 1934, however, during a period when buying decreased and production was said to have shrunk to a new post-war low, not improbably points to some sort of joint action to maintain prices.

The price clauses in the code have several features not approved by Office Memorandum 228 nor by the National Industrial Recovery Board's recent statement with respect to price policy. They prescribe (1) open price filing with the Paper Industry Authority, with a 1-day waiting period; (2) a minimum price basis, set by the individual member's own cost except where a competitor names a lower price; and (3) an obligatory uniform cost system. Although no cost system for the industry has yet received National Recovery Administration approval, it is not apparent to what extent uniform costing that might influence price has been adopted, since the code provides that pending administrative approval of a standard system, individual methods shall be "subject to such preliminary rules as the Paper Industry Authority shall from time to time prescribe." In current pricing the cost to be used is that which obtained over the latest 3-month accounting period ending not less than 30 days before the start of the quarter in which the price is quoted; e. g., a price filed any time from July to September must not go below the cost in a quarter ending May 31 or earlier. While this puts no obstacle in the way of price rise, it clearly tends in a period of declining cost to delay price decline. Any price suspected of violating the minimum is subject to investigation by the Paper Industry Authority (which is given power to require cost data for this purpose), and pending such investigation is subject to suspension by the Administrator. Taken all together, these price and accounting clauses of the code have unquestionably a stringency not favorable to price flexibility.

* * * * * * *

The Government Printing Office, a large buyer of these two types of paper, has compiled a statement showing the prices paid over recent years. The statement exhibits price increases in late February 1934 (when bids were accepted covering the second quarter of 1934) over late January 1933 (when bids were accepted covering the contract year beginning in March) that run as follows: (1) For some three dozen grades of book paper, increases centering around 67 percent—with a half dozen grades that increased less than 50 percent offset by others increasing up to or above 100 percent; (2) for writing papers, increases centering around 60 percent, or much higher if reference is made to related grades of fine paper.

Senator KING. I am advised by Senator La Follettee that the committee asked for certain information from Mr. Blackwell Smith, acting general counsel, and in response to that request Mr. Smith has transmitted to the chairman of the committee, information as well as a letter. The letter and the information furnished will be inserted in the record.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 16, 1935.

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

MY DEAR SENATOR HARRISON: In accordance with Senator La Follette's request, and our previous practice of making requested documents and information available to the members of your committee, I am enclosing a table indicating which codes of fair competition have been promulgated by the National Recovery Administration and which by the Agricultural Adjustment Administration. The table also indicates the dates of transfers and supervision and administration of certain codes from administration to the other.

In further explanation of the table it should be pointed out that the abbreviation "L. P." means labor provisions and the abbreviation "T. P." means trade practice provisions.

Very truly yours,

BLACKWELL SMITH,
Acting General Counsel.

History of codes now assigned to the food division, N. R. A.—N. R. A. versus A. A. A. administration and promulgation

PROMULGATED AND ADMINISTRATION

Code	Promulgated by A. A. A.	Promulgated by N. R. A.	Transferred, A. A. A. to N. R. A., Executive order Jan. 8, 1934		Transfers since Jan. 8, 1934	
			Trade practices	Labor provisions	Trade practices	Labor provisions
Alcoholic beverages, importers.		L. P.—N. R. A.				
		T. P.—F. A. C. A.				
Alcoholic beverages, wholesale.		T. P.—F. A. C. A.				
		L. P.—N. R. A.				
Anti-hog-cholera serum.	T. P.	L. P.		L. P.		
Bakers matzoh		L. P. and T. P.	T. P.	L. P.		
Baking industry		L. P. and T. P.	T. P.	L. P.		
Baking powder		L. P. and T. P.	T. P.	L. P.		
Biscuit and cracker		L. P. and T. P.	T. P.	L. P.		
Bottled soft-drink industry.		L. P. and T. P.	T. P.	L. P.		
Bouillon cubes		L. P. and T. P.	T. P.	L. P.		
Brewing industry		L. P.—N. R. A.				
		T. P.—F. A. C. A.				
Butter manufacturing.	T. P.	L. P.		L. P.		
Butter and egg distributors.		L. P. and T. P.				
Candy manufacturers.		L. P. and T. P.	T. P.	L. P.		
Canning industry		L. P. and T. P.	T. P.	L. P.		
Cereal preparations industry.		L. P. and T. P.	T. P.	L. P.		
Cheese, packaged, pasteurized, blended.		L. P. and T. P.	T. P.	L. P.		
Chewing-gum manufacturing.		L. P. and T. P.				
Cigar manufacturing	T. P.	L. P. and T. P.		L. P.	[1] Apr. 7, 1934	
Cigarette, snuff, chewing and smoking tobacco.	N. T. P.	L. P.		L. P.		May 8, 1934
Cocoa and chocolate manufacturing.		L. P. and T. P.	T. P.	L. P.		
Cocoanut oil refining		L. P. and T. P.	T. P.	L. P.		
Coffee industry		L. P. and T. P.	T. P.	L. P.		
Commercial breeder and hatchery.	T. P.	L. P.		L. P.		
Condiment sauce		L. P. and T. P.	T. P.	L. P.		
Confectionery, wholesale.		L. P. and T. P.	T. P.	L. P.		
Corn milling, dry	T. P.	L. P.		L. P.	Mar. 30, 1935 [1]	
Corn products, wet milling.	T. P.	L. P.		L. P.	do.[1]	
Corn starch		L. P. and T. P.	T. P.	L. P.		
Corn sirup, packaging and mixing.		L. P. and T. P.		L. P.		
Cotton compress and warehousing.	T. P.	L. P.		L. P.		
Cotton ginning	T. P.	L. P.		L. P.		
Cotton, raw trade	T. P.	L. P.		L. P.		
Cotton pickery		L. P. and T. P.	T. P.	L. P.		
Cottonseed crushers	T. P.	L. P.		L. P.		
Cottonseed oil refining.	T. P.	L. P.		L. P.	Nov. —, 1934 [1]	
Country grain elevators.	T. P.	L. P.		L. P.	Mar. 30, 1935	
Date packing	T. P. [2]	L. P. and T. P. [2]		L. P.	July 22, 1934	
Desserts, food		L. P. and T. P.	T. P.	L. P.		
Desserts, frozen		L. P. and T. P.	T. P.	L. P.		
Desiccated coconuts		L. P. and T. P.	T. P.	L. P.		
Distilled spirits industry.		T. P.—F. A. C. A., L. P.—N. R. A.		L. P.		
Distilled spirits rectifys.		L. P.—N. R. A., T. P.—F. A. C. A.		L. P.		
Dog food		L. P. and T. P.	T. P.	L. P.		

[1] Supervision A. A. A. [2] Originally. [3] Code revamped.

History of codes now assigned to the food division, N. R. A.—N. R. A. versus A. A. A. administration and promulgation—Continued

Code	Promulgated by A. A. A.	Promulgated by N. R. A.	Transferred, A. A. A. to N. R. A., Executive order Jan. 8, 1934		Transfers since Jan. 8, 1934	
			Trade practices	Labor provisions	Trade practices	Labor provisions
Dried fruit industry, Pacific Coast.	T. P.	L. P.	T. P.[1]	L. P.		
Feed trade	T. P.	L. P.	T. P.[1]	L. P.		
Feed manufacturers	T. P.	L. P.		L. P.	Mar. 30, 1935	
Feed manufacturing, mineral		L. P. and T. P.	T. P.	L. P.		
Flavoring products		L. P. and T. P.	T. P.	L. P.		
Flour distributors	T. P.	L. P.		L. P.		
Flour, self-rising	T. P.	L. P.		L. P.		
Food brokers		L. P. and T. P.		L. P.		
Food brokers		L. P. and T. P.				
Grocery manufacturing (master code)		L. P. and T. P.[4]				
Food and grocery, retail		L. P. and T. P.[4]				
Food and grocery, wholesale		L. P. and T. P.[4]				
Fresh fruits and vegetables, wholewholesale	T. P.	L. P.		L. P.		
Gelatine, edible		L. P. and T. P.	T. P.	L. P.		
Grain exchanges	T. P.	L. P.		L. P.		
Household cleanser		L. P. and T. P.[4]				
Ice industry		L. P. and T. P.[4]				
Ice-cream-cone manufacturers		L. P. and T. P.	T. P.	L. P.		
Licorice industry		L. P. and T. P.	T. P.	L. P.		
Linseed oil	T. P.	L. P.		L. P.		
Live poultry:						
Chicago	T. P.	L. P.		L. P.		
New York	T. P.	L. P.		L. P.		
Livestock marketing agencies	T. P.	L. P.		L. P.		
Macaroni		L. P. and T. P.	T. P.	L. P.		
Malt industry	T. P.	L. P.		L. P.	Mar. 30, 1935	
Malt products		L. P. and T. P.	T. P.[1]	L. P.		
Mayonnaise		L. P. and T. P.	T. P.	L. P.		
Meat packers	T. P.	L. P.		L. P.		
Meat, retail		L. P. and T. P.	T. P.	L. P.		
Milk:						
Dry	T. P.	L. P.		L. P.		
Evaporated and condensed	T. P.	L. P.		L. P.		
Fluid	[3]	L. P.		L. P.		
Mustard		L. P. and T. P.	T. P.	L. P.		
Oleomargarine	T. P.	L. P.		L. P.		
Olive importers		L. P. and T. P.	T. P.	L. P.	May 20, 1934[1]	
Peanut butter		L. P. and T. P.	T. P.	L. P.		
Peanut millers, raw	T. P.	L. P.	T. P.[1]	L. P.		
Pecan shellers	T. P.	L. P.	T. P.[1]	L. P.		
Pickle packing		L. P. and T. P.	T. P.	L. P.		
Potato chip	T. P.	L. P.	T. P.[1]	L. P.		
Poultry and egg distributors. 6 registered codes	T. P.	L. P.		L. P.		
Preserve and glace fruit		L. P. and T. P.	T. P.	L. P.		
Pretzel manufacturing		L. P. and T. P.	T. P.	L. P.		
Refrigerated warehousing		L. P. and T. P.[4]				
Rendering	T. P.	L. P.	T. P.[1]	L. P.		
Restaurant		L. P. and T. P.[4]				
Restaurant in Hawaii	[4]					
Rice milling, southern	T. P.	L. P.		L. P.	[1] Mar. 30, 1935	

[1] Supervision A. A. A.
[4] This code has always been an N. R. A. code; never was in A. A. A.
[3] Marketing agreement takes place of T. P.

History of codes now assigned to the food division, N. R. A.—N. R. A. versus A. A. A. administration and promulgation—Continued

Code	Promulgated by A. A. A.	Promulgated by N. R. A.	Transferred, A. A. A. to N. R. A., Executive order Jan. 8, 1934		Transfers since Jan. 8, 1934	
			Trade practices	Labor provisions	Trade practices	Labor provisions
Salmon canning	.....	L. P. and T. P.	T. P.	L. P.	.....	
Sausage casing	.....	L. P. and T. P.	T. P.	L. P.	.....	
Seed trade	T. P.	L. P.	T. P.[1]	L. P.	.....	
Spice grinders	.....	L. P. and T. P.	T. P.	L. P.	.....	
Stockyard operators	T. P.	L. P.	.....	L. P.	.....	
Sugar-beet producing	No. T. P.	L. P.	No. T. P.	L. P.	.....	
Sugar refining, cane	T. P.	L. P.	.....	L. P.	.....	
Sirup blenders and molasses	T. P.	L. P.	T. P.[1]	L. P.	.....	
Tea importers, blenders, and packers	.....	L. P. and T. P.	T. P.	L. P.	.....	
Tobacco auction, loose leaf and warehousing	T. P.	L. P.	.....	L. P.	.....	
Tobacco-leaf dealers	T. P.	L. P.	.....	L. P.	.....	
Tobacco, wholesale	T. P.	L. P.	T. P.[1]	L. P.	.....	
Tobacco, retail	T. P.	L. P.	T. P.[1]	L. P.	.....	
Vegetable oils (to cover all oils not under codes)	T. P.	L. P.	.....	L. P.	.....	
Wheat-flour milling	T. P.	L. P.	.....	L. P.	Mar. 30, 1935[1]	
Wine industry	.....	L. P.—N. R. A. T. P.—F. A. C. A.	.....	.....	.....	
Yeast manufacturers	.....	T. P. and L. P.	T. P.	L. P.	.....	

[1] Same as restaurant.

FISHERY CODES PROMULGATED AND ADMINISTERED BY N. R. A.

National Fishery Code.
Alaska Herring (salting and processing).
Atlantic Mackerel Fishery.
Blue-Crab Industry.
California sardine processing.
Crushed-Oyster Shell Industry.
Fresh-Oyster Industry.
Groundfish Fishery (New England).
Halibut Fishery (Pacific coast).
Lobster Fishery.
Menhaden Fishery and Industry.
Miscellaneous fisheries:
- New England.
- Middle Atlantic.
- Southeastern (Florida).
- Pacific coast.
- Great Lakes.

Miscellaneous Preparing and Wholesaling.
- New England Fish and Shellfish.
- Middle Atlantic.
- Southeastern.
- Gulf, South.
- Southwest.
- Northwest.
- Midwest.

New England Sardine Canning.
Pacific Crab Industry.
California Mackerel Processing.
Processed or Refined Fish Oil.

Salmon Fishery (Pacific coast).
Shrimp Industry.
Sponge Packing and Distributing.
Trout Farming (eastern section).
Tuna Fishery.
Wholesale Lobster Industry.

Senator KING. I also offer a communication from the Youngstown-Erie Terminals Co. of Youngstown, Ohio, opposing the extension of the code for the service industries.

MARCH 27, 1935.

Re proposed extension of N. R. A. in opposition to an application of codes to service industries.

MY DEAR SENATOR: Before addressing myself to the subject, may I give you my reasons, which are based in all sincerity, on submitting our argument to yourself. Inasmuch as the State of Ohio apparently has no representation on this committee, I feel that no ethics are being violated in writing to any Senator of my particular choice.

It was my very good fortune some 10 or 12 years ago to listen to an address made by you at a dinner given by the Cleveland Traffic Club, Cleveland, Ohio, at which you were the speaker of the evening, and which address I today recall as being one of the most sound and scholarly to which I have ever listened. Further, I recognize in you one of the all too few members of your honorable body, who base their conclusions entirely on facts and also a man who is not influenced by popular clamor. With the foregoing statement, I wish to present my views relative to the application of codes to those institutions whose principal stock in trade is service.

Inasmuch as it has been publicly stated by both Gen. Hugh S. Johnson and by Mr. Donald Richberg that the application of codes to service institutions was impracticable and should be discontinued. I wish to call your attention to the copy of a letter that I addressed to Gen. Hugh S. Johnson under date of March 2, 1934, at the time the Code for the Merchandising Warehouse Trade was under consideration. I also enclose a copy of a letter written January 17, 1935, to the Deputy Administrator C. P. Clark, in which I reiterated my views in the matter. My letter to Mr. Clark, of course, was based on a years' experience of operating under the code; whereas, my letter to General Johnson was largely prophetic in its nature.

The operation of a storage warehouse is entirely local in its nature. Its functions can serve only to immediate population that is tributary to their warehouse. Having nothing to sell, other than empty space and service, it is automatically restricted in its operations by the demand and characer of service required by that particular locality. I believe that you will agree with me that this is a very sound assumption. This being the case, it would appear impracticable to attempt to cover such a business by a blanket set of rules, regulations, and restrictions that would have to apply in all localities of the 48 States of the Union.

I am enclosing you a pamphlet issued by the Merchandise Warehousing Trade Code Authority as of January 31, 1935, showing by States the members of this industry that are now operating under this code. The pamphlet indicates the total code membership participation of 1467 different business concerns.

At this juncture I desire to state that in my honest opinion 90 percent of this membership had little voice and less participation in the preparation of this code. The code was prepared by leading members and officers of the American Warehousing Association, which is an old trade organization of the industry, with a total membership in 1934 of less than 300 accredited members. The 90 percent of warehouses I have referred to represents the smaller submerged members of the trade, who have neither the time nor the money, and I might say, the inclination, to attend meetings, either in the preparation of the code or the attempted enforcement of the code. They have, by threats and force been obliged to subscribe to the code and pay the assessment and additional expenses incident thereto for code participation and compliance under compulsion by code authorities.

A budget of $117,000 has been set up for the coming year to maintain the code authority at Chicago, which amount, of course, is to be collected from the members of the trade. This will be a direct drain on the resources of hundreds of companies engaged in this business, merely to set up a centralized bureau of highly paid officials and office organizations, and will be of no benefit whatever to the trade as a whole.

By what I have been able to glean from the newspapers, your committee is making an honest effort to get at some of the fundamental facts surrounding the formation and promulgation of a great many of the codes. There seems to be an inclination on the part of at least a number of the committee, of which you are one, who what to get down to the grass roots of the matter, and ascertain just how keen the average small business man in any industry is for the continuance of such codes.

The average warehouseman can only act as an individual, and cannot afford, of course, to appear in person before the Senate committee. In this connection, permit me to make a suggestion which, while it might not be in conformity with the method of procedure of your committee, it would at least be authoritative.

I should like to see a mail poll conducted by your committee of every individual member of this industry, as indicated by the enclosed pamphlet, giving their opinion as to the further continuance of this code. The small proportion of those members who desire the continuance will, of course, no doubt, soon be heard from in Washington by personal representation. The little fellow in your State and the other 47 States in the Union, will not be heard from, unless as in the manner indicated by me—an absolute poll of the industry by your committee.

In conclusion, so far as wages a concerned, the rate as established by the code proves no burden on any legi..nate warehouse. This concern, previous to the presidential proclamation under the National Recovery Act as to hours and wages, was paying from 10 to 35 percent above such requirements, and has continued to do so.

Apparently to me, the fundamental intention of the National Recovery Act was to produce employment at fair wages and reasonable hours, and such permanent employment must in the last analysis be furnished by the business men of this country, large and small. In the main, the business men in this country are, after all, pretty good citizens. We are bearing the brunt of taxation upon taxation from every source and angle and faced with the necessity, which obligation is his own entirely, of being able to meet pay rolls, the less governmental interference the fewer restrictions imposed by either Government or trade codes will go far to lessen his burden and free him to expand his business and furnish additional employment and really start us on the right road to recovery.

The foregoing, my dear Senator, is the situation as I interpret it, and I feel sure that this communication will have a respectful consideration, at least by you personally.

I am, with my respects,

Sincerely yours,

YOUNGSTOWN ERIE TERMINALS CO.,
P. F. ANDERSON,
Vice President and General Manager.

Hon. WILLIAM H. KING,
United States Senator from Utah, Washington, D. C.

(Copy of original letter of date of Mar. 2, 1934)

MARCH 2, 1934.

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

DEAR MR. JOHNSON: We are taking advantage of the invitation extended by you to the public, to register in person or by letter any suggestions or complaints that any member of an industry or individual might, in their judgment, have reason to make in connection with code compliance.

In our particular case we have reference to the code of fair competition, which has been approved for the merchandise warehousing trade. After giving very careful consideration to this code, application of it as it is written, to our own position and which we believe would apply to 75 percent of the members of the industry, and viewing the situation from a practical standpoint, we are forced to the conclusion:

First: That the code is not truly representative of the thought or ideas of 75 percent of the individuals and companies now engaged in this business.

Second: That application of certain charges and policies obligatory on the part of the signers of the code, are based on conditions as existed in 1926, and in our opinion, cannot be applied at this time.

Third: The strict application of this code will result in a serious blow to the industry, inasmuch as it will tend to the elimination of such concerns in a great

many similar cities and communities resulting in a concentration of "spot stocks" in the larger centers of distribution.

Taking up the foregoing conclusions in order, we submit:

First: That the code, as prepared and accepted, is not representative of the industry. No reflection is aimed at the members of the American Warehousing Association, which took the lead and practically prepared the code through their acting president for the year 1933, their executive secretary and 3 or 4 members of the American Warehousing Association, principally from the city of Chicago.

The American Warehousing Association is a very commendable and honorable industry organization, embracing as it does, membership in all the larger centers of population with members of course, in smaller communities. The total membership, however, of the American Warehousing Association, according to figures submitted at the recent convention at St. Louis, is less than 400, which probably is not in excess of 20 percent of the total number of independent firms and individuals engaged in the storage and warehousing business in the United States.

Second: We would desire to all to your particular attention article 8 in its entirety, referring first to section one: from which I quote:

"As adopted by unanimous vote by representatives of the shippers, bankers, railway men, and warehousemen, at a general conference, April 30, 1926, at the Department of Commerce, Washington, D. C., and endorsed October 30, 1926, by the Department of Commerce."

Herein, in our opinion, constitutes one of the most serious and fundamental objections to the code. All industry, labor, and business are supposed to be entering a new era, leaving behind practices that have been deemed inexpedient and impractical in the past.

Article 8, referred to embraces in section 2, paragraph A, an arbitrary schedule of charges that a warehousing concern must assess their customers, definite and fixed policies they must require their customers to conform to.

It is our belief that conditions that existed in 1926 do not form an entirely stable foundation on which to predicate charges and policy for the future. We do not believe that these policies and charges can be forced upon the distributing public at this time.

We are further confirmed in our views on this subject when it should be taken into consideration that the American Warehousing Association members signing this agreement in 1926, have not, down to the present writing been able to enforce them or translate them into acceptance by their clients.

Third: Taking the warehousing industry as a whole, it is probable in as serious a position as to the future as any industry in the United States. A warehouseman is not engaged in the barter or sale of any commodity; he has nothing representing a marked cost price, or a tag selling price. The only thing that he has to sell is service. It is his entire stock in trade and the worth of service is generally determined by the man who is paying for it.

We are on absolutely safe ground when we state that, in our opinion, a great many warehouses in the United States owe their being in business today more to the tolerance and good will of their customers rather than to any other reason. We support this statement as follows:

First, the development of fast freight schedules by the railroads has resulted in a less demand for the carrying of stocks in smaller communities.

Second, the development of factory door to store door delivery by the various trucking companies has eliminated the necessity of storage entirely in a great many communities other than the larger centers of population. These are the conditions that the warehousing industry now faces.

The question of higher rates to our customers and enforcement of arbitrary policies to be adopted, is not what is going to bring relief to the industry. It is the volume of business, and this only, that is going to save the members of the industry not so fortunately located as those in the large cities. There are now evidences of a determination on the part of the larger concerns in the United States using storage and warehousing facilities toward a concentration of stocks in the more populous centers, and if, in our opinion, other located members of the trade attempt to enforce any additional charges or restrictions, the result will be that there will be a further concentration of stocks in the larger cities which can only result in a great many warehouses being compelled to close their doors.

We do not believe, and we have some very concrete evidence to support our statement, that those distributors who are paying the bills are in a receptive mood for additional warehousing charges. If forced to take them, they will reduce the amount carried in stocks to the lowest possible quantity and in as few localities as possible, depending on railroad service and the trucking service

to offset the small advantage they had in carrying spot stocks in the smaller communities.

In conclusion, referring to article 4, as to wages, working hours, etc., the code is satisfactory. As a matter of fact, we have since our organization paid to all classes of labor and clerical help higher rates and salaries than the President's National Recovery Administration agreement called for and higher than the code set up. We will, so long as we remain in business, maintain the integrity of this section.

The principal matter of concern now is, can we hold our present volume of business and can we hope to secure additional business, if attempting to apply all the conditions of article 8 in the code to our customers?

Unfortunately, we have an answer to this question when we state that certain very desirable accounts advise us that rather than accept these additional charges and terms, they would make other arrangements, if necessary, buy their own private warehouse if they elected to maintain distribution in this community. It is a condition and not a theory that gives us the answer.

Submitting the foregoing, not in a critical attitude as to the general purposes or intent of the National Recovery Act, but our conclusion relative to the attempted application of the code as it now stands to the industry, we are,

Very truly yours,

YOUNGSTOWN ERIE TERMINALS CO.

JANUARY, 17, 1935.

Deputy Administrator C. P. CLARK,
Room 317 Denrike Building, Washington, D. C.

DEAR MR. CLARK: Availing ourselves of the opportunity afforded us as outlined in your administrative order 232-14, under date of December 31, we are submitting in this manner and method our position in the matter of the present code governing the warehousing industry, which will, naturally, also cover our objections to the assessment of the estimated budget of $117,000 plus for the coming year.

This letter is supplemented by copies of correspondence on this matter. Among them is a copy of a letter under date of March 2, 1934, which was addressed to Gen. Hugh S. Johnson, National Recovery Administrator, in which we at that time set forth our objections to the application of this code, and at the same time attempted to furnish arguments sustaining our opinion. As a matter of fact, the past year's experience has demonstrated to us that our arguments were sound and that the arbitrary continuance of the code as written for another year will spell ruin to a great many warehouses in the United States.

In substantiation of the argument that we set forth in our letter of March 2, 1934, I am pleased to quote no less an authority than Gen. Hugh S. Johnson, himself, who stated in his Saturday Evening Post article of July 21, 1934:

"That the first lesson we have learned was that a national code is wholly impractical for an industry which does not sell or manufacture goods."

This fully sustains the contention set up by us a year ago that a concern whose principal stock in trade was service could not be made to successfully operate under a hard and fast code or schedule of performance. Stated in their relative order of importance, a public warehouse has for sale only two things, service and facilities.

Four walls and a roof, so far as facilities are concerned, could constitute a warehouse in name. The demands of the present age call for a nature of service that determines, in the mind of the purchaser of service, whether it is valuable to them or not. The extent and nature of the service can only be measured and controlled by purely local conditions, in accordance with present-day demands. Article 8, copy of which is submitted, was promulgated in 1926, and it is too violent an assumption to believe that it can be made applicable at this time. Again, local conditions being the sole determining factor which must determine the extent and character of service to be rendered, the local warehouseman is in no way concerned, nor could he be expected to be bound by conditions which might prevail in Seattle, Wash., Pensacola, Fla., or Boston, Mass. Article 8 of the code says that he must be found by such conditions and act in accordance therewith.

To briefly summarize our objections as to the impracticability of this code, we submit the following:

First, the code, in its application for the past year, has not tended to promote new business for warehouses, and in this connection, it has failed to raise the revenues of a majority of the warehouses in the country. Instead of acting as a

medium to promote business, it has affected the industry with a loss of business. Our company has lost accounts by the attempted enforcement of section 8. We shall lose a great deal of business if we are obliged to comply with it to the letter.

Second, according to data submitted by the United States Chamber of Commerce in the summer of 1934, there has been a noticeable increase in the occupancy of the warehouses located in the metropolitan centers, and a corresponding decrease in the warehouses located in the smaller communities. This will be the inevitable result of the continuation of the Warehousing Code as in existence the past year. It will force the users of warehouse space to a more restricted and segregated outlet for their products, which will naturally result in a gain to the warehouses in the larger cities. A copy of the set-up of the regional directors of the code authority will show the metropolitan character of such representation.

Third, the present attempted arbitrary enforcement of this code, instead of promoting a spirit of harmony between members of the trade, is producing the opposite result. Friction, jealousy, snooping by one competitor on another, is not conducive in a general way to the well-being of the trade.

Fourth, without any disparagement or criticism of the integrity of the gentlemen composing the American Warehouse Association, or its members, we reiterate that the American Warehouse Association does not truly represent in numbers the rank and file of the smaller warehouses of these United States. According to a bulletin issued by this association themselves, under date of October 1934, the total membership in the United States at that time engaged in the dry merchandising warehouse business exclusively, was 287 firms. There were seven States, namely, Vermont, New Hampshire, Delaware, South Carolina, Mississippi, Wyoming, and Nevada, which showed no representation whatever, or membership in the American Warehouse Association. Considering the number of firms engaged in the warehousing business in the United States, such a representation cannot be fairly said to be indicative of the entire industry.

Again, it might be taken into consideration that the larger membership, in point of numbers, which composed the nonmetropolitan warehouses, are inarticulate in hearings before the code authorities in Washington. These warehouses are not able, financially, to have a representative at such hearings, and as a consequence, their views are, to a great extent, submerged.

Fifth: The cost upon individual members of the trade for the enforcement of, and maintenance of the budget, as requested, is, in a great many cases, prohibitive. A conservative calculation on our part, would show that in the payment of our footage assessment the preparation of tariffs and supplements thereto, the answering of correspondence, and the preparation of statistics, charts, analysis of costs, etc., from the code authority, the attendance at divisional code meetings would cost us approximately $600 for the coming year. This for something that, in all probability, will not only prevent us from securing new business, but will drive some of our old business away from us.

We acknowledge the fine character, business acumen, and the good intentions of the gentlemen who have been responsible for the Warehouse Code, but from the standpoint of the submerged man trying to do business in one of the smaller communities, and with competition from two large Metropolitan centers in very close proximity to him, we cannot share the altruistic motives, nor concur in their idealistic opinions as to the enforcement of this code, or to the good results that will come to the industry from such attempted enforcement.

In conclusion, we utter our formal protest against any further continuance of such.

Sincerely yours,

YOUNGSTOWN-ERIE TERMINALS CO.,
P. F. ANDERSON,
Vice President and General Manager.

SECTION 1. As adopted by unanimous vote by representatives of the shippers, bankers, railway men, and warehousemen at a general conference, April 30, 1926, at the Department of Commerce, Washington, D. C., and endorsed October 30, 1926, by the Department of Commerce."

SEC. 2. (*a*) The standard contract terms and conditions designate each of the following as a separate and distinct warehousing service: Handling; providing special warehouse space; repairing or coopering; weighing; inspection; special

physical warehouse checking; compiling special stock statements; making collections of money in behalf of customer; furnishing revenue stamps; reporting marked weights or numbers; payment of freight charges in behalf of customer; shipping; storage; supplying material; sampling; repiling.

(b) Other separate and distinct warehousing services are: Drayage; providing office space; providing office service, special telephone service, invoicing for customers, etc.; providing extra labor; distribution of "pool cars."

(c) Not to name an adequate and separate rate or charge for each of the services listed in subsection (a) of this section 2 when making quotations, or not to assess an adequate rate or charge (whether or not there is an existing rate or charge) for each of the services listed in subsections (a) and (b) of this section 2 when performed, shall be deemed a violation of this code. * * * as determined by cost-accounting methods recognized in the trade and approved by the code authority, subject to the approval of the Administrator.

TESTIMONY OF BENJAMIN A. JAVITS, NEW YORK, N. Y.

(Having first been duly sworn, the witness testified as follows:)

Senator BLACK (presiding). Proceed, Mr. Javits.

Mr. JAVITS. I have prepared a short statement and will take just about 15 minutes.

Senator BLACK. Since there is only one member of the committee here I think you would accomplish the same result if you put it in the record.

Mr. JAVITS. I would rather read it and then get some questions from you.

Senator BLACK. You may read it. I do not know about the questions.

Mr. JAVITS. The N. R. A. if it is to be successful must be consistent with our form of government. To be consistent with our form of government it must become, if it is to be continued, an industrial court where the constructive problems of industry will properly be dealt with on the part of government in the only place where industry and government should meet, and that is in the judicial branch. Any other relationship breeds trouble for government and stops progress in industry. In my opinion no N. R. A. or N. I. R. A. was ever necessary.

An intelligent Attorney General in charge of the antitrust division could have done a far better job than was done by N. R. A. and could have eliminated child labor, given the full benefits of collective bargaining to labor in a more satisfactory form than 7 (a) has developed, set minimum wages and maximum hours and could have accomplished all of the other supposed benefits of N. I. R. A. The industrial control plan without any N. R. A. is outlined in a memorandum which I submitted to Donald Richberg some months ago and it briefly reads as follows [reading]:

MEMORANDUM ON PLAN FOR INDUSTRIAL RECOVERY VIA SELF-REGULATION BY INDUSTRY UNDER JUDICIAL SANCTIONS, WITH ELIMINATION OF GOVERNMENT SUPERVISION TENDING TOWARD BUREAUCRACY

The plan provides for the organization of industry along trade association lines for the purpose of fostering the economic rights of every division of the economic process, and every individual therein. It rests on the well-established right of industry to enter into contracts in the public interest. It is predicated on the assumption that both business units and individuals are entitled to the opportunity to live and prosper in return for discharging their responsibility to their fellows. Because the plan considers the industrial rights of all members of society, it proposes a necessary and practical basis for the economic development of the

country whether the present National Industrial Recovery Act remains on the books in its present or amended form, or is allowed to lapse.

Point 1: Agreements in promotion of or in restraint of trade which are in the public interest or are not against the public interest have been approved by the United States Supreme Court since 1911.

Beginning with the *Standard Oil case* and thereafter in the *Window Glass case*, the *U. S. Steel case*, the *International Harvester case*, the *United Shoe Machinery case*, the *Maple Flooring and Cement cases*, the *Appalachian Coal case* and the *New York State Milk case*, the Supreme Court has consistently supported the above doctrine. This policy on the part of the Supreme Court becomes clearer when one studies the cases which on the surface are opposed to those just mentioned. These include the *Hardwood case*, the *Oklahoma Ice case*, the *Trenton Potteries case* and similar ones.

Point 2: National Industrial Recovery Act is a sound declaration of the policy of the Nation at the present time, but its administration is wholly or in part a responsibility of both the Attorney General and the Federal Trade Commission.

The Attorney General is the officer of the Nation empowered to pass upon agreements concerning trade to see whether they violate the antitrust laws. It is also his duty to keep in touch with the economy of the Nation to see that where agreements of this character are in force, they are not violated. The policy of the National Industrial Recovery Act, however, as laid down by Congress is a direction to the Attorney General and the Federal Trade Commission of a change in the economic policy of the country. Congress in effect declared in this statute that the price structure of an industry shall not be permitted by any recalcitrant minority or any individual to go below a point which under ordinary circumstances would fail to show a fair return. This was to eliminate cut-throat competition which purposed merely to put a competitor out of business, and hence his employees out of jobs.

Point 3: Self-government of industry as a national policy is legal and practical only if industry itself prepares and subscribes to binding agreements in the public interest which are approved by a court of law.

Leadership to inaugurate self-government of industry must be exercised by the Government in the person of the President since industry itself does not understand its own responsibility for the welfare of the Nation and does not realize that it must have a definite philosophy of its own course and its own objective, and since it has no representative endowed with the confidence of the country as is its political Chief Executive. Our objective is undoubtedly toward some form of planned economy.

Industry should submit agreements which will entitle it to self-regulation and self-government provided that the following obligations are assumed by it:

A. Not to sell below a price which will endanger our economy of abundance. This may be accomplished by arbitrarily fixing a base price where the accounting methods of an industry are not such as to permit accurate price finding or until a uniform cost-accounting system is developed.

B. To set aside a substantial percentage of its profits to be distributed among its employees earning below $5,000 per annum so that buying power may be constantly on the increase and in recognition that wages alone do not keep pace with modern requirements for constantly higher mass purchasing power.

C. To provide unemployment insurance, pensions, sickness and death benefits and any other provisions which will give economic security to the employable population.

D. To pay to the association of the industry a percentage of gross income to be used for standardization, simplification, research or any other improvement which will lower price, improve product and therefore widen the market and lower the price.

E. To be responsible for a certain part of the employable population of the Nation, and either to see that they are employed or to carry them as a part of the cost of the industry. (This may not be immediately practicable but must be assumed as an ultimate obligation.)

F. To treat with labor as a part of the management of the industry and not as a "commodity". (The General Motors plan provides some constructive suggestion along this line.)

G. To set up a board or boards in the industry itself, giving such representation as may be necessary to groups like labor, the consumers, other branches of the industry and government, which will best effectuate the agreement set forth here in its broadest outline. This board would determine and define fair and unfair trade practices with the approval of the courts.

Under this plan the courts should determine in individual cases what percentage of an industry would be qualified to determine the provisions of the various agreements to apply to the industry, it being expected that 60 percent or more would be required.

Point 4: The Attorney General should institute proceedings in courts of law to determine promptly the legality of such agreements.

The approval by the courts of agreements drawn along these lines under the procedure followed by the Attorney General in the *Remington Cash Register and National Cash Register case*, in the *Standard Oil Co. of New York and Vacuum Oil Co. case*, and the *Appalachian Coal case*, would quickly instill that confidence in our economy so essential to recovery.

Under the recent amendment to the United States Judicial Code (H. R. 4337, approved June 14, 1934) industry and the Attorney General were given a simpler and quicker method for determining court approval of the plans of business through the declaratory judgment. The statute reads as follows:

"(1) In cases of actual controversy the courts of the United States shall have power upon petition, declaration, complaint, and other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

"(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

"(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not."

Implicit in the plan would be provision by the Government, upon request of industry and/or the Attorney General, for speeding of court decisions and lessening the cost of judicial procedure.

It is submitted that such of these principles as might not have been valid prior to about 1912 will be practical today because of the changed behaviour of economic factors under the changed conditions brought about by machinery and electricity operating on the mass production principle. Our economy has shifted from a condition in which it was of paramount importance to the national welfare that the buyers' interest be protected to one wherein it is of equal or even greater importance that the sellers' interest be safeguarded.

This economy of abundance can be inaugurated only as each owner of goods or labor power is assured of getting a price for it showing a constantly higher return even though the actual price may actually go down. That is the paradox of an economy of abundance as yet not generally understood.

The character of all our legal thinking affecting commerce has heretofore been to protect the buyer. In our present sellers' civilization we must change our approach to problems of industrial and business rights in recognition of the fact that the rights of the seller must be protected, though without damage to the buyer.

By recognizing the natural economic demands of all divisions of the industrial process the plan here outlined provides for a basis for self-government in industry that—

1. Assures that government and industry can work together because industry will rely on judicial sanction which makes it independent of bureaucratic tendencies in government.
2. Gives industry full power of civil and equity enforcement.
3. Makes every business man a guardian of his code contract.
4. Separates policies of civil government from economic requirements of the Nation, and eliminates all danger of dictatorship.
5. Gives industry a dominant voice in the formation of the economic policy of the nation.
6. Relieves government, and therefore the country, of assuming burdens for permanent relief of the population.
7. Provides the only dependable way for the country to balance the budget and establish a stable financial policy.
8. Separates industry and the state and at the same time ties them together in the service of the people.

In view of the fact, however, that the American public is politically minded in that for every trouble it believes some new law should be passed, I shall also submit within a day or two a rough idea of a statute to replace N. I. R. A. or as an amendment to N. I. R. A., which would combine the functions of the Federal Trade Commission insofar as the Federal Trade Commission acts as a judicial body on matter affecting fair competition with those of the present N. R. A. My proposed legislation provides that the new court act somewhat in the same manner as the Board of Tax Appeals does when it sits as a special court to hear and determine tax cases before they are heard and determined by our regular courts of law. Briefly, my proposed statute provides as follows:

The formation of the Federal Industrial Court which shall be a judicial tribunal and which shall review all codes of fair competition. There shall be 9 such courts, 1 for each Federal district. Each court shall be composed of 3 members—1 who must be a lawyer, and 2 others who may be chosen from the ranks of labor, industry, the professions or an economist. All of them should be chosen because of their experience in industry. There should be three appeals courts, each composed of three lawyers, and from these appeals courts, appeals should be taken directly to the Supreme Court of the United States.

The Federal Industrial Court, however, shall not be able to amend or terminate a code unless 65 percent of the members of the industry agree to such changes. If the industry has no code or if 65 percent of the industry cannot agree on a code or a provision for a code the Federal Industrial Court may write the code or the sections of the code upon application by any member of the trade or industry.

In the proposed act the Federal Industrial Court is given a great many of the duties provided for in the Federal Trade Commission Act and in the National Industrial Recovery Act except that industry is permitted the broadest powers of self-government.

The Federal Industrial Court shall be a court of limited jurisdiction, but it nevertheless shall be a court of record. It shall be principally a fact-finding body. The principle of a fair return to industry where industry can be shown to be vested with a public interest should be the guiding principle of this court. This industrial tribunal should conduct its proceedings not in the heat and temper amidst a clashing of interest, which characterizes a great many of the proceedings under N. R. A., but with a dignity and with a restraint which makes our Federal courts so noteworthy and such models of how courts of law should be conducted. The act incorporates 7 (a), with the understanding that 7 (a), in itself, must still be passed upon finally by the courts of the land.

Under either of these programs industry would enforce its own rules and regulations and bring into line recalcitrants that were adversely affecting the economy. The procedure of the new courts under my legislative proposals would be simplified and available on informal notice to everyone. Under the proposed law agreements in the public interest would exempt people from the operation of the antitrust laws and there would be no limit placed upon the powers of industry just so long as the public interest was protected. This it would be the duty of the Federal Industrial Court to see done.

With respect to the N. I. R. A. I talked with General Johnson when I helped to some extent to draw the act and pointed out to him

how there was no possible hope of getting a full measure of recovery unless the hand of bureaucracy was never permitted to get to the surface. The N. R. A. as it stands today is admittedly a bureaucracy. This is not to be blamed upon anyone in particular as it was a natural outgrowth of the vast powers vested in a bureau without tradition or previous experience. General Johnson prefers to take the blame, because he permitted the development of conflicting groups within N. R. A. that made those who administered N. I. R. A. lose sight of the large aspects of the recovery act and so involved the administrators in the minute problems of day-to-day administration as to make of N. R. A. a place where industrial conflict was exaggerated and intensified instead of a place where coordination and cooperation by all was to be the rule. I believe the mistake was in thinking that industry could be run by adopting the principle of the town meeting, which may be all right for political democracy but will not work presently in industry.

The Federal Industrial Court could properly do a great deal in solving the problems of overlapping codes. We would do away with the great problem of executive orders in National Recovery Administration that have not the force of law and the exceptions to which are not matters of public record, or are of such public record as to be unavailable to the average lawyer.

The proposed legislation would make of National Recovery Administration what it was designed to be in the first place, and that is an umpire between the various conflicting groups in various industries. The act would undoubtedly result in bringing together the various members of code authorities into an organization representing industry instead of discouraging the formation of such an organization as is the present policy and which has resulted in industry having no leadership and no united voice except that of the United States Chamber of Commerce which is admittedly not sufficiently representative, and of the National Association of Manufacturers which is also not sufficiently representative.

I realize that I have not touched upon many of the present questions which the National Recovery Administration has placed in bold type before us. For instance, the right to assess all members of an industry, the right of enforcement of a code as against nonassenters or as against a minority the right of a predominating majority to virtually put people out of business, the right to establish price and production regulation in varying degrees, to these and a number of other questions my answer is that the industrial statesmanship which at the present moment can best be developed by the kind of a court I suggest, is needed in order to solve these questions and that such industrial statesmanship will be sustained by our higher courts even if the decisions might clash with our present ideas of the right to conduct our economic interest as did our grandfathers. I believe that every man and woman and even child must now admit that our economic order has changed and that the economic interests which should be considered as a private right, nevertheless are subject to broad ideas of statesmanship which must find their place in our economy as they already have a well-established place in our politics.

The questions above referred to, which I have not been able to touch on here, will be dealt with in the statute which is being drafted by my firm, Javits & Javits, of New York City. We have had a great deal of experience as counsel to code authorities and associa-

tion groups in trade and industry with the practical problems raised by the National Industrial Recovery Act itself and its administration, and we are proposing to meet these problems in the draft statute realistically yet with a recognition of the economics of today in which they must be solved. As stated before, I hope to present this statute to you in a few days.

Senator BLACK. Very well; thank you.

TESTIMONY OF WILLIAM H. INGERSOLL, ATTORNEY, NEW YORK, N. Y.

(Having first been duly sworn, testified as follows:)

Senator BLACK. Because of the very small number of the committee here, can you finish in 5 or 10 minutes?

Mr. INGERSOLL. I will make it very brief.

Senator BLACK. We asked you to prepare a written statement. You may make a short presentation now and then put your written statement in the record.

Mr. INGERSOLL. My concern in this situation is for the continuance of the National Recovery Administration. I have a profound conviction that the scheme in its main ideas is not only an excellent one, but a very necessary one unless we are going to have a tremendous change in our social and economic situation. I am particularly interested in the distribution side of business.

Senator BLACK. What is your business?

Mr. INGERSOLL. I am a member of the firm of Ingersoll & Norvell, sales consultants and advisers, but my principal business experience was in the manufacture and distribution of dollar watches. I became well acquainted with the problems of the distribution field, the merchant, at that time.

When I hear the proceedings as you had them this morning, it seems to me there is an undue emphasis on the gigantic corporations that you are very much concerned about regulating, but I would ask you to let your minds sweep across the country to Wisconsin, to Alabama, to Michigan, where I came from, to all of the sections of this country where the towns and cities are made up of main streets, composed of ordinary little business men. Those are the men in whom I am interested and for whom I am concerned and in whose behalf I think the National Recovery Administration is essential unless they are going to be wiped out.

I have prepared a chart here which I can show you in an instant to give you an idea about whom I have in mind. I think the National Recovery Administration is the only protection we have had to curb the tendency that has been so rapid.

This full circle [indicating] represents the entire retail distribution of the country, which in 1929 was about a billion dollars a week. At the close of the war, practically all of this business was in the hands of the independent merchants. Up until 1924, about 14 percent of all of the business had been concentrated into chain store business. From 1924 to 1929, 7 percent more was concentrated, so that we had about 21 percent, and since 1929, there has been about 5 percent more. This is sweeping around and eliminating the small man who numerically constitutes the bulk of American business.

I believe that unless the provision to permit the small man to secure such protection as they can, unless they can get that through the code

regulations, there is no way of stopping the continuance of that tendency that I have just disclosed in the chart.

There are so many thoughts that ought to be brought out in that connection, and in the pressure of time that you have, that I hardly believe, Mr. Chairman, that it is worth attempting to go on, although I am intensely interested and feel that unless you are going to change the character of every town and village and eliminate the independent man you must take the business people in and allow them to have a voice in setting up and controlling the conditions under which they are going to operate. I believe you have done, in the passage of the National Industrial Recovery Act, something that should have been done long before, the absence of which was largely responsible for the trouble we got into and are still in, and that you in effect made a beginning in professionalizing business.

I have been impressed by the preceding speaker and by others this morning with the fact that business was not prepared. They had never had associations that could do anything. The short experience that we have had has not permitted them to accomplish what was implied in the N. I. R. A. You have commenced a great educational work. Most of the Members of Congress are professional men. They were not permitted to enter their profession without a training, they were not permitted to practice without satisfying an authority of their qualifications to practice. They have inherited centuries of accumulated and systematized and organized knowledge, they have a tradition and a system of ethics which govern. The ethics, I know, have silly phases and selfish phases, but that will always obtain in human affairs. Nevertheless, they are a bulwark, and you have commenced something that begins to give business the status of a profession in this sense, that there is a zone between what you can cover in a general law such as the Federal Trade Commission Act, the Clayton Act, and the things that have been left to the individual and still others which must always be left to the individual to be controlled himself. There is a zone in between there that is analogous to the zone that is taken care of in the legal profession by the bar association and in the medical profession through their associations. All of the professions have them.

There is no way to legislate and educate and train this body of business men overnight. No act of Congress can accomplish that, but the amount of education that has now gone on under the National Recovery Administration is bringing a social appreciation and a sense of responsibility, to the business community, and if the act is allowed to continue and the preponderance of responsible business men are allowed to set the standards, you will have an accumulating body of regulations which are analogous to that in-between zone that in the professions is covered through their professional associations and their bar committees, and so forth.

There is one other thought I might leave with you in this respect. The fact that we business men had no such preparation as you professional men had—there was no place to get it. Perhaps you are familiar with the reminder that is over the entrance to the Harvard School of Business Administration, where they say that "Business is the oldest of the arts but the newest of the sciences."

We suffer from a series of abuses in the business world, part of them deliberate part of them predatory on the part of the powerful interests,

part of them ignorance due to their lack of preparation and the unsoundness of the knowledge of those who are operating. If you consider the matter, if you would be realistic and look at the situation and realize that a majority of the business men have not even a set of books that gave them the information on which they can know their costs, you will find why it is necessary to leave to the responsible majority the establishment of these intermediate regulations that cannot be covered in such an act as the Clayton Act, and yet must not be left to the individual caprice and notion, you will realize why that must be done or else we will have just what we have had going on and as pictured in this chart.

Therefore, Mr. Chairman, I plead for the continuance of the National Recovery Administration in its substantially present form. I believe that you drafted the act originally about as well as you will ever do it, that it contains no major defects, that the defects, the disappointments that we have had have arisen from two things.

In the first place, it was impossible to get both the competent business administration coupled with the social appreciation that has to go with the thing, and secondly, the business community was not prepared to fulfill the obligation that was expected, but it never will be unless you let us go on trying and get the experience and try and develop. Then we shall have a business which will be comparable in a sense to the professions.

Senator LA FOLLETTE. I got the impression from your statement that you thought that the N. R. A. had been helpful in checking the absorption of retail distribution by the so-called "chain organizations"?

Mr. INGERSOLL. I think it has.

Senator LA FOLLETTE. In what respects? In what ways has that been done?

Mr. INGERSOLL. If you look at the abuses which were rampant and are still to some extent, because the thing could not be cured in so short a time, you discovered that we had unfair price discrimination between customers amounting to subsidies in favor of the big buyers, out of all proportion to any economies or savings. You see, it comes to this, that when a distributing chain organization or any other organization gets control of a market, that manufacturers cannot gain entry there except they make terms with that distribution outfit, then the pressure is put on them to drive down prices, and drive down prices. It has to come out of wages and purchasing power.

For one thing, the N. R. A. put a bottom to how far that could be done.

Then, all of the different trade associations, and when I say all of them, that is too sweeping, but many of them that put provisions in their codes which limited the amount of favoritism and subsidy which could be granted to these tremendous buyers, and has put the small man on an approximately fair competitive basis, so that all the way through the allowances, the different forms of favors have been curbed which never could have been covered in any general legislation and would have to be left to codes, just as Mr. Choate this morning described how he did not think a bill could be drafted that would enable the Treasury to do the work that his bureau is doing. You could not possibly make a general act that will cover the ground, that will run all the way from powder puffs to locomotives.

The chances for abuse differ so much in the different industries that you must make provision to allow the industries to formulate

their regulations, the men in the industries who know the conditions, who know the abuses and who are there and who feel any violations that occur. The first notice of violation in the field comes to a competitor. He is the one that goes to the code authority and gets the matter straightened out.

Therefore, Senator, I believe that through the curbing of these favors to the big ones, which has run through very generally the majority of the codes, has been a decided help. You have only to go—I have done this myself before I came here—I have consulted the booksellers, the druggists, the tobacconists, the jewelers. You find this invariably, that the small people feel that there has been a stability put underneath them. They know that there is some protection that puts a limit to the amount of discrimination that can be put against them because they are not big, and it gives them a sense of spirit and a confidence to go on which they never have had for some years.

There has been, in my judgment, omissions, particularly one—was it Senator Owen spoke this morning?

Senator BLACK. Senator Owen, yes.

Mr. INGERSOLL. He referred to the loss leader abuse, which was one of the chief causes of the concentration that I pointed out to you; the misuse by the big organization of the standard, well-known article as a bait to draw trade.

The Federal Trade Commission inquiry for the Senate into the chain-store situation disclosed that those organizations do some 20 or 21 or 22 percent of their business at a loss, for the purpose of bringing in suckers, of deceiving people. I believe that the N. R. A. administration erred in failing to face that in the Retail Code, but I look upon that as a minor omission which can be corrected as time goes on, and I know that under the act it could be corrected if the administration wanted it to be and could be convinced of its advisability.

I would say this in conclusion, Mr. Chairman, that there has been a great deal of criticism and complaint on the so-called "price fixing" in the codes. I myself am firmly convinced that it was utterly wrong in principle—the matter of price fixing. I am not nearly so indignant about it however as I am about abuses which caused the price fixing to be attempted, the loss leader and all of the other things, but when business first had its privilege of trying to do these things, and in the unorganized and illy prepared condition and state in which they had to meet this sudden opportunity, the first thing they tried to do was to curb these abuses by the means that came to their minds, and the efforts to regulate the price cutting was one of them. But almost all of them would be quite content not to have any general price fixing and not to have any agreements among themselves, among those who are competing, although that only puts them now on a footing with the chains. The chain stores may have a thousand stores and they have no need for any agreements. They can impose their prices, the same prices in all of their stores without any question, and nobody thinks there is any impropriety about it. A thousand little retailers competing with them have been forbidden from doing such a thing.

I still think that it is not a sound practice, that price fixing among competitors is negation of the principle of economic individualism.

At the same time, the reason that that was so generally sought for was this abuse of the standard well-known articles, and if Congress would only face that one issue, you would find all of those trade associations perfectly willing to dispense with general price fixing if you would permit them to have some arrangement that would forbid this loss-leader abuse on the standard merchandise.

I thank you, Mr. Chairman, and I will submit a statement.

Senator LA FOLLETTE. If you submit your statement, you understand that you are at liberty to enlarge on any of these points that you have covered and to cover anything that you have not covered.

Mr. INGERSOLL. Yes, sir; I assumed that I could.

The CHAIRMAN. You can send it down at any time.

(Mr. Ingersoll subsequently submitted the following statement:)

SUPPLEMENTARY STATEMENT OF WILLIAM H. INGERSOLL

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

Mr. CHAIRMAN: The results of the Recovery Act have fallen short of hopes and possibilities. You did your part well in formulating and passing the act. The measure itself was all right in principle and for the most part in its terms. It has fallen short of expectations because (1) we business men were inexperienced in self-government by industries and fell into some grievous errors; and (2) the administration of the act has not measured up to the concept which prompted its drafting and adoption. Its application has not been realistically adopted to actual conditions. But the greatest mistake of all would be for you to conclude that because there is reason for disappointment in this short trial that all is lost and that the effort should be abandoned in its entirety. That would plunge us back into the quicksands upon which it would be disheartening to build recovery.

In those dark days of early 1933 when the Recovery Act was born, conditions stood out in such stark nakedness that we could not miss some of the causes which led to our collapse. Our situation was so desperate that things simply had to be done overnight which ought to have been done gradually long before, and the omission of which permitted an accumulation of burdens that finally broke our backs. The National Industrial Recovery Act was one of the fruits of those difficult days. It was plucked a bit green and hasn't had time to ripen yet.

To understand what the National Industrial Recovery Act could have done, we must think again of the conditions it was designed to cure. I shall list some of the abuses in a moment. It will beg the question to say, as some of you do, that minimum wage rates and maximum hours of labor measured the limits of its usefulness and need. We must not yield to the impulse to throw up our hands in confusion simply because the subject is intricate.

Over the entrance to the Harvard School of Business Administration we are reminded that business is the oldest of the arts and the youngest of the sciences. We business men had to come to our duties without adequate preparation. Our practices have been full of faults and abuses. Our calling lacks formulated tradition, knowledge, and ethics. Most of you in the Senate come from the professions such as the law or medicine. You were heirs to an historic body of organized knowledge in which you received a systematic training. Coupled with that, your profession has a prescribed system of ethics as a guide to its practitioners. Overlooking that these ethics are marred in some degree by silliness and selfishness, as all human institutions must be, they nevertheless stand as a bulwark of decency and fairness. You cast out members who transgress their tenets. They are a protection to those within the profession, to clients, and to society as a whole. They are your "codes." Without them what would the professions have become? Why expect more of business with its ramifications and opportunities for trade-practice abuses?

In the depth of the depression it became vividly real that there was no hope for business to recover without breaking the stranglehold of the evils of excessive competition. Demoralization had reached a point where goods would not bring their costs. Trade involved loss. Lawyers will not work without retainers or fees. Labor will not work without wages. How can business be expected to carry on and furnish employment without prospect of remuneration? I refer to ordinary business and to reasonable remuneration, not to overgrown quasi-

monopolies or unearned compensation. The latter helped to bring on our general break-down and they thrive on unregulated conditions.

Let us list a few of the typical malpractices infesting nearly every branch of trade and industry to remind ourselves of the evils the Recovery Act aimed to remedy. The business man who sees the situation from the inside knows that the most insidiously far-reaching abuses are not those which sound the worst to the consumer and professional man. But consider these forms of chiseling which were rampant when you passed the National Industrial Recovery Act:

Unfair price discrimination between customers amounting to subsidies to favored buyers. Rebates or discounts with no adequate consideration received in return, favoring some customers over others, reminiscent of and akin in effect to the secret freight rebates which fostered the old oil and steel monopolies and threatening the continuance of the ordinary-sized enterprise.

"Allowances" for "advertising" or other ostensible considerations not actually expected to be fulfilled, granted to some customers, unknown to others.

Favors to some over others in terms of settlement, delivery or other particulars.

Spurious classification of merchandise as "discontinued" patterns or "seconds" and false billing to disguise unethical, discriminatory transactions.

"Loans", gifts, and "sure thing" wagers to conceal improper inducements to buyers.

Exaggeration, misrepresentation, and false claims in sales and advertising; defamation to discredit competitor's products.

Price cutting; selling at a loss; "loss-leader" sales on well-known articles to deceive the unwary into supposing that similar values prevail on all the advertiser's other merchandise.

These are conscious and intentional departures from straight dealing which with their elusive diversifications cannot be reached by general legislation like the Clayton Act. Twenty years of the Federal Trade Commission shows the insufficiency of a general unfair trade act. Such a list of subversive practices with all the variations that are rung on them according to the nature of the different fields of industry and commerce, suggest only some of the commoner devices deliberately resorted to in the scramble for business when competition is unbridled. The harder it is to get business, the more prevalent the trickery becomes.

But business suffers not only from deliberate transgressions. Men cannot enter law, medicine or engineering without demonstrating their qualifications to practice competently. Business is not so safeguarded. Without experience or training anyone can enter and "practice" business. Constantly a whole industry or a commercial community has been subjected to the competition of some who operated without even a set of books. In the absence of reliable accounting information or a knowledge of costs or operating expenses they do reckless things. Capably conducted enterprises must meet the prices, terms, and other inducements of inexperienced, ignorant, captious, lawless or predatory operators who were without accountability to any authoritative tribunal. We had no bar association or its equivalent before which to bring offenders against business decency, or sanity, until you gave us our code authorities.

It is no answer to say that the incompetent will fail and the fit survive. The newcomers are endless and their irresponsible actions menance all who must meet them in the business arena. In failing, they carry down with them many worthy enterprises which cannot survive the continuous racking.

It was under such conditions, accentuated by the tension of a terrifying depression and by productive facilities far outstripping our capacity to consume, that something had to be done. The competitive system without the ballast of ethical limitations or tests of ability to practice, had overstrained itself. Concentration and quasi-monopoly had grown apace. Prices had been driven down and down partly by the old familiar device of the big fellows who cut as a means of eliminating smaller competitors and partly by the reckless efforts of the uninformed and irresponsible incompetents who in their desperation to get business, took it upon any terms. The sound, wholesome majority found themselves ground between the upper and nether millstones. If they did business it was at a loss that would soon exhaust their resources. If they declined to trade on such terms it meant stagnation and unemployment. Thus the intensifying depression brought to its culmination a process that in ordinary times works so slowly that its effects are not plainly discernible. I am not offering this as the whole explanation of the economic disaster which overtook us but as one of its serious aspects. At any rate we had reached the brink of collapse. Something had to save us.

The Recovery Act was your contribution to this situation and it was a good one notwithstanding all the pontifical criticism of those who have never been in business and of some in business who have special axes to grind. Of course, we expected the impossible from this legislation and that was one of its handicaps, that it seemed to promise all things to all men. Business expected stimulation; labor expected higher wages, employment, and stronger organization; consumers expected purchasing power. I am dealing herein, gentlemen, primarily with the trade-practice provisions of the act which are of first interest to the business community. But if we can keep our sense and perspective until we get adequate administration, the act as a whole, with relatively minor modifications, will promote the general welfare.

Why was the passage of this act hailed with a universal approval never accorded any other act of Congress? Why were all classes of business men raised to unexampled heights of exaltation? Why, though warned that it was going to make living cost more, did the people welcome this prospect with such patriotic zeal that it became all but traiterous to patronize any who were not flying the "blue eagle"? Why from coast to coast did our cities express their ardor in parades amounting to a national celebration of a reprieve from impending disaster? It was not that we were insane then. But we had balanced on the edge of the precipice and were saved from going over. If it had done nothing more than give us courage to struggle on, the Recovery Act would have justified itself. But there was substance in it as well as inspiration. If only there had been the practical administrative wisdom, there was a situation to conjure with for the general good.

What the average, ordinary business man saw in the Recovery Act was the chance for the wholesome majority in his industry, to rescue it from the unsound and unfair "goings on" that had brought it to the verge of a breakdown. Business men threw their hats in the air because it seemed as though Congress finally had seen that business with its hundreds of industries and trades, each with its ramifications and peculiar abuses, required some protection analogous to that enjoyed by the professions with their standards of practice and their associations to enforce them. He thought, subconsciously, that Congress recognized the hopelessness of general legislation to meet the situation and saw that the single way to do it was to leave the corrective measures in the hands of the only body intimately enough acquainted with the conditions to deal with them effectively, the men actively comprising the industry. Thus he had a vision that, industry by industry, and trade by trade, the better element, the great responsible majority constituting the middle group, in each, would prescribe the standards governing the conduct of that whole industry or trade. He saw order and decency supplanting chaos and depredation.

It refreshed the business man to be treated as a trustworthy citizen, fit to have an influential voice in the conditions in which he was to carry on his activities instead of being lumped with the predatory big fellows and the little gyps as members of a plunder band. A wave of hope, pride, and encouragement swept through the ranks of business, and nothing would have been impossible if the administration had met this with the right leadership. Much, indeed, has been accomplished if we stop to think, but more has been tragically missed and morale lost.

But the great thing was that Congress recognized that there was a zone of conduct regulation between what could be covered by general legislation which a national legislature could frame to apply to all kinds of business as a whole and what had always been left to each individual business to settle as it pleased in its competitive practices, and that this zone could most wisely be left to collective business in each line to set the standards and enforce them as the professions had long done. To this extent and with only reasonable governmental supervision there was to be "self-government" in business.

Before telling why the scheme hasn't worked according to schedule, let us ask what the majority of moderate-sized businesses were most interested in curing among the abuses that were eating at their vitals. That will explain why the National Industrial Recovery Act was looked upon as a godsend.

If we examine the abuses cited above we find one recurring characteristic in a number of them—in prices, discounts, rebates, allowances, and other concessions given to some and not to others. Now when favors are being dispensed, they go to the big and powerful. The multitude of smaller businesses find themselves at a paralyzing disadvantage in trying to compete with those who enjoy inside benefits. Thus the great majority were dissatisfied with the way the few were enabled to pry larger and larger slices of the total business away from them.

This is not the place to stop and argue the merits or possible justification for the quantity prices and other allowances enjoyed by large buyers. The bald fact is that the vast majority of business men have small businesses and they felt themselves unjustly discriminated against. For years, in good times and bad, they had seen their fellows driven to the wall by the thousands. They had seen business become more and more concentrated in fewer and fewer hands and the units grow bigger and bigger. They attributed this to the system more than to efficiency. They were against the system and that is why, constituting a majority, they haled the National Industrial Recovery Act. They felt that a solution was being delivered into their hands, that the processes of democratic balance were being restored.

Senator Borah and Clarence Darrow to the contrary notwithstanding, the Recovery Act was an instrument by which majorities could protect themselves against the aggressions of minorities if administered in accordance with its concept. It was a protection to the mass of moderate-sized businesses against predatory or unsound competition. There are clear reasons why the scheme has not delivered what was hoped from it and these do not discredit the long-run soundness of the plan itself.

To begin with, the very terms of the recovery act presupposed a preparedness in the ranks of business to fulfill its purposes which did not exist and could not instantly be brought into being. The act stipulated that codes to be acceptable must be offered by associations that were "representative" of their industries nationally. Presumably this meant that the association memberships were to include a majority of the businesses in their line throughout the country. Few such organizations that came anywhere near such representative proportions in fact existed.

Business men had been forbidden under the Sherman Act to associate themselves together for some of the uppermost purposes that they were now suddenly expected to deal with. Trade associations were generally under suspicion. Many had been prosecuted and disbanded. They had never enjoyed any authority to enforce any principles they might adopt. Few of them carried on serious work. Business men commonly regarded them mainly as social adjuncts. Usually their dues were too low to support important activities. For the most part they were managed by secretaries who had had no responsible executive experience in the industry and whose main duties were to drum up membership, collect dues, arrange conventions, and perhaps publish bulletins or an association organ. There were important exceptions, but only rarely were these secretaries of the caliber for instance to direct adequately the activities of a code authority or command sufficient respect to discipline the industry or settle trade disputes.

In such circumstances there was no way at once to get the men in each line from all over the country into their appropriate associations and to select the most competent officers. These men were not accustomed to getting together on important matters. Their constitutions, and bylaws were not designed to permit orderly and discriminating treatment of questions vital to their industries and touched with an element of public interest. The members had been prevented legally from getting experience in such affairs. Hence, when the emergency called for preparedness our previous public policy precluded finding them ready to exercise their new powers and duties as judiciously as conditions needed.

If those administering the National Industrial Recovery Act had been practical as well as social-minded men with an appreciation of these realities they would not have attempted to jam through their program so shortly expecting impossible results. The wonder is that we have fared as well as we have. And since men learn best by doing, the National Recovery Act has compelled education in an area where formerly it was forbidden. The short life of the National Recovery Act has not permitted the improvement in understanding and method that will come with a little further experience.

If we persevere in preserving and developing the National Industrial Recovery Act and its administrative agencies, we shall regenerate our whole body of business men. Out of the struggle of perfecting and administering their codes, the members of each industry will be brought face to face with the issues which mean the health of their trades and of the whole fabric of society. They will be compelled to learn how to keep track of the essentials of their affairs in such a manner that they will come to a new realization of their responsibilities.

The educative process of considering and revising code regulations and operating under them will build a morale which will lead business men to discountenance the practices and abuses which may give to individuals a momentary advantage at the general expense of the whole body. A patient, determined continuance of the National Recovery Act will cultivate for society a more expert, efficient, and service-minded rank and file in the business world such as social students think we ought to have but which we have never previously provided to foster.

Then our merchants and manufacturers will generally have the attitude toward their callings which only the exceptional ones now have but which professional men have long entertained toward their professions. Their codes will become their ethical standards and their code authorities their "bar committees".

The most criticized feature of the present codes has been the so-called "price-fixing provisions". These were the first efforts of the suffering groups to rid themselves of the most oppressive abuses. Those who have been most vehement among business men in condemning these efforts at relief, are for the most part certain large department and chain store representatives who profited most by practicing the abuses. Under jungle law the lions are safe and these lions of trade have prospered at the expense of those less strong. They have fattened on inside prices and other favors which they have wrung from manufacturers. They resent the reduction or withdrawal of these advantages which they formerly enjoyed by force but were not earned in the main and which have been modified by many of the manufacturers' codes. This has caused a feeling among them against the National Recovery Administration and their opposition has taken the form of using the so-called "price-fixing clauses" of the codes as a target.

These price-fixing provisions, amounting to broad agreements among competitors, are inconsistent with the competitive system on which our business structure rests. They were resorted to, in reality, to put a stop to the "loss-leader" abuses in which the large retailers have been the leading offenders. This abuse of selling well-known articles in popular demand at cut prices as a bait to draw trade and spread the impression of similar value-giving on unidentified articles has been one of the principal devices for exterminating the smaller dealers and concentrating trade in the hands of the predatory operators. It was at this specific abuse that the general price clauses of the codes were clumsily aimed.

Had the Recovery Administration sanctioned agreements between manufacturers of standard articles and the dealers who distribute their goods stipulating the prices at which they were to be resold, these code provisions would not have been demanded. Most of the trade associations could gladly dispense with the code provisions if the new National Industrial Recovery Act offers a better solution of the loss-leader evil as it can and ought to do.

STATEMENT OF E. S. McCAWLEY, HAVERFORD, PA., PRESIDENT AMERICAN BOOKSELLERS' ASSOCIATION

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

Senator BLACK. You are connected with the American Booksellers' Association?

Mr. McCAWLEY. Yes, sir.

Senator BLACK. And you desire to make a statement?

Mr. McCAWLEY. Yes, sir.

Senator BLACK. Proceed.

Mr. McCAWLEY. I am appearing before this committee not only as president of the American Booksellers' Association, but also as a small and independent bookseller. I have requested permission to appear before your committee to speak for our industry in favor of the continuance for a further period of the N. R. A. code under which we are now operating.

This code, known as "schedule B" of the General Retail Code applying to the booksellers' division of the retail trade, has been effective since April 13, 1934. The adoption of this code signalized a victory for the independent booksellers who for some 30 years had

waged an unsuccessful struggle against the use of books as loss leaders by certain department stores and other price-cutting agencies.

Books had demonstrated their qualifications as ideal merchandise to use as loss leaders. They sold at a list price, set by the publishers, widely publicized through advertising, through catalogs, special lists, distributed by the retail trade, through official compilations such as the United States catalog and cumulative index, used generally by bookstores and public libraries, including the Library of Congress.

There is no possibility of differentiation between the book sold at the published price of $2 and the cut price copy, sold at $1.39. They are identical merchandise, two identical copies of the same edition. But the faulty influence in the mind of the customer is that the store offering the book at the lower price, by virtue of demonstrating this tangible saving, must offer equal savings on other merchandise. There is no general realization of the fact that the book is deliberately sold at a loss to create that impression. Furthermore, the type of customer tempted into a cut-price department store to purchase a book is exactly the sort of customer the store wishes to attract as a potential customer for other merchandise on which the stores does not take a loss.

The practice of selling books at a loss was so wide-spread, radiating from a group of New York department stores in the heart of the publishing center of the country, that the very existence of numerous independent bookstores throughout the country was seriously jeopardized. The problem was not simply a New York, or even a metropolitan problem. I experienced exactly the sort of cut-price competition in a suburban community outside of Philadelphia.

Destructive price cutting and the use of books as loss leaders not only jeopardized the chance of staying in business for many bookstores, but also threatened the wages and employment of many employees in such bookselling establishments, as might be able to survive.

In the last few weeks of 1933 a few large department stores with national influence on merchandising practices were engaged in the "battle of the books", with large advertising space to persuade the public that they held the secret of how to sell books at less than invoice cost.

These were the circumstances that led to the inclusion of the price provisions in our schedule, and possibly we have the paradox of N. R. A. in our code in which there is a price provision, but which has worked with a minimum amount of oiling and the maximum amount of happiness to those people who are selling the product.

Senator BLACK. What is that provision?

Mr. MCCAWLEY. I will go on to that, Senator.

The following provisions supersede the provisions of article VIII of the Retail Code, except as hereinafter specified, as to the sale of books:

(a) Except as hereinafter specified, no bookseller shall sell or offer for sale any copy or edition of any book during the first 6 months after the publication date thereof, or if published before July 1 in any year, at a price lower than the publisher's published price thereof.

(b) At any time after publication date than the time specified above, no bookseller shall sell or offer for sale any copy or edition of any book at a lower price than provided in the preamble and paragraph 1 of section 1 of article VIII of the Retail Code and any amendments thereto.

This is followed by certain exemptions covering books sold at clearance, second-hand books, sales of books to public libraries, State reading circles, and other public agencies, and sales governed by State laws and contracts with a State or subdivision thereof, and so forth.

It is estimated that numerically less than 5 percent of all titles in print are covered by the price provisions of the schedule, and that even those are excluded from these price provisions within a maximum period of 1 year from publication date, and many of them only 6 months after publication.

Many of the statements which I am here presenting have been previously presented in a brief prepared for the N. R. A. hearing held here in Washington in January, by members of our executive committees. They adequately sum up the concensus of opinion on the part of the majority of small independent booksellers throughout the country. In my double function as president of the A. B. A. and as a small independent bookseller, I subscribe to them heartily and feel that they constitute our most cogent arguments for the continuance of our code.

I should like to point out that the reading of books covered by our schedule is available to the consumer in a variety of ways and at prices varying from nothing to the publisher's published price:

1. Many—certainly the more important—are available in public libraries at no cost to the consumer.

2. Many are first published as magazine first serials. A few are even first published as newspaper serials before publication in book form.

3. The more popular are available in thousands of rental libraries at a reading price of a few cents a day.

4. Still others are published as second serials in magazines or newspapers after book publication, and lastly there is the grand way of borrowing it from a friend and not returning it.

Senator BLACK. Has that increased any since you put on these price schedules?

Mr. MCCAWLEY. Borrowing from friends?

Senator BLACK. Yes.

Mr. MCCAWLEY. I don't know. My friends borrowed my books and do not bring them back.

Senator BLACK. Are there any statistics to show that has increased any since the price was fixed?

Mr. MCCAWLEY. No, sir; I do not think that was increased any more than formerly. That always goes on.

Another provision in the schedule to which we should like to call the special attention of your committee is the Administrator's price-control committee, a committee appointed by the Administrator himself. Upon demand of the Administrator or any member of the committee, the committee shall investigate and report to the Administrator any claim of unwarranted increase in the publisher's list prices or decreases in discount to booksellers. If such have been made, the Administrator may suspend the price provisions of this schedule on the sale of the book or books in question. This provision properly protects the consumer from unwarranted price increases.

There is a very marked difference between price fixing and the price provisions of our code. Price fixing would mean that all books of the

same size cost the same amount and, in other words, the book that had 200 pages would be $2 and the book with 300 pages would be $3, and so forth, or a book of certain lineal dimensions would be at a price and a larger one at a greater price. But there is nothing in our code or the Trade Book Publishers Code which stipulates at what price a book shall be published. The publisher is at complete liberty to publish a book at any retail price he chooses—a novel, for instance, at 15 cents or $10; but having designated that price, and widely publicized that price, common justice to the retailer and the consumer demands that destructive price cutters shall not make of the book so priced a loss leader with which to oppress small enterprises or to discriminate against them. The Federal Government years ago adopted that policy on the sale of its own publications and strictly prohibited any cut price on publications issued by the Department of Documents.

I walked through Gimbels in New York yesterday afternoon, and on the table there were many books at reduced prices, quite legally reduced, and there was also a very large and active stamp department. The only things that they were not cutting prices on were Mr. Farley's stamps. They cannot do that.

Senator BLACK. They have to pay just as much as anybody else.

Mr. MCCAWLEY. They can go right over here to the table and buy them at their face value and sell them at a 20 or 30 or 40 percent increase if they can get away with it.

Senator BLACK. But there is quite a difference though, is there not, in selling a stamp for a profit?

Mr. MCCAWLEY. That is quite true; I was just being funny there.

The experience of the department stores is best expressed in a detailed statement of the National Retail Dry Goods Association which appeared in the New York Times of August 16, 1931, to the effect that the spread of cost between the cost price and the publishers' published price of books is not sufficient to permit an operating profit in practically any of the book sections in department stores throughout the country. The National Retail Dry Goods Association reported that in 1930 the common figure was a net loss of 2.9 percent for book departments in department stores doing more than $10,000,000 annually, and that in smaller stores the net loss was larger. The 1932 report of the Controllers' Congress of the National Retail Dry Goods Association stated [reading]:

> For the past 3 years the book departments have incurred losses in the typical stores of each of the groups in which statistical data for the department has been available. Losses in 1930 were approximately 5 percent, the following year 7.5 percent, and last year over 10 percent. A casual analysis of the merchandising figures of the book department of the past 3 years calls attention to certain disadvantages which the department operates compared to the average department; the purchase mark-on is lower than average, and the cash discounts are also very much smaller, failing to approach the markdown figure.

According to the 1933 report of the Controllers' Congress of the National Retail Dry Goods Association, typical book and magazine departments in department stores showed losses varying from 1.5 to 14 percent. And it should be noted that, except in New York, a very small fraction of department stores indulge in price cutting of books. Accordingly, it is to be assumed that even selling books at the publishers' published price is for most department stores not a profitable enterprise.

I leave to your imagination the losses sustained by book departments in those department stores which deliberately slashed book prices to their wholesale cost price, because it was in their judgment good "promotion" for them, so long as the consumer indulges in erratic but highly desirable deductions.

Under these circumstances the Administration approved the Booksellers Code. It should be here emphasized that the code as signed had the full approval of the Consumers' Advisory Board of the N. R. A., a unique distinction.

Your committee would like to have answers to these two questions:

Senator BLACK (interrupting). Did they sign it? The Consumers' Advisory Board?

Mr. MCCAWLEY. They approved it, yes, sir.

Senator BLACK. Who were the members of that board?

Mr. MCCAWLEY. I have not the data right here, but I can supply it.

Senator BLACK. What was the date?

Mr. MCCAWLEY. It was the 13th of April last year. I have that in my brief case, I think.

Here are the two questions: What have been the experiences of booksellers under the price provisions of the code? And what has been the effect of these provisions on book production and book distribution generally?

Where are we to find an accurate and complete answer to those questions?

Such an answer is not to be found in a recent adroit publicity release by Channing E. Sweitzer, managing director of the National Retail Dry Goods Association, nor in the Federal Reserve Bank figures which Mr. Sweitzer quotes. Mr. Sweitzer should know that the Federal Reserve bank figures for book and magazine departments quoted by him are drawn exclusively from nine reporting department stores in the New York Federal Reserve district, presumably including those stores which before the approval of our code were making liberal use of books as loss leaders. Unfortunately, we are not able to reveal the identity of the stores reporting on book sales, but we suggest that their identity be ascertained by a member of your committee so that you may discover whether they reflect almost exclusively the effect of the code on book sales or price-cutting department stores or book sales generally. To our knowledge the Federal Reserve bank figures do not include the book and magazine departments of at least three important department stores in the New York Federal Reserve district which do not use books as loss leaders. We are reliably informed that there has been an improvement in the book sales in one of those stores. We are reliably informed that in another, sales in the book and magazine department were, for 1934, 16.8 percent in excess of the year 1933. We have no data for the third store.

Senator BLACK. That was the department stores which had been selling books below cost?

Mr. MCCAWLEY. Yes; they were selling them as loss leaders.

Senator BLACK. Evidently the people still buy books from them in increasing quantities.

Mr. MCCAWLEY. I will go on and lead to what happens.

In a letter to the chairman of our code authority in December 14, 1934, Mr. Sweitzer wrote [reading]:

> I admit that no complete survey of all types of bookselling stores was made prior to the issuance of this statement.

Nor is the complete answer to be found in the report of book sales for each month of 1934 in comparison with the corresponding months of 1934 by 277 booksellers—representing the first batch of returns to a questionnaire sent in late December to several hundred booksellers throughout the United States, including New York. The trend is at marked variance with the trend reported in the release of the National Dry Goods Association. These figures are on file at the office of the National Booksellers' Code Authority.

We have certain figures from the following retail booksellers in New York City showing sales in December 1933 in comparison with sales in December 1934. These stores have never been price cutters. They are Brentanos, Scribner's, Dutton, Putnam, 10 Doubleday, Doran Book Shops; and the Lord & Taylor (department store) book department, a department store which does not report its book department to the New York Federal Reserve District. The figures show the following:

December 1933 in comparison with December 1934

20-percent increase	14-percent increase
23-percent increase	24-percent increase
25.5-percent increase	30.6-percent increase

A survey among 13 retail book shops in New York shows that there was an increase of 11.2 percent for January 1935 over January 1934, with individual stores listing their gains from 1.1 to 22 percent. In February the same stores reported 31.2 percent gain in 1935 over 1934, with individual stores listing their gains from 18 to 51 percent.

The real question to be answered is, "Has the total distribution of books been increased or temporarily decreased as a result of the price provisions of the code?" Without an exhaustive survey of all retail book outlets, requiring more time and money than is at our disposal, it is impossible to answer that question on the basis of incomplete bookseller's figures. The most authoritative available answer is the report of the 36 trade-book publishers. By "trade books" I mean not textbooks, but trade books published and sold at the trade discount—that is, the maximum discount. The publishers have answered a questionnaire sent in late December to the 47 important trade-book publishers as to the percentage of increase or decrease in their book sales for each month of 1934 in comparison with the corresponding months of 1933 and the increase or decrease in their sales for the year 1934 in comparison with the year 1933. The yearly figures show the following changes in 1934. Each publisher is designated by a letter of the alphabet. I will include this in the record, Senator, but I won't read out all of these names and keys.

Senator BLACK. Very well.

(The tabulation referred to by the witness is as follows:)

A, 4 percent decrease; Ax, 0.004 percent increase; B, 2.8 percent increase; BB, 4.5 percent increase; Bx, 4.9 percent increase; C, 5 percent increase; D, 7 percent increase; E, 8.5 percent increase; F, 11 percent increase; G, 13 percent increase; H, 14 percent increase; Hx, 14.5 percent increase; I, 14.57 percent increase; J, 14.8 percent increase; Jx, 15 percent increase; K, 17 percent increase; L, 19.19 percent increase; M, 20.8 percent increase; N, 21 percent increase; O, 21.2 percent increase; P, 24.3 percent increase; Q, 24.3 percent increase; QQ, 25.3 percent increase; R, 27.5 percent increase; S, 29.19 percent increase; T, 32 percent increase; U, 32.4 percent increase (11 months); UU, 36 percent increase; V, 42.4 percent increase; Vx, 48.2 percent increase; W, 47 percent increase; X, 55 per-

cent increase; Y, 55.8 percent increase; Z, 72.5 percent increase; Zl, 180 percent increase; WW, 50 percent increase.

Mr. McCawley. They start in with a 4-percent decrease for only 1 publisher, and the other 28 of them show increases starting at practically scratch, the third one on my list is 2.8 percent increase. There are only 2 in that whole list of which 1 shows a decrease and 1 shows just an even break, and the rest of them, starting with 2.8-percent increase run up to 1 of 180-percent increase. That 180 percent may be questioned, but one best seller like Anthony Adverse, we will say, would put a publisher on velvet for sometime to come.

These figures are submitted in detail and may be verified at the office of the National Association of Book Publishers in New York by any governmental representative, and we have gotten some additional figures since this compilation.

I have a letter here which I would like to put in the record from Mr. W. W. Norton, president of the National Association of Book Publishers, to Senator Harrison, the chairman of this committee, verifying this information and himself strongly sponsoring the continuance of this Publishers' Code.

(The letter referred to by the witness is as follows:)

March 8, 1935.

My Dear Senator: We should like to present to you our hope that in the amendatory legislation now being drafted for the National Recovery Administration, provision will be made for retaining a code such as the Retail Booksellers' Code whose principal clauses were formulated to stop the use of new books as "loss leaders" and establish fair competition in the bookselling trade. The Consumers' Advisory Board after most careful consideration last spring gave the code price rulings its full approval. May we point out that these provisions do not constitute price fixing, merely price maintenance, and that similar provisions have obtained in the book trade in principal European countries for years.

Book prices have not advanced since the inauguration of the code; in fact, publishers have made every effort to keep prices down, despite increased manufacturing costs. It should be stated, too, that compliance has been general in the case of the Booksellers' Code; the few instances of noncompliance have been due to misunderstandings and have been speedily cleared up.

In the opinion of our executive committee the code should be continued for a further trial period. Abandoning it at this time would seriously affect the very real improvement in wholesale and retail book-trade conditions. A survey among our members, made in January, showed a substantial increase in book sales to retail stores during 1934 and our interest in continuance of the code is based on the belief that it is serving to strengthen and increase the number of outlets for the books we publish.

The National Booksellers Code Authority has received hundreds of letters from booksellers in all parts of the country stating that the code has aided them. Most of these are "small enterprises," a class of business which we believe your committee is especially anxious to protect.

The cultural life of the country is sustained by wide distribution of books. If, in the new law, there is to be provision for the abandonment of many codes, we trust that your committee will insert clauses permitting the continuance of codes which have a special function to perform, valuable to the industry itself, and from the standpoint also of service to the general public.

President Roosevelt referred to the unfortunate practice some stores have followed in the past of using books as "loss leaders," at his press conference on January 25 last, according to an item in the New York Herald-Tribune.

Sincerely yours,

W. W. Norton, *President.*

Mr. McCawley. These figures establish beyond a shadow of doubt the fact that the price provisions in the Booksellers' Code have increased book distribution, an increase which in the judgment of the National Booksellers' Code Authority and the vast majority of book-

sellers and publishers can only be maintained and exceeded if the price provisions of the Booksellers' Code are retaind. Unlike many other codes, compliance has been general, and the few cases of non-compliance have apparently been due to misunderstandings which, when cleared up, have brought full and complete compliance.

Our Booksellers' Code has been running financially on a shoestring throughout this entire year. Our own industry has gone into the red to finance it because the Retail Code Authority would not give us any money. We have had to spend very, very little. The executive secretary in New York is the only person who has taken it on the chin, and he has $1,500 coming to him, if he ever gets that salary.

New capital has been attracted to the business, new expansion has taken place, with resulting increased employment and release of funds. There has been no increase in price ranges or change in discount ranges by the publishers, even though they have had to meet substantially increased manufacturing costs. Those who are seriously disturbed by the code are the department stores, which have lost a part of one of their most effective loss leaders. "Part" is used here advisedly, for in January four New York department stores advertised books not protected by the 6-month price provision at prices in many cases the lowest permitted by the retail code, mainly 10 percent above wholesale invoice cost less cash discounts. This is an indication of the fact that books are still considered ideal loss leaders, and if the price provisions of the Booksellers' Code are removed any independent bookseller might with reason shut up shop and go on the relief rolls.

Senator BLACK. Did I not understand you to say at the beginning that this provision only affected 5 percent of the books?

Mr. MCCAWLEY. Yes, sir. Approximately 5 percent of the total number of books in print.

Senator BLACK. And yet you think if this price were not upheld on these 5 percent, that it will put all of the independents out of business?

Mr. MCCAWLEY. That 5 percent covers that volume of new books which are constantly being published—probably 20 a day—that have a life ranging from 3 to 6 months.

Senator BLACK. Is that just 5 percent of the volume of business?

Mr. MCCAWLEY. No; not 5 percent of the volume of business, but 5 percent of the total number of books in print. If you go over here to the Congressional Library and ask to see a list of the books in print, you will see it that high [indicating].

Senator BLACK. What percentage of the volume of the bookseller's business is affected by this fixed price?

Mr. MCCAWLEY. Just a rough guess would be about 80 percent of their business is done in new books.

Senator BLACK. In other words, 80 percent of the books being sold today——

Mr. MCCAWLEY (interrupting). Are brandnew books.

Senator BLACK. What volume of the total business of the booksellers?

Mr. MCCAWLEY. I should say that 80 percent are in the new books, and when I say "new books", I mean books recently published.

Senator BLACK. Of all of the books sold today or the new books published, if they are sold at a price other than that fixed by the manufacturers, it will be illegal?

Mr. McCawley. Yes, sir.

Senator Black. All right; proceed.

Mr. McCawley. Inevitably without this price provision many booksellers will be driven out of business, employment and wages will be reduced in book manufacturing establishments as well as in bookselling establishments, and more outlets, the one hope of cheaper book prices for all consumers, will be eliminated. It will concentrate all of that business in a group of large department stores, and the small bookstores throughout the country, the type of stores that the former witness spoke of, will be eliminated, and the hope of those stores. The existence of new outlets in the small communities will effectively be eliminated, and I can say right here that you may think that because this price situation has been confined to one large metropolitan area where it was particularly prevalent and particularly vicious, that the country at large is not conscious of that.

But the literary magazines, the advertising sections of the big magazines, have a national circulation. They see in there, the new books advertised at fixed prices, and on the following pages in the advertising sections, they see those same books offered by the big department stores at substantial savings. And the conclusion that they draw is that the local bookseller is a gyp if he tries to get $2.50 that they can get a book for at $1.39 by mailing a postcard to New York.

We believe the facts here presented are eloquent argument for the continuation of the Booksellers' Code with its price provisions; provisions which are peculiar to our industry.

One more vital point before leaving this question of the effect of the code on the progress of the industry as a whole. It may be suggested that the improvement in business is not due to the code, but rather to the general upward trend. This argument can be met on various more or less theoretical bases. But one practical fact stands out. A comparison of the upward curve of the book industry, as opposed to other retail merchandise, shows that there is a marked disparity (roughly 11 percent), which the bookselling industry shows beyond its neighbors, and which can only be accounted for by a factor distinguishing it from the others, namely, the existence of the special price provisions of the Booksellers' Code.

In the matter of dollar volume our industry represents very small potatoes in comparison with some of the huge industries on which you gentlemen have been receiving testimony on, such as the gasoline business this morning, but the cultural, social, and education implications of bookselling are vast. We are the distributors of raw material from which a national culture is made. It is important to note that in foreign countries the meaning of price cutting on books is unknown. Abroad books are sold at publishers' published prices in exactly the way, as mentioned previously, our Government protects the prices set by the Department of Documents on all Government publications.

But most important of all, this code is wanted by the industry for which it was written, was formulated by the industry as an essential need to protect small enterprises from predatory monopolistic practices.

Senator Black. May I ask, Mr. McCawley, how much longer your statement will take? We have five more witnesses.

Mr. McCawley. About 2 minutes.

Senator BLACK. It is very interesting, but we must hasten along.

Mr. MCCAWLEY. I repeat, we may seem to you to be "small potatoes" but our influence in spreading the best products of human knowledge and understanding is tremendous. Gunpowder is a mighty force but the explosive action of the written word on men's minds is a far mightier force.

We in this industry are not prompted entirely by commercial motives. I can safely argue that on those grounds alone most of us would be forced to retire. But I know of no business which in its promotional efforts is actuated by greater altruism and idealism than ours. Our great hope is for cheaper book prices, that can come about through wider education, more adequate distribution through many small bookstores and the possibilities of mass consumption.

Senator BLACK. I want to ask you a few questions. What does the average book cost you that they publish at the price of $2?

Mr. MCCAWLEY. $1.20.

Senator BLACK. What does the average book cost you that the publishers sell at $5?

Mr. MCCAWLEY. Forty percent off of that. Forty percent is the straight discount to the A accounts. The average discount is figured usually for inventory purposes at one-third. We have to pay transportation.

Senator BLACK. Do you favor as a general principle in all industries, say for instance, the steel companies, that the United States Steel Corporation should have the right to fix the price at which anybody sold its product?

Mr. MCCAWLEY. No; I do not.

Senator BLACK. Do you favor it on food?

Mr. MCCAWLEY. No, sir.

Senator BLACK. Do you favor it on clothing?

Mr. MCCAWLEY. No, sir.

Senator BLACK. You only favor it on books?

Mr. MCCAWLEY. I favor it on books because of a very peculiar situation in this industry, and that is that of those other articles that you mentioned, there are similar types of things that you cannot distinguish any difference between them. You have got a suit of clothes on and I have got a suit of clothes on. They are both from different places. Yours happens to be gray and mine happens to be blue. I might have paid $50 for my suit of clothes and you might have paid $50 for your suit of clothes, and mine might be a better suit of clothes than yours is. The books, however, are identical and you cannot tell any difference between them.

Senator BLACK. You understand that if a manufacturer is allowed to fix a price, that he can fix it up as high as he pleases and increase his profits. Would you be in favor of our providing in the law that we can limit their profits?

Mr. MCCAWLEY. As far as the profit is concerned, at present there is no question of increasing our profit. It is a question of protection.

Senator BLACK. Take the American Book Co., for instance, or one of the big book companies.

Mr. MCCAWLEY. They publish only textbooks. We do not want to fix the price on textbooks. We are not interested in that. They do not come under this provision.

Senator BLACK. On the companies that do sell these books, that are to be sold within 6 months, do you favor letting them fix those prices so that it might give them 200 or 300 percent of profit?

Mr. MCCAWLEY. They fix them now and there is no question about the publishers fixing prices.

Senator BLACK. They fix them now, but heretofore they have not been able to make it a crime to sell one at less than the price they fix at retail.

Mr. MCCAWLEY. No; they have not.

Senator BLACK. And that, of course, enables them to sustain the wholesale price?

Mr. MCCAWLEY. Yes.

Senator BLACK. As a business man, you know that?

Mr. MCCAWLEY. Yes, sir.

Senator BLACK. If we are going to take that privilege away from the public and the protection, do you not think we should also limit their profits?

Mr. MCCAWLEY. Well, how about the small independent fellow that is going to be forced out of the picture?

Senator BLACK. We are talking now about the profits when you fix a price. Would you be opposed to us including in the law that wherever we give that privilege, we limit their profits and limit their bonuses and salaries so that they cannot make indirectly large profits?

Mr. MCCAWLEY. I do not know that I understand you.

Senator BLACK. Suppose a book company is making on its actual investment 300 or 400 percent, would you favor limiting that profit to a reasonable amount?

Mr. MCCAWLEY. If you can find a publisher that is making that percentage.

Senator BLACK. I do not think there would be the slightest difficulty in finding it, or what they put in it, and of course it does aid them to make a big profit. This provision does that?

Mr. MCCAWLEY. No; it does not affect them in any way. It does not affect the public here in any way.

Senator BLACK. If they can hold the price up at which it can be sold at retail, it does not affect them?

Mr. MCCAWLEY. No; it does not affect them. They are not selling any more books as the result.

Senator BLACK. I though you showed that they were.

Mr. MCCAWLEY. They are selling more books, yes; but the books are being sold by the retail stores. For instance, there has been an improvement all along the line. But that is a general upward curve in business.

Senator BLACK. Your idea is that contrary to all of the general ideas we have had heretofore in economics, that raising the price of books has increased the consumption of books?

Mr. MCCAWLEY. We have not raised the price of books. The books are sold at exactly the same price as they were before.

Senator BLACK. Then there is no use in having the price fixing provisions that you mentioned, if they are sold at the same price.

Mr. MCCAWLEY. I think we are arguing about a different thing.

Senator BLACK. I understood you to say that it was a crime under the code to sell a book within 6 months of its publication at a lower price than fixed by the publisher.

Mr. McCAWLEY. For the retailer; yes.

Senator BLACK. That was not the law before. So that has raised the price to the consumer, has it not?

Mr. McCAWLEY. It has raised the price to the consumer in certain districts; yes.

Senator BLACK. And your theory is that that has increased the circulation of books and the sale of books?

Mr. McCAWLEY. It has increased the sale of books in the retail bookstores that are not cutting prices.

Senator BLACK. It has increased the sale of books in the bookstores that do not cut prices, but I understood you to present a long argument to show that it increased the general sale of books throughout the Nation.

Mr. McCAWLEY. There are a great many factors that enter into that. By sending this trade back into the bookstores, which are personal-service organizations which render a better service in many cases than the department stores, there has been an opportunity to make more sales.

Senator BLACK. I did not want to delay, because we will have more witnesses. I listened to your argument and I understood it to be a long argument to sustain the fact that this price-fixing provision had increased the sale of books throughout the Nation and you gave figures from month to month?

Mr. McCAWLEY. Yes.

Senator BLACK. And you attributed the increased sale of books to the increased price of the books?

Mr. McCAWLEY. I do not think that that is exactly the case.

Senator BLACK. You attributed it to that code provision, did you not?

Mr. McCAWLEY. I attributed it to the code provision. The retail bookstores have gotten business that they had previously lost to the department stores.

Senator BLACK. All right. Thank you very much.

TESTIMONY OF A. F. HINRICHS—Resumed

(Previously sworn, resumed his testimony as follows:)

Senator BLACK. Will you put your figures in the record, please. Were these to go into the record, or simply a statement made with regard to them?

Mr. HINRICHS. These relate to this first table that I was discussing with you this morning [indicating] and are figures on paper and printing, rubber products, tobacco manufacture, railroad repair shops, machinery, and transportation equipment, compiled in the same method that the Federal Reserve Board used.

Senator BLACK. They are to be put in as exhibits and not in the record.

Mr. HINRICHS. As a matter of record, I would like to make these two further statements, if I may, with reference to this particular group of tabulations.

Senator BLACK. Just as quickly as you can.

Mr. HINRICHS. The first is that these figures shown in your second chart here on metal products, combine nonferrous metals, iron and steel, for the whole period 1923 to 1934, although the nonferrous metal series begin only in 1931. The combination in that case seemed to me to be an improper one, and I am, therefore, also submitting a picture of the real earnings in the iron and steel and in the nonferrous metals figured separately, figured in the same way that the Federal Trade Commission figured them.

As a second matter of record, without developing the technicality, the average cost of living index as computed by the Federal Trade Commission from our figures is very slightly different from the ones we would have compiled. In terms of method, it is their method and we could not use it without noting the fact that there is a technical problem there. Actually the differences with references to these particular dates are sufficiently small so that I have used the same method that the Federal Trade Commission used to carry the thing forward.

That completes this particular folder that you asked me to look up.

The second file that you submitted to me for my examination was this file on employment and pay roll in specified kinds of business, where you have asked for information from 1923 to 1934, inclusive, showing certain high and low figures.

This record is also taken from our figures with the exception of one table which I think was erroneously headed. It is called in this file, "Rubber Tire Manufacturing Industry", and it includes both rubber goods of other sorts other than rubber tires. It might cause you some confusion if you were comparing it with other series of those two industries. Other than that the figures are taken from our present records.

The figures for 1933 and 1934 have not yet been adjusted to the census in this tabulation. That is a task on which we are now engaged, and it will be completed within the period of approximately six weeks. Those adjustments have to be made each time new census figures become available, because in the index, for various reasons, keeping various forms month after month, parts with reality, because if we have new forms and old forms going out of the picture, there are some rather severe distortions of these actual figures.

We ourselves have never released these obsolete figures as shown here, nor would we have at this time except on the request of the Federal Trade Commission to make available such material as we have. Were they adjusted to the census, they would be far more useful. These figures back of 1931 are, however, adjusted to the census and would compare with figures in which an adjustment had been made.

Senator LA FOLLETTE. I do not believe I just understand what this is all about. Did the Federal Trade Commission ask the Bureau of Labor Statistics to make certain figures available to them?

Mr. HINRICHS. Yes. They apparently had been asked by the committee or by Senator King to make certain studies of employment, and as we have most of the information on employment that is available in Washington, they came to us for such information, and we have given them what we had.

Senator LA FOLLETTE. And they took the information and made it up and resubmitted it to you?

Mr. HINRICHS. They took our sheets and made photostatic copies of which this is one series. These are our sheets photostated [indicating]. Then they took from these photostat copies with references to certain industries, the information which was copied on this sheet here [indicating] and was submitted to the Senate Committee, I judge. I received a call on Monday apparently to verify all of this, to verify the fact that this is our information.

Senator COSTIGAN. I understood there had been a misplacement of a period, or a comma, or a decimal point in some prior use of these figures. Is that true, if you know?

Mr. HINRICHS. Are you referring to the earlier tabulations of the National Recovery Administration that were submitted by Mr. Richberg?

Senator COSTIGAN. That was my understanding.

Mr. HINRICHS. There are certain differences between the figures as they are presented here for the years 1933 and 1934, and the tabulation as it was presented by Mr. Richberg.

Senator COSTIGAN. The committee, of course, desires and accurate itemization of such figures.

Mr. HINRICHS. I should myself prefer the figures as submitted by Mr. Richberg for the period of 1933–34, to these figures of ours. We would have made and are making the same kind of an adjustment which the National Recovery Administration made before submitting that tabulation.

Senator COSTIGAN. Have you checked and compared the figures?

Mr. HINRICHS. I have checked the individual series. Noting the points where there was agreement and disagreement, and there are comparatively few cases in the Richberg figures in which the discrepancies are not to be explained in terms of the fact that they have adjusted the real figures as revealed by the census in contrast with our figures which await adjustment and will agree with the Richberg figures quite closely at the end of 6 weeks. There are, however, in the Richberg figures, two or three—somewhat more than that—perhaps four or five errors which appear to be of a typographical sort.

Senator COSTIGAN. Will you at this time or in the future indicate what in your judgment the figures should be?

Mr. HINRICHS. I think I can do that very briefly now. In the case of cast-iron pipe, the employment figures are given as for example——

Senator BLACK (interposing). I wish you could put them in the record. I wonder if you could?

Mr. HINRICHS. Yes, sir; I will be very glad to submit a memorandum to the record.

Senator LA FOLLETTE. What I am trying to get at is these tables that are in evidence in this blue bound folder, as I understand it, are tables which have been prepared by somebody connected with with the Federal Trade Commission from data in the possession of the Bureau of Labor Statistics?

Mr. HINRICHS. Yes.

Senator LA FOLLETTE. And they have attempted to carry back over a period of years, figures which would be comparable with those submitted by the N. R. A. to this committee, is that correct?

Mr. HINRICHS. That is correct. The figures in this blue folder from 1931 back to 1923 can be hitched to the figures as submitted by the N. R. A., industry by industry.

Senator LA FOLLETTE. I begin to get a little light on the subject now, and I would like to have you tell me to what extent those figures are comparable to the Richberg or the N. R. A. figures and to what extent, if the Bureau of Labor Statistics had made the compilations, there would have been different methods employed?

Mr. HINRICHS. I can answer that quite briefly. The figures in this folder [indicating] from 1923 to 1931 inclusive, are strictly comparable to the Richberg figures. The figures for 1933 will subsequently be somewhat adjusted not so drastically as the later figures. The figures for 1933 and 1934 we ourselves would not use to describe the situation in those 2 years. When we have made an adjustment of those figures for 1933 and 1934 by the method which is almost identical with the method used in N. R. A., presuming that there were no clerical errors in the N. R. A. tabulations, the results in our study will be identical with the results presented by Mr. Richberg, except that the records of two industries, and men's clothing and one other which I will have to submit for the record later on, in which they have combined groups which we do not use. Those figures are slightly different from ours.

Senator LA FOLLETTE. When you say "they", you mean the N. R. A.?

Mr. HINRICHS. The N. R. A.; yes.

Senator LA FOLLETTE. What is your answer as to whether or not the figures in the blue folder made up by the staff of the Federal Trade Commission are different from the figures submitted by the N. R. A.; to what extent are the differences or discrepancies to be attributed to any different method of preparing material or to any different conclusion that might be drawn from them?

Mr. HINRICHS. Virtually the entire difference, and there is difference in somewhat more than half of the industries, is to be accounted for by virtue of the fact that the Federal Trade Commission made no adjustment for the 1933–34 figures, whereas the N. R. A. did. In the figures in this folder, they seem to be useful as historical perspective if you are interested in the situation in 1920. I would however disregard entirely the figures which you find in the 1933 or 1934 years in this blue folder, and in its place, to get a picture of what has happened since 1933 in figures as submitted by Mr. Richberg with such corrections as need to be made for typographical errors which appear in the record.

Senator BLACK. That is all.

(The following data is in connection with Mr. Hinrich's testimony.)

EXPLANATORY STATEMENT

The following tables were prepared at the request of Senator King by the staff of the Federal Trade Commission from statistics furnished by the Bureau of Labor Statistics of the Department of Labor covering the years 1923 to 1934, inclusive, and embracing a typical number of industries. They show the yearly number of wage earners, the weekly pay rolls, the per capita weekly wage, the wholesale price index of foods, cost-of-living index, and the real wage for the several industries tabulated.

Accompanying these tables in the exhibit filed are a number of graphs which are not printed in the record but are contained in the physical exhibit.

TABULATIONS, EMPLOYMENT, PAY ROLLS, AND WAGES, 1923 TO 1934, INCLUSIVE

COMPILED FROM PUBLICATIONS ISSUED BY BUREAU OF LABOR STATISTICS, RELATING TO BUILDING MATERIALS (LUMBER AND ALLIED PRODUCTS AND STONE, CLAY, AND GLASS PRODUCTS) CHEMICALS AND ALLIED PRODUCTS, FOOD AND KINDRED PRODUCTS, LEATHER AND ITS MANUFACTURES, TEXTILES AND THEIR PRODUCTS, METALS AND METAL PRODUCTS (IRON AND STEEL AND THEIR PRODUCTS AND NONFERROUS METALS AND THEIR PRODUCTS)

Conversion of cost of living indexes

[1913=100 to 1926=100. Simple average of reported monthly index numbers of the cost of living (based upon the year 1913 as 100), divided by the index number for 1926, computed on the same basis

Periods—Year and months	Index (1913=100)		Converted index (1926=100)
	Index numbers[1]	Average	
1923:			
March	168.8		
June	169.7		
September	172.1		
December	173.2		
Total	683.8	171.0	97.6
1924:			
March	170.4		
June	169.1		
September	170.6		
December	172.5		
Total	682.6	170.7	97.4
1925:			
June	173.5		
December	177.9		
Total	351.4	175.7	100.3
1926:			
June	174.8		
December	175.6		
Total	350.4	175.2	100.0
1927:			
June	173.4		
December	172.0		
Total	345.4	172.7	98.6
1928:			
June	170.0		
December	171.3		
Total	341.3	170.6	97.4
1929:			
June	170.2		
December	171.4		
Total	341.6	170.8	97.5
1930:			
June	166.6		
December	160.7		
Total	327.3	163.7	93.4
1931:			
June	150.3		
December	145.8		
Total	296.1	148.1	84.5
1932:			
June	135.7		
December	132.1		
Total	267.8	133.9	76.4
1933:			
June	128.3		
December	135.0		
Total	263.3	131.7	75.2
1934:			
June	136.4		
November	138.9		
Total	275.3	137.7	78.6

[1] Indexes of Cost of Goods Purchased by Wage Earners and Low-Salaried Workers in the Larger Cities of the United States.

(Monthly Labor Review, February 1935, Bureau of Labor Statistics.)

Building materials

[Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935, unless otherwise indicated)]

EMPLOYMENT

Year	Lumber and allied products [1]		Stone, clay, and glass products [2]		Total wage earners for combined groups	General index (all manufacturing industries) [3] [4]
	Average number weekly wage earners	Group index [3] [4]	Average number weekly wage earners	Group index [3] [4]		
	(A)	(B)	(C)	(D)	(E)	(F)
1923	932,100	101.5	351,400	100.4	1,283,500	104.1
1924	901,300	98.1	346,400	98.9	1,247,700	96.5
1925	921,600	100.4	352,700	100.7	1,274,300	99.4
1926	922,300	100.4	363,500	103.8	1,285,800	101.2
1927	864,100	94.1	349,800	99.9	1,213,900	98.9
1928	848,100	92.4	334,900	95.7	1,183,000	98.9
1929	876,500	95.4	328,500	93.8	1,205,000	104.8
1930	699,400	76.1	280,800	80.2	980,200	91.5
1931	516,900	56.3	222,800	63.7	739,700	77.4
1932	377,800	41.1	156,000	44.6	533,800	64.1
1933	406,100	44.2	157,500	45.6	563,600	69.0
1934	[5] 447,400	48.7	185,000	57.8	632,400	78.8
January 1935	[5] 432,600	[5] 47.1	165,300	[5] 47.2	597,900	[5] 78.7
February 1935	[6]	[7] 49.4	[6]	[7] 49.6	----------	[7] 81.2

WEEKLY PAY ROLLS

Year	Lumber and allied products [1]		Stone, clay, and glass products [2]		Combined groups		General Index (all manufacturing industries) [3] [4]
	Average weekly pay rolls	Group index [3] [4]	Average weekly pay rolls	Group index [3] [4]	Total average weekly pay rolls	Per capita weekly wage [8]	
	(G)	(H)	(I)	(J)	(K)	(L)	(M)
1923	$18,526,000	100.0	$8,726,000	98.3	$27,252,000	$21.23	103.3
1924	18,228,000	98.4	8,926,000	100.5	27,154,000	21.76	96.1
1925	18,824,000	101.6	8,985,000	101.2	27,809,000	21.82	100.6
1926	18,997,000	102.5	9,257,000	104.2	28,254,000	21.97	103.8
1927	17,916,000	96.7	8,929,000	100.5	26,845,000	22.11	101.8
1928	17,454,000	94.2	8,541,000	96.2	25,995,000	21.97	102.4
1929	18,062,000	97.4	8,323,000	93.7	26,385,000	21.90	100.1
1930	13,484,000	72.6	6,828,000	76.9	20,292,000	20.70	88.7
1931	8,641,000	46.6	4,786,000	53.9	13,427,000	18.15	67.5
1932	4,656,000	25.1	2,588,000	29.1	7,244,000	13.57	49.1
1933	4,900,000	26.4	2,455,000	27.6	7,355,000	13.05	48.5
1934	[5] 6,002,000	32.7	[5] 3,153,000	35.5	9,215,000	14.57	61.9
January 1935	[5] 5,872,000	[5] 31.7	[5] 2,805,000	[5] 31.6	8,677,000	14.51	[5] 64.1
February 1935	[6]	[7] 34.8	[6]	[7] 34.8	----------	[6]	[7] 69.1

[1] Lumber and allied products: The following industries are comprised in this group: Furniture, lumber (mill work), lumber (saw mills), turpentine, and resin. (See Note.)

[2] Stone, clay, and glass products: The following industries are comprised in this group: Brick, tile and terra cotta, cement, glass, marble, granite, slate and other products, pottery. (See Note.)

[3] "Trend of employment," December 1934 (Bureau of Labor Statistics).

[4] Basis 1923–25=100.

[5] "Trend of employment," January 1935.

[6] Comparable data not available.

[7] "Employment in February 1935."

[8] Computed by dividing "Total average weekly pay rolls" (column K) by "Total wage earners, combined groups" (column E).

Building materials—Continued

PRICES AND WAGES

Year	Wholesale price index building materials [9] [10] (N)	General price index wholesale (all commodities) [9] (O)	Cost-of-living index [11] (P)	Real wage [12] (Q)
1923	108.7	100.6	97.6	$21.75
1924	102.3	98.1	97.4	22.34
1925	101.7	103.5	100.3	21.75
1926	100.0	100.0	100.0	21.97
1927	94.7	95.4	98.6	22.42
1928	94.1	96.7	97.4	22.58
1929	95.4	95.3	97.5	22.46
1930	89.9	86.4	93.4	21.16
1931	79.2	73.0	84.5	21.48
1932	71.4	64.8	76.4	17.76
1933	77.0	65.9	75.2	17.35
1934	[13] 88.2	74.9	78.6	18.54
January 1935	[14] 84.9	[14] 78.8	----------	----------
February 1935	[15] 85.0	[15] 79.5	----------	----------

[9] Basis 1926=100.

[10] Building materials: The following commodities are comprised in this group: Brick and tile, cement, lumber, paint and paint materials, plumbing and heating, structural steel, other building materials. (See Note.)

[11] The "Cost-of-living index" (column P) is computed by using a simple average (of the monthly periods shown for the respective years) of "Indexes of the cost of goods purchased by wage earners and low-salaried workers in the large cities of the United States" contained in Monthly Labor Review, February 1935 (p. 515), which have been converted into 1926=100.

[12] Computed by dividing "Per capita weekly wage" (column L) by "Cost-of-living index" (column P.)

[13] "Wholesale prices", December and year 1934 (Bureau of Labor Statistics).

[14] "Wholesale prices in January 1935."

[15] "Wholesale prices in February 1935."

NOTE.—In this case combinations of groups have been made for purpose of comparing the price indexes with the employment and pay-roll indexes. It is noted that the subgroups of building materials (note 9) are not exactly the same as the subgroups as "Lumber and allied products" (note 7), and "Stone, clay, and glass products" (note 8). For example structural steel is contained in "Building materials" only.

Metals and metal products group—iron and steel and their products and nonferrous metals and their products

[Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935, unless otherwise indicated)]

EMPLOYMENT

Year	Iron and steel and their products [1]		Nonferrous metals and their products [2]			General index (all manufacturing industries [3] [4] (F)
	Average number weekly wage earners (A)	Group index [3] [4] (B)	Average number weekly wage earners (C)	Group index [3] [4] (D)	Total wage earners, combined groups (E)	
1923	892,400	103.9	(5)	105.4	(5)	104.1
1924	833,700	97.0	(5)	96.7	(5)	96.5
1925	851,[illegible]	99.1	(5)	97.9	(5)	99.4
1926	880,[illegible]	102.5	(5)	(5)	(5)	101.2
1927	834,900	97.2	(5)	96.5	(5)	98.9
1928	829,800	96.6	(5)	(5)	(5)	98.9
1929	881,000	102.6	(5)	111.4	(5)	104.8
1930	706,200	89.2	(5)	(5)	(5)	91.5
1931	598,400	69.7	209,000	74.0	807,400	77.4
32	458,100	53.3	164,200	58.1	622,300	64.1
33	503,400	58.6	175,200	62.0	678,600	69.0
1934	[6] 592,800	[6] 69.0	[6] 210,000	74.3	802,800	[6] 78.8
January 1935	[6] 582,800	[6] 67.8	[6] 214,500	[6] 75.9	797,300	[7] 78.7
February 1935	(5)	70.6	(5)	----------	(5)	[7] 81.2

Footnotes at end of table.

Metals and metal products group—iron and steel and their products and nonferrous metals and their products—Continued

WEEKLY PAY ROLLS

Year	Iron and steel and their products [1]		Nonferrous metals and their products [2]				General index (all manufacturing industries) [3] [4]
	Average weekly pay rolls [4]	Group index [4]	Average weekly pay rolls [4]	Group index [4]	Total average weekly pay rolls	Per capita weekly wage [6]	
	(G)	(H)	(I)	(J)	(K)	(L)	(M)
1923	$25,442,000	103.2	(5)	103.7	(5)	$28.51	103.3
1924	23,834,000	96.7	(5)	95.9	(5)	28.59	96.1
1925	24,680,000	100.1	(5)	100.4	(5)	28.99	100.6
1926	25,875,000	105.0	(5)	(5)	(5)	29.40	103.8
1927	24,289,000	98.6	(5)	100.5	(5)	29.09	101.8
1928	24,740,000	100.4	(5)	(5)	(5)	29.81	102.4
1929	26,568,000	107.8	(5)	116.4	(5)	30.16	109.1
1930	21,126,000	85.7	(5)	(5)	(5)	27.57	88.7
1931	13,562,000	55.0	$4,662,000	53.1	$18,184,000	22.52	67.5
1932	7,164,000	29.1	2,865,000	39.1	10,029,000	16.12	46.1
1933	8,925,000	36.2	3,039,000	41.5	11,964,000	17.63	48.5
1934	[8] 12,074,000	49.0	[8] 4,105,000	56.0	[8] 16,179,000	20.15	61.9
January 1935	[8] 12,798,000	[9] 51.9	[8] 4,280,000	[9] 58.4	[8] 17,078,000	21.42	[9] 64.1
February 1935	(5)	[7] 58.9	(5)	[7] 63.4	(5)	.....	[7] 69.1

PRICES AND WAGES

Year	Wholesale price index metal and metal products [10]	General price index wholesale (all commodities) [9]	Cost-of-living index [11]	Real wages [12]
	(N)	(O)	(P)	
1923	109.3	100.6	97.0	29.21
1924	106.3	98.1	97.4	29.35
1925	103.2	103.5	100.3	38.90
1926	100.0	100.0	100.0	29.40
1927	96.3	95.4	98.6	29.50
1928	97.0	96.7	97.4	30.61
1929	100.5	95.3	97.5	30.93
1930	92.1	86.4	93.4	29.52
1931	84.5	73.0	84.5	26.65
1932	80.2	64.8	76.4	21.10
1933	79.8	65.9	75.2	23.44
1934	[13] 86.9	[13] 74.9	78.6	25.64
January 1935	[14] 85.8	78.8	(5)	(5)
February 1935	[15] 85.8	79.5	.....	.....

[1] Iron and steel and their products: The following industries are comprised in this subgroup: blast furnaces, steel works, and rolling mills; bolts, nuts, washers, and rivets; cast-iron pipe; cutlery (not including silver and plated cutlery) and edge tools; forgings (iron and steel); hardware, plumbers' supplies; steam and hot water heating apparatus and steam fittings; stoves, structural and ornamental metal work, tin cans, and other tinware; tools (not including edge tools, machine tools, files, and saws); wirework. (See Note.)

[2] Nonferrous metals and their products: The following industries are comprised in this subgroup: Aluminum manufacturers, brass, bronze, and copper products; clocks, watches, and time-recording devices; jewelry; lighting equipment, silverware, and plated ware; smelting and refining copper, lead, and zinc; stamped and enameled ware. (See Note.)

[3] "Trend of Employment", December 1934 (Bureau of Labor Statistics).

[4] Basis 1923–25=100.

[5] Comparabele data not available.

[6] "Trend of Employment, January 1935."

[7] "Employment in February 1935."

[8] Computed by dividing "Total average weekly pay rolls" (column K) by "Total wage earners, combined groups" (column E).

[9] Basis 1926=100.

[10] Metals and metal products: The following commodities are comprised in this group: Agricultural implements, iron and steel, motor vehicles, nonferrous metals, plumbing and heating. (See Note.)

[11] The "Cost-of-living index" (column P) is computed by using a simple average (of the monthly periods shown for the respective years) of "Indices of the Cost of Goods Purchased by Wage Earners and Low Salaried Workers in the Large Cities of the United States" contained in "Monthly Labor Review", February 1935 (p. 515), which have been converted into 1926=100.

[12] Computed by dividing "Per capita weekly wage" (column L) by "Cost-of-living index" (column P).

[13] "Wholesale prices," December and year 1934 (Bureau of Labor Statistics).

[14] "Wholesale Prices in January 1935."

[15] "Wholesale Prices in February 1935."

NOTE.—In this case combinations of groups have been made for purpose of comparing price indices with the employment and pay-roll indices. It should be noted that the price index group includes agricultural implements and motor vehicles which are not included in the employment or pay-roll indices group.

Textiles and their products

[Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935)]

Year	Employment					Weekly pay rolls						Prices and wages			
	Fabrics	Wearing apparel	Entire group	Group index [1] [2]	Index of all manufacturing industries [1] [3]	Fabrics	Wearing apparel	Entire group	Per capita weekly wage	Group index [1] [2]	Index of all manufacturing industries [1] [3]	Wholesale price index of textile products [3]	General price index of all commodities [3]	Cost-of-living index [4]	Real wage [5]
1923	1,164,400	499,300	1,714,300	105.2	104.1	$21,593,000	$10,919,000	$33,511,000	$19.55	105.8	103.3	111.3	100.6	97.6	$20.02
1924	1,041,900	455,800	1,545,500	94.9	96.5	19,014,000	9,804,000	29,712,000	19.23	93.8	96.1	106.7	98.1	97.4	19.74
1925	1,109,500	466,500	1,627,400	99.9	99.4	20,497,000	10,284,000	31,795,000	19.54	100.4	100.6	108.3	103.5	100.3	19.48
1926	1,095,700	472,800	1,628,000	99.9	101.2	20,241,000	10,297,000	31,731,000	19.49	100.2	103.8	100.0	100.0	100.0	19.49
1927	1,119,200	501,400	1,694,400	104.0	98.9	21,135,000	11,123,000	33,817,000	19.96	106.8	101.8	95.6	95.4	98.6	20.24
1928	1,062,400	513,100	1,651,300	101.3	98.9	19,510,000	11,114,000	32,199,000	19.50	101.7	102.4	95.5	96.7	97.4	20.02
1929	1,095,900	536,700	1,706,900	104.8	104.8	20,251,000	11,476,000	33,321,000	19.52	105.2	109.1	90.4	95.3	97.5	20.02
1930	950,400	497,700	1,513,000	92.9	91.5	16,167,000	9,680,000	27,115,000	17.92	85.6	88.7	80.3	86.4	93.4	19.19
1931	886,700	472,000	1,421,000	87.2	77.4	14,308,000	8,338,000	23,799,000	16.75	75.1	67.5	66.3	73.0	84.5	19.82
1932	794,100	401,800	1,250,300	76.7	64.1	10,367,000	5,733,000	16,947,000	13.56	53.5	46.1	54.9	64.8	76.4	17.75
1933	952,600	418,100	1,432,700	87.9	69.0	12,664,000	5,757,000	19,394,000	13.54	61.2	48.5	64.8	65.9	75.2	18.01
1934	[6] 989,300	[6] 432,100	[6] 1,485,900	91.2	78.8	[6] 14,448,000	[6] 6,992,000	[6] 22,564,000	15.19	71.2	61.9	[7] 72.9	74.9	78.6	19.33
January 1935	[6] 1,059,200	[6] 432,800	[6] 1,551,200	[8] 95.2	[8] 78.7	[6] 16,742,000	[6] 8,884,000	[6] 24,866,000	16.03	[8] 78.5	[8] 64.1	[9] 70.4	[9] 78.8	[10]	[10]
February 1935	[10]	[10]	[10]	[8] 98.4	[8] 81.2	[10]	[10]	[10]	[10]	[8] 84.5	[8] 69.1	[9] 70.1	[9] 79.5		

[1] Trend of Employment, December 1934 (Bureau of Labor Statistics).
[2] Basis, 1923–25=100.
[3] Basis, 1926=100.
[4] The "Cost-of-living index" is computed by using a simple average (of the monthly periods shown for the respective years) of indexes of the Cost of Goods Purchased by Wage Earners and Low-Salaried Workers in the Large Cities of the United States, contained in Monthly Labor Review, February 1935 (p. 515), which have been converted into 1926=100.
[5] Computed by dividing "Per capita weekly wage" by "Cost-of-living" index.
[6] Trend of Employment, January 1935.
[7] Wholesale Prices, December and year 1934 (Bureau of Labor Statistics).
[8] Employment in February 1935.
[9] Wholesale Prices in February 1935.
[10] Comparable data not available.

NOTE.—The following industries are comprised in this group: Fabrics, carpets and rugs, cotton goods, cotton small wares, dyeing and finishing textiles, hats (fur felt), knit goods, silk and rayon goods, woolens and worsted goods, wearing apparel, clothing (men's and women's), corsets, and allied garments, men's furnishings, millinery, shirts, and collars.

Leather and its manufactures [1]

Year	Employment: Number of wage earners	Employment: Group index [2] [3]	Employment: Index of all manufacturing industries [2] [3]	Weekly pay rolls: Average weekly pay rolls	Weekly pay rolls: Per capita weekly wage	Weekly pay rolls: Group index [2] [3]	Weekly pay rolls: Index of all manufacturing industries [2] [3]	Prices and wages: Wholesale price index, hides and leather products [4]	Prices and wages: General price index, all commodities [4]	Prices and wages: Cost of living index [5]	Prices and wages: Real wage [6]
1923	344,900	108.6	104.1	$7,472,000	$21.67	106.9	103.3	104.2	100.6	97.6	$22.20
1924	311,700	96.3	96.5	6,654,000	21.35	95.3	96.1	101.5	98.1	97.4	21.92
1925	314,200	97.1	99.4	6,831,000	21.74	97.8	100.6	105.3	103.5	100.3	21.67
1926	312,700	96.6	101.2	6,909,000	22.09	98.9	103.8	100.0	100.0	100.0	22.09
1927	316,000	97.7	98.9	7,009,000	22.18	100.3	101.8	107.7	95.4	98.6	22.49
1928	309,400	95.6	98.9	6,696,000	21.64	95.8	102.4	121.4	96.7	97.4	22.22
1929	318,600	98.5	104.8	6,915,000	21.70	99.0	109.1	109.1	95.3	97.5	22.26
1930	295,100	91.2	91.5	5,748,000	19.48	82.3	88.7	100.0	86.4	93.4	20.86
1931	272,800	84.3	77.4	5,035,000	18.46	72.1	67.5	86.1	73.0	84.5	21.85
1932	255,500	79.0	64.1	4,060,000	15.89	58.1	46.1	72.9	64.8	76.4	20.80
1933	269,400	83.3	69.0	4,394,000	16.31	62.9	48.5	80.9	65.9	75.2	21.69
1934	[7] 284,000	87.8	78.8	[7] 5,164,000	18.18	73.9	61.9	[8] 86.6	[8] 74.9	78.6	23.13
1935:											
January	[7] 285,700	[7] 88.3	[7] 78.7	[7] 5,337,000	18.68	[7] 76.4	[7] 64.1	[9] 86.2	[9] 78.8	[10]	[10]
February	[10]	[11] 91.6	[11] 81.2	[10]	[10]	[11] 82.5	[11] 69.1	[9] 86.0	[9] 79.5	[10]	[10]

[1] The following industries are comprised in this group: Boots and shoes, hides and skins, leather and other leather products.
[2] Trend of Employment, December 1934 (Bureau of Labor Statistics).
[3] Basis 1923–25=100.
[4] Basis 1926=100.
[5] The "Cost-of-living index" is computed by using a simple average (of the monthly periods shown for the respective years) of Indexes of the Cost of Goods Purchased by Wage Earners and Low-Salaried Workers in the Large Cities of the United States, contained in Monthly Labor Review, February 1935 (p. 515), which have been converted into 1926=100.
[6] Computed by dividing "Per capita weekly wage" by "Cost-of-living index."
[7] Trend of Employment, January 1935.
[8] Wholesale Prices, December and year 1934 (Bureau of Labor Statistics).
[9] Wholesale Prices in February 1935.
[10] Comparable data not available.
[11] Employment in February 1935.

Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935, unless otherwise indicated).

Foods and kindred products [1]

Year	Employment			Weekly pay rolls				Prices and wages			
	Number wage earners	Group index [2] [3]	Index of all manufacturing industries [2] [3]	Weekly pay rolls	Per capita weekly wage	Group index [2] [3]	Index, all manufacturing industries [2] [3]	Wholesale price index, foods [4]	General price index, all commodities [4]	Cost-of-living index [5]	Real wage [6]
1923	681,900	102.1	104.1	$15,296,000	$22.43	100.4	103.3	92.7	100.6	$97.6	$22.98
1924	657,800	98.4	96.5	15,155,000	23.04	99.4	96.1	91.0	98.1	97.4	23.66
1925	664,400	99.5	99.4	15,268,000	22.98	100.2	100.6	100.2	103.5	100.3	22.91
1926	664,400	99.5	101.2	15,503,000	23.33	101.8	103.8	100.0	100.0	100.0	23.33
1927	679,400	101.7	98.9	15,838,000	23.31	104.0	101.8	96.7	95.4	98.6	23.64
1928	707,100	105.8	98.9	16,388,000	23.18	107.6	102.4	101.0	98.7	97.4	23.80
1929	753,500	112.8	104.8	17,344,000	23.02	113.9	109.1	99.9	95.3	97.5	23.61
1930	731,100	109.4	91.5	16,593,000	22.70	108.9	88.7	90.5	86.4	93.4	24.30
1931	650,500	97.4	77.4	14,173,000	21.79	93.0	67.5	74.6	73.0	84.5	25.79
1932	577,100	86.4	64.1	11,308,000	19.59	74.2	46.1	61.0	64.8	76.4	25.64
1933	631,000	94.4	69.0	11,604,000	18.39	76.2	48.5	60.5	65.9	75.2	24.45
1934	[7] 711,700	106.5	78.8	[7] 14,060,000	19.78	92.4	61.9	[8] 70.5	[8] 74.9	78.6	25.17
January 1935	[7] 630,700	[9] 94.4	[9] 78.7	[7] 12,696,000	20.13	[9] 83.3	[9] 64.1	[10] 83.5	[10] 78.8	(11)	(11)
February	(11)	[9] 93.8	[9] 81.2	(11)	(11)	[9] 83.4	[9] 69.1	[10] 87.0	[10] 79.5		

[1] The following industries are comprised in this group: Baking, beverages, butter, canning and preserving, confectionery, flour, ice cream, slaughtering and meat packing, sugar (beet and cane refining).
[2] Trend of Employment, December 1934 (Bureau of Labor Statistics).
[3] Basis 1923–25=100.
[4] Basis 1926=100.
[5] The "Cost-of-living index" is computed by using a simple average (of the monthly periods shown for the respective years) of Indexes of the Cost of Goods Purchased by Wage Earners and Low-Salaried Workers in the Large Cities of the United States contained in Monthly Labor Review, February 1935 (p. 515), which have been converted into 1926=100.
[6] Computed by dividing "Per capita weekly wage" by "Cost-of-living index."
[7] Trend of Employment, January 1935.
[8] Wholesale Prices, December and year 1934 (Bureau of Labor Statistics).
[9] Employment in February 1935.
[10] Wholesale Prices in February 1935.
[11] Comparable data not available.

Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935, unless otherwise indicated).

Chemicals and allied products [1]

Year	Employment: Number wage earners	Employment: Group index [2] [3]	Employment: Index all manufacturing industries [2] [3]	Weekly pay rolls: Weekly pay roll	Weekly pay rolls: Per capita weekly wage	Weekly pay rolls: Group index [3] [11]	Weekly pay rolls: Index all manufacturing industries [2] [3]	Weekly pay rolls: Wholesale price index chemicals and drugs [4]	Weekly pay rolls: General price index all commodities [4]	Weekly pay rolls: Cost of living index [4]	Weekly pay rolls: Real wages [4]
1923	342,700	102.9	104.1	$8,499,000	24.85	102.2	103.3	101.1	100.6	97.6	$25.46
1924	322,200	96.7	96.5	8,013,000	24.87	96.3	96.1	98.9	98.1	97.4	25.53
1925	334,200	100.4	99.4	8,444,000	25.27	101.5	100.6	101.8	103.5	100.3	25.19
1926	355,100	106.7	101.2	9,055,000	25.50	108.8	103.8	100.0	100.0	100.0	25.50
1927	346,700	104.1	98.9	8,978,000	25.90	107.9	101.8	96.8	95.4	98.6	26.27
1928	342,500	102.9	98.9	8,997,000	26.27	108.1	102.4	95.6	96.7	97.4	26.97
1929	384,800	115.6	104.8	10,068,000	26.16	121.0	109.1	94.2	95.3	97.5	26.83
1930	364,700	109.5	91.5	9,334,000	25.59	112.2	88.7	89.1	86.4	93.4	27.40
1931	316,800	95.1	77.4	7,643,000	24.13	91.8	67.5	79.3	73.0	84.5	28.56
1932	279,700	84.0	64.1	5,861,000	20.95	70.4	46.1	73.5	64.8	76.4	27.42
1933	315,400	94.7	69.0	6,179,000	19.59	74.3	48.5	72.6	65.9	75.2	26.05
1934	[7] 361,600	108.6	78.8	[7] 7,437,000	20.57	89.4	61.9	[8] 75.9	[8] 74.9	78.6	26.17
January 1935	[7] 361,000	[7] 108.4	[7] 78.7	[7] 7,620,000	21.11	[7] 91.6	[7] 64.1	[9] 79.3	[9] 78.8	(10)	(10)
February	(10)	[11] 199.4	[11] 81.2	(10)	(10)	[11] 93.2	[11] 69.1	[12] 80.4	[12] 79.5	(10)	(10)

[1] The following industries are comprised in this group: Chemicals, cottonseed oil, cake and meal, druggists' preparations, explosives, fertilizers, paints and varnishes, rayon and allied products, soap, petroleum refining.

[2] "Trend of Employment," December 1934 (Bureau of Labor Statistics).

[3] Basis 1923-25=100.

[4] Basis 1926=100.

[5] The "Cost-of-living index" (Column P) is computed by using a simple average (of the monthly periods shown for the respective years) of Indexes of the Cost of Goods Purchased by Wage Earners and Low-Salaried Workers in the large cities of the United States contained in Monthly Labor Review, February 1935 (p. 515) which have been converted into 1926=100.

[6] Computed by dividing "Per capita weekly wage" by "Cost-of-living index."

[7] "Trend of employment," January 1935.

[8] Wholesale prices, December and year 1934 (Bureau of Labor Statistics).

[9] "Wholesale prices in January 1935."

[10] Comparable data not available.

[11] "Employment in February 1935."

[12] "Wholesale prices in February 1935."

Source of data: U. S. Department of Labor, Bureau of Labor Statistics (Monthly Labor Review, January 1935 unless otherwise indicated.)

EXPLANATORY STATEMENT

The following tables were prepared by the staff of the Federal Trade Commission at the request of Senator King from statistics furnished by the Bureau of Labor Statistics of the Department of Labor for a typical number of industries for 1926, 1930, 1931, 1932, 1933, and 1934. They show the total employment and pay roll of the several industries for March and December of each year and for January of the succeeding year, as well as the high and low employment and pay rolls for each of the said years. They are comparable to the figures introduced into the record by Mr. Richberg for similar periods during the years 1933, 1934, and 1935, except that the tables prepared by the Federal Trade Commission for 1933 and 1934 should be examined in connection with the testimony submitted by Mr. A. F. Hinrichs, Chief Economist of the Bureau of Labor Statistics.

Hearings pursuant to Senate Resolution 79, April 17, 1935

DEPARTMENT OF LABOR,
Washington, April 18, 1935.

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

MY DEAR SENATOR HARRISON: The Bureau of Labor Statistics was asked to submit for the record discrepancies between its figures and those presented by Mr. Richberg on March 11 (pt. I, pp. 78–81), which cannot be accounted for by the fact that the Federal Trade Commission used Bureau of Labor Statistics figures which had not yet been revised to the census of 1933.

Typographical errors appear to have been made in the following cases: Brick, tile, and terra cotta reached the maximum employment since March 1933 in August 1933. Employment in candy manufacturing reached a maximum in October 1933 rather than in October 1934. Employment in cast-iron pipes should be 5,873, 12,105, 9,125, and 11,295. The figures in the record are 10 times too high, apparently having the decimal point in the wrong place. Employment in the glass industries in March 1933 should read 40,500 rather than 83,400.

In addition to these cases it should be noted that maximum employment in the silk textile industry occurred in August 1933 rather than in February 1935 and that maximum employment since March 1933 in the soap and glycerine industries was 17,123 in October 1934 rather than 18,100 in January 1935.

Further lack of comparability between the figures submitted by the Federal Trade Commission and Mr. Richberg arises in the case of men's clothing, lumber and timber products and knit goods because of the fact that the two agencies included somewhat different groups of industries in making up these totals.

Very sincerely yours,

A. F. HINRICHS, *Chief Economist.*

The figures of pay rolls and employment appearing in the Finance Committee hearings on pages 78–81 were apparently prepared by the Division of Research and Planning of the National Recovery Administration, using the Bureau of Labor Statistics indices applied to the 1933 census. The Division of Research and Planning has also prepared figures for 1931 and 1932 adjusted to the trend between the 1931 and 1933 census figures for those years. Prior to 1931 the figures prepared by the Division of Research and Planning are apparently the same as those prepared by the Bureau of Labor Statistics. The Bureau of Labor Statistics figures since 1931 have not been adjusted to the census figures and consequently the data of this Bureau in the attached tables show certain discrepancies from those prepared by the Division of Research and Planning at pages 78–81 of the Finance Committee hearings.

If the Bureau of Labor Statistics figures shown in the following tables unadjusted subsequent to 1931 are adjusted to the census figures of 1931 and 1933 by the methods used by the Division of Research and Planning, the figures shown in the tables at pages 78–81 of the hearings should be comparable with the Bureau of Labor Statistics figures prior to 1931 as shown in the attached tables:

LUMBER AND TIMBER PRODUCTS INDUSTRY

[Sawmills: Bureau of Labor Statistics]

	March	High	December	January of succeeding year	Low
1926:					
Employment	441,731	474,840	437,540	414,909	437,540
Pay roll	$8,309,675	$9,104,161	$8,325,889	$7,515,189	$7,847,576
1930:					
Employment	362,102	372,161	247,688	222,961	247,688
Pay roll	$7,085,518	$7,117,946	$4,191,319	$3,445,475	$4,191,319
1931:					
Employment	215,417	222,961	139,979	132,017	139,979
Pay roll	$3,494,117	$3,494,117	$1,702,470	$1,410,618	$1,702,470
1932:					
Employment	124,473	132,017	117,767	109,804	117,767
Pay roll	$1,337,655	$1,410,618	$1,053,910	$940,412	$1,053,910
1933:					
Employment	102,260	173,088	159,258	146,900	102,260
Pay roll	$859,342	$2,083,499	$1,783,540	$1,553,820	$859,342
1934:					
Employment	155,991	172,739	151,206	147,857	146,900
Pay roll	$1,848,510	$2,161,060	$1,786,000	$1,705,630	$1,553,820

IRON AND STEEL INDUSTRIES (BLAST FURNACES, STEEL WORKS, AND ROLLING MILLS)

1926:					
Employment	415,305	418,242	400,623	393,911	400,623
Pay roll	$18,705,575	$13,789,917	$13,171,409	$12,384,217	$12,336,103
1930:					
Employment	400,623	404,398	316,303	310,850	316,303
Pay roll	$13,283,865	$13,410,378	$8,504,485	$8,040,604	$8,504,485
1931:					
Employment	313,367	313,367	235,759	234,081	235,759
Pay roll	$9,277,620	$9,277,620	$4,596,639	$4,076,530	$4,512,297
1932:					
Employment	230,725	234,920	195,068	189,198	188,775
Pay roll	$4,062,473	$4,245,214	$2,713,001	$2,656,773	$2,417,804
1933:					
Employment	187,097	291,972	272,256	264,160	187,097
Pay roll	$2,642,716	$6,817,645	$5,524,401	$5,284,724	$2,642,716
1934:					
Employment	284,886	321,482	271,882	282,042	264,160
Pay roll	$6,695,694	$8,837,803	$5,964,555	$6,913,753	$4,784,471

TOBACCO MANUFACTURING INDUSTRY [1]

1926:					
Employment	127,440	129,573	129,176	117,593	119,993
Pay roll	$2,090,230	$2,176,056	$2,112,323	$1,831,416	$1,937,585
1930:					
Employment	110,544	110,544	105,865	94,532	103,767
Pay roll	$1,646,430	$1,718,090	$1,587,441	$1,309,952	$1,563,178
1931:					
Employment	103,756	104,401	91,165	87,912	91,165
Pay roll	$1,391,812	$1,397,102	$1,203,981	$1,088,269	$1,203,981
1932:					
Employment	89,597	92,378	87,526	77,101	85,558
Pay roll	$1,067,827	$1,097,760	$1,029,482	$791,105	$998,123
1933:					
Employment	73,721	91,412	85,971	75,389	71,942
Pay roll	$741,168	$1,135,579	$1,032,526	$888,132	$740,286
1934:					
Employment	89,090	90,332	85,604	78,205	75,389
Pay roll	$1,017,499	$1,116,111	$1,108,999	$921,293	$888,132

[1] Includes chewing, smoking, cigars, and cigarettes.

WOOLEN AND WORSTED INDUSTRY

	March	High	December	January of succeeding year	Low
1926:					
Employment	144,207	162,141	161,406	161,259	142,296
Pay roll	$3,188,570	$3,658,963	$3,655,806	$3,570,567	$3,103,331
1930:					
Employment	120,246	133,476	108,927	107,898	108,927
Pay roll	$2,380,378	$2,746,580	$2,118,347	$2,045,736	$2,096,248
1931:					
Employment	119,952	136,857	106,869	108,927	106,869
Pay roll	$2,411,948	$2,698,078	$1,853,159	$1,913,142	$1,853,159
1932:					
Employment	107,604	124,509	115,836	115,689	79,674
Pay roll	$1,793,176	$2,130,975	$1,736,350	$1,676,367	$1,095,479
1933:					
Employment	97,167	176,106	137,592	140,798	97,167
Pay roll	$1,193,346	$2,910,754	$2,197,272	$2,242,429	$1,193,346
1934:					
Employment	146,494	152,902	152,368	163,404	63,724
Pay roll	$2,396,128	$2,624,706	$2,624,706	$2,880,871	$957,663

KNITTED OUTERWEAR INDUSTRY

[Knit goods: Bureau of Labor Statistics]

1926:					
Employment	193,697	193,697	191,403	189,735	175,349
Pay roll	$3,529,292	$3,586,020	$3,586,020	$3,472,564	$3,059,260
1930:					
Employment	198,909	203,913	182,646	184,090	173,889
Pay roll	$3,748,100	$3,869,660	$3,115,988	$2,629,748	$2,844,504
1931:					
Employment	175,140	187,859	185,148	175,557	164,060
Pay roll	$2,998,480	$3,059,260	$2,868,816	$2,467,668	$2,629,748
1932:					
Employment	178,893	195,156	186,608	173,681	147,827
Pay roll	$2,605,436	$2,779,672	$2,471,720	$2,017,896	$1,685,632
1933:					
Employment	169,094	211,628	190,152	180,200	169,094
Pay roll	$1,916,596	$3,314,536	$2,771,568	$2,223,847	$1,916,596
1934:					
Employment	207,980	212,054	204,461	202,238	180,200
Pay roll	$3,337,330	$3,405,948	$3,405,948	$3,312,378	$2,223,847

SILK AND RAYON

[U. S. Department of Labor: Bureau of Labor Statistics]

1926:					
Employment	134,285	139,244	129,195	127,890	122,148
Pay roll	$2,835,440	$2,933,305	$2,700,545	$2,592,100	$2,473,075
1930:					
Employment	131,805	131,805	117,189	116,537	107,010
Pay roll	$2,565,650	$2,565,650	$2,142,450	$1,975,815	$1,827,695
1931:					
Employment	119,069	120,713	108,185	106,097	95,657
Pay roll	$2,137,160	$2,187,415	$1,764,215	$1,610,805	$1,650,480
1932:					
Employment	88,479	106,097	91,089	91,220	62,901
Pay roll	$1,177,025	$1,610,805	$1,174,380	$1,092,385	$759,115
1933:					
Employment	78,300	112,883	94,091	94,149	78,300
Pay roll	$896,655	$1,772,150	$1,385,980	$1,397,232	$896,655
1934:					
Employment	106,468	107,474	95,909	101,440	73,157
Pay roll	$1,710,232	$1,742,784	$1,625,096	$1,712,736	$1,029,144

COTTON GOODS (TEXTILE) INDUSTRY

	March	High	December	January of succeeding year	Low
1926:					
Employment	472, 914	472, 914	461, 441	463, 991	412, 153
Pay roll	$7, 389, 660	$7, 389, 660	$7, 246, 232	$7, 177, 636	$5, 799, 480
1930:					
Employment	389, 633	402, 380	328, 873	321, 649	322, 074
Pay roll	$5, 431, 556	$5, 624, 872	$4, 514, 864	$4, 285, 424	$4, 028, 456
1931:					
Employment	336, 946	346, 294	319, 950	316, 126	319, 100
Pay roll	$4, 552, 280	$4, 739, 360	$3, 679, 240	$3, 579, 464	$3, 635, 588
1932:					
Employment	325, 473	328, 873	326, 323	324, 624	240, 493
Pay roll	$3, 691, 712	$3, 791, 488	$3, 230, 248	$3, 130, 472	$2, 132, 712
1933:					
Employment	312, 302	449, 119	415, 977	419, 710	312, 302
Pay roll	$2, 849, 852	$5, 687, 232	$4, 995, 036	$5, 160, 616	$2, 849, 852
1934:					
Employment	455, 496	456, 370	424, 128	425, 453	229, 736
Pay roll	$5, 881, 023	$5, 950, 293	$5, 624, 724	$5, 666, 286	$2, 798, 508

MEN'S CLOTHING INDUSTRY

1926:					
Employment	180, 200	184, 338	184, 338	183, 586	167, 597
Pay roll	$4, 128, 800	$4, 196, 200	$4, 112, 920	$4, 140, 710	$3, 465, 810
1930:					
Employment	179, 636	185, 655	142, 768	147, 470	142, 768
Pay roll	$3, 588, 880	$3, 783, 410	$2, 294, 660	$2, 481, 250	$2, 294, 660
1931:					
Employment	160, 826	165, 528	138, 818	138, 442	138, 818
Pay roll	$3, 044, 990	$3, 044, 990	$2, 008, 820	$2, 030, 610	$2, 008, 820
1932:					
Employment	147, 847	149, 163	135, 056	129, 037	110, 246
Pay roll	$2, 223, 200	$2, 243, 030	$1, 441, 110	$1, 468, 900	$1, 214, 820
1933:					
Employment	138, 254	163, 647	139, 382	139, 747	129, 037
Pay roll	$1, 675, 340	$2, 647, 990	$1, 842, 080	$2, 022, 272	$1, 460, 960
1934:					
Employment	161, 611	163, 069	144, 120	152, 866	139, 747
Pay roll	$2, 730, 896	$2, 730, 896	$2, 179, 744	$2, 362, 080	$2, 022, 272

WOMEN'S CLOTHING MANUFACTURING INDUSTRIES

1926:					
Employment	142, 125	142, 313	142, 313	150, 750	117, 750
Pay roll	$4, 093, 497	$4, 093, 497	$3, 671, 487	$3, 948, 138	$2, 756, 510
1930:					
Employment	201, 750	201, 750	175, 313	174, 188	161, 313
Pay roll	$5, 204, 790	$5, 204, 790	$3, 704, 310	$3, 615, 219	$3, 202, 587
1931:					
Employment	195, 938	195, 938	155, 250	151, 125	152, 813
Pay roll	$4, 670, 244	$4, 670, 244	$3, 038, 472	$2, 747, 754	$3, 029, 094
1932:					
Employment	163, 688	163, 688	134, 813	134, 250	95, 813
Pay roll	$3, 394, 836	$3, 394, 836	$1, 978, 758	$1, 913, 112	$1, 406, 700
1933:					
Employment	141, 563	157, 500	119, 625	130, 637	119, 625
Pay roll	$1, 969, 380	$3, 240, 099	$1, 969, 380	$2, 339, 632	$1, 706, 796
1934:					
Employment	166, 649	168, 819	142, 513	149, 792	114, 419
Pay roll	$3, 558, 738	$3, 558, 738	$2, 549, 036	$2, 885, 108	$2, 001, 174

AUTOMOBILE MANUFACTURING, AUTOMOTIVE PARTS, AND EQUIPMENT MANUFACTURING INDUSTRIES

	March	High	December	January of succeeding year	Low
1926:					
Employment	468,428	468,428	344,945	344,498	344,945
Pay roll	$15,338,624	$15,338,624	$9,868,600	$9,289,624	$9,868,600
1930:					
Employment	351,209	371,789	284,099	283,204	278,283
Pay roll	$10,206,952	$10,784,070	$6,456,884	$4,906,104	$6,456,884
1931:					
Employment	307,364	325,260	273,361	287,678	231,753
Pay roll	$7,894,880	$8,839,446	$6,414,590	$6,372,296	$4,906,104
1932:					
Employment	289,020	297,968	204,909	229,069	109,117
Pay roll	$6,851,628	$7,161,784	$4,271,694	$4,863,810	$2,960,580
1933:					
Employment	190,093	288,126	265,756	323,368	199,093
Pay roll	$3,623,186	$7,034,002	$5,808,378	$7,356,294	$3,623,186
1934:					
Employment	436,527	462,702	358,000	435,319	220,213
Pay roll	$12,378,258	$13,551,732	$9,640,152	$11,633,796	$6,473,034

RUBBER MANUFACTURING INDUSTRY

1926:					
Employment	109,070	109,704	101,089	102,026	98,289
Pay roll	$2,945,124	$3,023,656	$2,773,952	$2,760,580	$2,698,568
1930:					
Employment	86,362	89,621	68,941	102,782	68,659
Pay roll	$2,429,732	$2,558,140	$1,581,860	$2,312,983	$1,485,656
1931:					
Employment	98,137	103,849	94,185	92,292	94,185
Pay roll	$2,293,981	$2,496,248	$1,790,487	$1,762,798	$1,758,028
1932:					
Employment	90,924	92,380	86,233	83,054	82,781
Pay roll	$1,712,193	$1,785,272	$1,428,976	$1,280,072	$1,318,066
1933:					
Employment	80,391	119,404	112,808	110,228	80,110
Pay roll	$1,129,668	$2,181,668	$2,045,185	$2,030,958	$1,129,668
1934:					
Employment	117,079	121,001	106,177	110,017	103,030
Pay roll	$2,442,307	$2,542,953	$2,286,370	$2,402,161	$1,942,193

ELECTRICAL MACHINERY AND MANUFACTURING INDUSTRY, EXCLUDING RADIOS

1926:					
Employment [1]	264,604	270,849	259,344	251,456	255,729
Pay roll [1]	$6,968,144	$7,161,216	$6,950,592	$6,660,964	$6,485,464
1930:					
Employment	264,132	274,041	204,398	200,718	204,398
Pay roll	$7,206,264	$7,468,030	$4,911,962	$4,580,905	$4,911,962
1931:					
Employment	197,038	200,718	155,988	154,290	155,988
Pay roll	$4,627,099	$4,667,895	$3,064,202	$2,933,319	$3,064,202
1932:					
Employment	148,628	154,290	104,181	99,368	104,181
Pay roll	$2,694,650	$2,933,319	$1,639,887	$1,547,499	$1,639,887
1933:					
Employment	97,103	134,756	132,208	128,547	97,103
Pay roll	$1,462,810	$2,378,991	$2,280,142	$2,188,478	$1,462,810
1934:					
Employment	137,443	147,229	145,894	146,562	128,547
Pay roll	$2,509,302	$2,990,538	$2,990,538	$3,001,996	$2,188,478

[1] Electrical machinery including radios.

BOOT AND SHOE MANUFACTURING INDUSTRY

	March	High	December	January of succeeding year	Low
1926:					
Employment	203,750	213,824	204,161	208,273	190,180
Pay roll	$4,362,540	$4,726,085	$4,298,568	$4,302,662	$3,738,098
1930:					
Employment	204,572	206,628	165,508	173,321	165,508
Pay roll	$4,003,272	$4,020,380	$2,656,017	$2,835,651	$2,412,228
1931:					
Employment	188,535	197,787	166,330	172,910	155,434
Pay roll	$3,575,572	$3,716,713	$2,487,529	$2,698,787	$2,232,594
1932:					
Employment	188,124	188,124	157,078	166,330	157,078
Pay roll	$3,263,351	$3,263,351	$1,993,032	$2,142,777	$1,993,082
1933:					
Employment	175,788	198,198	161,190	171,781	161,190
Pay roll	$2,378,012	$3,477,201	$2,493,491	$2,870,382	$2,142,777
1934:					
Employment	196,017	196,017	176,245	184,962	169,655
Pay roll	$3,760,111	$3,760,111	$2,848,027	$3,241,475	$2,441,166

PAPER AND PULP INDUSTRY

1926:					
Employment	128,000	128,896	125,440	125,312	125,440
Pay roll	$3,261,440	$3,291,392	$3,238,144	$3,148,288	$3,085,040
1930:					
Employment	129,920	130,688	114,176	110,848	114,176
Pay roll	$3,391,232	$3,414,528	$2,732,288	$2,582,528	$2,732,288
1931:					
Employment	109,824	110,848	102,784	102,528	102,784
Pay roll	$2,662,400	$2,689,024	$2,126,592	$2,003,456	$2,126,592
1932:					
Employment	103,168	103,168	96,640	95,616	95,744
Pay roll	$2,109,952	$2,116,608	$1,614,080	$1,554,176	$1,587,456
1933:					
Employment	95,872	125,568	121,856	120,962	95,616
Pay roll	$1,564,160	$2,290,320	$2,126,592	$2,109,767	$1,554,176
1934:					
Employment	125,906	129,524	129,524	128,801	120,962
Pay roll	$2,325,774	$2,470,765	$2,470,765	$2,470,765	$2,109,767

FURNITURE INDUSTRY

1926:					
Employment	193,980	200,943	198,042	188,565	179,475
Pay roll	$4,754,060	$5,104,310	$4,992,230	$4,473,860	$4,109,600
1930:					
Employment	166,324	173,673	136,540	129,771	136,540
Pay roll	$3,693,970	$3,834,070	$2,713,270	$2,465,760	$2,713,270
1931:					
Employment	131,512	131,899	120,295	112,559	120,295
Pay roll	$2,680,580	$2,680,580	$2,082,820	$1,802,620	$2,082,820
1932:					
Employment	109,464	118,941	97,087	89,351	86,063
Pay roll	$1,695,210	$1,821,300	$1,288,920	$1,069,430	$1,032,070
1933:					
Employment	84,516	135,767	113,013	103,740	84,516
Pay roll	$905,980	$2,250,940	$1,641,694	$1,445,182	$905,980
1934:					
Employment	108,927	114,979	112,385	110,829	103,740
Pay roll	$1,682,634	$1,932,368	$1,879,146	$1,780,890	$1,445,192

TESTIMONY OF GEORGE W. BOLLER, CHICAGO, ILL., REPRESENTING THE INDEPENDENT EQUIPPED COAL MERCHANTS, INC.

(Having been first duly sworn, the witness testified as follows:)

Senator BLACK. How long do you require to make your statement?

Mr. BOLLER. If I were to give you the entire statement that I have here, it would take considerable time, but I have briefed it and have exhibits that I could enter.

Senator BLACK. We will appreciate that, because I see here that there are five further witnesses, and we want to get through if we can. All of them are here from out of the city.

Mr. BOLLER. When the code was originally instituted, we, the independent dealers, in the city of Chicago, were notified that it would be necessary for us to form a group in order to secure representation on the code board, which was the reason for the organization of this small group. This brief which I have here is directed to the Senate Finance Committee.

The Independent Equipped Coal Merchants, Inc., of the city of Chicago, not being entirely in accord with the administration of the code in district no. 26, offer the following information.

As fully outlined in the brief hereto attached, this organization objected to the original method of election for the members of the code board, also to the set-up and do not think it fair to have the attorneys and auditors, who represent the Chicago Coal Merchants Association, the controlling factor of the code board conducting the affairs of the board and receive the reports and information requested to be filed.

The brief also fully outlines the objections to the methods of conducting the original hearing for the declaration of an emergency.

The question of how this power to declare an emergency can be abused is fully set out in the brief. It is also very evident from the records of the Research and Planning Division hearing conducted in Chicago in September 1934, and is also very evident from the facts outlined in the Building Managers and the Real Estate Boards' briefs filed with the code authority at Washington.

The evidence brought out at the original hearing was not absolute, conclusive, nor substantiating evidence of an emergency.

It is plainly evident from the price set-up of the original hearing that was not a cost determination but a fixed set of prices, copy of which is hereto attached, and the prices outlined after the Research and Planning Division hearing which is purely a fixed set of prices and not a cost determination as authorized by the Research and Planning Division. Press copy of the Research and Planning Division findings hereto attached.

The price list sent out by the code board of district no. 26, after the Research and Planning Division hearing, contained approximately 1,800 items from which it is purely evident that these are fixed prices in absolute violation of our State statutes and not minimum cost determinations. The budget as set up by the code board of district no. 26 and authorized a total of $158,700 as outlined in said attached brief, if collected on a tonnage basis in accordance with the actual tonnage handled by the retail coal merchants in the Chicago territory, the board would collect in excess of $300,000.

The group represented here today have also filed with special investigator at Chicago, namely Mr. J. Smart, considerable information relative to various members of the code board of district no. 26 which has been thoroughly investigated and found in accord with the statements made. Said evidence should have been sufficient to bar said parties from the privilege of being members of said board and prevented from conducting and administering the retail solid fuel business in this territory.

It is also plainly evident from the attached copy of newspaper advertisement and letter of the Chicago Associated Coal Yard Owners written on November 15, 1934, that a certain member of the code board seeks to derive special benefits for himself and his organization by being a member of said board.

Since this method of price fixing as heretofore outlined has appeared in this district, a great many methods have been used to defeat the prices as set up by the code board of district no. 26, a few examples which are as follows: One of the supposed reliable coal dealers in the Chicago territory offered to rent space (which they would not use) in one of the large office buildings and to pay rent for same on the basis of the difference between the price which he wished to charge said building for the coal and the price actually set up by the code board.

One of the greatest detriments to the coal business in this territory has been a question of intermediaries who handle large tonnage of coal for receivers and who offer said tonnage for sale on the basis of approximately 35 cents per ton with 2 percent discount for the payment in 10 days after date of delivery, making a total difference between the actual amount set by the code board and the delivered price, of $1 per ton less than the code price. If such large commissions can be paid there must be something wrong with the minimum-cost determinations.

There are also numerous other methods that have been used which are difficult of proof, however, if the proper investigators are put on the trail of certain business, evidence could undoubtedly be gathered.

Another effect that price fixing has had on the small dealer in this territory is as will be noted in the attached price list issued by the code board of district no. 26 on December 30, 1934, in which it will be found that the difference between the actual cost of the coal in the yard to the small dealer and the delivered price, take for instance on steam coal, is as low as 30 cents per ton, however, the Research and Planning Division found on its investigation that the minimum reasonable cost for handling coal in this territory was $1.35 per ton.

It is also purely evident throughout the entire price set-up that the margins allowed the little dealer are such that it is putting a great many of them out of business.

One of the members of our group reported yesterday that at his peak load he supplied 86 small dealers and that during the last few days he had cashed relief checks for 25 of them, showing that 25 of his dealers have been forced on the relief.

One of the greatest hazards confronting the coal men in our districts today, owing to price fixing, is the changing over of the plants from solid fuel to gas and oil.

Some of the largest plants in the city of Chicago have already installed gas burners and equipped their boilers to burn same, and a

number of the other larger plants in the loop district have signed contracts for the installation of gas burners.

We sincerely and honestly believe that in a great many instances if the coal prices could have been kept in line or if the proper legislation could be passed to prevent this change, that it would materially affect the labor situation in our district. Take for example, one of our largest consumers in the loop district has recently changed two of his 750-horsepower boilers over to gas whichis to be supplied to them on the basis of 2 cents per therm which means approximately 50,000 B. t. u.'s percent. With the present set-up in this district it is impossible to give them satisfactory fuel containing said value per cent.

The real effect this is having on employment is far-reaching. First it takes approximately six miners to mine the coal required in the particular plant mentioned and not only affects the miners but it affects the day laborers and the mine office employees, it affects the railroad transportation of solid fuels and the greater the total use of solid fuel decreases, the greater its effect upon the number of railroad employees. It affects the distribution office of solid fuel, its salesmen, office employees, weighmen, and so forth; it eliminates the men for unloading and the distribution of solid fuel at destination and materially affects the number of engine-room employees necessary to operate the plant. It affects all industries handling engine-room supplies, mine equipment and railway equipment and so on down the line.

We sincerely believe that our stand is justly taken in these matters and in order to effectuate the real purpose of the National Recovery Act established really to promote the welfare of the laboring man and provide work for the idle, that the price-fixing factor has so materially affected the labor in this district that said price-fixing factors should be entirely eliminated from code matters.

We are sincerely in accord with the administration ideas relative to maximum hours and minimum wages and sincerely hope that if the continuation of the Recovery Act is contemplated that only the factors of wages and hours be considered, inasmuch as the price-fixing factors are entirely detrimental to the employment of labor and absolutely contrary to the laws of our State as set up in our statutes and that the factor of trade practices can be justly handled through the proper judiciary bodies who have full power to prosecute the violation of trade practices.

The above brief and attached information are respectfully submitted for your consideration.

The matter of price fixing in our territory has led to a number of bad practices that cannot be met by those in the industry who are trying to handle their business open and aboveboard. If we were to try to meet the proposition of paying an intermediary about 85 cents per ton, even though we know that a part of this is going over to the place where the orders are placed, we could afford to abide by the rules and regulations of our code board, as we have been advised that it is not necessary to know where the commissions are going. However, we do know where the commissions are going and we feel that if there is room enough to give that much money back to someone who is on the inside and has no financial interests in our industry whatsoever, that we should be allowed to give a portion of that direct

to the buyer or the man who is paying the bills rather than to give it to some intermediary who has no interest whatever in the industry.

We are, however, opposed to the proposition of the code board as set up in Chicago. The factor of being controlled by the Chicago Coal Merchants Association is a problem which has been discussed a number of times, and our brief fully outlines the reasons why we object to their control of our industry in the territory.

Senator BLACK. You are not a member of the Coal Merchants Association?

Mr. BOLLER. We were at one time.

Senator BLACK. You are objecting, as I understand, to the price-fixing provisions of the Retail Coal Code?

Mr. BOLLER. Yes, sir.

Senator BLACK. You favor a law of the type of the National Recovery Act or any other method as I understand it, to regulate minimum wages and maximum hours?

Mr. BOLLER. I favor employment control. However, I do not favor any price-fixing schedules or trade practices which we have. Of course, we do not want to violate trade practices, but they can be amply handled by our judicial body in Illinois.

Senator BLACK. And you have elaborated those ideas in the brief?

Mr. BOLLER. In the brief; yes, sir.

Senator BLACK. Is that all now?

Mr. BOLLER. That is all I have.

(The documents above referred to follow:)

As a preliminary to this brief, attention is first called to the original set-up of members to be voted for to compose the code authority for the retail solid fuel industry, district no. 26. The orginal notices from the Chicago Coal Merchants Association containing the names of the parties to be voted for, was also mailed out by the Chidago Associated Coal Yard Owners Associatin with the name of the Chicago Coal Merchants Association scratched out and the name of the Chicago Associated Coal Yard Owners Association typed in in its stead and contained the same list of names recommended by the Chicago Coal Merchants Association. Also as mentioned in the prior letter to Mr. Wayne P. Ellis, deputy administrator of the retail solid fuel industry at Washingon, D. C., the name of J. J. O'Laughlin of the Consumers Co. and W. P. Worth were shown as representing group B or the unaffiliated equipped coal merchants, and as stated in said letter, the tonnage represented by the Consumers Co. overblanced, as far as could be determined, the tonnage which could be voted for by the unaffiliated equipped coal merchants of district no. 26.

The names appearing on said list, namely: George I. Netho, chairman, who is a past president of the Chicago Coal Merchants Association; Robert H. Clark, past president of the Chicago Coal Merchants Association; Joseph D. Biety, former vice president of the Chicago Coal Merchants Association; Richard De Kiker at the present time on the board of directors of the Chicago Coal Merchants Association; A. Frank Druley, past president of the Chicago Coal Merchants Association; Frank Donovan, present vice president of the Chicago Coal Merchant chants Association; Josehh J. Heritage, president of the Chicago Associated Coal Yard Owners Association; J. J. O'Laughlin, representing group B, official of the Consumers Co.; W. P. Worth, former official of the Chicago Coal Merchants Association, now representing group B unaffiliated equipped coal merchants; and Charles W. McCoy, representing the msall unequipped dealer.

The entire ballot naturally was fully controlled at said election inasmuch as said tonnage represented overbalanced any opposition which might have been offered as the representation for the unaffiliated equipped coal merchants of district no. 26 and, therefore, each party whose name appeared on the original set-up, was elected to hold representation on the Retail Solid Fuel Code Board of District No. 26.

The Chicago Tribune attorneys, namely Kirkland, Fleming, Green & Martin, 33 North LaSalle Street, Chicago, also represent the Chicago Coal Merchants

Association, who now handle the affairs of the code board district no. 26 and conducted the questioning in order to determine whether or not an emergency existed within said territory.

Said code board was also incorporated.

No authoritative information can be found authorizing said code board to incorporate and convey its power and authority to a corporation. It is, therefore, very difficult to understand why the attorneys representing the Chicago Coal Merchants Association, who control the entire voting power of the code board, should conduct the questioning of witnesses, and as will be shown later in said brief, a number of which were former officials of the Chicago Coal Merchants Association and members thereof.

If the Retail Solid Fuel Code Board of District No. 26 is to pass fair and unbiased opinions, it is difficult to understand how a board controlled by the Association and governed by its own attorneys, questioning its own officers or past officers and members, could pass opinions or render rulings which are unbiased and not strictly in accordance with the ideas of their organization.

In the letter of transmittal to the President by National Administrator Hugh S. Johnson and incorporated as part of the Retail Solid Fuel Industry Code appears the remark that the retail solid-fuel industry has had a decline of 28.9 percent in its sales between the years of 1926 and 1933, due to the severe competition of oil and gas as well as the general depression. Other causes, which also were factors entering into the decline of tonnages in the retail solid-fuel industry, may have been caused by a great number of vacancies in buildings, the closing down of factories, and cutting down of the fuel requirements necessary to operate said factories under present conditions and the entry of a great number of new dealers in this territory, which have come into being since the year of 1926, such as merchants in other lines of industry who had a great deal of idle equipment and decided it was policy for them to enter the fuel business in order to keep their equipment in operation and for other purposes.

The evidence brought out at the inquiry conducted by the code board of district no. 26 and its association attorneys, endeavored to bring out the facts that the shrinkage of tonnages, shown by each dealer, was a question of price cutting, in order that an emergency could be declared in this district.

It was very evident that evidence not relevant to the question as to whether or not price cutting existed in district no. 26 to such an extent that an emergency should be declared, was admitted in numerous cases, also that the question of costs and blends were brought out by several witnesses, however, some witnesses were allowed to enter irrelevant facts and others were prevented from doing so.

The interrogation of W. E. E. Koepler, secretary of the Pocahontas Operators Association, who was interrogated by the attorneys as to the relative values of Eagle seam coal versus Pocahontas and brought out the facts as to whether or not the average purchaser could distinguish the difference from the appearance of one coal from the other, which Mr. Koepler thought the average buyer could readily do both from the appearance and burning of same. However, when a later witness was interrogated by the attorneys, the facts were brought out that the average purchaser could not tell one of the above-mentioned coals from the other.

When the attorney, Joseph T. Harrington, representing the union employees, took the stand, he was barred when he endeavored to bring out the facts that union labor in this district was being paid less today than they were paid in 1932 and 1933, tending to show that the costs of handling fuels in this district, as far as labor factor is concerned, is less today than it was prior to the incorporation of the code board, this information being detrimental to the anticipated declaration of an emergency, was determined by the attorneys conducting the questioning to be irrelevant and the witness was prevented from giving further testimony. Also as shown later in this brief, Mr. Paul J. Alwart was told that his evidence as to blends was irrelevant.

It was also very evident that every question put to the witnesses was of a leading nature, also plainly evident that some of the witnesses had been arranged for prior to the board meeting.

There was considerable discussion amongst practically every witness appearing on the stand that their tonnage had shrunk during the past year, which they stated was undoubtedly caused through price cutting. Mr. Frank G. Reed, sales manager for the Consumers Co., stated that when he had submitted prices on various pieces of business that invariably someone would put in a price less than his and if he met that price, the other party would invariably go lower and he would continue in an attempt to meet said price, until, in his opinion, the price became such that he would have lost money if he had cut any further, at

which time he naturally had to pass up the business, however, he did not consider the fact that his original price, as submitted, might have been the first cut on the particular piece of business. If not, who establishes the correct prices to be quoted in this district, and under what legal obligation is every dealer in the district obliged to quote said established price?

It was also very apparent that numerous parties testifying objected to the blending of fuels stating that it was tending toward price cutting, however, when Mr. Paul J. Alwart attempted to enter into evidence that blending of fuels was not a price-cutting factor and would, in some instances, provide a fuel of a more economical nature for certain plants, and also attempted to enter into evidence the fact that New River coal and other so-called "smokeless coals" were sold by most dealers in this territory as Pocahontas and advertised as such, stating that if there is to be a fair and impartial investigation, that such practices should also be taken into consideration in determining whether or not it is a false representation to customers, and he was prohibited from giving said information and told that said evidence was irrelevant to the facts to be determined.

However, immediately after his evidence, a party by the name of George J. Parkinson, an employee of the Consumers Co., was called to the stand and asked his name and with what company he was affiliated, without further interrogation as to his duties, etc., with said company and the question immediately put to him by the association's attorney was "Have you ever conducted analyses for your company, etc?" Later on he was questioned as to whether he ever visited mines for his company, and whether or not such services were necessary for rendering proper service to customers of said organization. He was also asked whether or not he happened to have an analysis with him representing such blends as analyzed by him and whether or not he had any analysis made by him on genuine Pocahontas coal. He immediately said he had such analysis and proceeded to take them from his pocket, showing analyses on blended coal as follows:

Moisture	2.85
Ash	8.23
Volatile matter	28.39
Fixed carbon	60.53

B. t. u. as received, 13,329; sulphur, 1.94.

This analysis, he stated, was made in the year of 1927.

On an analysis of genuine Pocahontas coal covering a year's business of approximately 3,000 tons, the average analysis he had was as follows:

Moisture	1.36
Ash	3.87

B. t. u., 14,820; sulphur, 0.92.

However, no analysis was made as to the volatile or carbon contents of said Pocahontas, leaving it questionable as to whether or not this was a true Pocahontas coal.

Said inquiries were conducted along this line when it was finally determined between the chairman of the board of district no. 26 and other officials of said Board and the attorney representing the incorporated code board that said evidence was irrelevant and should be stricken from the records.

Some of the witnesses examined from the various districts of Chicago were as follows: From the north side, Mr. J. A. Peterson, of the Peterson Coal Co., former vice president of the Chicago Coal Merchants Association during the year of 1931; from the west side Mr. Chas. H. Drieske, former president of the Chicago Coal Merchants Association; from the south side was Mr. Norman D. Elmstrom of the Elmstrom Coal Co., president of the Chicago Coal Merchants Association during the years of 1932 and 1933; from the loop was Mr. C. J. Holland of the Holland Coal Co., former member of the board of directors of the Chicago Coal Merchants Association.

Mr. James B. Young, managing editor of the Journal of Commerce, was also put on the stand and asked questions regarding the prices published in the Journal of Commerce daily, excepting Sundays, and whether or not he considered those the correct prices used in the territory, however, he was not interrogated as to where he had obtained said prices and had no means of determining whether or not they represented the true costs of handling business in District No. 26 and laid no basic foundation as to why it was necessary for all dealers in said district to follow prices published in said paper, nor did he lay ground to the facts as to why the majority of dealers in said territory followed said prices, nor were the

facts brought out why the advance in coke prices in this territory of 75 cents per ton f. o. b. Chicago were not advanced to the general public on the first of the month, when said advance went into effect by the coke ovens.

The next witness on the stand was Mr. Clark, secretary of the Chicago Associated Coal Yard Owners, who attempted to show that there was a difference between the handling costs of coal on a c. o. d. basis and the handling of coal on charge accounts of approximately 75 cents per ton, attempting to prove said difference, he was advised at numerous times by the association lawyers that said information, which he wished to have entered into the records, was irrelevant and not a factor as to whether or not price cutting existed in this territory and whether or not it was necessary to call an emergency.

W. J. O'Brien, vice president and general manager of the Sterling-Midland Coal Co., was later placed on the stand to give expert testimony as to the respective tonnages transported into the Chicago territory via rail and via boat. From the records which he had obtained from the United States Engineering Department showed that the Chicago unloadings from boat were 164,354 tons, however, as close as he was able to check said tonnage information from dock records he found unloadings at docks 158,411 tons. From said tonnage he said there would have to be deducted the amounts of approximately 18,000 tons of bunker coal in one instance and approximately 14,355 tons in another instance, leaving a balance of approximately 126,000 tons of boat coal sold at retail.

From the Calumet Harbor records obtained, it was shown that 1,507,382 tons were unloaded from boat, approximately 218,000 tons to retail dealers, 30,000 tons which were used for bunker coal, leaving a balance of 188,000 tons to be resold, stating that approximately 110,000 tons of said 188,000 tons were reloaded in rail cars for reshipment.

He also stated that approximately 5,257,542 tons of Outer Crescent coal was shipped in the Chicago territory and approximately 2,135,536 tons of Inner Crescent coal, representing approximately 7,400,000 tons of eastern coal coming into the Chicago territory during the year of 1933. Facts were then brought out as to the relative costs of all rail shipments versus rail and boat to Chicago.

No mention was here made as to the representative tonnage coming in to the Chicago territory via rail from West Kentucky, Indiana, and Illinois, which in accordance with Roland Sperry's report is approximately 4,885,548 tons of fine coal and 3,918,769 tons of nut, egg and lump, making a total tonnage of Central district coal of approximately 8,804,317 tons, as shown by Roy Kern's reports on shipments of Eastern coal, West Virginia, Eastern Kentucky, Pennsylvania, and Tennessee coal shipped via rail was approximately 7,393,417 tons.

It was also evident that the budget being prepared to maintain the Retail Solid Fuel Code Board, District No. 26, is based on approximately 7½ million tons of coal at 2.6 cents per ton. If the above tonnages are correct, there is approximately 16,000,000 tons of coal coming into this territory via rail shipments and if the dock reports, as testified by the expert, are correct, there is approximately 1,600,000 tons coming into Chicago via boat, of which, he stated, approximately 204,000 tons are sold at retail; however, from the evidence used by the Interstate Commerce Commission, they estimate the tonnage coming into the Chicago territory as 33,000,000 tons annually for all purposes; therefore, there seems to be considerable discrepancy in the reports available thus far to determine as a basis of the charge of 2.6 cents per ton or whether or not this charge is excessive for the maintenance of the Retail Solid Fuel Code Authority of District No. 26.

The question of loss of tonnage by the respective dealers during this entire interrogation, seemed in their opinion to be caused through price cutting, however, as shown in this brief there has been numerous other factors entering into the causes as shown heretofore, also changing of purchases by receivers from one company to another, has affected the tonnage loss of certain dealers.

It is estimated that approximately 60,000 plants in Cook County are now using either gas or oil for fuel. This naturally considerably reduced the demand for solid fuels.

Further evidence brought out at said code hearing relating to the unfair practices used in this district some of which, as stated by Norman Elmstrom of the Elmstrom Coal Co., were as follows:

Substitution of coals, fraudulent blending, rebates, fixing engineers and janitors, real estate companies collecting commissions, unreasonable extension of credit, allowances, misleading radio advertising, companies taking care of boiler repairs, cleaning furnaces, etc., double tickets and other methods.

The question of all rail and (rail and boat) rates to the Chicago territory were brought out and made part of the record.

If unbiased attorneys, not affiliated nor associated with any coal organization or dealers, etc., could be appointed by the Government for district no. 26, it undoubtedly would tend toward unbiased and fair trials and rulings pertaining to the retail solid fuel industry in said district.

The question of fixing minimum costs for handling retail solid fuel and adding same to the cost f. o. b. mines on said coal is nothing more nor less than the question of fixing prices in the territory and is contrary to the statutes of the State of Illinois, in accordance with paragraphs 598 to 605, inclusive, of chapter 38, Chaill's Revised Statutes of Illinois for 1933 and paragraphs 569 to 576, inclusive, of chapter 38, Smith-Hurd's Revised Statutes of Illinois for 1933.

Copy of paragraph 598 of Cahill's Revised Statutes is as follows:

"If any corporation organized under the laws of this or any other State or country for transacting or conducing any kind of business in this State or any partnership or individual or other association of persons whosoever shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation, or understanding with any other corporations, partnership, individual or any other persons or association of persons to regulate or fix the price of any article or commodity or shall enter into, become a member of, or a party to any pool, agreement, contract, combination of confederation to fix or limit the amount or quality of any particle, commodity or merchandise to be manufactured, mined, produced or sold in this State, such corporation, partnership, or individual or other association of persons, shall be deemed and adjudged guilty of conspiracy to defraud, and be subject to an indictment and punishment as provided by this act."

Summarizing said report on district no. 26 code board hearing of the retail solid fuel industry.

Balloting and setting up a code board of said district was fully controlled by Chicago Coal Merchants Association.

Question as to authority of said code board to incorporate and delegate its rights and powers is brought out in said brief.

Evidence brought out was not actual or conclusive proof of price cutting existing in said district.

Numerous factors attributed to the decline in tonnage of sales besides those shown in Administrator Hugh S. Johnson's reports to the President.

This report also brings out the fact that considerable irrelevant evidence was admitted by some and relevant evidence of others was prevented.

Every question put to witness to bring out desired facts were of a leading nature.

The question relating to blended coal was barred as irrelevant when brought out by P. J. Alwart.

Factor of charge versus c. o. d. business, attorney stated was not a relevant question.

The question of determining the tonnage sold at retail in said district as brought out leaves considerable room for adjustment on which to base assessment for the maintenance of said code board.

In our opinion, unbiased attorneys should conduct the affairs of the district no. 26 retail solid fuel code board and in conclusion beg to state the unaffiliated equipped coal merchants are not duly and properly represented on said code board and have no direct voice in its affairs and have made numerous requests for representation without results.

INDEPENDENT EQUIPPED COAL MERCHANTS, INC.,
By GEO. W. BOLLER, *Secretary.*

(Further documentary data submitted by Mr. Boller is on file with the clerk of the committee.)

(The following letter was also submitted by Mr. Boller in connection with his testimony:)

CHICAGO ASSOCIATED COAL YARD OWNERS,
Chicago, Ill., November 15, 1934.

Mr. STEPHEN LAWSON,
Ideal Fuel Co., Chicago.

DEAR MR. LAWSON: How would you like to have a list of all the suits and judgments each week against persons who have bought coal and failed to pay for it? Without this list you may be the next coal man to get "stuck."

Think of the new business you can get if you have a list of the new receivers for buildings as soon as they are appointed.

Do you want notices of all requests for bids on coal and coke?
Do you want "spot" credit information or special credit reports?
How would you like to have information regarding the activities of the code authority, changes in prices, rulings, and other important information hours ahead of your competitors?
Do you want a representative on the code authority watching your interests, investigating complaints and giving you first-hand information right off the bat? Semimonthly meetings and dinners.
Would you like to have always available the services of a trained executive familiar with the coal business at your beck and call for quick information and assistance?
Your membership in the Chicago Associated Coal Yard Owners gives you all this service for 33 cents a day or less. The initiation fee is only $10. Dues are only 1 cent per ton per month, with a minimum of $10, or 20 cars of coal.
May we have your application for membership by return mail? Sign the enclosed blank and send check for $10.

Yours very truly,

CHICAGO ASSOCIATED COAL YARD OWNERS,
(Signed) C. S. CLARK, *Secretary.*

TESTIMONY OF P. J. ALWART, CHICAGO, ILL., ALWART BROS. COAL CO.

(Having first been duly sworn, testified as follows:)

Mr. ALWART. Now, Senator, I wish to add a little to Mr. Boller's statement. I represent a company that has been in the coal business for 65 years. I personally supervised that business for 30 years, and during the war I was the director of conservation for the State of Illinois. I was also a member of the coal merchants association from its inception until back in 1926 when they tied up with union labor to control the prices in the city of Chicago and I quit. Since that time it has been more or less of a racket. In 1928 I brought it to the attention of the Department of Justice and they sent investigators to Chicago, and they found that they were conspiring in order to put people out of business. In fact, they tried to put our company out of business. It cost my company about $10,000 in 1 year. We paid more wages than anybody else in Chicago because we would not go along with that condition.

Senator BLACK. You worked union men?

Mr. ALWART. Yes, sir; we worked union men, but we would not cope with them.

Senator BLACK. You would not do what?

Mr. ALWART. We would not join the coal-merchants association. We resigned and then they wanted to drive us back into that organization. Then later on they got into that famous TNT case, which you gentlemen may recall. You may remember that they organized that organization to control price. Then they got up the code. This code is a detriment to anyone who is trying to run an honest business in Chicago.

Senator BLACK. What features of it?

Mr. ALWART. For instance, these code prices set up a certain fixed price at the mines for coal. Then they added the cost determination which was revamped by the planning and research division here, and instead of taking the prices as fixed by the planning and research division, they simply changed it, baptized the coal from steam coal and called it domestic and run that price up to $7.79 a ton, whereas the minimum cost should have made it $6.64.

Then, that business today is simply sold. You buy business in the city of Chicago like you buy a suit of clothes. If you don't go in with that, you go out of business. We have four large yards and a million dollars invested in it, and if I thought that this code would be any good for the industry and put any money in the industry, I would not be here talking to you today. I think it is one of the most damnable things that ever was perpetrated.

Senator BLACK. What are you against?

Mr. ALWART. Price fixing.

Senator BLACK. Are you for the other features?

Mr. ALWART. Oh, yes. I was always a unionist. We never had any trouble with labor. There is quite a lot of labor disputes now in Chicago. This Coal Merchants' Association was simply built on a racket. The racketeers got in and harassed the independent dealer and drove him into the Coal Merchants' Association and got 240 members, and they got people in by driving them in in order to control this industry.

Senator BLACK. As I understand it, you are for the provisions which will fix minimum wages?

Mr. ALWART. Yes, sir.

Senator BLACK. And maximum hours?

Mr. ALWERT. Yes, sir.

Senator BLACK. What about section 7 (a); are you for that?

Mr. ALWART. Section 7 (a) never bothered us in Chicago, because we have our men all satisfied.

Senator BLACK. You are unionized anyhow?

Mr. ALWART. We are all unionized and we never had any trouble with that. The only troubles we have had are conspiracies between associations and labor.

Senator BLACK. What you are opposing is the price fixing by law?

Mr. ALWART. Yes. It should be out, because if it is not it will drive people out of the coal business. You cannot do business in Chicago under this political set-up. In one of the districts where our yard is, 70 percent of the business is in the hands of the receivers. They will sell you 10,000 tons of business for 85 cents a ton. If you want your money in 10 days you have got to put 2 percent more on. You buy the very business you lost.

Senator BLACK. Is that method in a sense new since the codes went in?

Mr. ALWART. I would say it is.

Senator BLACK. We have been led to believe it existed before.

Mr. ALWART. That came before the codes went in. You had a chance to meet that price. But you cannot meet this. If the building goes in the hands of a receiver for taxes, they have the fellows from the tax office affiliated with the coal company. And they get all of that business. It is beyond the possibility of doing business honestly in Chicago. Before, you could at least sit down and meet it, but you cannot meet this.

Senator BLACK. Your chief objection is the law which permits fixing of the prices?

Mr. ALWART. That is right.

Senator BLACK. Does that code actually fix the price or does it show it as some of the others do, fix a price below which you cannot sell?

Mr. ALWART. We have it in the brief here. I was down here in Washington four or five times last year, and I knew what these cost determinations were, and when they got into Chicago, they baptized the code and increased the prices. I thought I knew what I was talking about because I had my interpretation from Washington here, and if they did not get me on a case and bring me into the Federal court for violation of the code, and when they found out they had a hot line on that and could not go through with it, then they automatically dismissed it without notice to our attorneys.

Senator BLACK. Do you mean that they charged you with a criminal offense and dismissed it without notifying you?

Mr. ALWART. Yes.

Senator BLACK. What were you charged with?

Mr. ALWART. Selling below the cost of determination.

Senator BLACK. All right, gentlemen.

Mr. ALWART. May I file this letter that I wrote the code authority in Chicago? I would like to put that in the record.

Senator BLACK. How long is it?

Mr. ALWART. It is a little long, but it ought to be in to tell them how to run the coal business honestly.

Senator BLACK. Do you think they will run it that way?

Mr. ALWART. If they run it that way it will be better all around.

Senator BLACK. Very well.

FEBRUARY 19, 1935.

Maj. C. STERRY LONG,
Assistant Deputy Administrator, National Recovery Administration,
400 North Michigan Avenue, Chicago, Ill.

DEAR SIR: You have asked for a memorandum covering certain points which I discussed this morning with you and Colonel Cowling and Mr. Smart, in connection with the Retail Solid Fuel Code and the cost determinations made by the divisional code authority.

Of course, you realize that a suit is pending in the Federal court against my company, and I want my comments in this regard to be considered as in no way affecting that suit or prejudicing any position which I or my company may wish to take in connection with the suit.

I think the entire code authority should be reorganized, although this may not be the most appropriate time to do it, and I think the entire cost determinations should be eliminated. It is unnecessary for me to elaborate on this, as complete briefs have been filed by other parties. However, I will make the following comments with respect to the specific matters which we discussed:

1. DEFINITION OF STEAM COAL

The term "steam coal" is not a new term in the industry. The following types of coal have been known as "steam coals" in the industry for a period of over 30 years: (*a*) All mine run coal as shipped from the mine; (*b*) screenings; (*c*) no. 5; (*d*) no. 4; (*e*) no. 3; (*f*) no. 2; (*g*) 3 by 1¼ nut; (*h*) 6 by 1¼ egg.

As stated above, all of the above classifications of coal have been known generally in the industry as "steam coals", irrespective of the State or district in which they are mined, for the reason that they are principally used for the purpose of generating steam in both large and small plants. No. 5 is known as "carbon" and is used almost exclusively for steam generating purposes. Mine-run coal, no. 2, 3 by 1¼ nut, and 6 by 1¼ egg, are also used quite generally, but to a lesser extent, for domestic purposes, but are nevertheless classified in the trade as "steam coals."

I believe the above classifications would be concurred in by practically every experienced coal man who was asked to define steam coals.

However, I wish to point out that any coal may be used for steam purposes, and practically any coal may be used for domestic purposes. For that reason, no matter what definition is used, there is apt to be misunderstanding of the term when used to differentiate costs, but the foregoing definition reflects the general usage of the term in the industry prior to the code and at this time.

2. DIFFERENTIAL BETWEEN LOWEST REASONABLE COST DETERMINATIONS FOR STEAM COAL AND DOMESTIC COAL

If costs are to be determined at all, there should undoubtedly be a differential between steam coal and strictly domestic coals; that is, specially prepared or sized high or low volatile coals, where a fair allowance must be made for degradation. If such a differential is made, a complete and specific definition of steam and domestic coals must be adopted.

Applying the present differential to screened mine-run Pocahontas coal, for instance, which coal is used for both steam and domestic purposes, is absolutely unwarranted, since there is no degradation and no basis for the differentiation. As between Pocahontas mine run and Pocahontas screened mine-run coal, there is absolutely no difference in cost of handling and delivery. The only difference in cost arises between deliveries in lots of 10 tons and over and lots of less than 10 tons, in which latter case there is an increased cost. This increased cost has been adequately taken into account in the cost determinations approved by the special committee and approved by the National Industrial Recovery Board in its order of November 7, the differentials being 20 cents per ton additional cost on deliveries of 4- to 10-ton lots, and an extra service charge of 50 cents per load for deliveries of less than 4-ton lots.

3. THE USE OF CODE AUTHORIZED MINE PRICES

Here, again, if cost determinations are to be made at all, in my opinion, delivered prices should be based on actual mine cost of coal (and oven cost in the case of coke), plus freight and the determined reasonable minimum cost for handling, etc., rather than on the fixed code authorized mine price (or cost determined by the National Recovery Administration under the code in the case of coke), plus the other items mentioned. It is true that this point raises the question of the relation between the Retail Solid Fuel Code and the Bituminous Coal Code. It seems obvious that the Retail Solid Fuel Code Authorities should not attempt to be the policing agencies of the Bituminous Coal Code. So far as the retail solid fuel industry is concerned, it should be interested only in actual costs, and not in costs artificially and theoretically fixed by some other code or by the code authorities.

This matter is of extreme practical importance, because of the fact that regardless of the Bituminous Coal Code, there is a wide difference in mine prices of coal and oven prices of coke, and as long as these differences exist, the effect will be either to compel the retail dealer to take an unwarranted profit by complying with the Retail Solid Fuel Code, or give him an excuse for violating the code by passing the benefit of these price differences on to the consumer or to some intermediary who, by virtue of influence, political, or otherwise, is in a position to control some coal business.

4. DIFFERENTIATION IN COST BASED ON VOLUME OF COAL BOUGHT BY PARTICULAR PURCHASERS

I believe it would be very difficult to differentiate costs on this basis. While there might be some small differences in sales and general overhead expense if a dealer did volume business or small business exclusively, such differences would properly apply to only a few dealers. I think the dividing line as to costs is between sales on which deliveries can be made in 10-ton lots and sales where deliveries must be made in less than 10-ton lots. So far as actual cost is concerned, it costs no more to make 10 deliveries to 10 different buyers in 10-ton lots than to make 1 delivery of 100 tons to a 100-ton buyer in 10-ton lots; and as a matter of fact the cost may be lower in making deliveries to separate buyers, because in the single large delivery congestion is often encountered and bin capacity is often limited, necessitating the repiling of the coal. In order to make myself clear on this point, I am not arguing that a very large buyer should not be entitled to a better price than a 10-ton buyer, because a dealer is willing to operate on a smaller margin of profit on volume business than on small sales in 10-ton lots, but this is a question of profit and not of cost to the dealer of coal sold to large buyers and of coal sold to buyers in 10-ton deliveries.

Trusting that this may be of some assistance to you in working out your problems, I am

Yours very truly,

PAUL J. ALWART.

TESTIMONY OF FRED PERKINS, YORK, PA., INDEPENDENT BATTERY MANUFACTURER

(The witness was first duly sworn and testified as follows:)

Senator BLACK. I see that you sent a telegram asking to appear before the committee. Will you make a statement?

Mr. PERKINS. It had been arranged that I come here to tell my experiences; the persecution that I suffered.

Senator BLACK. Who arranged it?

Mr. PERKINS. Colonel Curlee. And he gave me to understand he had made definite arrangements, in a tentative way, that I would be here, and I found that it was postponed, that there would not be any witnesses called after Thursday, and I sent that telegram.

I am not prepared to discuss the philosophy of the occasion unless you wish me to.

Senator BLACK. What is it that you want to discuss?

Mr. PERKINS. If you wish me to, I will, but I mean I had not planned in advance to do anything of that kind.

Senator BLACK. I do not know whether you are prepared to give a philosophical dissertation or not. What is it you want?

Mr. PERKINS. Officially I represent only myself, but unofficially I represent a great many small manufacturers.

Senator BLACK. Have you any authority from them to represent them?

Mr. PERKINS. Not officially.

Senator BLACK. Have any of them told you that they wanted to be represented, in writing?

Mr. PERKINS. Well, yes.

Senator BLACK. How many?

Mr. PERKINS. In writing, you say?

Senator BLACK. Yes. I am just trying to find out. You stated that you represent some manufacturers, and I am trying to find out who they are.

Mr. PERKINS. I have had letters from all over America. The prosecution I went through was looked upon as an outstanding case.

Senator BLACK. You are the gentleman that had your picture in the Times?

Mr. PERKINS. I am the guy; yes. I was looked upon as the outstanding case of prosecution.

Senator BLACK. You were convicted?

Mr. PERKINS. As ex-Senator Reed says, it represents——

Senator BLACK (interrupting). As I recall it, you were convicted and an appeal is pending now.

Mr. PERKINS. The appeal is pending now.

Senator BLACK. Who represents you?

Mr. PERKINS. John W. Davis, Newton D. Baker, James Reed, David Reed, and Harold B. Bagner.

Senator BLACK. Is that all? [Laughter.]

Mr. PERKINS. No, sir. There is my own private attorney in York, who was formally the Democratic leader up there.

Senator BLACK. Which one did you employ?

Mr. PERKINS. I did not employ any of them. They all gave their services free.

Senator BLACK. You wanted to make a statement about it.

Mr. PERKINS. Well, it was designed that I should come here and tell my experiences. That is what Colonel Curlee had arranged for. He wanted me to come.

Senator BLACK. I believe Colonel Curlee is the man that came and testified against the code.

Mr. PERKINS. I think he has, but I do not know that officially. Originally, it originated in St. Louis, and it was handed over to Colonel Curlee, and he told me it was arranged with Senator McCarran and Senator Nye to have me come here and tell my experiences.

Senator BLACK. Do you know who originated it in St. Louis?

Mr. PERKINS. No; it was in Illinois. I beg your pardon.

Senator BLACK. What place in Illinois?

Mr. PERKINS. DeMoulen, I think was the man, a manufacturer of uniforms, and I cannot remember the name of the town. Is there a DeMoulen?

Senator BLACK. Do you mean the name of a person or a town?

Mr. PERKINS. The name of the person or a firm. He was the one that suggested it originally, and he took it up with Colonel Curlee, and then Mr. Merriwether got into the game, and he wanted to see it come to pass, and then my attorneys all favored it.

Senator BLACK. All of your attorneys favored your coming down here?

Mr. PERKINS. They all favored it. It had all been looked ahead to. Mark Sullivan was particularly anxious that I tell my experiences.

Senator BLACK. Has he been to see you?

Mr. PERKINS. Has he been to see me?

Senator BLACK. Yes.

Mr. PERKINS. He has not been to see me, I have been to see him. I have been to see him several times. There were a great many people interested outside of the coal manufacturers. The manufacturers in a general way were looking to me to represent their forces. They were writing to me and telling me their troubles from all over the country. It was the outstanding case, without any effort and without any desire on my own part, I was looked to as the champion of the small business man on account of this prosecution.

Senator BLACK. And Mr. John W. Davis, is he representing any small business men or associations that you know of?

Mr. PERKINS. Not that I know of, but he was interested in this case, like all of these others. They said it was the most wonderful case because of the circumstances surrounding it.

Senator BLACK. Did you talk to Mr. Davis?

Mr. PERKINS. Several times.

Senator BLACK. Did he come down to see you in Pennsylvania or did you go to see him in New York?

Mr. PERKINS. He did not come to Pennsylvania. I met him several times. We corresponded a great deal.

Senator BLACK. Where did you see him?

Mr. PERKINS. We had our pictures taken together, for one thing.

Senator BLACK. Where was that?

Mr. PERKINS. You saw it, probably.

Senator BLACK. Where was it taken? Where was the picture made?

Mr. PERKINS. They were taken in New York in 15 Broad Street.

Senator BLACK. Fifteen Broad Street.

Mr. PERKINS. Mr. David Reed and Mr. Davis and myself. That was only one occasion. You asked me when.

Senator BLACK. Mr. Morgan was not there, was he?

Mr. PERKINS. No; he was not there.

Senator BLACK. You wanted to make a statement as I understand it about your trial, I am asking you because, frankly, I do not exactly know what it is you want to testify about.

Mr. PERKINS. I know. They wanted me to tell my experiences and what led up to them.

Senator BLACK. Which one suggested that you tell it? Did they tell you what they wanted you to discuss?

Mr. PERKINS. I think they all wanted it. It was a matter of correspondence largely. I told you where it was originated, and then as it went on, they all desired it.

Senator KEYES. Why don't you tell us what you want to tell us and not what somebody else wants?

Mr. PERKINS. I will tell you what I wanted to tell. I was prosecuted. I don't know why I was singled out, but I do know this, that the York Local Compliance Board recommended me for exemption and it was refused, and the secretary of the code authority told me himself that it was one of my large competitors that made the complaint, and he asked——

Senator BLACK. Did he say what competitor?

Mr. PERKINS. He did not say. He would not say.

Senator BLACK. Have you ever heard?

Mr. PERKINS. No, sir.

Senator LA FOLLETTE. Did you make application for an exemption under the code?

Mr. PERKINS. I did, with their assistance. To the code authority in York.

Senator BLACK. With whose assistance?

Mr. PERKINS. Not the code authority. With the compliance board.

Senator BLACK. You mean you made application with the assistance of the compliance board?

Mr. PERKINS. No, sir; I sent it to Washington.

Senator BLACK. You said that you made the application with their assistance?

Mr. PERKINS. With their assistance. They helped me prepare it.

Senator BLACK. Who did?

Mr. PERKINS. The local compliance board in York.

Senator BLACK. So that is the way the matter originated? You asked for an exemption?

Mr. PERKINS. Yes; I asked for exemption.

Senator BLACK. That was on wages, was it not?

Mr. PERKINS. Yes, sir.

Senator BLACK. You claim that you could not pay the minimum wage. What was the minimum wage?

Mr. PERKINS. Forty cents an hour.

Senator BLACK. What were you paying?

Mr. PERKINS. I was paying an average of 24.4 taken right through the year.

Senator BLACK. And you asked for an exemption because you said that you could not pay 40 cents an hour and do your work?

Mr. PERKINS. I was paying an average equal to what all industries outside of New York City, near mine, was paying.

Senator BLACK. Did you come down before the board to present your case?

Mr. PERKINS. No, sir; I sent it through the mail. They received it.

Senator BLACK. They asked you to come down?

Mr. PERKINS. No, sir; I did not do that. I did not know that they had received it until I arrived in New York to meet the secretary of the code authority, and he told me he had it right there; that they had received it and they had refused it.

Senator BLACK. They declined to let you pay a smaller wage rate than the other people in your particular line of business?

Mr. PERKINS. Yes, sir. Even although that it had been advertised in the papers frequently that exemptions would be offered, but they declined it. It meant nothing to him. Just they declined it.

Senator BLACK. They brought you into court then for paying wages below 40 cents an hour?

Mr. PERKINS. Yes.

Senator BLACK. Did you testify before the jury?

Mr. PERKINS. I was not allowed to testify.

Senator BLACK. In court?

Mr. PERKINS. I would have been allowed to, but my attorneys thought it best not to.

Senator LA FOLLETTE. Why did they come to that decision?

Mr. PERKINS. You will have to ask them.

Senator LA FOLLETTE. Who were they?

Mr. PERKINS. Mr. Beitler of Philadelphia.

Senator LA FOLLETTE. Mr. Beitler?

Mr. PERKINS. Harold B. Beitler. He is the president of the Pennsylvania Bar Association.

Senator BLACK. What firm is he in?

Mr. PERKINS. Beitler and Byrne.

Senator LA FOLLETTE. Senator Reed was not representing you, then?

Mr. PERKINS. No; not until after his term as senator expired on the third of January. Then he came in.

Senator LA FOLLETTE. He was representing you when he came down there?

Mr. PERKINS. He was interested very much at the time and was in correspondence with me, and before his time expired he offered to join the forces as soon as it was up.

Senator LA FOLLETTE. He helped to arrange to have this picture made, did he not?

Mr. PERKINS. I would not say he helped to arrange. They asked me, they called me up one day. It was a surprise to me. I had not heard a thing about it and did not hear anything about it, but the March of Time called up and said for the opening number they would like to make a story of the *Perkins case*, and as it developed, they took in attorneys and showed all of the attorneys; and that answers that.

Senator BLACK. You were paying some of your employees 16 cents an hour?

Mr. PERKINS. He worked eight and a half days as an apprentice boy, at 16 cents an hour, and they were very glad to get his testimony. Alongside of him was a man 67 years old, old enough to retire, that I was paying 27 cents an hour. That was too high; they did not want his testimony and did not bring him in. He was with me 3 years.

Senator BLACK. Some of them you were paying 25 cents and hour and 22 cents an hour.

Mr. PERKINS. I will read you the affidavit from one man that will interest you.

Senator BLACK. I am not interested in affidavits. Were you paying that?

Mr. PERKINS. Sometimes they made 60 cents an hour. It was piecework mostly, and 20 cents an hour on time and piecework brought it up.

Senator BLACK. What did the evidence on your trial show that you were paying?

Mr. PERKINS. They said 20 cents an hour.

Senator BLACK. You were sitting there and heard it?

Mr. PERKINS. Yes.

Senator BLACK. Were they telling the truth?

Mr. PERKINS. They were telling the truth on the time, yes, sir; but they did not tell that they were receiving it on piecework. They were led to believe if I was fined, they would get the play-back on their wages, and that my fine would come to them in back wages, and they only testified and my attorneys did not bring it out. I have been very much provoked about it.

Senator BLACK. Do you mean that they did not testify to the truth?

Mr. PERKINS. They did testify to the truth. But they worked most of the time on piecework. Will you let me read this one affidavit?

Senator BLACK. I have no objection.

Mr. PERKINS (reading):

YORK, PA., *December 12, 1934.*

John L. Goodling, of York, Pa., deposes and says:

I have worked for the Perkins Battery Co. for approximately 2 years. I will be 19 years old on the 25th of this month. In the case against Frederick C. Perkins in the Federal court at Harrisburg I testified that my normal rate of pay when working by the hour has been 20 cents.

Since the Battery Code went into effect on October 16, 1933, the records show that I have worked up until December 1 of this year a total of 1,479½ hours, have earned a total of $465.02 and that the average earnings per hour (combining both time and piecework) has been about 31½ cents. Because of my age and lack of a trade I do not know where I could obtain a job if I was to be thrown out of work here.

I am partly the support of my parents and four children younger than myself. We are fairly close neighbors of Mr. Perkins in West York, and both he and Mrs. Perkins have taken a very human interest in our family. Most certainly I would not make a complaint against him to N. R. A.

JOHN L. GOODLING. [SEAL.]

Subscribed and sworn to before me this the 12th day of December 1934, C. M. Stauffer, notary public.

I have four others just like it.

Senator BLACK. Did you have a man working for you named Levi Jenkens?

Mr. PERKINS. Yes, sir.

Senator BLACK. Did he testify?

Mr. PERKINS. He testified.

Senator BLACK. What did he testify he was making?

Mr. PERKINS. He was making 20 cents an hour.
Senator BLACK. And he was raised by you to 22 cents?
Mr. PERKINS. Twenty-two; yes.
Senator BLACK. That was 18 cents under the minimum wage?
Mr. PERKINS. That was 18 cents under the minimum wage.
Senator BLACK. Were you selling soap?
Mr. PERKINS. I am glad you spoke of that. I did not sell him soap. I got soap powder for those boys. They got up there and said I sold them soap powder that I had to give to them. I furnished them soap that they did not want to use. They did not want to use this soap.
Senator BLACK. Did you know that they did not want to use the soap?
Mr. PERKINS. They did not want to use the soap that was furnished them free. I offered and got this hand cleaner and let them have it at cost.
Senator BLACK. Did this man testify that you made him buy soap?
Mr. PERKINS. I don't know, but I know his testimony was belittling.
Senator BLACK. Did you deny it?
Mr. PERKINS. I did not go on the stand. I would like to have gone on the stand.
Senator BLACK. Your lawyers would not have let you?
Mr. PERKINS. I would have liked very much to have gone on the stand.
Senator BLACK. Did you have a man working for you named Scherney?
Mr. PERKINS. Yes, sir.
Senator BLACK. Was he making 20 cents an hour?
Mr. PERKINS. He was making 20 cents an hour.
Senator BLACK. A man named Kellerman, was he making 20 cents an hour?
Mr. PERKINS. I don't know whether that was on piecework at that time. That work was on piecework that he was doing.
Senator BLACK. A man named Gibbs?
Mr. PERKINS. He worked eight and a half days at 16½ cents an hour. And a man along side of him that was 67 years old that had been with me 3 years, and they did not want his testimony.
Senator BLACK. You are in the battery business?
Mr. PERKINS. Yes. Not automobile batteries; I don't make automobile batteries at all.
Senator BLACK. You are still in business?
Mr. PERKINS. Yes, sir. My competitors say I am not, but I say that I am.
Senator BLACK. Are you still manufacturing batteries?
Mr. PERKINS. Just exactly the same.
Senator BLACK. What are you paying your employees now?
Mr. PERKINS. Most of them are earning about $15 a week.
Senator BLACK. How much per hour?
Mr. PERKINS. It is mostly piecework now. There is very little time work any more. It is mostly piecework—$15 to $20 a week.
Senator BLACK. What is the minimum wage per week in piecework?
Mr. PERKINS. We had one man that was getting 20 cents. That was the minimum; 22 and 27 and 30, and I would say the rest of them were on piecework.

Senator BLACK. Did somebody advise you not to make a bond in this case and go to jail? Or did you appeal the case?

Mr. PERKINS. No one ever advised me not to put up a bond; no.

Senator BLACK. Did you make a bond?

Mr. PERKINS. Sure.

Senator BLACK. You made a bond immediately?

Mr. PERKINS. Yes, sir; they took me to the hotel that night.

Senator BLACK. The papers as I recall it—I think the papers stated that you could not make a bond. That was not correct?

Mr. PERKINS. I could not make it; no.

Senator BLACK. You could not make a bond?

Mr. PERKINS. No.

Senator BLACK. When did you make it?

Mr. PERKINS. I did not make it myself. Others put it up.

Senator BLACK. How long until it was made?

Mr. PERKINS. Twenty-four hours.

Senator BLACK. Your business was worth how much at that time?

Mr. PERKINS. My business worth? What do you mean? The inventory value or what I had?

Senator BLACK. Yes.

Mr. PERKINS. Five thousand dollars would cover it.

Senator BLACK. Dun & Bradstreet rated you about $15,000?

Mr. PERKINS. They rate me at $3,000 to $5,000 and no more.

Senator BLACK. That is credit?

Mr. PERKINS. $3,000 to $5,000, is my total rating in Bradstreet.

Senator BLACK. They rated you on your report, did they not as being worth $14,000?

Mr. PERKINS. No, sir; they rated me as $3,000 to $5,000.

Senator BLACK. How much was the bond?

Mr. PERKINS. I have sent the letter, the original letter, to Judge Watson the next day.

Senator BLACK. How much was the bond?

Mr. PERKINS. It was $2,000.

Senator BLACK. And you could not make a $2,000 bond?

Mr. PERKINS. I could not make a $2,000 bond; no. I don't know that I was—I doubt if I could. I did not even try. Others came in and did it.

Senator BLACK. Why did you not try?

Mr. PERKINS. I was in the custody of the sheriff at that time.

Senator BLACK. Did you have a bond before you were convicted?

Mr. PERKINS. No, sir.

Senator BLACK. You did not have any bond before that? When they arrested you, were you indicted?

Mr. PERKINS. Possibly I am discussing one thing and you are—I wonder if you could get me a drink of water?

Senator BLACK. Certainly, we will have a galss of water brought to you. What I was interested in was that I understood you to say that you could not make a $2,000 bond.

Mr. PERKINS. I did not even try because others offered to do it. There were a great many interested. The whole country was interested.

Senator BLACK. You did not have any difficulty in making a $2,000 bond, did you?

Mr. PERKINS. Why should I do it? I don't think I could have done it. I did not even try.

Senator BLACK. How long have you lived in that town?

Mr. PERKINS. Ten years.

Senator BLACK. You had never been charged with anything before, as I recall it, had you?

Mr. PERKINS. I was under $5,000 bond at the time I was taken to jail for 18 days. I thought possibly there was a confusion there when you are speaking of this bond. I was in jail for 18 days of a $5,000 bond.

Senator BLACK. Who finally made the bond?

Mr. PERKINS. Local residents of York.

Senator BLACK. How long had you known them?

Mr. PERKINS. I had never seen them before. I had seen him possibly on the street; I know I had seen him.

Senator BLACK. How did you arrange about your bond?

Mr. PERKINS. He came down at 9 o'clock at night and brought in his deeds on a $2,500 building and put it up and got me out that night.

Senator BLACK. You had talked to your lawyers? You had discussed the fact that if you stayed in jail for a long time you would get a lot of publicity?

Mr. PERKINS. I do not think that was discussed. I don't want that to appear that way either.

Senator BLACK. You did not discuss it with your lawyers at all?

Mr. PERKINS. No, sir.

Senator BLACK. Do you mean that for 18 days you were trying to make a $5,000 bond in a town you had lived in for 10 years and could not make it?

Mr. PERKINS. My wife was calling up everyone, and my superintendent the last 2 days was doing nothing but going around to get business men to see if they would put it up.

Senator BLACK. What about the first 16 days?

Mr. PERKINS. The first 16 days were just the same in a sense, waiting for someone to put up the bond.

Senator BLACK. You had already made a bond when Senator Reed came down on his campaign tour, had you not?

Mr. PERKINS. He came down in his campaign to York. He came down early in November.

Senator BLACK. Was this before or after——

Mr. PERKINS (interposing). I got out of jail the 14th of July.

Senator BLACK. You had dinner with Senator Reed at the hotel before he spoke?

Mr. PERKINS. I never met him before he spoke.

Senator BLACK. You were not at the hotel with him at dinner?

Mr. PERKINS. I was not at the hotel with him; no, sir.

Senator BLACK. You went up to the meeting?

Mr. PERKINS. I went up to the meeting and he asked to meet me, and he brought me up there and I shook hands with him. That was the first time I ever met him.

Senator BLACK. That was while he was speaking?

Mr. PERKINS. Just before the meeting opened.

Senator BLACK. You know, do you not, that other small battery people are paying the 40-cent wage?

Mr. PERKINS. There are no other small people making a lighting-plant battery only. They are making automobile batteries. The

small battery manufacturers have published a statement in the Wall Street Journal that I answered. He may testify.

Senator BLACK. Who was that?

Mr. PERKINS. A man from Dayton.

Senator BLACK. Was he paying 40 cents an hour?

Mr. PERKINS. I averaged five men more than he. He had 14 in the summer and 15 in the winter, and I had 14 in the summer and 20 in the winter. He also testified that his gross sales were $120,000 and mine were $23,000. That is the difference.

Senator BLACK. It did not take as many men to produce——

Mr. PERKINS (interposing). It took high-production machinery which I had nothing of.

Senator BLACK. Did you pay the minimum wage when the code was fixed?

Mr. PERKINS. Did I pay the minimum wage when the code was fixed?

Senator BLACK. Yes.

Mr. PERKINS. I did, when I told the compliance board that I could not meet it.

Senator BLACK. What wages were you paying before the code went into effect?

Mr. PERKINS. For the few months before the code went in, I raised the wages of the men about 5 cents an hour. It averaged about 5 cents an hour.

Senator BLACK. Where did you live before you went to York?

Mr. PERKINS. I lived in Hanover.

Senator BLACK. Were you in business there?

Mr. PERKINS. Yes, sir; I was in business there. Not in business for myself. I was with Mr. H. N. Gitt.

Senator BLACK. Were you and Mr. Gitt partners?

Mr. PERKINS. He offered to make me a partner, to make me his general sales manager at $100 a week salary, but I would not accept it. I stayed with him about a year accepting from him just what it took me to live and no more. I went to York and started out with nothing.

Senator BLACK. What happened to his business?

Mr. PERKINS. He eventually lost a great deal of money in it and gave it up.

Senator BLACK. He gave it up before you left?

Mr. PERKINS. Before I left Hanover?

Senator BLACK. Yes.

Mr. PERKINS. I stayed there possibly 3 months after he gave it up, that I stayed in Hanover. I really started in the battery business in Hanover and moved to York. I was mistaken in the details.

Senator BLACK. And this business had just failed in Hanover when you moved down to York?

Mr. PERKINS. The business itself had not failed, but Gitt had transferred his ownership to other parties. The business itself never went through a receivership, if that is what you mean. It was the Jento Light Co. I had had charge of their Pacific coast business for 4 years before he brought me east and offered me an interest in its business.

Senator BLACK. What wages was he paying in Hanover and what hours was he working?

Mr. PERKINS. His men, or me?

Senator BLACK. His men.

Mr. PERKINS. I think probably they were——

Senator BLACK (interposing). They were not organized? They did not have any union?

Mr. PERKINS. No; there was no union in our business.

Senator BLACK. And was he not working 10 hours a day or more in that plant, the men that worked?

Mr. PERKINS. I don't think they were working over 9, possibly not over. I had nothing to do with the factory end of it.

Senator BLACK. What wages was he paying up there?

Mr. PERKINS. All wages in York County were low.

Senator BLACK. What were they?

Mr. PERKINS. I would not attempt to say. Possibly 15 or 20 cents an hour, and the mechanics went up to probably 50 cents an hour.

Senator BLACK. Were not some of them under 15 cents an hour?

Mr. PERKINS. I cannot tell you. I had nothing to do with the factory end. I was entirely in the sales end of the business.

Senator LA FOLLETTE. You said, if I understood you, that you raised your wages some short period before the code went into effect, by 5 cents an hour. What were they prior to that increase?

Mr. PERKINS. Well, possibly you thought they were all the same; all on a level. There were very few the same. They were all along the line, we say from 16 cents up to 25 cents, I will say. That would about cover it.

Senator LA FOLLETTE. Prior to this 5-cent raise, what were they making on the average per week?

Mr. PERKINS. On the average per week?

Senator LA FOLLETTE. Yes.

Mr. PERKINS. Well, we will say working 9 hours a day, 49 hours a week, and an average of 24.4 cents or approximately 25 cents an hour will tell you that. That is what we paid on an average; approximately 25 cents an hour.

Senator LA FOLLETTE. Do you mean prior to this?

Mr. PERKINS. After that.

Senator LA FOLLETTE. What was it before?

Mr. PERKINS. About 5 cents an hour less, before that.

Senator LA FOLLETTE. Was that the lowest that wages had been during the depression, in your plant?

Mr. PERKINS. That was about the wage for York County at that time. You could hire the very best carpenters at 25 cents an hour, and you can today, for 35 cents an hour.

Senator LA FOLLETTE. You did not answer my question. I asked you whether the wages which existed prior to this advance that you spoke of was the lowest paid in your factory during the depression?

Mr. PERKINS. I don't quite get that. It was the lowest paid during the depression?

Senator LA FOLLETTE. Yes.

Mr. PERKINS. I would not say that; I don't know. I do know this: The lowest that I paid at any time, is that the point?

Senator LA FOLLETTE. That is the point.

Mr. PERKINS. I remember one case, it comes to my mind, a man that I had met—my business entirely with farms—I had met him at

a place where I had sold a set of farm lighting batteries, and one day I met him on the street. He had been in York for 2 years and was on relief and just begged me for a job, and it was in the middle of the summer and it was the dullest year we had. It was 1931, I think, and it was very dull. We had practically nothing, only 2 or 3 men working there and he just begged me for a job and I did not have a thing. He finally said, "I will do anything at all if you will just give me a chance to show what I can do", and more to try him out than anything else, I said, "Can you work for 10 cents an hour?" And he said, "Yes." And I said, "There is a man with some pluck that I think perhaps there is something in him." And I put him on some awfully hard work, and he stuck it out and right away I raised his wages when I saw what he would do.

Senator BLACK. What did you raise him to?

Mr. PERKINS. Fifteen cents.

Senator BLACK. How many hours a day?

Mr. PERKINS. They were working 9 hours at that time.

Senator KEYES. Mr. Chairman, I understood you to say you had 4 or 5 more witnesses this afternoon. I don't know just what it is we are trying to get out of this witness.

Senator BLACK. He asked to testify. That is what he came down here for.

Mr. PERKINS. I would like to read the last page of what I have here if I could. You asked me to prepare a statement. My friends and supporters had wanted me to have a statement of what experience I have been through before I got into the battery business. This particular statement covers most of it. I was in mining in my early life. The last page refers to my experience in York. Would you like to have me read that?

Senator BLACK. Anything that you would like to put in.

Mr. PERKINS. I would like to have the whole thing put in.

Senator BLACK. A statement that you have prepared?

Mr. PERKINS. Yes; it is a statement that I prepared. It has mostly to do with my relations to labor in my early life.

Senator BLACK. You prepared it yourself?

Mr. PERKINS. I prepared it myself; yes, and I also had it acknowledged when I found you wanted me to have a prepared statement.

Senator BLACK. Do you want to put it into the record or do you want to read it?

Mr. PERKINS. I would like to read a part of it. If you won't hear it all, I will read it all or a part.

Senator BLACK. I am willing to limit it to what you want to read, unless some of the members of the committee want to hear it read?

Senator KEYES. I think it would be all right to put it in the record.

Mr. PERKINS. I refer to my experience with mining companies where I had been mining superintendent. [Reading:]

Many years were to pass before I again was to experience the employment of men; this time in my own factory, manufacturing storage batteries for farmers. This time I was on my own and rather a small "own" at that. I was to discover that the same principles applied to running a battery factory as in running mining camps. In other words I still had the same love for enthusing men. Until the Battery Code came into effect, I was paying about the standard wage that other industries in York County paid. I was not getting rich but I was steadily building up trade and continually enlarging my plant.

Always it was in my heart to try to do better by every man who stuck by me. I had a very distinctive feeling that wages were not the only thing that would

bring out the best in a man. I could not immediately offer any great inducements in the form of wages, but I could at least take an interest in the lives of the men; visit their homes and satisfy myself that families of my men were not in distress. One young fellow took a notion to accompany some other boys on an excursion aboard a freight train one day, without taking the trouble to ask off. I did not learn the true facts until he called me "long distance collect", from a point 150 miles away, to beg me to get him out of jail. I arranged for his release. I began to notice it was always the boss they came to when they got into trouble.

One older man got into an auto wreck, was charged with assault, and battery, and of course it was the boss who bailed him out. When any of them wanted to make a payment on a car or something similar, it was always the boss to whom they came for an advance on future wages, and almost invariably they got it. I doubt if there is a man who worked for me for any length of time who could not recall a good many occasions where I had helped him out—consisting often of paying small bills for him without deducting from his wages. Until rather recently, I employed a colored boy who started with me at 18 years of age and worked quite steadily for me for 5 whole years. This boy was the oldest of eight or nine children, and the mother was on a widow's pension. Many times have I been into this boy's home to see for myself how things really were going. My children's playthings, after the newness had worn off, usually went to their home.

I seemed to feel a moral obligation that the family conditions of any man who worked for me were to be made as good as I could help make them. I could never quite lose the thought that I had no right to expect a man to take a greater interest in me than I took in him; and in a selfish way, I wanted the best service that every man could give me. This colored boy really became quite popular among the white men because of the interest he took in his work.

If I had really made anything more for myself than a living, I would have, perhaps, felt a little differently toward the National Recovery Administration. I went 10 years without a new suit, and during this time my wife made all her own clothes. It was a new experience to have to buy second-hand furniture, but it was the best I could do. Even our family car was an old Buick which cost the munificent sum of $165 and which I overhauled myself.

When I divorced my first wife I had given her everything I had in the world in lieu of paying alimony.

Senator BLACK. When was that?

Mr. PERKINS. I divorced her and gave her everything I had in the world and started out without anything. [Continues reading:]

It was an option that the judge offered me. When I left Mr. H. N. Gitt (at Hanover, Pa.) to go into business for myself at York, 20 miles away, I had accumulated nothing. As Mr. Gitt would testify, I remained with him in Hanover a whole year, after he had brought me back from the West, at a salary merely large enough to support my family, instead of accepting the $100 a week that he repeatedly tried to thrust upon me. I had opened a Pacific coast distributing branch for him for farm lighting plants in Spokane just before the panic of 1920 hit the country. I had chosen commission rather than salary, and when the crash came I told him I would stick it out.

Senator BLACK. How long is that statement?

Mr. PERKINS. Just half a page more.

Senator BLACK. Very well.

Mr. PERKINS (continues reading):

At that time I gave up my room in a boarding house, rigged up a bedroom in one corner of the basement of our store, and went there to live until I married my present wife, and then moved to her small cottage in Spokane. I stuck out that depression for 3 years, and then Mr. Gitt decided to bring me East and give me an outright interest in his business in addition to making me his general sales manager. It was only after arriving in Hanover that I felt I could not quite conscientiously accept the new sales policies outlined by him and, therefore, I declined his kind offer. As related above, I remained with him for another year before moving to York and hitting out for myself—in an old Ford sedan in which I made my bed on the road each night during my first summer and fall in the new business. I want to say in passing that I still hold an intense admiration for Mr. Gitt. Men can disagree in their policies and still be great friends.

I feel that in arresting me and throwing me into jail that the National Recovery Administration did me a great injustice, and consequently I am determined never

to bow down to them. I expect that during the past few months I have been called a "fool" oftener than any other man in the State of Pennsylvania. A question very commonly asked me is, "Why don't you make a million dollars out of the advertising you have received?" I reply by saying, "I am just not built that way." I don't want to capitalize on this kind of advertising. I have turned down chances. After I see that I have finally 'icked National Recovery Administration I am going to try to build up my battery business. The present is not the time.

Senator BLACK. You say that you turned down a chance, as I understood, to make a million dollars?

Mr. PERKINS. I did not say literally that they offered me a million dollars, but I have had many people suggest to me that they would like to capitalize on the advertising, and organize a company using the Perkins name for batteries. We never made automobile batteries. I have always made farm lighting batteries.

Senator BLACK. May I ask you just one other question? How much of a fee did you pay to Mr. Beitler for defending you?

Mr. PERKINS. I paid him not one red cent.

Senator BLACK. Who paid him?

Mr. PERKINS. No one. He gave it free.

Senator BLACK. Mr. Beitler from Philadelphia?

Mr. PERKINS. Absolutely free.

Senator BLACK. Did he volunteer his services?

Mr. PERKINS. He volunteered his services; yes, sir.

Senator BLACK. And you are sure nobody paid him?

Mr. PERKINS. He told me that he had not received one cent, and he told Judge Watson right before me that he had not.

Senator BLACK. And he came down without anybody paying him a fee and without anybody paying him his expenses?

Mr. PERKINS. He absolutely did, at his own expense. He did tell me this one day—he said: "If I were to make any charge at all to you, I would charge you $500 a day for every day in court. That is my regular charge when I go into court." He is president of the Pennsylvania Bar Association.

Senator BLACK. I want to be sure of that. Did I understand you to testify—I want to be sure of this under oath—that you stayed in jail 18 days because you were unable to make a bond?

Mr. PERKINS. That is absolutely the truth.

Senator BLACK. You testified that you could not make a bond?

Mr. PERKINS. I say I could not make a bond, positively, in any way before.

Senator BLACK. And do I understand you also that you deny that you had reported to Dun & Bradstreet that you had net assets of $17,500 or more?

Mr. PERKINS. I deny that I reported to them net assets of $17,500 or more.

Senator BLACK. What did you report?

Mr. PERKINS. They rated me at from $3,000 to $5,000.

Senator BLACK. What did you report that you were worth?

Mr. PERKINS. I never made any to Bradstreet & Dun. They never had any report from me.

Senator BLACK. Did Mr. Beitler suggest that he would help make your bond?

Mr. PERKINS. Who?

Senator BLACK. Your lawyer from Philadelphia.

Mr. PERKINS. That he would make my bond?

Senator BLACK. Yes.

Mr. PERKINS. I cannot tell you for sure, but I do know this—as I recall, it is that Mr. Haynes who put up my bond to get me out of jail told me that he thought—he said, "I am perfectly willing to do it, but I think others should take an interest in it"; and he said, "If I don't do it, it will throw the responsibility on some others to do it."

Senator BLACK. Was that right after you were convicted?

Mr. PERKINS. No; it was just before the trial or during the trial. It was during the trial that he made that remark.

Senator BLACK. Amd Mr. Beitler did not suggest anything to you at all about whether he would make your bond or not?

Mr. PERKINS. About whether he would make the bond?

Senator BLACK. Or have it made?

Mr. PERKINS. I don't recall that he said anything about it until it was all over and I had been convicted and turned over to the marshal.

Senator BLACK. What did he say then about your bond?

Mr. PERKINS. He said "We will arrange for it." I knew they had to. I was in the custody of the marshal.

Senator BLACK. Mr. Beitler said they would arrange for your bond?

Mr. PERKINS. I think I am stating it correctly. Possibly it was Mr. Love. More likely it was Mr. Love.

Senator BLACK. Was he your lawyer too?

Mr. PERKINS. He was my own private attorney. I don't know that Mr. Beitler said anything about a bond. I really don't think he mentioned it. I am very sure I am right when I say that he turned the bond matter entirely over to Love as my private attorney. I am very sure that I am right. I am positive that is the way it was left. The marshal took me in custody and took me over the hotel, and it was the next afternoon, it was 24 hours before they had a bond offered from a surety company.

Senator LA FOLLETTE. Was there any discussion between you and your attorneys as to whether you should go on the stand in this case and testify, or not?

Mr. PERKINS. I don't know as you would call it a discussion.

Senator LA FOLLETTE. Did you talk to them about it?

Mr. PERKINS. I supposed of course I was going to go on the stand, and when it came our turn, when it was turned over to the defense to put in their witnesses, they asked for an adjournment for a half an hour and took me into this little room, and Mrs. Perkins was in there with me, and for the first time Beitler and Love disclosed that they thought it would be best not to put me on the stand.

Senator LA FOLLETTE. Did they give any reason for it?

Mr. PERKINS. They did not seem to give any reason, no more than that they thought that would be best. I think it was just in a general way. I don't think there was any detailed reason given, but I knew they thought it, I was very determined about it, but my wife talked with me and pleaded with me to put the trust and confidence in our attorneys.

Senator LA FOLLETTE. And they did not give you any reason at all for their judgment being that you should not go on the stand?

Mr. PERKINS. I don't recall that they mentioned any details, no; only they thought it would be best not to. That was about the way I would express it. In their own judgment they thought it would be best not to put in any defense. I remember the reason now, it does come to me. They did give one reason. They said that they would

have the last plea. The Government would have to make the first plea and they had the last voice. Otherwise, if they put on a witness, they would have to make the first plea to the jury. That was the reason. That was the predominant reason. I had forgotten that.

Senator LA FOLLETTE. I understood you to say that your case was on appeal. Who are the attorneys of record in that appeal?

Mr. PERKINS. I said, John W. Davis, Newton Baker, James Reed, David Reed, Harold Beitler, and George Love. Six of them.

Senator BLACK. I must have misunderstood you. Did I understand you to say that 24 hours after you were convicted, they sent down a bond from a surety company?

Mr. PERKINS. A surety company put up the bond.

Senator BLACK. What surety company?

Mr. PERKINS. I could not tell you the name of that.

Senator BLACK. Who put up the surety with them?

Mr. PERKINS. I could not answer that definitely; I could not answer that.

Senator BLACK. Did you?

Mr. PERKINS. I did not; no.

Senator BLACK. You don't know who did?

Mr. PERKINS. Not definitely; no.

Senator BLACK. Do you know indefinitely?

Mr. PERKINS. It was arranged—they told me I would not have to pay any attention to it. Mr. Love told me to just forget about it. I don't know really who it was. I know there were a great many people in our county taking an interest in that case. I don't think it was Mr. Haynes, but I do know this, that there were certain ones that told me between the time of conviction and the time of the sentence that they would gladly raise the fine from the business men in York, if I would allow it.

Senator LA FOLLETTE. How do you account for the fact that you were able to get a bond within 24 hours after you were convicted and not for the 18 days when you were arrested before your trial?

Mr. PERKINS. Mr. Love arranged it.

Senator LA FOLLETTE. He was still your attorney, was he not?

Mr. PERKINS. I talked to him by the hour trying to get him to give a bond. He said that as an attorney he cannot do it.

Senator BLACK. He did it as an attorney after you were convicted?

Mr. PERKINS. With others, he did it. Possibly he could have done it before; I don't know why not. My wife pleaded with him to try to do it, and we tried every way in the sun to try to get me out of jail.

Senator BLACK. You are sure that Mr. Love could not have done it before if he did it within 24 hours?

Mr. PERKINS. He told me he did not know where he could.

Senator BLACK. Has it ever occurred to you that they wanted to keep you there for the purpose of advertising?

Mr. PERKINS. No, I don't think they ever mentioned it. [Laughter.] If you think that is funny, I don't think that was mentioned and I don't think there was any such thing mentioned, but I am going to retract that and say there was one offer I had from another attorney who came to visit me while I was in the jail and said that if I would consent to allow a certain person, and he would not name the party, to name the attorney, that this man had told him to bring a

message to me that he would put up the bond and get me out. I had been in jail less than a week.

Senator BLACK. That was a $2,000 bond?

Mr. PERKINS. At that time it was a $5,000 bond. I am under $2,000 bond today. This was $5,000 then, but the advertising feature was absolutely nothing thought about in connection with that. The circumstances leading up to it were these: I had been sick a whole year. I ran my business 2 months from bed, and I was on crutches 3 months, and I was physically unable to do anything at the time the code went into effect, in the way of manual labor. I was without physical capacity to do anything. I had accumulated nothing, everything that I had made had gone into the business. I had not saved a thing for myself.

After I came back from New York, after talking to the secretary of the code authority, I spent a very late evening with Mr. Love and he asked me if I would go on the relief and I told him I would not even think of such a thing as going on relief. He said, "Can you go out and do manual work?" I said, "No, I cannot, I am not able to."

Senator BLACK. Mr. Love asked you if you would go on relief?

Mr. PERKINS. He asked me if I would be willing to go on relief.

Senator BLACK. You had a running business.

Mr. PERKINS. He said, "Can you pay the advance in the wages to 40 cents?" and I said, "No; I could not do such a thing, I could not think of such a thing."

Senator BLACK. Then did Mr. Love give a statement to the papers about your terrible condition?

Mr. PERKINS. He did not say anything to the papers. There was nothing published in the papers. That was in January, and the first thing that was ever published in the papers was in May, when it appeared in the paper that the "blue eagle" had been taken away from me, which I had never had. So, so far as advertising purposes, that is most remote. I could take it today and capitalize today on that. That is proof enough I was not interested in that sort of thing. That did not have the slightest influence on me, the advertising feature.

Senator BLACK. You do not think any of them are interested in trying to advertise to show——

Mr. PERKINS. I was not interested in trying to advertise.

He said:

I think you are within your constitutional rights, and as a lawyer I advise you to go on and do the best you can. Pay the 40 cents, and if you cannot, do the best you can.

Senator BLACK. Did Mr. John W. Davis agree to represent you before or after you were convicted?

Mr. PERKINS. Before or after?

Senator BLACK. Did he talk to you before or after?

Mr. PERKINS. I had met him once before the trial.

Senator BLACK. When?

Mr. PERKINS. If you want to know definitely, I will say I think it was in October. The trial was in December.

Senator BLACK. Where did you meet him? In New York?

Mr. PERKINS. I met him in New York.

Senator BLACK. Were you on the bond at that time or had you been arrested?

Mr. PERKINS. I was out on $5,000 bail at that time.

Senator BLACK. You were out on $5,000 bail?

Mr. PERKINS. I got out of jail on the 18th of July. Mr. Haynes bailed me out on the 18th of July, and the trial came on on December 3, and I was on $5,000 bail in the interval.

Senator BLACK. And you saw Mr. Davis before that or after that?

Mr. PERKINS. In October I called on Mr. Davis.

Senator BLACK. Did he send for you?

Mr. PERKINS. No, sir; he did not.

Senator BLACK. How did you happen to accidentally come up and see Mr. Davis?

Mr. PERKINS. I thought I would just go up and see him. I did not know that he would see me.

Senator BLACK. You had heard of him?

Mr. PERKINS. I had heard of him.

Senator BLACK. You had no communication with him?

Mr. PERKINS. Yes.

Senator BLACK. And you concluded that you would go up and see Mr. John W. Davis in New York?

Mr. PERKINS. Yes, sir.

Senator BLACK. Did you have any difficulty getting in?

Mr. PERKINS. No, sir.

Senator BLACK. Just sent in word that you were Mr. Perkins and he said, "Come in"?

Mr. PERKINS. He sent out word that he would be glad to see me. To make it perfectly accurate, I called up from the hotel and talked to the Secretary and told her who I was.

Senator BLACK. Who had told you to go up and see him?

Mr. PERKINS. Who had told me to go up and see him?

Senator BLACK. Yes.

Mr. PERKINS. I just took it on my own head to go and see him.

Senator BLACK. Is that the way you got Mr. David Reed, too?

Mr. PERKINS. Very much so. I had written to Mr. Reed several times and he had answered my letters, but I never met him until the night he came to York.

Senator BLACK. How did you get Mr. Newton Baker? Did you go to see him?

Mr. PERKINS. I wrote him.

Senator BLACK. You wrote him?

Mr. PERKINS. Yes, sir.

Senator BLACK. Nobody suggested it at all?

Mr. PERKINS. No one suggested it.

Senator BLACK. Did you write any letter to him about it?

Mr. PERKINS. I used to know Newton Baker a little bit. It just happened we belong to the same college fraternity. I knew him a little bit, and it was a long time since I had met him, and I met him and I explained the situation and I asked him if he would come in and join the counsel of the appeal, and he called up David Reed and through David Reed I learned of his acceptance first, and then I got a letter from him.

Senator BLACK. Which one is the leading counsel?

Mr. PERKINS. Mr. Beitler.

Senator BLACK. That is all.

Mr. PERKINS. And I would like these affidavits put in with my statement.

Senator BLACK. Very well.

(The following letter was subsequently received and ordered inserted in the record.)

PERKINS BATTERY CO.,
York, Pa., April 24, 1935.

Hon. HUGO L. BLACK,
United States Senator, Washington, D. C.

DEAR SENATOR: When you were questioning me last Wednesday as to who paid for the security bond which automatically placed my case on appeal to higher courts, I was unable to give you the name of the party, as you well remember. You seemed to think it very strange that I would be so ignorant about the donor, and you even reminded me that I was answering questions under oath.

Quite frankly, it was very embarrassing to me at the time not to be able to recall an incident of this nature, which naturally would seem to come within my intimate knowledge. However, I was very truthful in saying at the time that I did not know. It did occur to me almost immediately after the meeting had broken up that this bond (the cost of which I recall was $40) was paid out of the Perkins defense fund by the custodian, H. L. Stitt, cashier of the Industrial National Bank of West York. Attorney Love had handed me the bill and I had passed it over to Mr. Stitt, and check was probably sent through the mail. Why I could not recall such a simple incident is beyond my understanding except for the fact that I had had a motor mishap on the way to Washington late the night before, and for lack of sleep I felt sort of dazed all the time I was in the room.

The Perkins defense fund consisted of approximately $300, contributed entirely voluntarily, and mostly by small manufacturers from many different States, but to some extent by farmers and professionsl men. Examples: A small farmer in Mississippi sent a $1 bill. A country physician in the State of Kansas sent two $1 bills. A farmer in Vermont did the same. About 10 percent of the contributors did not even give their names or said they dare not give them. The average gift was about $5. Every single penny from any source whatsoever, even although no message was sent with the money, was deposited with the custodian; in all cases where names were given receipts were issued by him.

I would thank you very much, Mr. Black, to enter this letter as a part of the ecord, and for this purpose I am attaching an affidavit to it.

Very truly yours,

FRED PERKINS.

Subscribed and sworn to before me this 24th day of April 1935.

[SEAL] J. C. GROSS, *Justice of the Peace.*

My commission expires January 1, 1940.

(The statement and affidavits referred to in Mr. Perkins' testimony follow:)

RELATIONS OF FRED PERKINS AND HIS MEN

One thing that made me decide I would never bow to N. R. A. was the fact that all my life I have taken a great interest in men, and when the Government, by arresting me, cast an implication that I had been a heartless employer, it was almost more than I could stand. Then and there I made a resolve that I would see this thing through to a finish, taking my own chance that truth would come to light.

When I left college, I started in at a dollar a day as apprentice in a machine shop—and earned another dollar each night by doing private tutoring. Later I got a hankering to learn millwrighting in a steel plant, and I got such a job under a particularly hard taskmaster—a master mechanic who had been raised in the school of hard knocks. In those days, a college boy was sometimes held in disfavor and I determined to overcome this prejudice by trying to work a little harder than the rest. I will never forget the day he sent for me, and in his office handed me a blueprint, telling me to get a gang of men and go out and do that job. Tears were actually streaming down my face as I left that little office, realizing I had gotten a "start." As a millwright foreman over a period of about a year, I obtained a great deal of valuable experience under this wise but harsh man.

It is hard to satisfy youth. I know I craved to run engines. I would sometimes get down to the plant an hour or two before starting time and talk the engineers of the "dinkies" (locomotives) into allowing me to run their engines. One day I met up with the master mechanic of another steel plant who agreed to give me a chance to learn to operate stationary engines. I started in there

as a greaser on an old-fashioned blooming-mill engine. This engine had been designed in the days of low-pressure steam, and I noticed that under the high pressures we were using, that the big cast-iron heads of the cylinders expanded a half inch every time the engine had a hard pull. It is well-known that cast-iron will not stand much bending before it will break; it is not elastic like steel. I called the master mechanic's attention to this expansion of the metal one day and he offered a kind suggestion that I do not stand behind those cylinders any more than was absolutely necessary. Two weeks after I left that engine, having been promoted to engineer of a small engine, one of those large cylinder heads blew 200 feet—the entire length of the mill.

In those days there was very little regard for human life in the steel plants. Ambulances usually came several times a day and the morgue wagon made quite frequent trips. I give full credit to labor organizations for promoting State laws that gradually overcame the unnecessary hazards presented in nearly all types of mills back in those days. In this plant I was promoted from engine to engine until I finally became engineer ofa 5,000-horse power Corliss compound, with an assistant under me.

Our lives often turn in sharp angles. A certain mining company in northern New York State was looking for a superintendent with a lot of practical experience with machinery and they offered me the job. There I began to learn the art of handling fairly large bodies of men. I found it to be merely a common sense proposition. If you want men to give you their all (in the way of helpfulness) you just give them your all. How could I expect these men to take a greater interest in me than I took in them? I soon began to find that one of the greatest pleasures I could get out of life was in developing men.

I will never forget one man, whom I made a foreman at that plant very much against the general manager's advice. The G. M. pictured him to me as the laziest man in 10 counties and (so he said) would be sure to demoralize the whole force if I ever put him in charge of other men. The G. M. concluded his remarks by saying, "The only reason we keep him here at all is because he is so darn bright that we have him around when we really do need an exacting piece of work done." Well, I refused to take the G. M.'s advice and in 6 months time had the satisfaction of his telling me that he had made a wrong guess, that never in his life had he seen such a change come over a man as he now observed in this one, and he added: "I cannot yet figure out how you did it."

I believe that old-fashioned system of paternalism is intrinsically sound, although I know it has often been overdone by greedy employers. I do not believe any employer would find life worth living if it was publicly known that he was getting rich while his employees were living in want. This is why I advocate much greater publicity as to wealth, earnings and formulas by which men have gained their successes. I think that by compulsory disclosure a man would be automatically protected against distrust of class hatred in case he had done right by his men; and would likewise be condemned in case he had not done right.

I know it is human nature to be selfish, but wise laws can curb selfishness. As long as we allow groups of men to manipulate to their own advantage, in defiance of competition and entirely without regard to the effect on the welfare of the general public, just so long I believe we may expect to remain in the throes of a terrible depression. This applies both to labor and to leaders of industry. Also, I never could quite figure out why a man's right to work should not be just as sacred a right as that to hold property; and added to this, it is surely an economic fact that when competition of labor is shut off, a monopoly must occur which will add an increment of increase to the selling price of the product.

While at this mining camp in upper New York State, a rather sickly looking individual drifted into camp one day and asked for a job. He was about 10 years older than myself and having been with French-speaking people all his life he could talk but very little English at that time. His apparent eagerness for a job prompted me to give him a trial. I soon found he had more than usual ability in handling men and I began to train him in my own natural way. I proceeded to teach him to read and write and to figure, and above all else to talk better English.

After about 2 years at this camp, I changed to a large copper smelter as master mechanic with 250 men under me at times. This man (Joe by name) shortly afterward showed up at this copper plant and, of course, I took him on as a labor boss. It was not long before other departments were trying to borrow him from me—just to get some "pep" into their men (as they expressed it). It seemed to be a fact that men would work like demons for him and call it fun. I recall where one rush job required 48 hours of continuous three-shift work, and as Joe was in charge of this job I could not even persuade him to take time out during the whole 48 hours, and I had to send all his meals to him.

Later I changed to another mining operation as superintendent. It was open-cut work with two steam shovels, several locomotives attending them, and ore washers to handle the ore. To this job Joe likewise followed me and became almost indispensable in the 2 years I was there. When I moved to Seattle to go into the machinery business, Joe even followed me there. I helped fit him out to go to Alaska which seemed to be his destination. When he returned the following year he said he had "frozen his lungs." I sent him back east to his relatives. When he died they wrote me that his last words were a message to "Mr. Perkins." No one can make me believe that paternalism is slavery. It is mutual confidence in each other, making for efficiency and progress. I know I would have laid down my life for that man and I believe he would have done the same for me. There was a certain nobleness about his character that made an impression with me that will remain as long as I live.

An incident in connection with my work at the last mining camp (before I went to Seattle) is well worth relating. This particular camp had never before been known to pay. Dating back to almost the days of the Revolution, it had changed hands dozens of times. On the property there were 60 to 70 tenant houses (mostly log houses) from which we drew our main supply of labor. Also, these tenants had lived in those houses for from 2 to 3 generations and had intermarried so extensively that they sort of constituted one big family which would be bound to act in unison at the slightest provocation in anything seemingly unjust. I believe they constituted the best class of help that could be found anywhere in America for the work we had at hand. In passing, I want to remark that the housewives in these little homes kept everything spotlessly clean, regularly whitewashed their houses and fences and each maintained a vegetable garden in which she took great pride.

I saw that in order to operate this mine at a profit that it would be necessary to run the machinery continuously without rest periods (except for the men) both day and night through the week. In other words, I got my ideas from operations in the steel plants as to how to make this particular proposition pay. The brown hematite ore lay in rich veins as far as it was safe and then blow down the bank from overhead the ore that lay ahead.

Through several generations these men had never heard of running a mining operation at night or even keeping the machinery going during the usual rest period at noon. I knew there would be resistance when I announced my plans but I saw the urgency of the occasion. I figured that with a telephone beside my bed (at my home 3 miles away) and one on each shovel, that I could, by running nights, take out the droppings fast enough to operate the ore washers each day instead of running them once or twice a week as formerly.

Just as I expected, I started a miniature rebellion when I announced my plans one noon hour. Every man on the job threatened to quit. I allowed the antagonism to reach its height and then I mounted a box and addressed them about as follows: "You must admit you have never before had any one in charge here who has taken even a small part of the interest in you that I have taken. I put new sash in your houses, laid new floors and new roofs where needed, built a front porch on each house and improved the sanitary conditions at every home. I have provided dances and entertainments for you and have even opened a night school to teach a lot of you older men to read and write. Into every home I have been many times to satisfy myself that you were all comfortable. You have come to know every inch of Fred Perkins and now I am going to ask that you take an interest in him. I was sent down here to make this job pay and I see only one way to accomplish it, and, by thunder, I am going to try out this scheme of mine—to see how it works—even if I have to fire every man on the place and bring in outsiders to give it a trial. If you appreciate what I have done for you, you will now do something for me."

There was hush. Full well they knew every word I had said was true. They gathered together in groups and finally selected a spokesman to advise me that they would give the "fool notion" a trial just to show me that it wouldn't work. Immediately we started in on the new scheme, with my faithful Joe in charge of the night work, and within a week I had men begging me to allow them to go on that night shift. They began to see that the operation could be made to pay, and there was enthusiasm in that camp such as they had never known before.

Take it from me, workmen do like to see a business pay. I surely got a wonderful send-off from those men when I left that camp. The owners brought in a new man who immediately drifted back to old methods, so I am told, and it was not many months until they got discouraged and shut down that plant and it has never been reopened from that day to this. Still I say that paternalism

when rightly handled does pay. You must be your brother's keeper if you wish to hold him as a brother.

Many years were to pass before I again was to experience the employment of men; this time in my own factory, manufacturing storage batteries for farmers. This time I was on my own and rather a small "own" at that. I was to discover that the same principles applied to running a battery code came into effect, I was paying about the standard wage that other industries in York County paid. I was not getting rich, but I was steadily building up trade and continually enlarging my plant.

Always it was in my heart to try to do better by every man who stuck by me. I had a very distinctive feeling that wages were not the only thing that would bring out the best in a man. I could not immediately offer any great inducements in the form of wages, but I could at least take an interest in the lives of the men; visit their homes and satisfy myself that families of my men were not in distress. One young fellow took a notion to accompany some other boys on an excursion aboard a freight train one day, without taking the trouble to ask off. I did not learn the true facts until he called me "long distance collect", from a point 150 miles away, to beg me to get him out of jail. I arranged for his release. I began to notice it was always the boss they came to when they got into trouble.

One older man got into an auto wreck, was charged with assault and battery and, of course, it was the boss who bailed him out. When any of them wanted to make a payment on a car or something similar, it was always the boss to whom they came for an advance on future wages, and almost invariably they got it. I doubt if there is a man who has worked for me for any length of time who could not recall a good many occasions where I had helped him out—consisting often of paying small bills for him without deducting from his wages. Until rather recently, I employed a colored boy who started with me at 18 years of age and worked quite steadily for me for 5 whole years. This boy was the oldest of 8 or 9 children and the mother was on a widow's pension. Many times have I been into this boy's home to see for myself how things really were going. My children's playthings, after the newness had worn off, usually went to their house.

I seemed to feel a moral obligation that the family conditions of any man who worked for me were to be made as good as I could help make them. I could never quite lose the thought that I had no right to expect a man to take a greater interest in me than I took in him, and in a selfish way I wanted the best service that every man could give me. This colored boy really became quite popular among the white men because of the interest he took in his work.

If I had really made anything more for myself than a living, I would have perhaps felt a little differently toward National Recovery Administration. I went 10 years without a new suit and during this time my wife made all her own clothes. It was a new experience to have to buy second-hand furniture, but it was the best I could do. Even our family car was an old Buick which cost the munificent sum of $165 and which I overhauled myself.

When I divorced my first wife I had given her everything I had in the world in lieu of paying alimony. It was an option that the judge offered me. When I left Mr. H. N. Gitt (at Hanover, Pa.) to go into business for myself at York (20 miles away) I had accumulated nothing. As Mr. Gitt would testify, I remained with him in Hanover a whole year (after he had brought me back from the West) at a salary merely large enough to support my family—instead of accepting the $100 a week that he repeatedly tried to thrust upon me. I had opened a Pacific coast distributing branch for him (for farm lighting plants) in Spokane just before the panic of 1920 hit the country. I had chosen commission rather than salary, and when the crash came I told him I would stick it out.

At that time I gave up my room in a boarding house, rigged up a bedroom in one corner of the basement of our store and went there to live until I married my present wife—and then moved to her small cottage in Spokane. I stuck out that depression for 3 years and then Mr. Gitt decided to bring me East and give me an outright interest in his business in addition to making me his general sales manager. It was only after arriving in Hanover that I felt I could not quite conscientiously accept the new sales policies outlined by him, and therefore I declined his kind offer. As related above, I remained with him for another year before moving to York and hitting out for myself—in an old Ford sedan in which I made my bed on the road each night during my first summer and fall in the new business. I want to say in passing tht I still hold an intense admiration for Mr. Gitt. Men can disagree in their policies and still be great friends.

I feel that in arresting me and throwing me into jail that the National Recovery Administration did me a great injustice, and consequently I am determined never

to bow down to them. I expect that during the past few months I have been called a "fool" oftener than any other man in the State of Pennsylvania. A question very commonly put to me is: "Why don't you make a million out of the advertising you have received?" I reply by saying, "I am just not built that way." I don't want to capitalize on this kind of advertising. I have turned down chances. After I see that I have finally licked the National Recovery Administration I am going to try to build up my battery business. The present is not the time.

(Signed) FREDERICK CLARK PERKINS.

Subscribed and sworn to before me this 15th day of April 1935.

[SEAL] J. C. GROSS,
Justice of Peace.

(My commission expires Jan. 1, 1940.)

AFFIDAVITS BY EMPLOYEES OF PERKINS BATTERY CO.

YORK, PA., *December 12, 1934.*

Chester L. Wilt, of York, Pa., deposes and says: I have been working for the Perkins Battery Co. for approximately 2 years. I testified in the Federal Court at Harrisburg at the trial of Mr. Perkins that my rate of pay when working by the hour was 20 cents. * * * Since the 16th day of October 1933, when the Battery Code went into effect, I have up until December 1, 1934, worked a total of 1,994 hours, receiving in pay a total of $563.27, an average of 28 cents per hour. At times I have made as high as 60 cents an hour on piece work, but the minimum of 20 cents per hour (on straight time) brought the average down to 28 cents.

Time and again (in addition) Mr. Perkins has turned over to me the engine-repair work that came in from farmers, and for this work I charged 50 cents per hour and was never asked by Mr. Perkins to turn any of this money back to him, even although he allowed me free use of his shop, his tools and electricity. At times when I have needed money for special purposes, in amounts beyond my earnings, Mr. Perkins has willingly advanced me such money.

At no time have I ever seen anything to indicate that any of the employees were dissatisfied with their treatment at the hands of Mr. Perkins. We all felt that he sympathized with us and was trying to do the best he could to help us. If any employee ever complained of him to National Recovery Administration I certainly have never heard of it.

(Signed) CHESTER L. WILT.

Subscribed and sworn to before me this the 12th day of December 1934.

[SEAL] C. M. STAUFFER,
Notary Public.

(My commission expires Feb. 23, 1935.)

YORK, PA., *December 12, 1934.*

J. B. Jones, of York, Pa., deposes and says: I have worked for the Perkins Battery Co. for just 1 year. I started in at 20 cents per hour and was raised in April of this year to 22 cents. I have had regular work every day since I started. In the peak of the battery season we sometimes work 9 hours, but regularly it has been 8 hours and on Saturday 4 hours.

I came to Mr. Perkins seeking employment after voluntarily dropping another job that hardly paid enough for me to exist. My earnings with Mr. Perkins have been sufficient to enable me to pay up all my back bill and to buy what additional clothing that I needed. * * * During the 3 years that I have been in York I have found that living expense in this community is far less than in the larger cities to which I had formerly been accustomed.

Throughout my constant daily association with all Perkins employees (totaling 20 men in the peak season) I have never heard any remark that would indicate to me that any employee had ever made a complaint against Mr. Perkins to National Recovery Administration.

[SEAL] (Signed) J. B. JONES.

Subscribed and sworn to before me this the 12th day of December 1934. C. M. Stauffer (notary public). My commission expires February 23, 1935.

LETTER FROM FRED PERKINS TO H. N. GITT, HANOVER, PA.

DECEMBER 9, 1934.

DEAR MR. GITT. Time Magazine (address, Chrysler Building, New York City) is about to write up a story about the *Perkins case* and about Fred Perkins individually.

I am wondering is you would do me this favor: To write immediately to Miss Mary Fraser, care of the editorial department, and tell her what you yourself know about Fred Perkins—with particular reference to the fact that I preferred to stay with you without a stipulated salary (you giving me whatever I needed to get along on) than to accepting a really generous salary either from you or form any other man. In other words, I wish to establish the fact that I deliberately turned down offers of money while I was with you—and consequently had accumulated no funds at time I struck out for myself 10 years ago.

If you wish, you can also tell them to what extent you found me honest and sincere. You know it is a little hard for a man to toot his own horn, and yet the Time Magazine sort of placed me in the embarrassing position of being compelled to tell about myself in the absence of anyone else to toot the horn for me.

I think you catch the idea, Mr. Gitt. In order that they may receive the material in time to use, it would be necessary for you to get your letter off in good season tomorrow, and it would be best if you would add a special delivery stamp to assure prompt attention.

Cordially yours,

(Signed) FRED PERKINS.

LETTER FROM SERVICE SUPPLY CO., YORK, PA., TO MANUFACTURERS' ASSOCIATION OF YORK, PA.

AUGUST 3, 1934.

GENTLEMEN: Mr. Fred Perkins has been dealing with us for about 5 years. His firm builds farm-lighting batteries exclusively and therefore their sales are largely to farmers. Since their competitors offer batteries on a time-payment plan, the Perkins Co. is likewise forced to do so. Because Mr. Perkins' capital was limited, he was obliged to offer farmers' checks in payment for raw materials with his own endorsement as a guaranty of payment. These checks were accepted by us, by prearrangement, in exchange for our merchandise. At various times we have held as high as $200,00 in such checks and in only two instances did any come back—Mr. Perkins making these two good in cash.

Any move your body can make in Mr. Perkins' behalf we assure you will be appreciated.

Yours very truly,

SERVICE SUPPLY CO.,
R. F. WANTZ, *Treasurer.*

LETTER FROM EVANS LEAD CO. (GEORGE A. ROWLEY, MANAGER) PHILADELPHIA, PA. (SUBSIDIARY OF NATIONAL LEAD) TO MANUFACTURERS' ASSOCIATION OF YORK, PA.

JULY 30, 1934.

GENTLEMEN: Mr. Fred Perkins of your city happens to be well known to the writer, and as a letter concerning him might be of service to you I take pleasure in writing.

My dealings with Mr. Perkins have extended over the past several years and during this time he has proven himself on more than one occasion to be a man of his word and one with whom it has been a pleasure to do business. I have the greatest confidence in his integrity and his constant desire to fulfill his obligations.

Mr. Perkins has been working under a tremendous handicap in an effort to establish his business in the face of many adverse conditions and with practically no capital reserve. As a result of this fact it has been necessary for him and myself to work out some plan whereby he could secure from us raw materials needed to conduct his business and for which he would be able to give some warranty of future payment.

His business is conducted almost exclusively with farmers and it has been the custom of these farmers to give Perkins certain checks which are not post dated, yet which bear notations to be held to certain future dates before presenting. I have held close to $1,000 in these farmers' checks at one time, and as the deposit date arrives they are put through our bank with our own endorsement under Perkins' endorsement. With but one or two exceptions they have always been paid, and the few exceptions were made good in cash by Perkins within 48 hours.

I have not taken these checks as a last resource in settlement in any sense whatsoever, but have accepted them with full understanding that they are in payment of materials furnished.

I hope the information contained in the foregoing will be of some service to both yourselves and to Mr. Perkins.

Very truly yours,

GEO. A. ROWLEY, *Manager.*

LETTER FROM JOHN H. MYERS LUMBER CO., YORK, PA., TO MANUFACTURERS' ASSOCIATION OF YORK, PA.

AUGUST 1, 1934.

GENTLEMEN: Mr. Perkins takes from time to time certain forms of checks in payment for batteries furnished to farmers. It is clear that they cannot be used by anyone until their deposit date. Mr. Perkins suggested that he needed some lumber which he wished to pay for with these checks; we accepted his proposition and supplied him with lumber to extent of $241.60. The checks were all paid as they fell due.

We will personally appreciate anything you may do to aid Mr. Perkins.

Yours very respectfully,

JOHN H. MYERS.

LETTER FROM THE PASCHALL OXYGEN CO., PHILADELPHIA, PA., TO MANUFACTURERS' ASSOCIATION OF YORK, PA.

AUGUST 1, 1934.

GENTLEMEN: We have been asked to write to you direct in regard to our relations with the Perkins Battery Co. of your city. It has been our pleasure to do business with Mr. Perkins since 1928.

As a matter of cooperation, we agreed, about a year ago, to accept checks drawn to the order of Perkins Battery Co. and submitted by farmers in the surrounding territory—with payment dates several months beyond the original dates of the checks. Settlement of our account in this manner, while a bit unusual, has been acceptable and we have been satisfied to continue our regular line of credit with settlement being made on this basis.

This information is submitted in strict confidence and without responsibility on our part, but we trust it does answer your requirements. If we can be of further assistance do not hesitate to write us.

Very truly yours,

PASCHALL OXYGEN CO.,
N. BAUERERS, *Credit Department.*

LETTER FROM FULTON, MEHRING & HAUSER CO., YORK, PA. (WHOLESALE HARDWARE) TO MANUFACTURERS' ASSOCIATION OF YORK, PA.

AUGUST 2, 1934.

GENTLEMEN: Mr. Perkins has been buying from us since 1925, his highest credit during that time being $100. It seems that Mr. Perkins sells his batteries on installment terms, taking checks in advance for each installment payment and agreeing to hold and deposit them on the due dates. He has been endorsing such checks over to us, sometimes as much as 3 months before they are due. Of course you understand that it is not our usual way of doing business but we agreed to cooperate with Mr. Perkins by selling him goods in this manner until he could get on his feet financially.

Mr. Perkins seems to be on the job all the time and we believe that assistance such as this will enable him to pull through and keep his plant going.

Yours, truly,

FULTON, MEHRING & HAUSER CO.,
D. C. HILL.

YORK, PA., *December 18, 1934.*

John L. Goodling of York, Pa., deposes and says: I have worked for the Perkins Battery Co. for approximately 2 years. I will be 19 years old on the 25th of this month. In the case against Frederick C. Perkins in the Federal court at Harris-

burg I testified that my normal rate of pay when working by the hour has been 20 cents.

Since the Battery Code went into effect on October 16, 1933, the records show that I have worked up until December 1 of this year a total of 1,479½ hours, have earned a total of $465.02 and that the average earnings per hour (combining both time and piece work) has been about 31½ cents. Because of my age and lack of a trade I do not know where I could obtain a job if I was to be thrown out of work here.

I am partly the support of my parents and four children younger than myself. We are fairly close neighbors of Mr. Perkins in West York and both he and Mrs. Perkins have taken a very human interest in our family. Most certainly I would not make a complaint against him to National Recovery Administration.

[SEAL] JOHN L. GOODLING.

Subscribed and sworn to before me this the 12th day of December 1934.

C. M. STAUFFER, *Notary Public.*

YORK, PA., *December 12, 1934.*

Thomas J. Martin deposes and says: I had been without work for 2 years and about the 1st of January of this year I asked Mr. Perkins of the Perkins Battery Co. for a job. I was given a try-out at 20 cents an hour and after about a week I was raised to 25 cents an hour. I have worked regularly every day since I started, except for a brief illness, and have been very thankful for the job.

I can further state that Mr. Perkins has repeatedly asked me about conditions within my home, has satisfied himself that we were comfortable and on two occasions has made visits to my home. Occasionally, small bills have been paid by Mr. Perkins without deducting from my wages.

Not to my knowledge have any of Mr. Perkins' employees ever made complaint to National Recovery Administration regarding wages or anything else. The working force at the factory consisted of about 10 men in summer and 20 in winter.

[SEAL] THOMAS J. MARTIN.

Subscribed and sworn to before me this 12th day of December 1934.

C. M. STAUFFER, *Notary Public.*

My commission expires February 23, 1935.

EXCERPTS FROM LETTERS WRITTEN BY FRED PERKINS

"I see very clearly where compulsory education, and particularly higher education, has created a demand for greater opportunities to round out a fullness of life. The average person sees no ready means of attaining wealth and the formulas by which others have attained it are shielded from him. It is only natural that his analytical mind should begin to crave something that it could not clearly define. Gradually, over a period of years, these cravings have assumed a form or resistance, manifested by individuals forming into groups and each group manipulating to its own advantage without regard to effect on the general mass."

"My idea is that a frontal attack (disclosure of wealth, earnings and activities) on the men who have achieved success would lessen and in time eliminate this resistance. It is my belief that the Lincoln which this country must eventually develop before we can emerge from the 'fix' we are in, will succeed in bringing our people into common lines of thought through winning their confidence and drawing them to a clear understanding of the futility of trying to defeat nature's laws."

"I was prompted to write a new philosophy through listening to talks by Father Coughlin. He had a great deal to say about 'an assured living' but never mentioned 'an opportunity to make a living,' and to my mind these two lines of thought lead us in exactly opposite directions. The farmer used to say 'Keep my taxes down and give me a chance to save and I will take care of myself', but from now on, if votes continue to follow their present trend the farmer will soon begin to concern himself with whatever favors the Government will extend."

"A nation forges ahead by breeding workers rather than sluggards, and if our present system of trying to progress under artificial laws is continued for a few years we will begin to see America lose the coloring that our forefathers gave it. I could never clearly see why a right to work should not be as sacred a heritage

as the right to hold property, and I think it is a trust that the Government should assume."

"I cannot believe it possible that a nation partly boom but mostly broke can ever expect to progress until something has been done to again establish our economic system under nature's laws. I believe, with Clarence Darrow, that the natural state is the primitive state, and that all our attainments in life are what we can make them or possibly what we may individually have inherited."

"I notice the industrialists in general seem to be as heartily in favor of N. R. A. as do the people on relief—who seem to think that the set-up is just great. Now if the farmers likewise are taken care of at the expense of the remaining class—who are neither industrialists, farmers, nor subsistence receivers—I am wondering just how long it will be before something terrible will happen. The great difficulty, in my mind, is to impress our people with the fact that new price levels are caused by hidden taxes (and many of them) in everything we purchase."

"I noticed that Mr. Lippman rightly feels very wrathy about the 'pink slip.' I felt that the logic of David Reed should have won him a reelection, yet it failed. I felt that the logic of Huey Long in his share-the-wealth radio broadcast was altogether wrong, yet it is reported that he received 64,000 favorable replies and only 9 critical ones. Facts like these should make us sit up and think."

"Our people demand something which they cannot define, and the man who can define it for them can ultimately be placed in a position of great power. The fate of a nation depends upon whom this man shall be. Never since the day of Lincoln have our people needed a correct-thinking shepherd as they do at this very moment. It is not a very great leap from dictatorship to a monarchy—where a favored few express their views through a figurehead and strife for office is eliminated."

"Pensions and such-like are altruistically fine, but can our country afford to pauperize its great middle class for the sake of realizing altruistic motives long before the millennium is anywhere in sight?"

"An employer's own protection is to pay wages sufficiently high to "hold" the workers that he really wants to keep. My own ideas about getting out of a depression is to eliminate taxes as much as possible and to lower the price level on merchandise to a point where we can offer bargains to foreign countries. A boom in the manufacture of cotton ginning machinery for export to Egypt and South America is surely no sign of a revival in cotton growing in our own country."

"I tried out my article, A New Philosophy, on a few of my friends, among them Mr. Mark Sullivan, who replied that he was interested very much and that it was both humane and practical. However, he cautioned me not to appear to be setting myself up as a philosopher at the very time I was trying so hard to establish my independence as a small manufacturer. I ask you to please treat it confidentially."

TESTIMONY OF ROBERT J. BARRETT, WASHINGTON, D. C., REPRESENTING NATIONAL ASSOCIATION OF MASTER PLUMBERS

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

Senator BLACK. You are here representing the National Association of Master Plumbers?

Mr. BARRETT. Yes, sir.

Senator BLACK. Have you a statement?

Mr. BARRETT. I will take about 5 minutes.

Senator BLACK. Proceed.

Mr. BARRETT. Probably no industry exceeded the plumbing contracting industry in its admiration for the National Industrial Recovery Act when it was enacted, or was more hopeful of being benefited by it. Our industry, on which over 600,000 persons depend for a livelihood, was in distress. We believed that the National Industrial Recovery Act offered us the solution to many of our troubles. We read the act and paid tribute to the sublimity of its language and to the high purposes expressed in it.

A year and 9 months have passed. We will pay tribute to the language and purposes of the act; but our hope that our industry would find a solution for many of its difficulties through activities under the act has rapidly waned. Possibly we expected too much. Possibly we too literally interpreted the language of the act. Possibly we were over sanguine in our belief that a group of persons could be rapidly assembled to administer the act in the spirit we found reflected in its language.

It is only by contrasting the hopes of 21 months ago with the realities of today that we can bring to the committee a true picture of conditions as they now exist in our industry under our code.

Twenty-one months ago, when we read the language of section 3 (a) of the act, we believed that when an equitable code, proposed by a group truly representative of the trade or industry, was approved by the President its provisions would be enforced on all persons, corporations, or entities engaged in that trade or industry. Now we know, that in our industry at least, special corporate interests, such as mail-order houses and their retail subsidiaries, gas utilities, and others who are members of our industry, have successfully evaded its provisions to the detriment and demoralization of the other members of our industry, who represent at least 90 percent of the total volume of business in the industry. Repeated requests that these highly organized interests be brought under our code, to the end that fair competition would result, have been either disregarded or speciously evaded. The result has been that the majority of the industry, operating under the high standards imposed by the code, find their business drifting away into the hands of those corporate and other interests who operate as they choose without let or hindrance.

Twenty-one months ago, when we read section 3 (f) of the act we believed that swift and just retribution would be visited on those who violated any of the provisions of a Presidentially approved code. Knowing human nature, we recognized that all members of the industry would not voluntarily comply with the code, and we believed that a few convictions of violators would have a salutary effect on wavering or unconvinced members of the industry. Today we know that violation of our code does not bring retribution; but, rather, results in pecuniary benefit to the violator. The result has been that, lacking effective assumption by the N. R. A. of its clear enforcement duty, our self-elected code authority is practically impotent and our eulogies of the N. I. R. A. and our promise of relief to the industry are flung back at us as discredited lies.

Twenty-one months ago we were patient. As practical men we realized that the millennium would not arrive over night. We appreciated the tremendous organization problem confronting the Administrator. When our code was approved we did not rush headlong into soliciting money to put it into operation. We dug down into the resources of our trade association, accumulated over a period of years, in the belief that we could not justify collections until we demonstrated benefits to the members of our industry. But our patience, and our resources, are approaching the end. We expected to find orderly procedure and centralized responsibility slowly emerge from the formative stages of the N. R. A. Instead we find the same labyrinth of offices and jurisdictions and the same haggling and compromising. We agreed with President Roosevelt

when he said on September 30, 1934, "We have passed through the formative period of code making." It is apparent to us today that we are still in the twilight zone of code rumination; but not code action.

The statements we have made are not the unconsidered utterances of a disillusioned industry. We make them without rancor and in full recognition of the possibility that we may be called upon to substantiate them. We are prepared to substantiate them, lest we be considered mere destructive critics. May we suggest that certain things are necessary to reestablish the N. R. A. in industrial and public confidence. These suggestions are:

1. That the fundamental principle be asserted and made controlling that all persons, firms, corporations, or other entities dealing in the same products or services be placed under the same code.

2. That the enforcement personnel be strengthened and adequate legal support be given to their activities by approaching legislation.

3. That administrative machinery and authority be concentrated as much as possible, consistent with a democratic form of government; and that a clear distinction be drawn between purely advisory, and administrative and executive functions.

We are not despondent. We believe that the Congress which conceived the N. R. A. is competent to correct the defects of its administration. To us it appears a task of turning high principles into practical realities. We believe that the elected representatives of the people are able to accomplish this.

Senator BLACK. Is Mr. Bloome here?

(No response.)

Senator BLACK. Mr. O'Connell.

TESTIMONY OF HAROLD J. O'CONNELL, NEW YORK, REPRESENTING A GROUP OF INDEPENDENT NEW YORK WHOLESALE FOOD COMPANIES

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

Senator BLACK. Where do you live?

Mr. O'CONNELL. Staten Island in New York.

Senator BLACK. What is your business?

Mr. O'CONNELL. Wholesale food business.

Senator BLACK. Do you appear representing an organization or individually?

Mr. O'CONNELL. A group of New York wholesale food companies, independent food companies.

Senator BLACK. How many?

Mr. O'CONNELL. Twenty-one.

Senator BLACK. Have you a statement you desire to make?

Mr. O'CONNELL. Yes, sir. I was asked to come down here to Washington among other things to testify for this committee on two phases of the investigation.

First, the failure of the N. R. A. to curb monopolistic tendencies on the part of the large food combines, and second, the difficulties of small business methods of administering 7 (a) features under the N. R. A. codes.

As we understand it, the N. R. A. was not designed to change the old practical method or system. It was designed to eliminate the evils of it and to replace or to throw out the cut-throat practices and

extreme competition, and unfair methods which resulted from the fact that there was not sufficient business to go around to supply the larger companies whose sales had been curtailed.

We have a particular illustration in mind, and that is the Great Atlantic & Pacific Tea Co. They have recently departed from their usual policy and have entered the wholesale food business, the business of whoelsale food distribution. They have a purchasing power of $800,000,000 a year, and through the various methods of secret rebates and discounts and other forms of trade practice, which is covered in a report by the Federal Trade Commission to the Senate, they are afforded a competitive advantage over us. We think we conclusive prove that the A. & P. have the ability to manipulate and control food commodity markets. We believe that is equally true of some of the other large food combines. It is our understanding that the Federal Trade commission views the manipulation of food commodity markets as monopolistic. The mere fact that a market can be manipulated, can be controlled, can be changed, raised or lowered by any one influence, indicates that that influence has control of the supply.

The A. & P. Co., we believe, have gone beyond the bounds of fair practice, and in order to obtain their new business, their wholesale business, they are using coercive methods.

They control an enormous amount of freight. We believe they are using this freight traffic as a lever to obtain business from public carriers. We believe that they are using the lever of these tremendous cash positions in the larger banks in order to obtain wholesale business, because the banks in New York particularly are all involved in the operation of one or more hotels as trustees or through some other interest.

We believe that the N. R. A. was designed to protect us, to make the small merchant protected from that form of competition. We believe that it was an emergency measure enacted because the ordinary machinery of government was not rapid enough in its methods to control the situation to eliminate these coercive methods, and to eliminate these unfair practices.

There are other food combines who have evidenced the ability to manipulate markets. I have in mind particularly the Borden Co. This is based entirely on information and belief, since I have no access to their records, but I think it is true and it is current report in the industry. They bought during the fresh production, enormous quantities of butter at a low price of approximately 28 cents a pound. They had a virtual control of the storage butter market. The market went to approximately 36 or 38 cents a pound, the spot market. With the control of storage butter, they were able to feed out quantities of it for public consumption in a manner to control the stock market. They not only did that, but they sold this butter to consumers in competition with other small food distributors at 3 and 4 cents a pound below the current market.

We are absolutely unequipped and incapable of meeting that form of competition. We feel that we are entitled to protection against it. You gentlemen, the Congress, and the Government of the United States said to us small business men in enacting the N. R. A. legislation, "We will protect you against the evils of these large food combines and other competitive sources. We will put competition on a

fair and decent basis. We will make a contract with you to that effect, but it is not going to be a one-sided contract." You said to us, "In return for this privilege or improvement in your business and this protection against your larger and more powerful competitors, we expect you to increase wages and increase employment to the reduction in hours."

Everyone subscribed to it. Everyone entered into that contract with the Government. Everyone of substance signed the President's Reemployment Agreement. They expected something in return for what they gave. They reduced hours, they increased wages, and in the food business in particular, we received nothing in return.

We do not quarrel with the spirit of the N. R. A. at all, or the original intent, but we do quarrel with the failure to administer it, especially by the inability to administer it. We feel that the difficulty may lie in the fact that the law was not properly drawn, at any rate, the effect was not one originally contemplated in the food business.

As an illustration of that, the method of administering section 7 (a) throws us at a material disadvantage. The A. & P. Co., for example, with this $800,000,000 purchasing power had a tremendous advantage right there. In addition to that, they had a material wage differential. As a specific example, we will take the commodity of eggs, which they are tremendous consumers of tremendous users. They were paying egg candlers approximately $19 to $22 a week. The independent egg wholesale merchants were paying about $25 to $33 or $35. My particular company was paying $32 a week, while the A. & P. was paying an average, I believe, of $20.

Senator LA FOLLETTE. Was this prior to the code?

Mr. O'CONNELL. Yes, sir; it was, and I believe it still exists today. In the manner of administering section 7 (a), we were completely deprived of our defenses against the racketeering form of labor and legitimate uniform methods.

A great wave of strikes followed. The N. R. A., particularly the local regional board, was interested only in how many strikes they could settle. They had no interest in who paid the bills. In our case, a strike was called through an error. The union there said that they believed that we were affiliated with another company whose employees were on strike, but there was absolutely no connection whatever between the two companies. But they called a strike on us in this belief. We were paying $32 a week. The largest company in the world in that particular line was paying $20 a week. We were paying 60 percent more than they were.

Senator LA FOLLETTE. What were the minimums in the code?

Mr. O'CONNELL. $15 a week. There has been no code promulgated for that particular business even to this day. We opposed any increase in wages——

Senator LA FOLLETTE (interrupting). Are you still operating under the President's agreement in that industry?

Mr. O'CONNELL. Yes, sir; we are. No code has been signed.

Senator LA FOLLETTE. Has it ever been prepared?

Mr. O'CONNELL. There has been a great many prepared, but the N. R. A. did not approve any. The unions demanded that we increase our wages from $32 to $38 per week, and that we reduce our

hours from 48 to 40. We refused to reduce our hours, because the Government had issued an exception to the N. R. A. authorizing us to work 48 hours. Not us particularly, but the entire industry.

The local regional board harassed us as much as they could, primarily for the purpose of settling the strike. We had police protection. They even went to the extent of trying to have the police protection removed. The local head of the regional labor board demanded that I agree to arbitrate. I said that I could not arbitrate because we were already paying a fair living wage, we were paying more than most of our competitors, very much more than the larger food combines, and that we could not raise our wages and meet any form of competition.

This person responded that we were getting police protection and therefore we could hold out as long as we wanted to without arbitrating. I told him that we were entitled to police protection. They responded that we might not have it, as long as we expected it, and that if we did not have police protection, implying that if were subjected to violence, we would be compelled to arbitrate. A few days later this person went to the mayor, Mayor LaGuardia and reported this situation, and reported to me that unless we agreed to arbitrate by the following Monday, the police protection would be removed and then we would be compelled to arbitrate. I responded to the effect that if that were done, I would put armed guards on our trucks with shotguns and we would protect our property, and that the chairman of the local regional board would have to take the responsibilities. That was done to settle the labor difficulty.

Nothing was done to raise the A. & P. wages to a point where we would be on an equal competitive basis. The A. & P. are large enough and wealthy enough and have enough resources to combat any form of unionism. They can continue to pay $20 a week or $22, while we are compelled to pay $32.

We are now paying $35, because after the strike was declared off, we raised the wages to $35.

I say, we do not quarrel with the spirit or the intent of the law, and we think that under proper conditions it will be very effective, but we are entitled to some protection against the coercive methods of the larger combines, we are entitled to rapid protection that the Federal Trade Commission cannot ordinarily give us because it takes them 2 years or more to investigate a case, and if we are to remain in the present position of being at such a tremendous disadvantage because of wage differentials, because of their ability to demand business through the tremendous freight they control, and because of their banking connections, it won't be long after they have entered the business on a general scale before practically every wholesale marchant is out of business, and the effect of that will be that the farmer will lose one of his most important outlets.

Now, there are only two outlets. There are the wholesale dealers and the large chain stores who buy directly from the farmers. If you eliminate the independent wholesalers because of this competition of the large chains, particularly the A. & P., the farmer will lose one outlet, it will become thoroughly monopolistic, and the A. & P. will not only be able to manipulate markets, but to determine under any and all conditions, the price that they choose to pay for any farm produce.

I think that covers all I have to say, Senator.

Senator BLACK. Thank you very much.

TESTIMONY OF H. S. BROWN, ASSISTANT TO THE ADMINISTRATIVE OFFICER, NATIONAL RECOVERY ADMINISTRATION

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

Senator BLACK. You had some papers you wanted to put in the record.

Mr. BROWN. Yes, sir.

Senator BLACK. You are with the National Recovery Administration?

Mr. BROWN. Yes, sir.

Senator BLACK. What is your position?

Mr. BROWN. My title is assistant to the administrative officer.

Senator BLACK. You have some records that you were requested to bring?

Mr. BROWN. Mr. Vose, my assistant, was requested to bring some records, and there they are [indicating].

Senator BLACK. What are they?

Mr. BROWN. My desire was, if possible, in addition to presenting these, to make a brief statement regarding the budget situation. I thought perhaps I might clarify it for the committee, but if the time is too short——

Senator BLACK. (interrupting). What are the records? Suppose you call them off and mark them as exhibits.

Mr. BROWN. Will you do that, Mr. Vose?

Mr. VOSE. Exhibit no. 1 is a list dated February 18, 1935, of 71 approved budgets which, prorated to an annual basis amounts $100,000 or more each. The total amount involved is $38,362,207; 273 small budgets amount to $4,852,876.

The total amount on an annual basis of these 344 budgets is $43,215,083.

Exhibit no. 2: An analysis of the code authority salaries.

Exhibit no. 3: A summary of the progress made in budget examination up to March 15, 1935. This accounts for budgets applicable to 551 figured by national codes and 195 supplementary codes.

Exhibit no. 4: The standard mandatory provision devised by the N. R. A. to assist in making collection of the contributions.

Exhibit no. 5: Additional information regarding the mandatory amendment situation.

Exhibit no. 6: Has to do with the contribution, and the method of handling every part of the question.

Exhibit no. 7: A study we have of the problem of multiple secretaries.

Exhibit no. 8: A brief summary of part of the approval of the baking industry budget.

Exhibit no. 9: Similarly a brief summary on the bituminous coal industry budget.

Exhibit no. 10: The same regarding the Lumber and Timber Products Code Authority.

Exhibit no. 11: Covers the motor vehicle retail trade.

Exhibit no. 12: The retail trade.

Exhibit no. 13: The report we received in connection with the voluntary finance operations of the National Electrical Manufacturing Association.

This is not an exhibit on our part, but I was requested to bring a sample or samples of the abstracts made from the various letters covering the complaints that came to N. R. A.

Senator BLACK. Mark it as an exhibit and put it on file.

Mr. VOSE. That will be no. 14.

Senator LA FOLLETTE. Would you like to make a statement, Mr. Brown?

Mr. BROWN. I would like to make a brief one. These statements here, together with a great many others, have been compiled beginning last December up to date, for the purpose of replying to inquiries and requests for information regarding the cost of code administration and the general policies of approving budgets for code authorities.

I have followed the testimony that has been given before this committee, and I have felt that perhaps there was not being given to the committee a comprehensive picture of the budget problem and of the methods that are being pursued under Mr. Harriman's direction to see that the budgets of the code authorities comply with the requirements being necessary, proper, and reasonable, and that the bases of assessment on industry are equitable.

The budget problem involves the approving of budgets for 551 master codes that have been approved up to date and 196 supplemental codes. Those supplemental codes being the product divisions of the master codes.

In addition to that, both the master codes and the supplemental codes have divisional, regional, and local budgets for the administrative agencies that administer the provisions of the codes. That means that probably before the budgets for the entire present code structure are approved, they will aggregate approximately 1,000.

Statistics have been given to the members of the committee and to their representatives indicating that the total cost of the code administration as evidenced by budgets approved and to be approved, will aggregate $41,000,000, which, based on the estimated volume of the business to which they are applicable is something around one-twentieth of 1 percent of dollar volume. Those budgets do not, however, represent what will probably be the average annual cost if and when code authorities are operating on a business-like basis. In many cases they represent guesses as to what the cost of code administration will be; also guesses as to the amounts which their budget provisions for assessments enable them to collect.

It is likely that the annual cost of code administration for all of the codes that at present exist would be more nearly $30,000,000 per year, than the $41,000,000 that is evidenced by the present budgets.

The formative period of the code administration, is always the most expensive, which is another element which will work toward ultimate reduction.

One difficulty in giving accurate information to this committee as to the cost of code administration has been the fact that it probably was originally intended that the codes would be administered by voluntary contributions. It soon became evident that voluntary contributions could not be relied upon, and on April the 14th, the President issued his Executive order giving notice that codes that already had been executed had the right to be amended to include mandatory provisions, and those in process of negotiation, the right

to include the mandatory assessment provision. The result has been that at the present time the budgets that have been approved will represent probably 90 percent of mandatory collections for the entire code authority administration.

The President's order did not make it mandatory that the budgets should be filed for code authorities operating on a voluntary basis, with the result that some 200 code authorities did not file budgets until recently. At the present time, budgets have been filed for nearly 95 percent of all code authorities, whether operating on a mandatory or on a voluntary basis. A large number of those budgets have been recently filed and have not yet been reviewed and approved, but will probably be completed within the next 30 days.

During this investigation, comment has been made regarding the employment of multiple secretaries. We discovered some time in the latter part of last year, that there was a growing tendency on the part of the unorganized industries who had been codified to seek more or less expert assistance in the administration of their codes. That was not necessary for industries that been organized and were functioning through trade associations prior to the N. R. A.; but it was necessary for those industries that were wide-scattered and had not had that trade association cooperation and that did not apply only to small industries, but to many of the larger ones. The larger ones, however, were able to go on and employ capable executive officers because of the volume of business which they could assess for their costs. The smaller ones had no such opportunity, and they sought the cheapest method of code administration. The result was that some individuals, some accounting firms, some law firms, set themselves up as expert code authority administrators and sought to sell their services in that capacity to numerous code authorities, and were successful to a rather large extent.

The objections that could be raised to that policy was that they might racketeer salaries, get exorbitant salaries they might sell the codification idea to industries which were not warranted in having a code of their own, because that would make a job for the multiple secretaries. Furthermore, there was the additional objection that to get the best administration of the code, it is desirable that self-interested units in the industry be on the code authority, whereas the professional secretary or executive officer had no such interest either in the enforcement of labor provisions or fair-trade practice provisions.

Our inquiries were first as to the legality of those professional services, and the legal division advised us that unless there were improprieties or irregularities in code authority operations by professional secretaries, there was no legal obstacle. The fact remained that the code authority itself was responsible for the proper administration of the code, and they could employ proper agencies or administration.

We have therefore followed the policy in the budget unit of requiring of multiple secretaries to divulge at the time that they render their services to the code authority, the other codes for which they are functioning, to break down their fee into the ordinary budgetary elements of salaries, office expenses, general expenses, and expense, if there is any other particular kinds of expense and to sign a letter giving us the right to investigate their books and accounts at any time, and for them to make an agreement with the code authorities

whom they serve specifying particularly the service which they are to render.

Up to the present time we have had no complaints as to the inefficiency of administration. With one or two exceptions there appear to be no excessive charges made for services, and I do not refer to those exceptions because I know of any exorbitant charges but to qualify my statement that there are none. There may be. They are under investigation at the present time.

We have felt that as long as it seemed economical and efficient for code authorities to employ skilled representatives to handle their routine code problems in the administration of their codes, that we should not stand in the way of their getting the best service possible. The same principle does not apply to legal services or to accountant services. The differentiation there being that we know of the professional-secretary contracts with the units of industry in the administration of the code. His opportunities for racketeering or for using improper methods of code administration are greater, and we felt that a greater degree of check on his employment was necessary, and the making of the provision whereby he could be removed by having these contracts tested was more necessary whereas in the case of legal counsel and of accountants that do not contact the units of industry. Their negotiations are with the officers of the code authority either in rendering direct legal services of in auditing books and accounts and so forth.

Their fees are provided for in the budgets. We exercise our discretion as to determining whether they are reasonable and proper. We have certain standards that we can apply to check those figures, but with the exception of the multiple secretary who is an executive officer, we have not made the same requirement. Our feeling is that by and large, this multiple-secretary proposition, concerning which a great deal of adverse comment has been made, will, upon investigation prove not to be so criticizable as the testimony or the criticism might indicate.

With respect to salaries, we have been confronted with the criticism that no code authority executive ought to have more than $10,000 salary. It seems absolutely impossible to establish that as a fixed principle. We have, in lieu of that, established the policy of publicity and justification. By "publicity" I mean that we require in the noticing of the budget to the units of industry, that John Doe's salary at $12,000 or $15,000 be listed, and that adequate publicity be given to every unit in the industry. Where it is possible, and we have names, we require that a letter noticing the budget be sent to the units. When we have not the names, and there are trade journals in existence, we require the trade journals to publish. We exhaust every possible effort to see that every unit in the industry that is going to contribute to the cost of that budget knows what John Doe's salary is and that he is the fellow.

Then we require justification after publicity. By justification, of course, the first item is a resolution of the code authority that fixes his salary. Then a letter from each member of the code authority stating that John Doe is a man of sufficient experience, integrity and knowledge of the business, and that the job itself is big enough to warrant the salary and that he is the best man procurable at that salary for the job. Those letters are in addition to the minutes, because we feel that

anybody might write minutes and list the names, but it is a more clear matter to have it supplemented by individual letters from each member of the code authority. Then we require, in addition to that, similar letters from other members of the industry, important ones, who are not members of the code authority. In addition to that, we require a letter from the man himself giving a record of his business experience and his earning capacity to show that he has not used this job here to increase his earning capacity.

In all of the cases that have come before me for approval of salaries and budgets, those salaries have been less than the average earning capacity over a period of time, and the recent earning capacity of the individual involved.

A great many comments have been made about crookedness in the code authority operations. We find we have not had the opportunity to audit a great many code authorities accounts for the obvious reason that the audits to be valuable have to be made at the expiration of a budgetary period, and while many budgets expired on December 31, and a great many others have come in, we are not manned in our department, which had as of December 21, only 20 people, and part of them on budgets and part on statistics, and we have not been able to review those specifically, but in complaint cases we have had occasion to do so. In all cases of complaints, the expenditures which have been criticized have been made on the part of the code authority as to their right to make certain kinds of expenditures. Some of them felt that they had the right to make trade expenditures of a trade-promotion character.

Senator LA FOLLETTE. Did you hear Mr. Mortimer Fishel's testimony?

Mr. BROWN. No, sir; I did not read it.

Senator LA FOLLETTE. It was his testimony. I have heard so much here lately that I cannot remember it all and give it under the right witness, but if you remember his testimony correctly, he complained that the Cotton Garment Code Authority has been depositing the money of the code authority in the bank account of the trade association, that those funds had been commingled, and I got the impression from his testimony that he was perhaps not prepared to prove but that he was suspicious that the funds collected for the code authority had been used for the trade association, and that they had been unable to get any information about it, and it involved over $1,000,000.

Mr. BROWN. I do not know how much it involved, but that particular code authority's accounts are under audit and investigation at the present time, and I am therefore not able to say definitely whether the suspicions or accusations are well founded. There is a possibility that they may be.

The ones that have been investigated and have proven to be not as well founded as the criticisms at first indicated. There was the Millinery Code, which, for example, had spent some $13,000 for a fashion show. They thought that under a broad interpretation of title I of the act, promoting reemployment, and of course that of the interest of the industry in general, that the trade association's activities were warranted, and they spent the money and had to return it. In addition to that, there was some extravagant expenditures for attending code authority meetings in Atlantic City. Restitutions of some

of the expense charges there, where they were easily evidenced, were made.

Another one was the code authority for the retail solid fuel in Ohio. There the claims were made that they had been extravagant in their purchase of office furniture. It proved that they had bought for $89 a whole lot of office furniture second-hand. The criticism was that they had bought mahogany furniture. Another was that they had put in for $500 or $600 a fireproof safe and had taken it off the hands of one of the members of the code authority. It developed that the code authority had bought this safe through one of the members of the code authority who was in the business and had an agency, and he was able to buy a new safe and give them the full discount on it. The bill was produced and showed that he had done just that.

Many criticisms are made that are based on gossip which, when they are run down, do not hold water. Up to the present time all of the investigations that we have made—and I exclude this cotton garment one for the moment because it is under investigation, we have not found evidence of willful crookedness. We have found evidences of extravagance and we have found evidences that expenditures made with a misapprehension or lack of knowledge as to the limitations on code authority expenditures were made. The reports have been furnished to the committee of the investigations that we have made of those two, the details of which I have mentioned.

I could go on and elaborate on policies——

Senator LA FOLLETTE (interposing). How long do you want to do that? It is getting pretty late. If there are any further statements you want to make——

Mr. BROWN (interposing). I want to make one statement only, that I am agreeably surprised as a business man who has been on the job only a few months, to find so excellent a job in the way of establishing policies and checks and balances on the approval of budgets. I did not expect it. I was warned that that condition did not exist. I find that they are in very good shape and are progressing satisfactorily, and any inquiry will show it.

Senator BLACK. Thank you very much. Here is one more letter that goes in the record from the Cotton Garment Code Authority, signed by Samuel A. Sweet and addressed to Senator Harrison, in reference to statements by Mr. Fishel.

(The letter referred to is as follows:)

COTTON GARMENT CODE AUTHORITY,
New York City, April 15, 1935.

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

DEAR SENATOR: We respectfully request that you read into the record of the Senate Finance Committee hearing on N. R. A. the following in answer to certain testimony given to your committee on Saturday, April 13, by an attorney from New York named Mortimer Fishel:

In the first place, we believe it would be well for you to know who Mr. Fishel is, as it may have some bearing upon his testimony before you.

Mr. Fishel was for years an attorney for certain clients who had contracts with State prisons for the manufacture of cotton garments. These cotton garments were sold by Mr. Fishel's associates in the open market in competition with goods made by free labor in the cotton-garment industry.

For years the International Association of Garment Manufacturers conducted a bitter warfare against the sale of these prison products. The association joined with the American Federation of Labor and other interested groups in asking Congress for the passage of the Hawes-Cooper Act, which would permit the States

to regulate prison industries. Neither Mr. Fishel nor his associates participated in this fight, for as a matter of fact one of his associates was for years manufacturing in the prisons and opposing this type of legislation.

Congress passed the Hawes-Cooper Act by an overwhelming vote and as a result 18 States have enacted legislation to protect free labor and free industry from the unfair and un-American competition of prison-made goods.

The International Association of Garment Manufacturers have spent thousands of dollars in trying to rid the Nation of this unfair competition, and Mr. Fishel has been lined up against the campaign of the garment association.

In fact, he is the attorney on record who filed a bill in the New York court to declare the Hawes-Cooper Act and New York legislation in it unconstitutional and invalid. The International Association of Garment Manufacturers intervened to help the State defend the law of New York and the Hawes-Cooper Act and won the case in the New York courts.

During the time that the International Association of Garment Manufacturers were attempting to aid industrial prosperity by proposing and promoting a code of fair competition to give wage-earners a living wage and decent hours, Mr. Fishel was representing prison contractors endeavoring to rid the State of New York of prison regulatory legislation. This was entirely within the rights of Mr. Fishel, but it somewhat explains his attitude toward the International Association of Garment Manufacturers.

One of Mr. Fishel's associates was still using the labor of prisoners in the manufacture of cotton garments when the Cotton Garment Code was approved on November 17, 1933, and Mr. Fishel had not at that time withdrawn from the litigation in New York State.

It was not until about January 1, 1934, after the Cotton Garment Code had been approved and was in effect, that Mr. Fishel suddenly became active in the general work of the cotton garment industry; when one of his associates finally left the prison business Mr. Fishel became associated with the National Association of Work Shirt Manufacturers and now is its general counsel.

The financial affairs of the Cotton Garment Code Authority, Inc., and its relation to the International Association of Garment Manufacturers is an open book. Mr. Fishel could easily have found out the facts if he had taken the time to do so and one of us would gladly have told him. The administration in Washington has a complete record of just what transpired in respect to finances. One of the undersigned, Mr. Sweet, was chairman of the board of directors of the International Association of Garment Manufacturers at the time the industry proposed the code of fair competition; money had to be advanced to pay the expenses incidental to the promotion and approval of a code; many trips were made to Washington for a period of 7 months before final approval of the code. In none of these trips and in none of these activities did Mr. Fishel play a part. The International Association of Garment Manufacturers advanced the money necessary for this work and this is the only money that has been returned to the International Association of Garment Manufacturers as soon as the code went into effect. The total amount involved was $22,071.04.

Scovell, Wellington & Co., a firm of accountants and engineers located at 10 East Fortieth Street, New York City, made a complete examination of the accounts and financial records of the International Association of Garment Manufacturers, fiscal agents for the Cotton Garment Code Authority, Inc., for the purpose of reporting on the financial condition of the Cotton Garment Code Authority, Inc., as of January 12, 1935, and the results of its operations for the period from November 17, 1933 to January 12, 1935. Twenty copies of this audit were sent to National Recovery Administration officials in Washington.

When the code authority was first set up it had no means of certain financial support. The code authorized a voluntary contribution basis and members of the industry were requested to help finance the code authority through a percentage of the pay roll in each plant. This was a voluntary assessment and no attempt was ever made to enforce the collection.

The code authority entered into an open arrangement with the International Association of Garment Manufacturers to act as fiscal agents for the code authority. One of the undersigned, Mr. Sweet, was treasurer of the code authority and as has been said, chairman of the board of directors of the International Association of Garment Manufacturers. Accurate and complete statistical financial statements were kept at all times and the code authority was at all times informed of what transpired and the officials in Washington at all times had access to the records. Nothing was paid to the International Association of Garment Manu-

facturers for actual services rendered and the books and records are available to anyone who wants to know the facts.

We have respectfully requested that you place this letter in the record of your hearings so that there will be no misunderstanding as to the subject matter of Mr. Fishel's statements.

Very sincerely yours,

COTTON GARMENT CODE AUTHORITY, INC.,
By STANLEY A. SWEET, *Chairman.*
W. C. MORGAN, *General Manager.*

(The following document was submitted to the Finance Committee by the National Recovery Administration, in connection with Mr. Brown's testimony:)

MANDATORY CONTRIBUTIONS TO CODE AUTHORITIES

AUTHORITY

Executive Order No. 6678, dated April 14, 1934, approved the inclusion of a provision in a code authorizing a code authority to secure equitable contribution by all members of the industry and, if necessary, to institute legal proceedings therefor in its own name.

The order provides that only members of the industry complying with the code and contributing to the expenses of its administration shall be entitled to make use of any emblem or insignia of the National Recovery Administration (exhibit A).

Administrative Order No. X-36.—Administrative procedure designed to carry out the intent of Executive Order No. 6678 was first approved April 14, 1934. This procedure was revised by Administrative Order No. X-36, dated May 26, 1934, which is still in effect.

The last-mentioned order provides that a code authority may not demand a contribution from an industry member until—

(1) The code contains a provision whereunder nonpayment of equitable contribution is in violation of the code, or whereunder a legal obligation to pay the same has been created; and

(2) National Recovery Administration has approved an itemized budget of such expenses and an equitable basis of contribution thereto.

It also provides that, before the code authority may institute civil suit or before National Recovery Administration may remove the "blue eagle", the code authority must have met the requirements stated in paragraphs (1) and (2) above, and further must have

(1) Given notice of contribution in substantially the form approved by National Recovery Administration, which, among other things, inform the industry member of his right to protest payment on stated grounds.

(2) That the member after 30 days after receipt of notice has failed to pay the amount due, and

(3) That the industry member has not filed protest with the code authority or National Recovery Administration (exhibit B).

POLICY DETERMINATION

Office memorandum 340, dated February 27, 1935, established the Code Contributions Board. The Code Contributions Board directs the disposition of all protests against payment of code contributions and all certificates of nonpayment to code contributions filed in accordance with Administrative Order No. X-36; except that the authority to deprive industry members of their privileges either to display or to use the "blue eagle" or National Recovery Administration labels, or to participate in work financed in whole or in part by Federal funds, or in appropriate cases of restoring such privileges continues under the Compliance and Enforcement Director (exhibit C).

PROCEDURE

1. Certificates

Certificates of nonpayment of contribution received from code authorities are checked by the Contributions Section of the Compliance Division for—

(*a*) The mandatory nature of the assessment provision in each code.

(b) Whether the mandatory assessment amendment was properly noticed.
(c) Whether the code authority has been recognized by the Administration.
(d) Whether the budget and basis of assessment have been approved by the Administration.
(e) Whether the budget and basis of assessment have been properly noticed.
(f) Whether the budget and basis of assessment were noticed concurrently with or subsequent to the mandatory assessment provision.
(g) Whether the "Notice of contribution due" sent by the code authority to the industry member was in substantial agreement with the approved form.
(h) Termination of exemption granted by paragraph III of Administrative Order X-36, by Administrative Order X-78 and Administrative Order X-131.
(i) To ascertain if industry member has filed protest.

2. Certificates unaccompanied by protest or where protest has been overruled

If all of the administrative requirements have been met, the Contributions Section in cooperation with the code authority and in consultation with the Deputy Administrator concerned prepares the text of a general letter (exhibit D).

If the general letter does not prove effective in a particular case, steps may be taken to—

(a) Remove the "blue eagle."
(b) Certify noncompliance to Government purchasing agencies.
(c) Authorize the code authority to bring civil suit.

(a) *Removal of "blue eagle."*—Whenever a code authority has met all administrative requirements and asks that an industry member's "blue eagle" be removed, the Contributions Section sends the industry member by registered mail a letter putting him on notice that his "blue eagle" is in jeopardy and telling him that if satisfactory arrangements are not made with his code authority within 10 days his "blue eagle" will be removed (exhibit E). If this letter is not effective, another letter directing the surrender of all National Recovery Administration insignia to the local postmaster is sent. When the "blue eagle" is removed, the local postmaster, the code authority, the State National Recovery Administration compliance director and the regional National Recovery Administration director are informed.

(b) *Government contracts.*—Where certification of the fact of noncompliance with the contribution provision of a code seems the most effective means of gaining compliance, all of the steps outlined above for the removal of the "blue eagle" are followed up to and including the registered letter placing the industry member on notice that he will be certified to Government purchasing agencies.

(c) *Civil suit by code authorities.*—Here again the industry member is put on notice by registered mail that the action may be taken against him. Civil suit may be authorized alone or in conjunction with "blue eagle" removal or with action relative to Government contracts.

Authorization by the Administration to code authorities to bring civil suit is required by memorandum of December 20, 1934 (exhibit F).

3. Protests

The notice of contribution due sent by code authorities must inform the industry member of his right to protest on stated grounds. The grounds for protest stated in the approved notice are "that the basis of contribution as approved is unjust as applied to you, or is not being followed in your case, or that you have already contributed to the expenses of administration of another code, which other code embraces your principal line of business, and National Recovery Administration has not granted any order requiring your contribution to the expenses of administration of this code, or on any other valid ground. Any such protest filed by you must be accompanied by supporting facts".

When a protest is received in the Contributions Section it is examined to ascertain if it is made pursuant to Administrative Order X-36. Protests alleging hardship have been held by the Code Contributions Board to come within the meaning of X-36.

Objections requiring no policy decision such as a statement that a concern was not in business during the period covered by the assessment, are replied to by the Contributions Section.

Another group of protests alleging for example that the National Industrial Recovery Act or the code is unconstitutional, that the individual did not sign the code, that the code authority is not representative, or that the code has not

proved a benefit are replied to by the Contributions Section under statements of policy and authority delegated to the section by the Code Contributions Board.

All protests requiring policy decision on the merits of the case are presented to the Code Contributions Board for determination. The decision of the board is carried out by the Contributions Section.

ACTION TAKEN

Up to the week ending March 2, 1935, 60,651 valid certificates of nonpayment of contribution were received by the contributions section and 58,665 general letters (exhibit B) were sent out by the section. "Blue eagles" were removed from 208 delinquent industry members.

The letters sent were on behalf of 70 code authorities who had met all administrative requirements.

RESULTS

Under date of March 4, all code authorities with whom the contributions section had cooperated were asked to report results within 10 days. Only a few of these reports are in hand. The following are merely taken from the few reports we have received.

A. *Results of general letter.*—The National Retail Solid Fuel Code Authority advises that the 12,600 general letters and small number of "blue eagle" removals have brought in contributions to the extent of approximately $150,000.

The Code Authority for the Graphic Arts Code, A–1, reports that from the 7,000 general letters written by the contributions section 1,000 industry members have paid in full and an additional 1,000 have made partial payments.

The Crushed Stone, Sand and Gravel and Slag Industries Code Authority advises that from 1,202 letters sent, 338 firms have paid in full in the amount of $10,672.82, and 62 firms have paid partially in the amount of $1,441.46.

The Code Authority for the Preserves and Maraschino Cherry Industry advises that from 78 general letters sent $2,248.20 was received, constituting over 50 percent of the outstanding delinquencies at the time the letter was sent.

B. *Results of registered letter.*—The Retail Lumber and Building Materials Code Authority reports that it has received payment on delinquent code contributions to the extent of at least $100,000 as a result of the assistance of the contributions section. This National Code Authority states that early in November 1934 its local agencies were inadequately financed and as a result code administration was in jeopardy. Relatively few general letters, 38, were sent to members of this industry. A larger number of letters informing the industry members that their "blue eagles" were in jeopardy were sent. The code authority reports an improved morale in the organization, an improved compliance with the substantive provisions of the code and a number of other benefits.

Commercial Relief Printing (division A–1 of Graphic Arts) reports that the "blue eagle" letter has obtained the best results. Of 64 sent out recently 20 firms have paid in full and 10 more in part.

EXHIBIT A

EXECUTIVE ORDER MAKING PROVISION FOR A CLAUSE IN CODES OF FAIR COMPETITION RELATING TO COLLECTION OF EXPENSES OF CODE ADMINISTRATION

By virtue of and pursuant to the authority vested in me under the provisions of title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said title, I hereby order that the following clause or any appropriate modification thereof shall become effective as a part of any code of fair competition approved under said title, upon application therefor (1) pursuant to the provisions of the code relating to amendments thereto or (2) by one or more trade or industrial associations or groups truly representative of the trade or industry or subdivision thereof covered by the code, if the Administrator for Industrial Recovery shall find that approval by him of such clause is necessary in order to effectuate the policy of title I of said act:

1. It being found necessary, in order to support the administration of this code and to maintain the standards of fair competition established by this code and to effectuate the policy of the act, the code authority is authorized, subject to the approval of the Administrator:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the code;

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary, (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the industry;

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and secure equitable contribution as above set forth by all such members of the industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Only members of the industry complying with the code and contributing to the expenses of its administration as provided in section 1 hereof shall be entitled to participate in the selection of the members of the code authority or to receive the benefit of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

FRANKLIN D. ROOSEVELT.

Approval recommended:
HUGH S. JOHNSON,
Administrator.

By G. A. LYNCH,
Administrative Officer.

THE WHITE HOUSE, *April 14, 1934.*

(No. 6678)

EXHIBIT B

ADMINISTRATIVE ORDER NO. X-00, GOVERNING COLLECTION OF EXPENSES OF CODE ADMINISTRATION

By virtue of the authority vested in me under title I of the National Industrial Recovery Act and to supplement Executive Order No. 6678, dated April 14, 1934, I hereby prescribe the following regulations and grant the following exemptions, viz.:

I. In no case hereafter shall any code authority, directly or through a trade association or other agency, request or demand from any member of a trade or industry, a contribution to its expenses of code administration in a manner which states or implies that such payment is compulsory under the code unless—

(1) The code contains a provision whereunder nonpayment of such equitable contribution is in violation of the code, or whereunder a legal obligation to pay the same has been created; and

(2) The Administrator has approved an itemized budget of such expenses and an equitable basis of contribution thereto.

II. No code authority shall hereafter institute or cause to be instituted any legal proceedings in respect of the nonpayment of any such equitable contribution unless the requirements of subparagraphs (1) and (2) of the preceding paragraph I have been met, and unless the code authority or its duly authorized agency shall have certified to National Recovery Administration, in substantially the form attached hereto and designated "Certificate of nonpayment of contribution", as follows:

(1) That it has given such member notice of contribution due in substantially the form attached hereto and designated "Notice of contribution due."

(2) That such member after 30 days after receipt of notice has failed to pay the amount due as specified therein.

(3) That such member has not filed with such authorized agency or with the National Code Authority within 15 days from the receipt of the notice, a protest against the contribution on any of the grounds set forth in said "Notice of contribution due" given such member and that it has been informed by the National Recovery Administration that no such protest has been filed with the National Recovery Administration within such period, or that any such protest, if filed, has been overruled by the National Recovery Administration.

III. Pending determinations by the National Recovery Administration with respect to specific codes upon cause shown by a code authority or otherwise,

every member of a trade or industry is hereby exempted from any obligation to contribute to the expenses of administration of any code or codes other than the code for the trade or industry which embraces his principal line of business, provided that he shall submit such information and comply with such regulations with respect to such exemption as the National Recovery Administration may require or prescribe.

IV. No member of a trade or industry shall be deprived of the right to display a "blue eagle" because of nonpayment of his equitable contribution to expenses of code administration, unless the requirements of subparagraphs (1) and (2) of paragraph I of this order have been met, and unless the National Recovery Administration shall determine that the procedure outlined in subparagraphs (1), (2), and (3) of paragraph II has been sufficiently complied with.

V. Nothing in this order shall invalidate any contribution heretofore made by any member of a trade or industry to the expenses of administration of any code.

VI. Administrative order no. X-20, dated April 14, 1934, and entitled "Regulations governing collection of expenses of code administration" is hereby rescinded.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

WASHINTON, D. C., *May 26, 1934.*

---------- (Date)

To: Compliance Division, National Recovery Administration, Washington, D. C.

CERTIFICATE OF NON-PAYMENT OF CONTRIBUTION

---------- Code

The undersigned certifies that—

1. The respondent, ---------- (Name and address)

is subject to the Code for the---------- Trade/Industry.

2. The undersigned is the agency authorized pursuant to such code to collect contributions from the respondents to expenses of administration of the above code.

3. On----------, 1934, the undersigned gave to the above-named respondent notice of contribution due, a copy of which notice is attached hereto, by (here indicate manner of giving notice, whether by mail, personal service, or otherwise).

4. The respondent after 30 days from receipt of such notice has failed to pay the amount due as required in such notice.

5. (*a*) The respondent has not within 15 days of the receipt of the notice filed with the undersigned or with the National Code Authority a protest against the contribution on any of the grounds set forth in the attached copy of notice, and the undersigned has been informed by 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.

---------- (Signature)

---------- (Address)

---------- ---------- (Title)

(Name and address of National Code Authority)

(Name and address of authorized agency)

(Date of notice sent)

To: ---
(Name of member)

NOTICE OF CONTRIBUTION DUE

--- Code

1. The Administrator for Industrial Recovery has approved the plan for budget and equitable basis of contribution submitted by the Code Authority of the --- Trade/Industry. Such approved basis of contribution and the pertinent code provisions are set forth on the reverse side of this notice. Copies of said budget are available at the office of the undersigned agency.

2. Upon such basis, the amount of your contribution to such expenses is $------. (In lieu of the foregoing there may be inserted here the method by which the contribution of the individual member of the industry should be calculated.)

3. Your contribution is due and payable upon receipt of this notice. Your attention is called to the fact that failure to make payment thereof within 30 days renders you liable to appropriate legal proceedings.

4. Your attention is further called to the fact that you have the right to file a protest against the payment of such contribution with the undersigned agency or with the National Code Authority or with the contribution section of the Compliance Division, National Recovery Administration, Washington, D. C., at any time within 15 days from the receipt of this notice. Such protest may be on the ground that the basis of contribution as approved is unjust as applied to you, or is not being followed in your case, or that you have already contributed to the expenses of administration of another code, which other code embraces your principal line of business, and National Recovery Administration has not granted any order requiring your contribution to the expenses of administration of this code, or on any other valid ground. Any such protest filed by you must be accompanied by supporting facts.

(Authorized agency)
(Or appropriate official and title)

(Address)

EXHIBIT C

OFFICE MEMORANDUM NO. 340 [1], FEBRUARY 27, 1935, CODE CONTRIBUTIONS BOARD

1. The Code Contributions Board is hereby established.

2. Membership.

The Code Contributions Board will consist of three members as follows:

(*a*) The Code Administration Director, or whom he may appoint, chairman.

(*b*) The assistant to the administrative officer in charge of budgets and bases of assessment, or whom he may appoint.

(*c*) The Chief of the Compliance Division, or whom he may appoint.

3. Functions:

The Code Contributions Board will be responsible for and will direct the disposition of all protests against payment of code contributions and all certificates of nonpayment of code contributions filed in accordance with Administrative Order No. X-36; except that the authority to deprive industry members of their privileges either to display or use the "blue eagle" or N. R. A. labels, or to participate in work financed in whole or in part by Federal funds, or in appropriate cases of restoring such privileges, will continue under the Compliance and Enforcement Director.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN, *Administrative Officer.*

[1] The substance of this memorandum will be incorporated in the National Recovery Administration Office Manual under "Organization—N. R. A.—Part I—2,000" when released in office manual form.

EXHIBIT D

GENERAL LETTER

Date .....

GENTLEMEN: The National Code Authority for the Commercial Fixture Industry has certified to this Division your failure to remit your equitable contribution toward the cost of administering this code.

It appears from an examination of our records that your code authority has complied with the requirements of the several administrative orders relating to the collection of contributions which, under the provisions of your code (art. VI, sec. 10, par. (f), as amended) are mandatory upon all members of the industry.

You will realize that your National Code Authority and the several regional agencies now being established throughout the country can give an efficient administration of the code only if you, in turn, give your prompt and adequate financial support.

Many members of your industry have already contributed their share to the cost of code administration. It is only fair that this cost should be borne equally by all members. To accomplish this end, the Administration is ready to assist the code authority in collecting from any who have not as yet contributed.

We are directing your attention to this matter and withholding action for the time being in the belief that you desire to cooperate, and that you will promptly send your check for the amount due to the National Code Authority at 1620 South Forty-ninth Street, Philadelphia, Pa.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

(NOTE.—This letter, with the variations attached, represents the only approved form used by National Recovery Administration.)

GENTLEMEN: The National Code Authority for Daily and Non-Metropolitan Newspapers and your regional agency cannot give you efficient code administration unless you in turn give them prompt and adequate financial support.

To assure such support, the members of this industry added a mandatory contribution provision to the code, by an amendment which clearly established a legal obligation on the part of each member to pay a fair share of the cost of administration. The budget and basis of contribution were approved, however, prior to the inclusion of the amendment, and this Administration considered that in fairness to all concerned, an opportunity to file objections to either the amount of the budget or the basis on which it was to be raised, should be given at a time subsequent, rather than prior to the mandatory amendment.

Accordingly the budget and basis of contribution were renoticed to the industry, and no objections, requiring alternation of either, having been received, Administrative Order 287-396, dated November 30, 1934, became effective December 12, 1934. This order constitutes a reapproval of the original budget and basis of contribution, and the Administration is now prepared to assist the code authority in collecting this budget.

Quite clearly, the maximum benefits of self-government as provided in your code, can only be obtained if your regional agency and National Code Authority are able to concentrate on industry problems. Any delinquency requires time and attention which could otherwise be devoted to giving you a more efficient administration of the code.

May we count on you to take care of your contribution by January 15? Your regional agency's full address is .....

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

JANUARY 22, 1935.

P. J. JOHNSON,
Elizabeth, N. J.

GENTLEMEN: The National Code Authority for the Wiping Cloth Industry has certified to this division your failure to remit your equitable contribution toward the cost of administering this code.

It appears from an examination of our records that your code authority has complied with the requirements of the several administrative orders relating to the collection of contribution which, under the provisions of your code (art. VI, sec. 5) as amended, are mandatory upon all members of the industry.

You will realize that your national code authority and the several regional agencies now being established throughout the country, can give an efficient administration of the code only if you, in turn, give your prompt and adequate financial support.

Many members of your industry have already contributed their share to the cost of code administration. It is only fair that this obligation should be borne equitably by all members. To accomplish this end, the Administration is ready to assist the code authority in collecting from any who have not as yet contributed.

We are directing your attention to this matter and withholding action for the time being in the belief that you desire to cooperate, and that you will promptly send your check for the amount due to the National Code Authority for the Wiping Cloth Industry at 32 West Randolph Street, Chicago, Ill.

Very truly yours,

COMPLIANCE DIVISION.
By W. M. GALVIN.

HAND BAG FRAME MANUFACTURING

GENTLEMEN: The National Code Authority for the Hand Bag Frame Manufacturing Industry has certified to this Division that you have neither paid your equitable contribution, computed on the basis of one-half of 1 percent of your net sales for 1934, payable weekly, toward the cost of administering the code, nor have you filed any protest against such payment in accordance with the terms of paragraph 4 of the notice of contribution due, sent you by the code authority.

The provision of your code (art. IV, sec. 5) create a legal obligation on the part of each member of the industry to contribute his equitable share to the cost of code administration.

You will realize that your National Code Authority can give you an efficient administration of the code only if you, in turn, give your prompt and adequate financial support. Most of the members of your industry have already done this, and it is only fair that the remainder similarly contribute.

To accomplish this result, the Administration is prepared, if necessary, to deprive delinquents of "blue eagle" privileges and to authorize the code authority to institute civil proceedings for the amount due.

We are directing your attention to this matter, and withholding any action until February 1, 1935, in the belief that you will desire to cooperate with your code authority, and that you will either send your check for the amount due or make some satisfactory arrangement for payment of same with your Code Authority at 291 Broadway, New York, N. Y.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

JANUARY 9, 1935.

PRINTERY OF GEO. L. CLAPP,
Framingham, Mass.

GENTLEMEN: The Code Authority for the Commercial Relief Printing Industry reports that you have not paid your share of the cost of code administration. The code authority informs us that you were sent notice of this obligation more than 30 days ago, that you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and that no such protest was filed.

Your code authority is responsible for the proper administration of the code for your industry, which provides, in substance, that the code authority shall obtain equitable contributions from all establishments under the code and may, if necessary, institute legal proceedings to do so. Your code cannot be of maximum benefit to you unless you, along with the other members of the industry, pay your share of the cost.

In the belief that you will send your contribution to your code authority promptly, both the administration and the code authority are withholding any further action for 10 days.

Sincerely,

W. M. GALVIN, *Compliance Division.*

Date .....

NAME OF COMPANY,
Address.

GENTLEMEN: The Code Authority of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, 729 Fifteenth Street NW., Washington, D. C., reports that you have not paid your share of the cost of code administration. This agency further informs us that you were sent notice of this obligation more than 30 days ago, that you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and that no such protest was received by it.

Your code authority is responsible for the proper administration of the code for your industry, which provides, in substance that the code authority shall obtain equitable contributions from all establishments under the code and may, if necessary, institute legal proceedings to do so, Your code cannot be of maximum benefit to you unless you, along with the other members of the industry, pay your share of the cost.

It should be clearly understood that failure to pay this code authority contribution constitutes a violation of the code and when such assessments have not been paid, you cannot in entering into contracts with the United States Government, truthfully sign the certificate of compliance required with these contracts indicating that you are in full compliance with this code.

The privilege of using National Recovery Administration insignia is contingent upon compliance with your code and may be withdrawn upon administrative finding of noncompliance.

In the belief that you will send your contribution to your code authority promptly, the administration is withholding any further action for the time being.

Sincerely,

COMPLIANCE DIVISION.
By W. M. GALVIN.

EXHIBIT E

REGISTERED LETTER

Date .....

NAME OF COMPANY,
Address.

GENTLEMEN: The Regional Code Authority for the Commercial Relief Printing Industry ..... (Address), reports that you have not paid your share of the cost of administration of the Graphic Arts Code. You were sent notice of this obligation more than 30 days ago, you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and you received notice from this Administration that the code authority may, if necessary, under the code institute legal proceedings to obtain equitable contributions from all establishments.

Action in your case was withheld for 10 days by both your code authority and the Administration in the belief that you would send in your contribution.

We must advise that if by ..... (Date), you have not paid your equitable share in the administration of the code, as duly levied by your code authority, or unless you have made satisfactory arrangements with your code authority for such payment, the Administration will forthwith remove your "blue eagle", will certify to your code authority and to agencies disbursing Federal funds, that you are not in compliance with the code of your industry, and will authorize appropriate civil proceedings.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

Registered mail, return receipt requested.

"BLUE EAGLE" REMOVAL LETTER

GENTLEMEN: By registered letter on _____, this Administration advised you of the complaint against you for your failure to pay your equitable contribution to the costs of administering the _____, to which you are subject. In that letter you were informed that if you failed to comply with the code in this respect, you would be deprived of your right to display the "blue eagle."

We have received no explanation of your failure to pay your fair share of the expense of administering the above-mentioned code, after due demand by the code authority.

Because of your failure to pay your equitable contribution to the expense of administering this code, you are hereby deprived of the right to display any "blue eagle", and you will hereafter refrain from using any "blue eagle," or any other National Recovery Administration insignia in any manner whatsoever. You are directed to surrender immediately to your postmaster all "blue eagles" in your possession.

This Administration and the code authority will no longer certify to agencies disbursing Federal funds that you are in compliance with the above-named code.

By direction of Compliance and Enforcement Director:

L. J. MARTIN, *Compliance Division.*

Registered mail, return receipt requested.

LETTER TO STATE DIRECTOR AND CODE AUTHORITY

DEAR SIR: The attached letter _____ (Date), has been sent to _____ (Company and address)

The Administration has found that the respondent is in violation of the contribution provisions of the Graphic Arts Code.

After an administrative finding of noncompliance the privilege of using National Recovery Administration insignia has been withdrawn, and this company has been directed to surrender all National Recovery Administration insignia in its possession to the postmaster at _____ (City). This Administration and the code authority are no longer in a position to certify to agencies disbursing Federal funds that the company listed above is in compliance with its code.

You are authorized to give such publicity to this action as you deem appropriate.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

(Enclosure.)

POSTMASTER,
Address.

DEAR SIR: The Administration has found that the _____ (Company and address) is in violation of the contribution provisions of the _____ (Code), and has directed this company to surrender its Blue Eagle insignia to you.

Will you please advise this office within 10 days what action is taken by the above-named concern toward surrendering its Blue Eagle insignia to you, but be careful to do nothing yourself toward getting it back.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

EXHIBIT F

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., December 20, 1934.

To all Code Authorities:

This will supplement the letter to all code authorities of October 11, 1934, regarding litigation by or against you. That letter should not be construed as in any way relaxing the regulations contained in part III of Bulletin No. 7 (Manual for the Adjustment of Complaints) requiring code authorities to obtain the express prior approval of National Recovery Administration before initiating litigation. Such approval is still required. It is the purpose of this letter to set forth the procedure which should be followed in obtaining approval.

In States having State acts adopting the Federal codes, the approval of the State National Recovery Administration compliance director must be obtained by the code authority before it institutes legal proceedings or recommends to the State authorities the institution of such proceedings. As soon as a proceeding is instituted in a State court, a notice to this effect must be sent to the State director, to the Coordinating Branch of the Compliance Division, and to the Litigation Division. A form for this notice is attached.

National Recovery Administration is undertaking the direction of the early litigation on contributions to code authorities, so that the first cases may be ones in which the facts are clear and all National Recovery Administration procedural requirements have been complied with in order that we may obtain prompt action in court. Therefore, until further notice, approval of suits to enforce payment of contributions must be obtained from the Contribution Section, Compliance Division, in Washington. More detailed information on the procedure to be followed will be sent you shortly.

Code authorities are permitted by Administrative Order X-14 to refer unadjusted cases in which there is substantial evidence of a deliberate violation to the appropriate district attorney of the United States through the State National Recovery Administration compliance director for the State in which the appropriate district court is located. Your attention is called to the fact that this order requires the State director to send to Washington a complete transcript of the record of the case in duplicate. Action on these cases will be facilitated if the code authority will assist the State director in the preparation of these copies.

NATIONAL INDUSTRIAL RECOVERY BOARD,
W. A. HARRIMAN, *Administrative Officer.*

This copy for.....
(Litigation Division, Coordinating Branch, State director)

FORM VI-A—CASES REFERRED TO STATE COURTS

Code .....
State legal action instituted ..... Name of court.....
Form of legal action instituted .....
Status of case at time notice sent (state briefly what action, if any, has been taken since the case instituted).....
Name the code agency by which action was taken [1].....
Name of person to whom inquiries on this case should be directed .....
Name of plaintiff .....
Name of defendant .....
Address of defendant .....
Name of attorney, if any, for code agency.....
Nature of violation: (State briefly the nature of the violation, and cite the specific section of the code violated.)

(The following matter is in connection with Mr. Brown's testimony.)

STATEMENT REGARDING BUDGETS OF CODE AUTHORITIES

This statement covers a very small part of the subject of the examination and approval of budgets for the various code authorities under the jurisdiction of the National Recovery Administration.

[1] If a local code authority, give name of region or city.

STATISTICAL INFORMATION

A summary of the statistical information compiled and submitted for the record shows the following:

1. A list, dated February 18, 1935, of 71 approved budgets which, prorated to an annual basis, amount to $100,000 or more each. The total amount involved is $38,362,207; 273 small budgets amount to $4,852,876; total amount on an annual basis of 344 approved budgets, $43,215,083.

2. Analysis of code-authority salaries.

3. A summary of the progress made in budget examination up to March 15, 1935. This accounts for budget applicable to 551 basic or national codes and 195 supplementary codes.

The actual cost of administering the codes, say, for the period of 1934, is not possible of determination. The various code authorities submitted budgets which are only estimates of proposed expenditures covering various periods. Some periods extended for a few months; others extended beyond December 31, 1934. Many codes were not approved until part of the year had passed, so that the record of the year would not be complete as showing an annual cost for administering all codes. Many budget periods did not begin with the effective date of the code, as the code authorities operated on a voluntary basis for some time and only submitted budgets because the National Recovery Administration issued administrative order X-36, which required that budgets be approved before code authorities could request contributions in any way which stated or implied that such payment is compulsory under the code. Consequently, some expenditures had been made which are not accounted for in the budgets.

Budget estimates in many cases are very far from the actual results obtained in the administration of the code for the corresponding period.

Certain special features regarding code administration which is related to the work of the Budget Section are discussed as follows:

MANDATORY ASSESSMENT PROVISIONS

A few of the codes utterly neglected to include any provisions for financial support of code-authority activities. Various provisions were put in codes before there was any thought of standardizing such provisions. Finally, in July 1934, a standard mandatory assessment provision, to be put in codes to be approved thereafter if the code committees so desired, and to be inserted in other codes by amendment if desired, was devised. The essence of this amendment is a provision for the submission and approval of the Budget and basis of contribution and the granting of the power for the code authority to take legal action to enforce collection of contributions if necessary. Copy is offered for this record (no. 4).

After the issuance of administrative order X-20, under date of April 14, and of X-36, which was a revision thereof, on May 26, code authorities encountered increasing resistance on the part of members of the industry in the payment of their contributions. The insertion of the mandatory-assessment provisions in the codes overcame to a great extent this resistance. Additional information is presented for the record (nos. 5 and 6).

LEGAL FEES

The Budget Section has required that the code authorities indicate whether the expenditures listed for legal fees cover contractual or contingent expenses.

That some provision be made for the expenditure of funds for legal services, even on a contingency basis, is wise is demonstrated by the experience of the cod authority for the men's clothing industry, which found it necessary to employ counsel in enforcing compliance with wage provisions of the code.

INCOME FOR CODE AUTHORITY OFFICIALS FROM SOURCES OUTSIDE THE CODE AUTHORITY

Budget information should contain statements as to all part-time employees regularly employed as such, with a statement of the amount of time devoted to code authority work, the nature of the duties, and the compensation therefor. If the person involved receives salary from a trade association, in many cases the actual amount paid is given, together with the time devoted to association work.

Of course, individuals serving more than one code authority on a salary basis are required to submit details on all of their positions and the compensation received in each. A special report on this subject is offered (no. 7).

The volume of material included in the formal approval of large budgets is so great that no attempt has been made to submit in its entirety even one such docket. Summaries of a few of the large budgets and a summary of the reports submitted by a code authority operating on a voluntary basis are presented for the record (nos. 8, 9, 10, 11, 12, and 13).

H. P. VOSE,
Chief Code Authorities Accounts Section.

Approved budgets over $100,000

[Adjusted to an annual basis]

Industry or trade	Budget		Budget, annual basis	Annual sales	Percent of budget to sales
	National	Regional			
1. Lumber and timber products	$316,188.79	$3,738,935.81	$4,055,124	(1)	.....
2. General contractors	454,100.00	2,296,100.00	2,750,200	$2,000,000,000	0.14
3. Retail solid fuel	157,000.00	2,497,366.00	2,654,366	1,073,000,000	.26
4. Motor-vehicle retailing	149,900.00	2,144,242.00	2,502,700	1,745,000,000	.14
5. Retail lumber products, building material	114,000.00	1,687,086.62	1,801,086	365,642,000	.50
6. Trucking	1,139,849.72	575,150.28	1,715,000	(1)	.....
7. Retail trade	125,000.00	814,283.50	1,665,471	35,742,277,000	.005
8. Plumbing contracting	151,270.00	1,109,861.00	1,259,638	700,000,000	.18
9. Commercial relief printing	119,925.00	505,396.00	1,071,978	(1)	.....
10. Bituminous coal (approved divisions)	.....	1,043,941.00	1,043,941	(1)	.....
11. Roofing and sheet-metal contracting (construction)	203,667.88	453,000.00	985,001	150,000,000	.66
12. Baking	270,000.00	630,000.00	900,000	1,000,000,000	.09
13. Crushed stone, sand, and gravel and slag	189,500.00	646,601.00	771,785	109,000,000	.75
14. Nonmetallic and daily newspaper publishing and printing	185,400.00	449,216.00	761,539	(1)	.....
15. Builders' supply	129,500.00	563,391.00	692,891	140,000,000	.50
16. Wholesale and retail grocery	181,466.00	464,398.00	645,864	(1)	.....
17. Painting, paperhanging and decorating (construction)	227,000.00	375,000.00	602,000	128,000,000	.50
18. Mason contractors' division (construction)	56,450.00	193,550.00	000,000	142,000,000	.41
19. Coat and suit	249,462.00	50,100.00	599,124	(1)	.....
20. Men's clothing	225,000.00	.....	550,000	(1)	.....
21. Paper distributing	125,212.20	368,787.95	494,000	230,000,000	.....
22. Dress manufacturing	189,585.00	33,200.00	445,750	600,000,000	.07
23. Electrical contracting	186,000.00	250,400.00	436,400	140,000,000	.33
24. Wholesale tobacco	145,500.00	264,650.00	410,150	700,000,000	.17
25. National retail drug	25,000.05	173,979.00	397,959	1,209,000,000	.03
26. Motion picture	118,680.00	241,320.00	360,000	(1)	.....
27. Heating, piping, and air conditioning (construction)	153,750.11	153,749.89	335,554	123,000,000	.27
28. Wholesale automotive	75,000.00	250,000.00	325,000	500,000,000	.06
29. Construction	259,300.00	31,000.00	290,300	5,705,302,724	.006
30. Cigar manufacturing	224,363.67	55,796.67	280,160	240,000,000	.10
31. Wholesale confectioners	124,300.00	154,146.50	278,446	200,000,000	.13
32. Retail rubber tire and battery	274,500.00	.....	274,500	400,000,000	.07
33. Retail monument	127,100.00	108,589.50	271,485	40,980,000	.66
34. Scrap iron, scrap metal, nonferrous, etc.	256,760.00	1,300.00	258,060	300,000,000	.09
35. Folding paper box	138,041.51	112,265.60	250,307	72,000,000	.35
36. Infants and children's wear manufacturing	114,460.00	135,540.00	250,000	100,000,000	.25
37. Wheat-flour milling	125,047.58	119,078.40	244,722	1,000,000,000	.024
38. Ice	102,300.00	130,300.00	232,600	280,000,000	.08
39. Fertilizer	218,261.65	161,709.00	227,982	(1)	.....
40. Candy manufacturing	114,250.00	107,800.00	222,050	180,000,000	.10
41. Funeral service	73,400.00	141,375.00	214,775	214,775,000	.10
42. Investment bankers	110,486.39	21,000.00	201,729	4,000,000,000	.0005
43. Structural-clay products	9,628.00	129,345.25	197,423	20,352,300	.99
44. Fur manufacturing	50,645.00	7,350.00	190,685	100,000,000	.19
45. Hat manufacturing	179,738.80	.....	179,738	65,000,000	.28
46. Fabricated metal products	164,422.94	.....	171,571	750,000,000	.02
47. Lithographic printing	111,063.08	58,548.92	169,642	67,000,000	.25
48. Undergarment and negligee	144,526.10	23,000.00	167,526	62,000,000	.27
49. Photo and photofinishing	90,000.00	30,000.00	160,000	60,000,000	.27
50. Men's neckwear	133,250.00	26,580.00	159,830	40,000,000	.04
51. Silk textile	158,861.67	.....	158,861	300,000,000	.05
52. Photoengraving	62,560.00	93,191.00	150,751	50,000,000	.31
53. Petroleum equipment	83,586.00	67,596.00	151,182	150,000,000	.10
54. Canning	150,000.00	.....	150,000	300,000,000	.05
55. Funeral supply	145,740.00	.....	145,740	64,795,633	.22
56. Set-up paper-box manufacturing	85,050.00	56,117.00	141,167	34,020,000	.40
57. Resilient floor constructing (construction)	137,309.97	.....	137,309	42,000,000	.33

[1] No estimate of sales volume available Feb. 18, 1935.

Approved budgets over $100,000—Continued

Industry or trade	Budget		Budget, annual basis	Annual sales	Per-cent of budget to sales
	National	Regional			
58. Rayon and silk dyeing and printing	$67,830.00		$135,660	$57,113,000	0.24
59. Merchandise warehousing	103,657.94	$30,000.00	133,657	(1)	
60. Ladies' handbag	98,140.00	35,400.00	133,540	50,000,000	.33
61. Merchant and custom tailoring	96,912.18	24,087.82	132,000	165,000,000	.08
62. Daily newspaper publishing	100,000.00		126,312	(1)	
63. Boot and shoe manufacturing	72,660.00	54,000.00	126,000	635,000,000	.03
64. Gray iron foundry	92,123.40	15,800.00	125,346	70,000,000	.18
65. Wholesale dry goods	80,000.00	42,000.00	122,000	625,000,000	.02
66. Macaroni	104,040.00	68,000.00	121,440	50,000,000	.24
67. Wholesale fresh fruit distributing	116,000.00		116,000	1,200,000,000	.01
68. Wholesale coal	113,340.00		113,340	(1)	
69. Bottled soft drink	91,850.00	20,000.00	111,850	205,000,000	.05
70. Refractories	75,350.00	24,650.00	100,000	33,000,000	.30
71. Wrecking and salvage	40,000.00	60,000.00	100,000	24,000,000	.40
Total on annual basis			38,362,207		
Budgets for 273 additional industries on annual basis			4,852,876		
Total of all approved budgets on annual basis			43,215,083		

[1] No estimate of sales volume available Feb. 18, 1935.

NOTE.—Since many budgets were not approved on an annual basis, figures in the third column do not always represent the sum of the first two columns.

REPORT ON CODE AUTHORITY SALARIES

Attached are the following schedules:

1. Table of approved budgets which have salaries of $10,000 a year or more.
2. Table showing name of employees receiving $20,000 or more a year under approved budgets.
3. Table showing number of code authority employees receiving $5,000 or more, by salary groups.

These analysis are based upon a study of all budgets and bases of contribution approved by the National Recovery Administration. The compensation paid by code authorities whose budgets have not been officially approved by National Recovery Administration has not been included in either the tabulation or the analysis.

It will be noted that only 13 individuals are receiving compensation of $20,000 or more per annum. Three of these are subject to qualification; one is now being reduced; a second is partly charged to private funds of a trade association; the third covers a contractual service arrangement.

Before the National Recovery Administration would approve a budget containing a salary in the amount of $20,000, it was required that the code authority demonstrate the unusual nature of the activities of the code authority requiring the payment of so large a salary. In every case both the code authority and other industry members have indicated that the incumbent is the most logical man in the industry to hold the position. In many cases the incumbent has been drafted by the industry and has made personal financial sacrifices in order to accept the position.

TABULATION OF COMPENSATION ($5,000 TO $20,000)

Examination of this schedule indicates that a great majority of code authority officials are not receiving as much as $5,000. Of the 591 approved budgets, 366 or 62 percent do not contain salaries as large as $5,000 (The 591 total covers a number of sectional budgets grouped into national totals.)

Only 225 approved budgets contain salaries of more than $5,000 a year. These 225 code authorities provide budgetary items of compensation in excess of $5,000 per year for a total of 397 executives. A great majority of the budgets show compensation of less than $7,000 per annum.

Code authority executives receiving in excess of $5,000 a year are usually heads of large national organizations, employing many people.

TABLE I

Industry	Number of employees	Number of establishments	Total budget	Chief executives salary
Baking	2,000,000	600,000	$900,000.00	$18,000.00
Beverage dispensing equipment			24,000.00	12,000.00
Bituminous coal, southern subdivision I of division no. 1	455,800	4,976	210,000.00	30,000.00
Bottled soft drink	84,000	7,000	111,850.00	10,000.00
Business furnishings, storage equipment, and filing supply industry	7,000	59	53,727.11	11,166.66
Candy manufacturing industry	41,000	800	222,050.00	10,000.00
Canning industry	80,200	2,500	150,000.00	12,000.00
Cigar manufacturing	58,300	7,100	286,160.00	15,000.00
Cocoa and chocolate manufacturing	5,700	55	53,405.30	12,000.00
Commercial relief printing			1,071,978.00	12,500.00
Cooking and heating appliance manufacturing	9,500	197	44,975.00	10,000.00
Cotton-cloth glove manufacturing	7,000		24,890.00	10,000.00
Dress manufacturing	79,700	2,080	445,750.00	20,000.00
Electrical contracting division of construction industry			436,400.00	10,000.00
Fabricated metal products manufacturing and metal finishing and metal coating industry	413,100		171,571.00	15,000.00
Funeral service industry	26,000	25,500	214,775.00	10,000.00
Gas appliance and apparatus	16,400	305	85,200.00	12,000.00
General contractors			2,750,200.00	12,500.00
Graphic arts, national coordinating committee			50,000.00	12,000.00
Gray iron industry	53,500	1,600	123,346.00	12,000.00
Hat manufacturing industry	18,500	233	179,798.80	30,000.00
Ice industry	32,200	4,110	232,600.00	10,000.00
Investment bankers			211,980.72	20,000.00
Infants and children's wear	68,100	633	250,000.00	15,000.00
Ladies' handbag industry	10,400	200	133,540.00	10,400.00
Graphic arts, division B-1, lithographic printing	274,700	17,900	169,642.00	15,000.00
Lumber and timber products industries	567,800	20,751	4,055,124.60	14,000.00
Macaroni industry	4,800	310	121,440.00	15,000.00
Mayonnaise industry	4,000	370	75,000.00	12,000.00
Men's clothing	149,900	3,891	450,000.00	25,000.00
Motion picture	100,000	1,500	360,000.00	20,000.00
Motor vehicle retail metropolitan New York district	350,000	43,894	80,000.00	12,000.00
Narrow fabrics	18,000	342	57,431.00	12,000.00
National Tobacco Council			69,900.00	25,000.00
Oxy-acetylene industry	7,300	80	27,550.00	10,000.00
Paint, varnish and lacquer manufacturing industry	29,200	1,063	73,150.88	21,000.00
American petroleum equipment	2,100	28	151,182.00	12,000.00
Photo engraving, National Code Authority	7,600	800	62,860.00	20,000.00
Photo engraving, New York district			22,607.00	11,750.00
Plumbing contracting			1,259,638.00	12,500.00
Printing-ink manufacturing	2,400	150	51,323.00	11,077.00
Refractories industry	7,900	199	100,000.00	16,000.00
Retail lumber products	95,000	21,150	1,801,086.00	12,000.00 12,500.00
Retail rubber tire and battery	100,000	154,000	274,500.00	12,500.00
Retail solid fuel:				
Division 21			140,400.00	10,000.00
Division 32			77,000.00	10,000.00
General retail trade	3,453,800	893,725	1,565,471.00	12,000.00
Savings—building and loan associations			37,540.00	12,000.00
Scrap iron and waste materials trade	180,000	12,000	258,060.00	10,000.00
Set-up paper box	40,000		141,167.00	12,000.00
Silk textile	130,500	1,491	158,861.00	25,000.00
Soap and glycerin	14,200	248	51,146.00	10,000.00
Textile processing	12,000		70,262.00	15,000.00
Undergarment and negligee	22,500	300	167,526.00	10,000.00
Valve and fittings manufacturing	40,000	150	87,500.00	10,000.00
Wheat-flour milling			244,722.00	20,000.00
Wholesale confectioners			278,446.00	10,400.00
Wholesale dry goods	460,000	45,040	122,000.00	15,000.00
Wholesale fresh fruit and vegetable			116,000.00	12,000.00
Wholesale tobacco trade	19,600	2,000	510,150.00	15,000.00 15,000.00
Coat and suit	49,900	2,150	599,124.00	15,000.00
National food and grocery (retail and wholesale)	675,200	399,000	645,864.00	15,000.00

TABLE II.—*Analysis of code authority employee compensation ($20,000 per year and over)*

Industry	Annual amount of budget	Full time annual compensation	Employee
Bituminous-coal industry	$210,000.00	$30,000	W. G. Crichton.
Southern subdivision no. 1 of division no. 1		30,000	W. A. Richards.
Dress manufacturing industry	445,750.00	20,000	B. H. Gitchell.
Hat manufacturing industry	170,738.80	[1] 30,000	W. H. Ferry.
Investment bankers	211,980.72	20,000	Rolin A. Wilbur.
Millinery industry	565,389.12	20,000	Max Meyer.
Men's clothing industry	450,000.00	25,000	George L. Bell.
Motion picture industry	360,000.00	20,000	John C. Flynn.
National tobacco council	69,900.00	[2] 25,000	Sigfried F. Hartman.
Paint, varnish and Lacquer manufacturing industry	73,150.88	21,000	Ernest T. Trigg.
Photo-engraving industry	62,560.00	20,000	Louis Flader.
Silk textile industry	158,861.67	[3] 25,000	Peter Van Horn.
Wheat flour milling trade	244,722.96	20,000	Carl F. Dietz.

[1] Budget now proposed for new period shows compensation of $25,000 per year.
[2] Serves 3 tobacco codes. Salary represents contractual service arrangement.
[3] Only $15,000 paid by industry under budget for 60 percent of employees' time. Balance paid by trade association.

TABLE III.—*Tabulation of code authority employee compensation ($5,000 to $20,000 and over per year) compensation approved in 235 code authority budgets*

Annual rate:	*Number of code authority employees*
$20,000 and over	13
$19,000 to $19,999	----
$18,000 to $18,999	3
$17,000 to $17,999	----
$16,000 to $16,999	1
$15,000 to $15,999	12
$14,000 to $14,999	2
$13,000 to $13,999	----
$12,000 to $12,999	24
$11,000 to $11,999	4
$10,000 to $10,999	32
$9,000 to $9,999	17
$8,000 to $8,999	17
$7,000 to $7,999	59
$6,000 to $6,999	102
$5,000 to $5,999	111
Total	397

CORRECTION

Second paragraph should read: "It will be noted that only 12 individuals are receiving compensation of $20,000 or more per annum."

Table I (p. 4105-3) should show for Men's Clothing Code, chief executive salary $10,000 instead of $25,000.

Table II should show Morris Greenberg receiving $10,000 instead of George L. Bell, $25,000.

(The change was made early in February upon expiration of an arrangement made by the code authority prior to approval of the budget.)

PROGRESS OF BUDGET APPROVALS TO MARCH 15, 1935

According to the official statement submitted by the Code Record Section of March 6, 1935, the National Recovery Administration has approved 551 codes and 195 supplements.

The budgetary status of the above codes has been investigated and as of March 15, 1935, budgets and bases of contribution have been approved for 302 codes and 76 supplements leaving a balance of 249 codes and 119 supplements

not having approved budgets. Budgets are now in process for 116 codes and 47 supplements of the above group, leaving a total of 133 codes and 72 supplements for which budgets have neither been submitted nor approved.

Of the codes having approved budgets additional budgets have been submitted for 105 codes and 14 supplements.

At the present time, therefore, proposed budgets are now being considered for a total of 221 codes and 61 supplements.

A reconciliation of the budgetary action upon the approved codes and supplements is shown as follows:

	Master codes	Supplements
Budgets approved and additional budgets in process	105	14
Budgets approved; no additional budgets in process	197	62
No approved budget, but in process	116	47
No action taken by the code authority to submit a budget	133	72
Total	551	195

NEW PAGE 8, MODEL CODE

(e) To make recommendations to the Administrator for the coordination of the administration of this code and such other codes, if any, as may be related to or affect members of the trade/industry.

(f) 1. It being found necessary in order to support the administration of this code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the act, the code authority is authorized:

(a) To insure such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the code.

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the trade/industry.

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and obtain equitable contribution as above set forth by all members of the trade/industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Each member of the trade/industry shall pay his or its equitable contribution to the expenses of the maintenance of the code authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Administrator. Only members of the trade/industry complying with the code and contributing to the expenses of its administration as hereinabove provided (unless duly exempted from making such contributions), shall be entitled to participate in the selection of members of the code authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

3. The code authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget; and shall in no event exceed the total amount contained in the approved budget except upon approval of the Administrator; and no subsequent budget shall contain any deficiency item for expenditures in excess of prior budget estimates except those which the Administrator shall have so approved.

(g) (This subsection has been eliminated.)

NATIONAL RECOVERY ADMINISTRATION HANDLING OF CODE EXPENDITURES AND CONTRIBUTIONS

Audits or reports of the expenditures of all code authorities are required by National Recovery Administration. The majority of codes provide for mandatory contributions to be collected from every business establishment coming fully under a particular code, but audits or reports are also required to be submitted in connection with codes providing for voluntary contributions.

National Recovery Administration, in exercising its supervision over finances of code authorities, has set up machinery to determine the need for expenditures proposed, and the justice of the basis upon which contributions are assessed and whether the disbursement of funds has been in accordance with the budget approved.

Originally it was believed that most code authorities could easily finance their necessary operations on an equitable and satisfactory voluntary basis which would involve no Government supervision or assistance.

It soon became apparent, however, that in some industries a portion of the establishments covered would not contribute voluntarily, the burden being left upon those which realized the necessity of making the code fully effective. This situation was unfair and could not last. Therefore provisions requiring that each member of a given industry contribute his proportionate share of expenses to administration of his own code were added to codes.

In some codes, notably those covering the garment industries, the problem was automatically solved by the requirement that a label be affixed to each product manufactured by the industry. The label was a symbol of, and a check on, compliance with the labor provisions of the code. Labels were issued by the code Authority at cost of manufacture and administration. The basis of contribution was a proportionate and fair one since each manufacturer paid for as many labels as his volume of sales required. This type of provisions could not be used, however, except in industries producing goods suitable to label display.

The mandatory contributions provisions finally were extended to all industries which desired them. A large number of codes were amended accordingly, after specific opportunity had been given for every member of each industry to record any opposition to the plan.

As a condition to giving code authorities the assistance of Government in the financing of their operations, National Recovery Administration required that the basis on which contributions were based and a statement of all expenditures proposed to be made, be submitted for review and approval. Collection was not sanctioned until this approval was obtained.

Having once given approval of this procedure, and payment being a requirement of the codes, it was incumbent upon National Recovery Administration to take such measures as were possible to assist in collection from those who still would not contribute. This was especially necessary because National Recovery Administration flatly vetoed all collection methods which might have been interpreted as oppressive.

At this point the responsibility required that the administration set up a special budget audit unit to check all expenditures and pass only those which fully squared with a sound public trusteeship, requiring restitution of all funds not properly accounted for. Everything possible was done to reduce or eliminate billing of one establishment by more than one code authority, and each noncontributor was assured full opportunity to object and justify his opposition to payment before any action against him was permitted.

A survey of the codes has shown that actual code administration expenditures, including mandatory and voluntary contributions, do not exceed $41,400,000. Such code budgets as could be related to the industry's volume of sales showed that code expenditures did not exceed ten sixty-fifths of 1 percent of the dollar volume of sales. This result was obtained after eliminating from calculations six of the largest codes whose assessment rate was so low as to bring the average down to one-nineteenth of 1 percent.

Of the industries with provision for mandatory contributions, which relate to volume of sales, only 84 have an assessment rate exceeding one-half of 1 percent on sales. Only 14 of these equal, or barely exceed, a rate of 1 percent, and these industries are so very small that the cost of maintaining code organizations of their own is naturally high.

A rate of one-half of 1 percent has been regarded as a normal maximum in the consideration of budgets. Likewise all salaries of any size have been regarded as requiring justification before they could be approved.

The higher salaries which have been passed were justified as being acceptable to the industry as a whole, as being warranted both in the nature of responsibility involved and the caliber of the man chosen for the position. Several of these higher paid individuals actually have been drafted by the industry at some financial sacrifice to themselves.

In a large number of instances, where proposed salaries, after investigation, did not appear warranted, these have been scaled down by National Recovery Administration as a condition to approval of the budget.

One outstanding fact in relation to these budgets and National Recovery Administration handling of them is that they constituted a new venture for many of the industries. However, the best data available was used in preparing estimates of funds needed. Material scaling down of expenditures and contributions has resulted as first budgets ran out and new ones were approved.

MANDATORY CONTRIBUTIONS TO CODE AUTHORITIES

AUTHORITY

Executive Order No. 6678, dated April 14, 1934, approved the inclusion of a provision in a code authorizing a code authority to secure equitable contribution, by all members of the industry and, if necessary, to institute legal proceedings therefor in its own name.

The order provides that only members of the industry complying with the code and contributing to the expenses of its administration shall be entitled to make use of any emblem or insignia of the National Recovery Administration (exhibit A).

Administrative Order No. X–36.—Administrative procedure designed to carry out the intent of Executive Order No. 6678 was first approved April 14, 1934. This procedure was revised by Administrative Order No. X-36, dated May 26, 1934, which is still in effect.

The last-mentioned order provides that a code authority may not demand a contribution from an industry member until—

(1) The code contains a provision whereunder nonpayment of equitable contribution is in violation of the code, or whereunder a legal obligation to pay the same has been created; and

(2) National Recovery Administration has approved an itemized budget of such expenses and an equitable basis of contribution thereto.

It also provides that, before the code authority may institute civil suit or before National Recovery Administration may remove the "blue eagle", the code authority must have met the requirements stated in paragraphs (1) and (2) above and further must have—

(1) Given notice of contribution in substantially the form approved by National Recovery Administration, which, among other things, inform the industry member of his right to protest payment on stated grounds;

(2) That the member after 30 days after receipt of notice has failed to pay the amount due; and

(3) That the industry member has not filed protest with the code authority or National Recovery Administration (exhibit B).

POLICY DETERMINATION

Office memorandum 340 dated February 27, 1935, established the Code Contributions Board. The Code Contributions Board directs the disposition of all protests against payment of code contributions and all certificates of nonpayment to code contributions filed in accordance with Administrative Order No. X–36; except that the authority to deprive industry members of their privileges either to display or to use the "blue eagle" or National Recovery Administration labels, or to participate in work financed in whole or in part by Federal funds, or in appropriate cases of restoring such privileges continues under the Compliance and Enforcement Director (exhibit C).

PROCEDURE

1. Certificates

Certificates of nonpayment of contribution received from code authorities are checked by the Contributions Section of the Compliance Division for—

(*a*) The mandatory nature of the assessment provision in each code.

(*b*) Whether the mandatory assessment amendment was properly noticed.

(*c*) Whether the code authority has been recognized by the Administration.

(*d*) Whether the budget and basis of assessment have been approved by the Administration.

(*e*) Whether the budget and basis of assessment have been properly noticed.

(*f*) Whether the budget and basis of assessment were noticed concurrently with or subsequent to the mandatory assessment provision.

(*g*) Whether the "Notice of contribution due" sent by the code authority to the industry member was in substantial agreement with the approved form.

(*h*) Termination of exemption granted by paragraph III of Administrative Order X-36, by Administrative Order X-78, and Administrative Order X-131.

(*i*) To ascertain if industry member has filed protest.

2. *Certificates unaccompanied by protest or where protest has been overruled*

If all of the administrative requirements have been met, the contributions section in cooperation with the code authority and in consultation with the Deputy Administrator concerned prepares the text of a general letter (exhibit D).

If the general letter does not prove effective in a particular case, steps may be taken to—

(*a*) Remove the "blue eagle."

(*b*) Certify noncompliance to Government purchasing agencies.

(*c*) Authorize the code authority to bring civil suit.

(*a*) *Removal of "blue eagle."*—Whenever a code authority has met all administrative requirements and asks that an industry member's "blue eagle" be removed, the contributions section sends the industry member by registered mail a letter putting him on notice that his "blue eagle" is in jeopardy and telling him that if satisfactory arrangements are not made with his code authority within 10 days his "blue eagle" will be removed (exhibit E). If this letter is not effective another letter directing the surrender of all National Recovery Administrative insignia to the local postmaster is sent. When the "blue eagle" is removed the local postmaster, the code authority, the State National Recovery Administrative compliance director and the regional National Recovery Administration director are informed.

(*b*) *Government contracts.*—Where certification of the fact of noncompliance with the contribution provision of a code seems the most effective means of gaining compliance, all of the steps outlined above for the removal of the "blue eagle" are followed up to and including the registered letter placing the industry member on notice that he will be certified to Government purchasing agencies.

(*c*) *Civil suit by code authorities.*—Here again the industry member is put on notice by registered mail that the action may be taken against him. Civil suit may be authorized alone or in conjunction with "blue eagle" removal or with action relative to Government contracts.

Authorization by the Administration to code authorities to bring civil suit is required by memorandum of December 20, 1934 (exhibit F).

3. *Protests*

The "Notice of contribution due" sent by code authorities must inform the industry member of his right to protest on stated grounds. The grounds for protest stated in the approved notice are "that the basis of contribution as approved is unjust as applied to you, or is not being followed in your case, or that you have already contributed to the expenses of administration of another code, which other code embraces your principal line of business, and the National Recovery Administration has not granted any order requiring your contribution to the expenses of administration of this code, or on any other valid grounds. Any such protest filed by you must be accompanied by supporting facts."

When a protest is received in the Contributions Section it is examined to ascertain if it is made pursuant to Administrative Order X-36. Protests alleging hardship have been held by the Code Contributions Board to come within the meaning of X-36.

Objections requiring no policy decision such as a statement that a concern was not in business during the period covered by the assessment, are replied to by the Contributions Section.

Another group of protests alleging for example that the National Industrial Recovery Administration or the code is unconstitutional, that the individual did not sign the code, that the code authority is not representative, or that the code has not proved a benefit are replied to by the Contibutions Section under statements of policy and authority delegated to the Section by the Code Contributions Board.

All protests requiring policy decision on the merits of the case are presented to the Code Contributions Board for determination. The decision of the Board is carried out by the Contributions Section.

ACTION TAKEN

Up to the week ended March 2, 1935, 60,651 valid certificates of nonpayment of contribution were received by the contributions section and 58,665 general letters (exhibit B) were sent out by the section. "Blue eagles" were removed from 208 delinquent industry members.

The letters sent were on behalf of 70 code authorities who had met all administrative requirements.

RESULTS

Under date of March 4 all code authorities with whom the contributions section had cooperated were asked to report results within 10 days. Only a few of these reports are in hand. The following are merely taken from the few reports we have received:

A. *Results of general letter.*—The National Retail Solid Fuel Code Authority advises that the 12,600 general letters and small number of "blue eagle" removals have brought in contributions to the extent of approximately $150,000.

The Code Authority for the Graphic Arts Code, A–1, reports that from the 7,000 general letters written by the contributions section 1,000 industry members have paid in full and an additional 1,000 have made partial payments.

The Crushed Stone, Sand, and Gravel, and Slag Industries Code Authority advises that from 1,202 letters sent, 338 firms have paid in full in the amount of $10,672.82 and 62 firms have paid partially in the amount of $1,441.46.

The Code Authority for the Preserves and Maraschino Cherry Industry advises that from 78 general letters sent $2,248.20 was received, constituting over 50 percent of the outstanding delinquencies at the time the letter was sent.

B. *Results of registered letter.*—The Retail Lumber and Building Materials Code Authority reports that it has received payment on delinquent code contributions to the extent of at least $100,000 as a result of the assistance of the contributions section. This National Code Authority states that early in November 1934 its local agencies were inadequately financed and as a result code administration was in jeopardy. Relatively few general letters, 38, were sent to members of this industry. A larger number of letters informing the industry members that their "blue eagles" were in jeopardy were sent. The Code Authority reports an improved morale in the organization, an improved compliance with the substantive provisions of the code, and a number of other benefits.

Commercial Relief Printing (Division A–1 of Graphic Arts) reports that the "blue eagle" letter has obtained the best results. Of 64 sent out recently 20 firms have paid in full and 10 more in part.

EXHIBIT A

EXECUTIVE ORDER MAKING PROVISION FOR A CLAUSE IN CODES OF FAIR COMPETITION RELATING TO COLLECTION OF EXPENSES OF CODE ADMINISTRATION

By virtue of and pursuant to the authority vested in me under the provisions of Title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said Title, I hereby order that the following clause or any appropriate modification thereof shall become effective as a part of any code of fair competition approved under said Title, upon application therefor (1) pursuant to the provisions of the code relating to amendments thereto or (2) by one or more trade or industrial associations or groups truly representative of the trade or industry or subdivision thereof covered by the code, if the Administrator for Industrial Recovery shall find that approval by him of such clause is necessary in order to effectuate the policy of Title I of said Act:

1. It being found necessary, in order to support the administration of this Code and to maintain the standards of fair competition established by this Code and to effectuate the policy of the Act, the Code Authority is authorized, subject to the approval of the Administrator:

(a) To incur such reasonable obligations as are necessary and proper for the foregoing purposes and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code;

(b) To submit to the Administrator for his approval, subject to such notice and opportunity to be heard as he may deem necessary, (1) an itemized budget of

its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Industry;

(c) After such budget and basis of contribution have been approved by the Administrator, to determine and secure equitable contribution as above set forth by all such members of the Industry, and to that end, if necessary, to institute legal proceedings therefor in its own name.

2. Only members of the Industry complying with the Code and contributing to the expenses of its administration as provided in Section 1 hereof shall be entitled to participate in the selection of the members of the Code Authority or to receive the benefit of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

FRANKLIN D. ROOSEVELT.

Approval recommended:
HUGH S. JOHNSON,
Administrator.
By G. A. LYNCH,
Administrative Officer.
THE WHITE HOUSE, *April 14, 1934.*

(No. 6678)

EXHIBIT B

ADMINISTRATIVE ORDER NO. X-63, GOVERNING COLLECTION OF EXPENSES OF CODE ADMINISTRATION

By virtue of the authority vested in me under title I of the National Industrial Recovery Act and to supplement Executive Order No. 6678, dated April 14, 1934, I hereby prescribe the following regulations and grant the following exemptions, viz:

I. In no case hereafter shall any code authority, directly or through a trade association or other agency, request or demand from any member of a trade or industry, a contribution to its expenses of code administration in a manner which states or implies that such payment is compulsory under the code unless—

(1) The code contains a provision whereunder nonpayment of such equitable contribution is in violation of the code, or whereunder a legal obligation to pay the same has been created; and

(2) The Administrator has approved an itemized budget of such expenes and an equitable basis of contribution thereto.

II. No code authority shall hereafter institute or cause to be instituted any legal proceedings in respect of the nonpayment of any such equitable contribution unless the requirements of subparagraphs (1) and (2) of the preceding paragraph I have been met, and unless the code authority or its duly authorized agency shall have certified to National Recovery Administration, in substantially the form attached hereto and designated "Certificate of nonpayment of contribution", as follows:

(1) That it has given such member notice of contribution due in substantially the form attached hereto and designated "Notice of contribution due."

(2) That such member after 30 days after receipt of notice has failed to pay the amount due as specified therein.

(3) That such member has not filed with such authorized agency or with the national code authority within 15 days from the receipt of the notice, a protest against the contribution on any of the grounds set forth in said "Notice of contribution due" given such member and that it has been informed by National Recovery Administration that no such protest has been filed with National Recovery Administration within such period, or that any such protest, if filed, has been overruled by National Recovery Administration.

III. Pending determinations by National Recovery Administration with respect to specific codes upon cause shown by a code authority or otherwise, every member of a trade or industry is hereby exempted from any obligation to contribute to the expenses of administration of any code or codes other than the code for the trade or industry which embraces his principal line of business, provided that he shall submit such information and comply with such regulations with respect to such exemption as National Recovery Administration may require or prescribe.

IV. No member of a trade or industry shall be deprived of the right to display a "blue eagle" because of nonpayment of his equitable contribution to expenses of code administration, unless the requirements of subparagraph (1) and (2) of paragraph I of this order have been met, and unless National Recovery Administration shall determine that the procedure outlined in subparagraphs (1), (2), and (3) of paragraph II has been sufficiently complied with.

V. Nothing in this order shall invalidate any contribution heretofore made by any member of a trade or industry to the expenses of administration of any code.

VI. Administrative Order No. X-20, dated April 14, 1934, and entitled "Regulations Governing Collection of Expenses of Code Administration" is hereby rescinded.

HUGH S. JOHNSON,
Administrator for Industrial Recovery.

WASHINGTON, D. C., *May 26, 1934.*

---------- (Date)

To: Compliance Division, National Recovery Administration, Washington, D. C.

CERTIFICATE OF NONPAYMENT OF CONTRIBUTION

---------- Code

The undersigned certifies that—

1. The respondent---------- (Name and address)

is subject to the Code for the---------- Trade/Industry.

2. The undersigned is the agency authorized pursuant to such code to collect contributions from the respondent to expenses of administration of the above code.

3. On ----------, 1934, the undersigned gave to the above-named respondent notice of contribution due, a copy of which notice is attached hereto, by (here indicate manner of giving notice, whether by mail, personal service, or otherwise).

4. The respondent after 30 days from receipt of such notice has failed to pay the amount due as required in such notice.

5. (*a*) The respondent has not within 15 days of the receipt of the notice filed with the undersigned or with the National Code Authority a protest against the contribution on any of the grounds set forth in the attached copy of notice, and the undersigned has been informed by 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.

---------- (Signature)

---------- (Address)

---------- (Title)

(Name and address of national code authority)

(Name and address of authorized agency)

(Date of notice sent)

To: ---
(Name of member)

NOTICE OF CONTRIBUTION DUE

---CODE

1. The Administrator for Industrial Recovery has approved the plan for budget and equitable basis for contribution submitted by the code authority of the ---trade/industry. Such approved basis of contribution and the pertinent code provisions are set forth on the reverse side of this notice. Copies of said budget are available at the office of the undersigned agency.

2. Upon such basis the amount of your contribution to such expenses is $---. (In lieu of the foregoing there may be inserted here the method by which the contribution of the individual member of the industry should be calculated.)

3. Your contribution is due and payable upon receipt of this notice. Your attention is called to the fact that failure to make payment thereof within thirty (30) days renders you liable to appropriate legal proceedings.

4. Your attention is further called to the fact that you have the right to file a protest against the payment of such contribution with the undersigned agency or with the national code authority or with the contribution section of the Compliance Division, National Recovery Administration, Washington, D. C., at any time within fifteen (15) days from the receipt of this notice. Such protest may be on the ground that the basis of contribution as approved is unjust as applied to you, or is not being followed in your case, or that you have already contributed to the expenses of administration of another code, which other code embraces your principal line of business, and National Recovery Administration, has not granted any order requiring your contribution to the expenses of administration of this code, or on any other valid ground. Any such protest filed by you must be accompanied by supporting facts.

(Authorized agency)
(Or appropriate official and title)

(Address)

EXHIBIT C

OFFICE MEMORANDUM NO. 340 [1], FEBRUARY 27, 1935, CODE CONTRIBUTIONS BOARD

1. The Code Contributions Board is hereby established.

2. Membership:

The Code Contributions Board will consist of three members as follows:

(*a*) The Code Administration Director, or whom he may appoint, chairman.

(*b*) The Assistant to the Administrative Officer in charge of budgets and bases of assessment, or whom he may appoint.

(*c*) The Chief of the Compliance Division, or whom he may appoint.

3. Functions:

The Code Contributions Board will be responsible for and will direct the disposition of all protests against payment of code contributions and all certificates of nonpayment of code contributions filed in accordance with Administrative Order No. X–36; except that the authority to deprive industry members of their privileges either to display or use the "blue eagle" or National Recovery Administration labels, or to participate in work financed in whole or in part by Federal funds, or in appropriate cases of restoring such privileges, will continue under the Compliance and Enforcement Director.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN, *Administrative Officer.*

[1] NOTE.—The substance of this memorandum will be incorporated in the National Recovery Administration Office Manual under "Organization—NRA—Part I—2000" when released in office manual form.

EXHIBIT D

GENERAL LETTER

Date_____

GENTLEMEN: The National Code Authority for the Commercial Fixture Industry has certified to this Division your failure to remit your equitable contribution toward the cost of administering this code.

It appears from an examination of our records that your code authority has complied with the requirements of the several administrative orders relating to the collection of contributions, which, under the provisions of your code (art. VI, sec. 10, Par. (*f*), as amended) are mandatory upon all members of the industry.

You will realize that your national code authority and the several regional agencies now being established throughout the country can give an efficient administration of the code only if you, in turn, give your prompt and adequate financial support.

Many members of your industry have already contributed their share to the cost of code administration. It is only fair that this cost should be borne equally by all members. To accomplish this end, the Administration is ready to assist the code authority in collecting from any who have not as yet contributed.

We are directing your attention to this matter and withholding action for the time being in the belief that you desire to cooperate and that you will promptly send your check for the amount due to the national code authority at 1620 South Forty-ninth Street, Philadelphia, Pa.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

(NOTE.—This letter, with the variations attached, represents the only approved form used by National Recovery Administration.)

GENTLEMEN: The National Code Authority for Daily and Non-Metropolitan Newspapers and your regional agency cannot give you efficient code administration unless you, in turn, give them prompt and adequate financial support.

To assure such support, the members of this industry added a mandatory contribution provision to the code, by an amendment which clearly established a legal obligation on the part of each member to pay a fair share of the cost of administration. The budget and basis of contribution were approved, however, prior to the inclusion of the amendment, and this administration considered that in fairness to all concerned an opportunity to file objections either to the amount of the budget or the basis on which it was to be raised, should be given at a time subsequent, rather than prior to the mandatory amendment.

Accordingly the budget and basis of contribution were renoticed to the industry, and no objections, requiring alternation of either, having been received, administrative order 287–396, dated November 30, 1934, became effective December 12, 1934. This order constitutes a reapproval of the original budget and basis of contribution, and the administration is now prepared to assist the code authority in collecting this budget.

Quite clearly, the maximum benefits of self-government as provided for in your code can only be obtained if your regional agency and national code authority are able to concentrate on industry problems. Any delinquency requires time and attention which could otherwise be devoted to giving you a more efficient administration of the code.

May we count on you to take care of your contribution by January 15? Your regional agency's full address is _____.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

JANUARY 22, 1935.

P. J. JOHNSON,
Elizabeth, N. J.

GENTLEMEN: The National Code Authority for the Wiping Cloth Industry has certified to this Division your failure to remit your equitable contribution toward the cost of administering this code.

It appears from an examination of our records that your code authority has complied with the requirements of the several administrative orders relating to

the collection of contribution which, under the provisions of your code (art. VI, sec. 5) as amended, are mandatory upon all members of the industry.

You will realize that your national code authority and the several regional agencies now being established throughout the country can give an efficient administration of the code only if you, in turn, give your prompt and adequate financial support.

Many members of your industry have already contributed their share to the cost of code administration. It is only fair that this obligation should be borne equitably by all members. To accomplish this end, the administration is ready to assist the code authority in collecting from any who have not as yet contributed.

We are directing your attention to this matter and withholding action for the time being in the belief that you desire to cooperate and that you will promptly send your check for the amount due to the National Code Authority at 32 West Randolph Street, Chicago, Ill.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

HANDBAG FRAME MANUFACTURING

GENTLEMEN: The National Code Authority for the Handbag Frame Manufacturing Industry has certified to this Division that you have neither paid your equitable contribution, computed on the basis of one-half (½) of 1 percent (1%) of your net sales for 1934, payable weekly, toward the cost of administering the code, nor have you filed any protest against such payment in accordance with the terms of paragraph 4 of the notice of contribution due, sent you by the code authority.

The provisions of your code (art. IV, sec. 5) create a legal obligation on the part of each member of the industry to contribute his equitable share to the cost of code administration.

You will realize that your national code authority can give you an efficient administration of the code only if you, in turn, give you prompt and adequate financial support. Most of the members of your industry have already done this, and it is only fair that the remainder similarly contribute.

To accomplish this result, the administration is prepared, if necessary, to deprive delinquents of "blue eagle" privileges and to authorize the code authority to institute civil proceedings for the amount due.

We are directing your attention to this matter and withholding any action until February 1, 1935, in the belief that you will desire to cooperate with your code authority, and that you will either send your check for the amount due or make some satisfactory arrangement for payment of same with your code authority at 291 Broadway, New York, N. Y.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

JANUARY 9, 1935.

PRINTERY OF GEO. L. CLAPP,
Framingham, Mass.

GENTLEMEN: The Code Authority for the Commerical Relief Printing Industry reports that you have not paid your share of the cost of code administration. The code authority informs us that you were sent notice of this obligation more than 30 days ago, that you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and that no such protest was filed.

Your code authority is responsible for the proper administration of the code for your industry, which provides, in substance, that the code authority shall obtain equitable contributions from all establishments under the code and may, if necessary, institute legal proceedings to do so. Your code cannot be of maximum benefit to you unless you, along with the other members of the industry, pay your share of the cost.

In the belief that you will send your contribution to your code authority promptly, both the Administration and the code authority are withholding any further action for 10 days.

Sincerely,

W. M. GALVIN, *Compliance Division.*

(Date)

NAME OF COMPANY,
Address.

GENTLEMEN: The Code Authority of the Fabricated Metal Products Manufacturing and Metal Finishing and Metal Coating Industry, 729 Fifteenth Street, NW., Washington, D. C., reports that you have not paid your share of the cost of code administration. This agency further informs us that you were sent notice of this obligation more than 30 days ago, that you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and that no such protest was received by it.

Your code authority is responsible for the proper administration of the code for your industry, which provides, in substance, that the code authority shall obtain equitable contributions from all establishments under the code and may, if necessary, institute legal proceedings to do so. Your code cannot be of maximum benefit to you unless you, along with the other members of the industry, pay your share of the cost.

It should be clearly understood that failure to pay this code-authority contribution constitutes a violation of the code, and when such assessments have not been paid, you cannot in entering into contracts with the United States Government truthfully sign the certificate of compliance required with these contracts indicating that you are in full compliance with this code.

The privilege of using National Recovery Administration insignia is contingent upon compliance with your code and may be withdrawn upon administrative finding of noncompliance.

In the belief that you will send your contribution to your code authority promptly, the administration is withholding any further action for the time being.

Sincerely,

COMPLIANCE DIVISION,
By W. M. GALVIN.

EXHIBIT E

REGISTERED LETTER

(Date)

NAME OF COMPANY,
Address.

GENTLEMEN: The Regional Code Authority for the Commercial Relief Printing Industry ---------- (Address), reports that you have not paid your share of the cost of administration of the Graphic Arts Code. You were sent notice of this obligation more than 30 days ago, you were given an opportunity to protest if you felt the contribution was unfair or unjustified, and you received notice from this Administration that the code authority may, if necessary, under the code institute legal proceedings to obtain equitable contributions from all establishments.

Action in your case was withheld for 10 days by both your code authority and the Administration in the belief that you would send in your contribution.

We must advise that if by ---------- (Date), you have not paid your equitable share in the administration of the code, as duly levied by your code authority, or unless you have made satisfactory arrangements with your code authority for such payment, the Administration will forthwith remove your "blue eagle", will certify to your code authority and to agencies disbursing Federal funds, that you are not in compliance with the code of your industry, and will authorize appropriate civil proceedings.

Very truly yours,

COMPLIANCE DIVISION.
By W. M. GALVIN.

Registered mail, return receipt requested.

"BLUE EAGLE" REMOVAL LETTER

GENTLEMEN: By registered letter on _____ (Date) this administration advised you of the complaint against you for your failure to pay your equitable contribution to the costs of administering the _____ (Code), to which you are subject. In that letter you were informed that if you failed to comply with the code in this respect, you would be deprived of your right to display the "blue eagle."

We have received no explanation of your failure to pay your fair share of the expense of administering the above-mentioned code, after due demand by the code authority.

Because of your failure to pay your equitable contribution to the expense of administering this code, you are hereby deprived of the right to display any "blue eagle," and you will hereafter refrain from using any "blue eagle" or any other National Recovery Administration insignia in any manner whatsoever. You are directed to surrender immediately to your postmaster all "blue eagles" in your possession.

This administration and the code authority will no longer certify to agencies disbursing Federal funds that you are in compliance with the above-named code.

By DIRECTION OF COMPLIANCE AND ENFORCEMENT DIRECTOR,
L. J. MARTIN, *Chief Compliance Division.*

Registered mail, return receipt requested.

LETTER TO STATE DIRECTOR AND CODE AUTHORITY

DEAR SIR: The attached letter _____ (Date), has been sent to _____ (Company and address).

The Administration has found that the respondent is in violation of the contribution provisions of the Graphic Arts Code.

After an administrative finding of noncompliance the privilege of using National Recovery Administration insignia has been withdrawn, and this company has been directed to surrender all National Recovery Administration insignia in its possession to the postmaster at _____ (City.) This Administration and the code authority are no longer in a position to certify to agencies disbursing Federal funds that the company listed above is in compliance with its code.

You are authorized to give such publicity to this action as you deem appropriate.

Very truly yours,

COMPLIANCE DIVISION.
By W. M. GALVIN.

(Enclosure.)

POSTMASTER,
Address.

DEAR SIR: The Administration has found that the _____ (Company and address.) is in violation of the contribution provisions of the _____ (Code), and has directed this company to surrender its "blue eagle" insignia to you.

Will you please advise this office within 10 days what action is taken by the above-named concern toward surrendering its "blue eagle" insignia to you, but be careful to do nothing yourself toward getting it back?

Very truly yours,

COMPLIANCE DIVISION.
By W. M. GALVIN.

EXHIBIT F

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., December 20, 1934.

To all code authorities:

This will supplement the letter to all Code Authorities of October 11, 1934, regarding litigation by or against you. That letter should not be construed as in any way relaxing the regulations contained in part III of Bulletin No. 7 (Manual for the Adjustment of Complaints) requiring Code Authorities to obtain the express prior approval of National Recovery Administration before initiating litigation. Such approval is still required. It is the purpose of this letter to set forth the procedure which should followed in obtaining approval.

In States having State acts adopting the Federal codes, the approval of the State National Recovery Administration Compliance Director must be obtained by the Code Authority before it institutes legal proceedings or recommends to the State Authorities the institution of such proceedings. As soon as a proceeding is instituted in a State court, a notice to this effect must be sent to the State Director, to the Coordinating Branch of the Compliance Division, and to the Litigation Division. A form for this notice is attached.

National Recovery Administration is undertaking the direction of the early litigation on contributions to Code Authorities, so that the first cases may be ones in which the facts are clear and all National Recovery Administration procedural requirements have been complied with in order that we may obtain prompt action in court. Therefore, until further notice, approval of suits to enforce payment of contributions must be obtained from the Contribution Section, Compliance Division, in Washington. More detailed information on the procedure to be followed will be sent you shortly.

Code Authorities are permitted by Administrative Order X-14 to refer unadjusted cases in which there is substantial evidence of a deliberate violation to the appropriate district attorney of the United States through the State National Recovery Administration Compliance Director for the State in which the appropriate district court is located. Your attention is called to the fact that this order requires the State Director to send to Washington a complete transcript of the record of the case in duplicate. Action on these cases will be facilitated if the Code Authority will assist the State Director in the preparation of these copies.

NATIONAL INDUSTRIAL RECOVERY BOARD,
W. A. HARRIMAN, *Administrative Officer.*

This copy for_____
(Litigation Division, Coordinating Branch, State Director)

FORM VI A—CASES REFERRED TO STATE COURTS

Code_____
State legal action instituted_____Name of court_____
Form of legal action instituted_____
Status of case at time notice sent (state briefly what action if any has been taken since the case instituted)_____
_____
Name of code agency by which action was taken [1]_____
Name of person to whom inquiries on this case should be directed_____
Name of plaintiff_____
Name of defendant_____
Address of defendant_____
Name of attorney if any for code agency_____
Nature of violation: (State briefly the nature of the violation, and cite the specific section of the code violated.)

[1] If a local code authority, give name of region or city.

MEMORANDUM

JANUARY 23, 1935.

To: W. A. Harriman, administrative officer.
From: H. S. Brown, assistant to the administrative officer.
Subject: Multiple secretaries, attorneys, and accountants for code authorities.

A study has been made of the various phases of the problem confronting the administration in supervising the management of code authorities by indviduals or organizations interested in the administration of more than one code authority.

A consideration of the statistical analysis and economic study attached hereto, indicates the complexity of the problem. Briefly stated, the following premises have been established:

1. It is difficult to weigh the economic advantages against the disadvantages in considering the multiple activities of code authority officials and employees.
2. No tangible proof of malfeasance in office or improper practices have developed.
3. Multiple code authority executives have been required to protect themselves from criticism by National Recovery Administration officials, and have furnished all information to the National Recovery Administration that has been required.
4. The National Recovery Administration is instituting an unusual precedent in requiring certain professional organizations to itemize their fees.

At the present time the Administration, in most instances, is requiring that each multiple executive submit the following information:

(a) An agreement substantially in the form of the letter addressed to Mr. Marshall, attached hereto.

(b) A formal employment agreement as executed between a code authority and its agents in accordance with the form attached hereto.

(c) The submission of a list of salaries of employees, analysis of office expenses in order to itemize the amount of the fee in accordance with normal budgetary expenditures.

The present procedure was inaugurated as the result of a memorandum submitted by Mr. Blackwell Smith on August 1, 1934, wherein he stated:

"There is no technical reason against having any number of code authorities allocating to a single outside organization the administration of the entire budgetary funds of each code authority involved. The code authority still remains responsible for the proper carrying out of the delegation. However, potentialities of abuse in such situations require the greatest care on the part of the delegated organization."

It appears, from the consideration of the attached data and factors mentioned, that the Administration has set up all necessary safeguards against potential abuse of the multiple secretary relationship. The agreement submitted by the individual is so binding that the Administration may investigate conditions with the slightest provocation.

The only alternative to the continuation of the present method of procedure would be the establishment of a definite ruling that multiple activities will not be permitted. The facts do not appear to justify the adoption of such a drastic policy at the present time.

H. S. BROWN,
Assistant to the Administrative Officer.

MEMORANDUM

JANUARY 17, 1935.

To: H. S. Brown, assistant to the Administrative Officer.
From: J. D. Kershner, Code Authorities Accounts Section.
Subject: Multiple Secretaries, Attorneys, and Accountants for Code Authorities.

A problem confronting the administration in supervising the management of code authorities and in checking the administration of the various code authorities is the multiple activities of secretaries, attorneys, and accountants.

These individuals are specialists who present themselves to code authorities as experts in the supervising of code-authority activities in their specialized fields. In order to clarify a consideration of the problems involved, it might be well to define the nature of the activities of the various individuals under consideration. These definitions are as follows:

1. MULTIPLE SECRETARIES

A multiple secretary is an individual or organization specializing in acting as the administrative agency or rather the secretariat of more than one code authority. The extent of the responsibility of the various individuals and organizations varies with the type of arrangements made between the individuals or organizations and the code authorities. Some organizations control the entire budgetary funds of the code authorities, whereas other organizations are paid a flat fee by a code authority in order to carry on certain well-known and defined activities in the name of the code authority.

2. MULTIPLE ATTORNEYS

A multiple attorney is one who acts as counsel to more than one code authority, or who acts as counsel for members of an industry, a trade association of the same industry, and the code authority for the same industry. The extent of the interest in the activity of the code authority differs with the contract or arrangement made with the counsel. Some multiple counsel are simply retained on a contingent basis, to be used if needed, whereas others are held on a flat retainer fee by many code authorities.

3. MULTIPLE ACCOUNTANTS

A multiple accountant is one who is acting as the confidential agent, the statistical section, or as investigator for more than one code authority. Again, the extent of the activities of the accountant is governed by the arrangement made between the accountant and the code authority.

4. COMBINATION ARRANGEMENTS

In addition to the relatively well-defined activities of the three groups mentioned above, there are many individuals who combine the activities of one or more groups. For example, there are individuals or organizations who act for one code authority as counsel and act as secretary of another; and there are other organizations that may act as secretary of one code authority and the accounting agency of the other.

In considering the budgets and bases of contribution submitted by the various code authorities for approval, we have been able to find certain advantages and disadvantages in these multiple arrangements. Before giving any specific instances of the cases in point, a brief discussion will be made of the general advantages and disadvantages of the various types of multiple arrangements.

1. MULTIPLE SECRETARIES

(a) *Advantages*

1. Cost of administration: Industries frequently find it less expensive to engage the services of an organization or of a professional secretary than to retain a complete organization of their own. In small industries, particularly, it is difficult to maintain a large or efficient organization with the funds available. Code authorities are able to make an arrangement with a professional organization whereby part of the time of experienced executives is devoted to the administration of the code.

2. Knowledge of the National Recovery Administration requirements: Due to the fact that the employees of a professional organization are in frequent contact with the National Recovery Administration officials, and because the administrative problems of many codes require a thorough knowledge of National Recovery Administration routine, these individuals have a complete knowledge of all orders issued by the National Recovery Administration, all interpretations of these orders and are generally more expert in conducting negotiations with National Recovery Administration regarding industry problems.

3. Personnel: The professional multiple secretary is usually an experienced executive, and quite frequently, an experienced trade association man. The organization employed by the multiple secretary is frequently of a high type. Code authorities frequently find it better to retain one-quarter of the services of of $12,000 man than it would be to employ the full-time services of a $3,000 man. The multiple secretary usually has some power as a speaker, and is able to give more prestige to a code authority than a man retained as secretary of a small code authority at a low salary.

4. Administration: The routine administration of codes under jurisdiction of multiple secretaries is almost uniformly good. Correspondence is efficiently and promptly handled, and all requests from National Recovery Administration are usually satisfactorily answered with a minimum of delay. It is not infrequent that a request for information regarding one code administered by a multiple secretary will be answered in detail regarding all codes under his administration.

5. Interest in success of National Recovery Administration: Due to the fact that the continuation of the term of employment depends entirely upon the success in administering the code and the success of National Recovery Administration itself, these multiple secretaries are usually enthusiastic supporters of the National Recovery Administration program. Officers of a code authority, who are employed by only one industry, frequently are former secretaries of trade associations or prominent executives in the industry, and they therefore are likely to be more interested in the particular problems of the industry than in the general success of the National Recovery Administration program.

6. Code consolidations: Multiple secretaries frequently administer codes for related branches of the same large industry. Individual codes were granted these small branches of the large industries due to the insistence of the members of these industries. Members of these small industries will be brought together in the office of the multiple secretary and may eventually determine to consolidate under one code.

(*b*) *Disadvantages*

1. Industry problems: The multiple secretary is usually entirely unfamiliar with the specialized problem of any industry. He may not be familiar with the peculiar processes in an industry, or the competitive conditions between the members of the industry.

2. Negotiations: Multiple secretaries usually have a thorough knowledge of National Recovery Administration routine and procedure. This knowledge may easily be used in seeking loopholes in the exact compliance with National Recovery Administration instructions, in order to carry on activities not properly allocatable as code authority activities. From an industry standpoint, this disadvantage might well be listed as an advantage. It is the duty of National Recovery Administration officials to guard against such action, so this possibly is not a very strong objection.

3. Racketeering: There is room for considerable abuse in the multiple secretary relationship. Individuals may hold themselves out as having certain contacts with National Recovery Administration that are of value to industry. They may sell their services on the assumption that they will be able to obtain advantageous decisions in National Recovery Administration for the industry. It is also possible that certain individuals, possessing strong sales ability, will be able to sell inferior services to a code authority. It is also possible that these individuals are actual or potential racketeers, using their control over industry groups for their own profit, having no interest whatever in the success of the National Recovery Administration program or the proper solution to industry's problems. This possibility is the one most feared in National Recovery Administration, and the one most difficult to guard against. In discussing industry problems with code authority secretaries, it is very difficult to judge whether or not an individual is sincere in his efforts or is simply "going through motions" in order to earn a fee.

4. Compliance: One of the advantages listed was the efficiency of the routine administration of codes by multiple secretaries. Due to the fact that multiple secretaries are not familiar with the specific problems of industry, the major problems of compliance and code administration may be ignored or poorly administered. It is very difficult to check upon this disadvantage, due to the fact that compliance problems vary so greatly as between codes, and the fact that a particular code has poor compliance is no indication that the administration is poor. Conversely, good compliance is not—on its face—an indication of good administration.

5. Profits: It is difficult to check upon the reasonableness of fees charged by multiple secretaries. A multiple secretary may contract to furnish the administrative services for a flat fee of, for example, $10,000 per year. The consideration for the fee is the complete, prompt, and efficient administration of the code for the Code authority. All employees of the multiple secretary would devote part of their time to the administration of the code. On occasion, we have found that a $20 employee of a multiple secretary would be engaged upon the work of five codes, with a charge of $10 per week against each of the codes. Obviously, the multiple secretary was obtaining a gross income of $50 per week from the services of these employees. Items such as rent may easily be overcharged

against the various code authorities involved. The fee of the secretary, as an individual, is based upon his devoting a flat percentage of his time to administration of the code. We have one secretary who has accounted for one and one-half times his time in computing his fees for various code authorities. The difficulty in examining the fees of code authority multiple secretaries is in the fact that many of the fees seem small on their face, and the necessity for the fees or the reasonableness of the fees, is based entirely upon the quality of administration of the code obtained by the code authority. This office has no way to investigate into the quality of administration.

Cartelization: Certain professional organizations have been professional trade association management engineers for years. These organizations have maintained strong trade associations in certain industries. Industry members of these cartelized trade associations have benefited to the detriment of the nonmembers of the association. The professional organizations, in administering the code for the industry affected, usually overemphasize the importance of administering the price provisions and the fair trade practice provisions of the code, and pay little or no attention to the administration of the wage and hour provisions. The reporting phases of code administration and the price control phases of code administration are very efficiently administered. The difficulty in checking or watching the administration of such an organization is in the fact that code provisions are usually worded in very general language. The amount of stress to be laid in enforcing any particular code provision depends almost entirely upon the ideas of a code authority.

7. Code consolidation: One of the advantages listed for the multipled secretary arrangement was a possible consolidation of codes administered by a single multiple secretary. If, however, codes for different industries are administered by one multiple secretary, instead of codes for related branches of the same industry, then the multiple secretary will usually negotiate as long as possible in order to retain the administrative functions of the code. It is to the advantage of the multiple secretary, in nonrelated industries, to have as many codes in existence as possible, so that the total of the fees to be charged may be larger.

II. MULTIPLE LEGAL COUNSEL

(a) *Advantages*

1. Knowledge of orders: The larger firms of multiple counsel usually employ one or more individuals as research men or librarians who devote a major part of their time in familiarizing themselves with the various orders, interpretations, rulings, etc., as issued by the National Recovery Administration. These legal advisers, therefore, are usually able to keep code authority operations within the scope of code authority powers.

2. Knowledge of routine. Multiple legal advisers are familiar with the various steps to be taken by code authorities before compliance activity can be taken, etc. Code authorities advised by multiple counsel frequently have more actual compliance decisions in court than do code authorities advised by a single counsel.

3. Caliber of counsel: Most multiple legal counsel are men of wide experience, and having large practices, they are usually individuals who have been receiving large fees for their services for many years. Their knowledge of administrative law is usually more complete than that of other counsel, and the code authorities benefit accordingly.

(b) *Disadvantages*

1. Political: Certain well-known legal firms, at present interested in code advice, on a multiple scale, are well-known members of political groups in opposition to the present policies of the administration. The negotiating methods used by these individuals are usually an implied or stated threat to "upset the apple art" if the specific request of the industry group is not granted.

2. Industry connections: Certain multiple legal advisers are acting as counsel for trade associations and individual members of industry. In any conflict of opinion as to whether the individual should represent the member of the industry or the code authority, the code authority may possibly suffer, due to the fact that the counsel's main income comes from the industry member rather than from the code authority. In at least one case, the statement has been made that partners of the same law firm represented both the code authority and the industry member in a compliance case.

3. Semiracketeering: Certain counsel, located in Washington, purport to be experts on National Recovery Administration problems. They become the

Washington representatives of the code authorities. They render an information and reporting service to code authorities, for which they receive a flat fee. This service is little more than a digest of the various orders and rulings issued by National Recovery Administration daily.

III. MULTIPLE ACCOUNTANTS

(a) It is not necessary to comment in detail upon the advantages and disadvantages of this particular arrangement, due to the fact that the accountant usually has no control over the administration of a code. In most cases the statistical functions of a code authority, or the accounting section of a code authority, has been turned over to a professional accounting firm. In addition, accounting firms are frequently appointed as the confidential agents of code authorities in collecting industry statistics. There is practically no opportunity for the influence of code authority activity in this relationship.

IV. GENERAL

At the present time there are more than 50 individual partnerships or corporations serving two or more code authorities in one of the above capacities. One firm is now serving more than 20 code authorities in the capacity of executive secretary and many firms are serving five or more code authorities. A preliminary study of the situation shows that about 176 code authorities are being administered or assisted by one of the 50 multiple organizations mentioned.

A typical case of the problems involved in considering multiple secretaries is that of Mr. George J. Lincoln, Jr., of Philadelphia, who is acting as executive secretary or manager for the following code authorities, with a total personal income of $39,000 per year, to wit:

(1) Paper disc milk bottle cap industry: Salary of $9,000 per year, as executive secretary for one-sixth of his time.

(2) Cylindrical liquid type paper container industry: Salary of $9,000 per year as executive secretary for one-third of his time.

(3) Sanitary milk bottle closure industry: Salary of $6,000 per year as manager, for one-sixth of his time.

(4) Paper napkin division of the paper and pulp industry: Salary of $9,000 per year as executive secretary, for one-sixth of his time.

(5) Crepe paper division of the paper and pulp industry: Salary of $6,000 as manager, for one-sixth of his time.

In addition to the above code functions, he also directs the activities of the National Association of Drinking Straw Manufacturers at a yearly compensation of $9,000. This salary brings his total remuneration for these functions to $48,000 per year. You will note that the first five functions have taken up all of his time, leaving no available time for the administration of the National Association of Drinking Straw Manufacturers. In addition to the duties mentioned, we understand that Mr. Lincoln is negotiating to become the executive secretary of another code authority at an annual compensation of $6,000, which will bring his total income to $54,000 per year.

Mr. Lincoln is a man of broad experience and knowledge. He has been accustomed to earning large fees for his services. The considerations before mentioned as advantages and disadvantages of such a relationship must be taken into account before judging whether or not the National Recovery Administration should place its stamp of approval upon the arrangement. Mr. Lincoln has been required to submit the standard form of letter, a copy of which is attached. In this letter he agrees to submit certain information and agrees to open his personal books for the inspection of National Recovery Administration officials. He also agrees to submit written agreements for the code authorities, as you will note. In addition to this agreement, he was required to submit additional break-down of his fees and activities, which information was used as a basis for the writing of this report.

The case mentioned above is given only as an example of the type of decision that is required in considering the problem of multiple secretaries. It is understood that in accordance with the memorandum issued by Mr. Blackwell Smith, the individual code authorities are primarily responsible for the administration of the codes. If the agent, as retained by the code authority, is inefficient or careless, the responsibility rests with the actual members of the code authorities. The crux of the entire situation is to determine the point where the National Recovery Administration should enter into and consider agreements made between code authorities and individuals they retain.

Attached hereto you will find a statistical analysis of budgets and bases of contribution administered by a number of multiple secretaries. This information is submitted in order to indicate the extent of the responsibility of multiple secretaries in the administration of codes of fair competition.

J. D. KERSHNER.

Multiple secretaries and codes affected

SUMMARY

Name of incumbent	Number of approved budgets	Total approved budgets on an annual basis	Equivalent annual fees
B. E. Babbitt	5	$41,490.00	$9,000.00
L. L. Balleisen	1	3,125.00	1,250.00
Herman J. Bauer	2	27,050.00	2,880.00
Byrne & Byrne	2	[1] 114,780.00	[1] 6,000.00
John M. Byrne	2	155,740.00	7,250.00
Fred A. Collinge	(2)	(2)	(2)
C. Stuart Comeaux	1	19,530.00	5,237.00
R. S. Crawford and C. M. Kendrick	4	[1] 70,429.96	[1] 33,421.82
D. A. Crocker	3	56,425.00	7,236.68
Edward R. Dewey	(2)	(1)	(2)
Clement J. Driscoll	2	26,188.07	8,030.00
R. P. Dryer	1	53,727.11	11,166.66
Arthur L. Faubel	1	15,045.00	3,420.00
George A. Fernley	2	35,500.00	6,100.00
I. H. Friedman	1	12,462.50	5,000.00
W. L. Finger	1	63,010.00	6,600.00
W. P. Fickett	2	16,000.00	9,500.00
A. M. Ferry	2	10,000.00	4,500.00
Gooch, Jennings & Co	1	15,000.00	6,000.00
Charles P. Garvin	2	48,630.00	13,500.00
Charles M. Haskins	4	207,920.00	11,000.00
W. S. Hays	2	1,151,068.96	10,500.00
Guy A. Henry	1	39,000.00	5,000.00
Joseph E. Henry	(2)	(1)	(2)
R. D. T. Hollowell	1	18,979.06	3,804.00
D. S. Hunter and associates	7	[1] 71,377.00	[1] 18,649.00
William P. Jeffery	1	25,000.00	15,000.00
R. W. Johnson	2	69,709.68	27,300.00
Alexander Konkle	(2)	(1)	(2)
S. D. Leidesdorf & Co	1	280,160.00	42,000.00
Simon J. Liebowitz	2	45,505.66	16,680.56
George J. Lincoln, Jr	(2)	(2)	(2)
Harry B. Lindsay	2	20,708.00	6,000.00
George Link, Jr	(2)	(2)	(2)
C. J. Skinner	1	89,192.00	6,000.00
J. W. McClinton	(2)	(2)	(2)
S. W. Mifflin	1	55,000.00	10,000.00
L. O. Monroe	3	42,400.00	[1] 11,250.00
Louis B. Montford	(2)	(2)	(2)
O. L. Moore	(2)	(2)	(2)
Victor Mosel	2	97,599.00	6,000.00
W. J. Parker	20	247,070.00	61,330.00
Irving S. Paull	3	103,783.48	47,635.07
C. H. Rohrbach	2	64,000.00	6,500.00
Benjamin Schwartz	2	52,350.00	13,000.00
J. Martin Seller	1	1,500.00	500.00
Scovell, Wellington & Co	3	38,887.00	7,477.00
Morris Siefer	2	54,420.00	8,700.00
Stevenson, Jordan & Harrison	6	436,037.11	120,000.00
Ralph P. Stoddard	2	64,893.76	9,284.00
Helen Stratton	3	16,300.00	5,250.00
H. B. Sweatt	3	40,616.00	21,027.00
Stuart J. Swensson	1	19,590.00	5,000.00
George F. Tegan	1	2,400.00	600.00
Herbert Tenzer	2	307,686.50	16,400.00
Donald E. Tolles	1	50,559.02	9,120.00
Trade Association Management, Inc	1	5,059.68	4,200.00
Trade Ways, Inc	(1)	(1)	(1)
W. F. L. Tuttle	2	102,000.00	18,000.00
Philip W. Upp	(2)	(2)	(2)
Raymond Tiffany	2	86,250.00	12,500.00
Arthur J. Tuscany	1	128,120.00	23,400.00
E. G. Vail	2	22,446.89	7,700.00
Alexander Vincent	1	13,000.00	3,600.00
W. E. Yeomans	(2)	(2)	(2)
	128	4,852,726.48	736,598.79

[1] Two or more consecutive budgets of the same code have been converted to annual basis, thus inflating the figures.

[2] No budgets approved.

Multiple secretaries and codes affected

[* Before code indicates budget not officially approved, information not included]

	Budget period	Amount of budget	Amount of fee	Annual budget	Equivalent fee	Nature of services rendered
W. J. PARKER						
96. Buff and polishing wheel	July 1, 1934–Dec. 31, 1934 (6 months)	$4,500.00	$2,250.00	$9,000	$4,500	Services of secretary and employees.
Do	Jan. 1, 1935–June 30, 1935 (6 months)	4,500.00	2,250.00	(9,000)	(4,500)	Do.
97. Buffing and polishing composition	July 1, 1934–Dec. 31, 1934 (6 months)	2,580.00	1,290.00	5,160	2,580	Do.
Do	Jan. 1, 1935–June 30, 1935 (6 months)	2,580.00	1,290.00	(5,160)	(2,580)	Do.
226. Light sewing, comfortable division	Feb. 2, 1934–Feb. 2, 1935 (12 months)	10,060.00	2,400.00	10,060	2,400	Do.
* Do	Feb. 2, 1935–Feb. 1, 1936 (12 months)					
226. Light sewing, mattress cover division	Feb. 2, 1934–Dec. 31, 1934 (11 months)	3,020.41	1,168.75	3,295	1,275	Do.
226. Light sewing, quilting division	Feb. 2, 1934–Feb. 2, 1935 (12 months)	8,390.00	1,500.00	8,390	1,500	Personal services only.
212. Drapery and upholstery trimming	Jan. 1, 1934–Dec. 31, 1934 (12 months)	8,000.00	3,600.00	8,000	3,600	Services of secretary and employees.
* Do	Jan. 1, 1935–Mar. 31, 1935 (3 months)					
40. Electric storage and wet primary battery.	July 1, 1934–June 15, 1935 (considered) (12 months).	42,420.00	10,200.00	42,420	10,200	Do.
98. Fire extinguishing appliance	Nov. 4, 1933–Dec. 31, 1934 (14 months)	21,000.00	5,600.00	18,000	4,800	Do.
* Do	Jan. 1, 1935–June 15, 1935 (5½ months)					
493. Industrial oil burning equipment	Oct. 23, 1934–June 16, 1935 (7¾ months)	3,600.00	1,550.00	5,575	2,400	Do.
315. Industrial safety equipment	Apr. 1, 1934–Dec. 31, 1934 (9 months)	6,525.00	2,250.00	8,700	3,000	Do.
* Do	Jan. 1, 1935–Dec. 31, 1935 (12 months)					
509. Marine equipment manufacturing	Sept. 6, 1934–June 16, 1935 (9½ months)	8,296.00	2,800.00	10,667	3,600	Services of secretary and minor employees.
108. Motor fire apparatus manufacturing	Nov. 8, 1933–Dec. 31, 1934 (13¾ months)	16,800.00	3,850.00	14,662	3,360	Services of secretary and employees and office equipment.
78. Nottingham lace curtain	Nov. 13, 1933–Nov. 13, 1934 (12 months)	7,200.00	4,040.00	7,200	4,040	Services of secretary and employees.
*79. Novelty curtain, draperies	Jan. 1, 1934–Dec. 31, 1934 (12 months)					Do.
454. Optical retail	June 18, 1934–June 16, 1935 (12 months)	36,440.00	2,100.00	36,440	2,100	Personal services only.
84–V–1. Perforating manufacturing	Sept. 10, 1934–June 10, 1935 (9 months)	5,000.00	1,500.00	6,667	2,000	Services of secretary and employees.
283. Ready-made furniture slip cover manufacturing.	Mar. 15, 1934–Mar. 14, 1935 (12 months)	4,000.00	800.00	4,000	800	Personal services only.
489. Safety razor and safety razor blade	Aug. 1, 1934–June 16, 1935 (10½ months)	15,234.50	1,750.00	17,411	2,000	Do.
*313. Steel wool	July 1, 1934–June 30, 1935 (12 months)					
314. Textile print roller engraving	Apr. 1, 1934–Mar. 31, 1935 (12 months)	7,500.00	2,400.00	7,500	2,400	Services of secretary, employees, and office.
471. Trailer manufacturing	July 12, 1934–June 16, 1935 (11 months)	12,600.00	3,000.00	13,745	3,273	Services of secretary only.
380. Used textile machinery, etc	Apr. 15, 1934–June 15, 1935 (14 months)	11,874.77	1,752.47	10,178	1,502	Do.
Total				247,070	61,330	

NOTE.—Mr. Parker's organization supplies office space, office equipment, telephone service, and other facilities, the expenses for which are broken down in the various budgets in the usual form. He has various agreements with various of the code authorities, copy of which have been or are to be furnished National Recovery Administration. When he submits his confidential reports properly tabulated, as requested in the accompanying letter, it will be possible to ascertain what, if any, profits he may make on salaries of his employees, rental of his office space, and other services rendered over any particular period of time. It will be noted that the various budgets expire on different dates and run for different periods. His report, of course, will be made accordingly.

BUDGET AND BASIS OF CONTRIBUTION FOR THE CODE AUTHORITIES OF THE MOTOR AND VEHICLE RETAILING TRADE

BUDGET

Period of budget, May 1, 1934, to April 30, 1935, one year. The amount is $2,502,700.46, which is briefly summarized as follows:

National control committee:	
Executives (St. Louis office) 2 at part time	$16, 980
Executives (Washington office) 5 or 6 full time	36, 200
Legal services	7, 500
Accounting and clerical personnel (28)	34, 020
Total salaries	94, 700
Office expenses: Rent, equipment, telephone and telegraph, stationery and supplies, etc	25, 800
Travel:	
For 5 members of the national control committee (4 resident at St. Louis, Detroit, and Belleville; 1 to be selected)	12, 000
Executive secretary, secretary staff, including 4 compliance assistants	14, 400
Personnel other than above	3, 000
Total travel	29, 400
Total estimated expense	149, 900

STATE ADVISORY COMMITTEES

The budgets for the 54 State and local advisory committees aggregate $2,352,800.46.

It is not possible to present an actual analysis of the major items contained in these local budgets, because of the difference in the methods of operation and in the manner in which the budgets were itemized. The following figures are, however, presented as representing a reasonable estimate of the major categories into which local expenditure may be divided:

1. Chief executive officers (approximately 10 percent)	$235, 000. 00
2. Other salaries, including professional, administrative, and clerical (approximately 42 percent)	990, 000. 00
3. Office and miscellaneous expenditures, including contingent reserve (approximately 25 percent)	590, 000. 00
4. Traveling expenses for code authority members and staff (approximately 23 percent)	537, 800. 46
Total (100 percent)	2, 352, 800. 46

BASIS OF CONTRIBUTION

1. The basis of contribution for the national control committee is distinct from those for its local agencies. The national committee is supported by a flat charge of $4 per member.

2. The bases of contribution for the various State and local advisory committees vary considerably in principle. Contributions are in general, based upon one of the following schemes:

(*a*) A uniform percentage of dollar sales (example, the Arizona State Advisory Committee obtains contributions at the rate of three-tenths of 1 percent of sales volume).

(*b*) Payment on the basis of cars sold. In some cases there is no distinction in price except between new and used cars, but in the majority of cases a graduated scale, depending upon the price of the car, is specified.

Practically all of the bases of contribution for the various local committees are based on one or the other of the above principles.

GENERAL

The motor vehicle retailing industry currently employes approximately 250,000 persons and the annual sales volume is estimated at $2,000,000,000. The cost of code administration represent, therefore, a levy at the rate of approximately $10 per amployee and approximately one-eighth of 1 percent of sales volume.

MEMORANDUM

APRIL 17, 1935.

To: H. P. Vose, chief Code Authorities Accounts Section.
From: Daniel House, Code Authorities Accounts Section.
Subject: Budgets for the Bituminous Coal Code Authority.

Twenty-five budgets for divisions, subdivisions, and districts of this code authority have been approved to date. All of these budgets are first budgets. Total amount of the budgets approved is $1,803,156.86. With the exception of three, these budgets are all on annual basis. Therefore, the total amount on an annual basis is $1,843,535.55.

Assessments are made on the tonnage of bituminous coal production and the rate of assessment varies from 3½ mills per ton to 20 mills per ton.

The total amount of budgets given above does not accurately represent even the budgeted cost of code administration on an annual basis, because a number of budgets going back into 1934 have been submitted for approval and have not yet been approved.

Roughly estimated, about $50,000 may be added to the budget total given in order to arrive at a fair estimate of the budgeted cost of code administration.

The industry has been divided for the purposes of code administration into five divisions and each division has been divided into subdivisions. However, division no. 3 is administered entirely through the divisional code authority and division no. 5 is administered partly through divisional code authority and partly through district and subdivisional code authority.

Another part of the organization of this code authority is the national and regional coal labor boards. These boards are composed partly from employers in the industry and partly from organized labor in the industry. The expenses of these boards are borne, one-half by the code authority and one-half by organized labor. In addition the code authority has as a member a representative of labor.

An additional organizational set-up has recently been completed; that is the organization of national and regional arbitration boards. These boards are temporary and budgets for them have not yet been submitted. The boards are composed of impartial members who are not members of the industry.

It can be noted from the attached summary of approved budgets that division no. 1 spends most of the total of budgetary funds.

Division no. 1 takes in Pennsylavnia, Ohio, lower peninsula of Michigan, Maryland, West Virginia, Kentucky, northern Tennessee, Virginia, and North Carolina. This includes much of the richest bituminous coal fields in the country, and the cost of administration if taken on a percentage of volume of production is comparatively low.

In 1932 this division produced almost 72 percent of the total bituminous coal produced in the entire industry.

Budgets for this division amount to less than 70 percent of the total amount of budgets submitted. It should be remembered that in this division severest competition takes place and that, therefore, the problems of code administration are much more complex and difficult than in other divisions.

DANIEL HOUSE.

Bituminous coal—approved budgets

	Subdivision or district	Period	Months	Amount approved	Amount on annual basis	Maximum assessment rate in mills per ton
Division I	Eastern subdivision	Jan. 1, 1934, to Dec. 31, 1934	12	$258,894.14	$258,894.14	10
Do	Western Pennsylvania subdivision	May 1, 1934, to Apr. 30, 1935	12	249,840.36	249,840.36	7
Do	Ohio subdivision	do	12	200,000.00	200,000.00	10
Do	Michigan subdivision	Apr. 1, 1934, to Mar. 31, 1935	12	8,250.00	8,250.00	15
Do	Northern panhandle of West Virginia subdivision	May 1, 1934, to Apr. 30, 1935	12	25,520.00	25,520.00	10
Do	Northern West Virginia subdivision	do	12	153,000.00	153,000.00	7
Do	Southern No. 1 (smokeless)	Apr. 1, 1934, to Mar. 31, 1935	12	210,000.00	210,000.00	6
Do	Southern No. 2	Jan. 1, 1934, to Dec. 31, 1935	12	258,441.00	258,441.00	5
Do	Western Kentucky	June 1, 1934, to Aug. 31, 1934	3	9,033.73	36,134.92	
Division II	Illinois subdivision	Jan. 1, 1934, to Dec. 31, 1934	12	105,000.00	105,000.00	3½
Do	Indiana subdivision	Nov. 1, 1933, to Oct. 31, 1934	12	64,087.23	64,087.23	7
Do	Iowa	Oct. 1, 1933, to Sept. 30, 1934	12	26,810.00	26,810.00	7
Division III		Apr. 1, 1934, to Mar. 31, 1935	12	43,956.00	43,956.00	4½
Division IV	Southwestern subdivision	July 1, 1934, to Mar. 31, 1935	9	43,030.00	53,787.50	10
Do	Arkansas-Oklahoma subdivision	May 1, 1934, to Apr. 30, 1935	12	19,842.00	19,842.00	20
Division V [1]		Apr. 1, 1934, to Mar. 31, 1935	12	58,800.00	56,800.00	3⅜
Do	District No. 3	do	12	12,361.60	12,361.00	6½
Do	District No. 4	do	12	7,184.40	7,184.40	3½
Do	District No. 5	do	12	3,060.00	3,060.00	7
Do	District No. 7	do	12	750.00	750.00	7
Do	District No. 8	do	12	2,850.00	2,850.00	4
Do	Southern Wyoming	do	12	3,097.00	3,097.00	1
Do	Subdivision K	June 1, 1934, to May 31, 1935	12	14,270.00	14,270.00	4
Do	Subdivision L	Apr. 1, 1934, to Mar. 31, 1935	12	15,000.00	15,000.00	7½
Do	Utah subdivision	Oct. 1, 1934, to June 30, 1935	9	10,080.00	12,600.00	4½
Grand total				1,803,156.86	1,843,535.55	

[1] District and subdivisional assessments are in addition to the divisional assessment.

ORDER

CODE OF FAIR COMPETITION FOR THE BITUMINOUS COAL INDUSTRY

Approval of the code authority budget and basis of contribution for the Eastern Subdivisional Code Authority of division I of the Bituminous Coal Industry for the period of January 1, 1934, to December 31, 1934.

Application having been duly made by the Code Authority of the Eastern Subdivisional Code Authority of division I of the Bituminous Coal Industry for approval of its budget for, and of the basis of, contribution by members of the industry to, the expenses of administering the code for the period of January 1, 1934, to December 31, 1934, and an opportunity to file objections having been duly afforded all members of said industry, and any objections filed having been duly considered, and such budget appearing to be reasonable and necessary to support the authorized activities of the code authority, and such basis of contribution appearing to be equitable.

Now, therefore, pursuant to authority vested in me, it is hereby ordered, subject to any pertinent rules and regulations issued by the Administrator, that

(*a*) Said budget in the total amount of $258,894.14, the original of which, as approved, is on file with the National Recovery Administration, be and it is hereby approved.

(*b*) The following basis of contribution by members of the industry, authorized by article VII, section 3, of such code, 1 cent per ton on all production during the period of January 1, 1934, to December 31, 1934, assessments to be made when indicated to be necessary, but in no event will collections exceed the total amount of the budget, be and it is hereby approved.

HUGH S. JOHNSON,
Administrator for Industrial Recovery,
Division of Research and Planning.
By ——— ———, *Director.*

Approval recommended:

———,
Division Administrator.

———,
Deputy Administrator.

———, 1934.

ORDER

CODE OF FAIR COMPETITION FOR THE BITUMINOUS COAL INDUSTRY

Approval of the code authority budget and basis of assessment for the Indiana Subdivisional Code Authority of Division 2 of the Bituminous Coal Industry for the period from November 1, 1933, to October 31, 1934.

Application having been duly made by the Code Authority of the Indiana Subdivisional Code Authority of Division 2 of the Bituminous Coal Industry for approval of its budget for, and of the basis of, contribution by members of the industry to the expenses of administering the code for the period of November 1, 1933, to October 31, 1934, and an opportunity to file objections having been duly afforded all members of said industry, and any objections filed having been duly considered, and such budget appearing to be reasonable and necessary to support the authorized activities of the code authority, and such basis of contribution appearing to be equitable.

Now, therefore, pursuant to the authority vested in us, it is hereby ordered, subject to any pertinent rules and regulations issued by the National Industrial Recovery Board, that

(*a*) Said budget in the total amount of $64,087.23, the original of which, as approved, is on file with the National Recovery Administration be, and it is hereby, approved,

(*b*) The following basis of contribution by members of the industry, authorized by article VII, section 3, of such code, assessments to be made at the rate of 7 mills per ton, based on the current monthly tonnage, beginning with June 1, 1934, which is necessary to cover the expenditures from June 1, 1934, through the balance of the budgetary period. The approximate tonnage for this period will be 5,500,000 tons. In no event, however, will the total assessments for the

entire budgetary period exceed the total amount of the budget be, and it is hereby, approved.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By LEON HENDERSON,
Director of Research and Planning Division.

Approval recommended:
W. P. ELLIS,
Division Administrator.
W. P. ELLIS,
Deputy Administrator.
OCTOBER 10, 1934.

ORDER

CODE OF FAIR COMPETITION FOR THE BITUMINOUS COAL INDUSTRY

Approval of the code authority budget and basis of contribution for the Michigan Subdivisional Coal Code Authority of Division 1 of the Bituminous Coal Industry for the period from April 1, 1934, to March 31, 1935.

Application having been duly made by the code authority of the Michigan Subdivisional Coal Code Authority of division no. 1 of the Bituminous Coal Industry for approval of its budget for, and of the basis of, contribution by members of the industry to, the expenses of administering the code for the period of April 1, 1934, to March 31, 1935, and an opportunity to file objections having been duly afforded all members of said industry, and any objections filed having been duly considered, and such budget appearing to be reasonable and necessary to support the authorized activities of the code authority, and such basis of contribution appearing to be equitable.

Now, therefore, pursuant to the authority vested in us, it is hereby ordered, subject to any pertinent rules and regulations issued by the National Industrial Recovery Board, that

(*a*) Said budget in the total amount of $8,250, the original of which, as approved, is on file with the National Recovery Administration, be and it is hereby approved,

(*b*) The following basis of contribution by members of the industry, authorized by article VII, section 3, of such Code, assessments to be levied in the total amount of 1½ cents per ton based on an estimated annual production of 550,000 tons, assessments to be levied when indicated to be necessary, but in no event to exceed the total amount of the budget, be and it is hereby approved, subject to the following provisions hereinafter set forth,

Provided, that a proper resolution is adopted by the code authority to safeguard the funds collected by assessment at the code authority's next regular meeting and a certified copy of this resolution will be forwarded immediately to the administration.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By LEON HENDERSON,
Director, Division of Research and Planning.

Approval recommended:
W. P. ELLIS,
Division Administrator.
W. P. ELLIS,
Deputy Administrator.
----------, 1934.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 25, 1935.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

MY DEAR SENATOR KING: In response to your request, transmitted through Mr. Kimball, I am herewith enclosing the following:

1. Table setting forth number of complaints handled by National Recovery Administration State offices from November 18, 1933, to April 13, 1935.

2. Table setting forth number of complaints referred to Compliance Division, or regional compliance councils for further administrative action (for the period of Dec. 1, 1933, through Apr. 13, 1935).

3. Protests against payment of contributions to defray code authority expenses.
4. Tabular analysis of favorable and unfavorable correspondence, resolutions, etc., concerning the National Recovery Administration, National Industrial Recovery Administration, or the codes of fair competition.

In connection with the treatment of complaints of discrimination against small enterprises and the establishment of monopolies, I refer you to the testimony of Dr. John A. Ryan, of the Industrial Appeals Board, before the Senate Committee on Finance on April 9, 1935 (p. 3233 et seq.).

Mr. Kimball also requested a statement setting forth the total personnel of code authorities, including the members thereof and their subordinates.

I regret to inform you that this information is not readily available in the form requested. Allow me to point out, however, that the mimeographed material, which is being forwarded to you from day to day under the caption of "Representative character of code propondents", in addition to data generally related to the approval of codes, contains the names of the Code Authority members of each code covered to date in that series.

Very truly yours,

BLACKWELL SMITH,
Acting General Counsel.

TABLE I.—*Complaints handled by National Recovery Administration State offices (Nov. 18, 1933, to Apr. 13, 1935)*

	Labor		Trade practice		Total	
(1) Complaints received	130,322	*Percent* 100.0	37,253	*Percent* 100.0	167,575	*Percent* 100.0
(2) Total closed	109,455	84.1	29,060	78.0	138,515	82.7
(3) Adjusted	71,299	54.8	20,986	56.3	92,285	55.1
(4) Investigated, no violation	38,156	29.3	8,074	21.7	46,230	27.6
(5) Referred to other agencies without action by National Recovery Administration State office	3,054	2.3	2,150	5.8	5,204	3.1
Code Authorities [1]	2,523	1.9	2,150	5.8	4,673	2.8
Regional Labor Board and National Labor Relations Board	531	.4	0	0	531	.3
(6) Referred to Compliance Division and district attorneys	3,952	3.0	2,550	6.8	6,502	3.9
Compliance Division	3,431	2.6	2,202	5.9	5,633	3.4
District attorney	521	.4	348	.9	869	.5
(7) National Recovery Administration insignia removed by State directors	521	.4	0	0	521	.3
(8) Pending, Apr. 13, 1935	13,340	10.2	3,493	9.4	16,833	10.0

[1] Revised figures.

TABLE II.—*Complaints referred to Compliance Division, or regional compliance councils for further administrative action, Dec. 1, 1933, through Apr. 13, 1935*

(1) Total docketed	5,977
(2) Total closed	3,132
(3) Number referred to litigation	1,001
(4) Number on hand, Apr. 13, 1935	1,844

PROTESTS AGAINST PAYMENT OF CONTRIBUTIONS TO DEFRAY CODE AUTHORITY EXPENSES

The contribution section of the compliance division has received up to and including April 20, 1935, 11,987 protests against payment of contributions to 319 code authorities. Of this total, 3,376 protests have been referred to the industry divisions for action by the deputy administrators; 3,689 protests have been acted upon by the contribution section. There are now outstanding 4,922 protests awaiting action by the contribution section at the direction of the Code Contributions Board.

An analysis of the protests received by the Contribution Section reveals the following information: 25 percent of the protests are based on the grounds that the industry member's principal line of business is subject to another code of fair competition; 16 percent of the protests received were on the grounds that the code or the code authority have been of no benefit to the industry member; 11 percent of the protests received were on the grounds that the payment of contributions created a hardship upon the industry member; 8 percent of the protests received were on the grounds that the industry member was no longer engaged in business; 6 percent of the protests received were on the grounds that payment had previously been made; 4 percent of the protests received may be classed as inquiries relative to the code; 4 percent of the protests received were on the grounds that the basis of contribution, as approved by the Administration, was excessive; 1 percent of the protests received were to the effect that the industry member was willing to pay, but had received no notice of the contribution due; 25 percent of the protests received were based on miscellaneous grounds.

EXPLANATORY STATEMENT

The following protests against assessments and alleged excessive code authority salaries and budgets are a few of the many thousands which have been received by the National Recovery Administration, according to its records.

MEMORANDUM TO MR. LANSBURGH REGARDING COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NO. 140 (COVERING JAN. 17, 18, AND 19)

JANUARY 19, 1935.

DIVISION 1

1. Commercial fixture: Bromann Bros., 857 Fulton Street, Chicago, Ill., protests assessment by the commercial fixture industry. They have been contributing regularly to Commercial Refrigerator Code Authority.

DIVISION 2

1. Fire extinguishing appliance manufacturing: Code authority submits protest from Walter Kidde & Co., New York.

2. Hoisting engine manufacturing industry: Domestic Engine & Pump Co. protests assessment of $45.39 by the Code Authority for the Hoisting Engine Manufacturing Industry, which is forty-five-one-hundredths of 1 percent of their sales of hoisting machinery for 1933.

3. Nonferrous foundry: N. S. Huxley, president, the Huxley Bronze Casting Co., 106–108 Tasker Street, Philadelphia, Pa., advises that they have no intention of paying current assessment or any future assessments. At the time this code was promulgated they opposed it and the code has made it difficult to do business profitably. They only joined this code on the assurance there would be no arbitrary assessment levied.

MANUFACTURING DIVISION

1. Dental goods and equipment: The B. F. Goodrich Co., Akron, Ohio, protests paying assessment to the Dental Goods and Equipment Industry and Trade Code Authority, due to the fact that this firm is operating under and contributing to another industry.

DIVISION 3

1. Plumbing contracting: F. J. Brass, Oneida, N. Y., in the plumbing business, complains that he is unable to pay the code assessment.

DIVISION 4

1. Retail solid fuel: Whiting-Plover Paper Co., Stevens Point, Wis., protests assessment. They sell coal only to their employees.

2. Retail solid fuel: Murray Hanson, Administration member, La Luz, N. Mex., encloses a protest from the Hahn Coal Co., Albuquerque, N. Mex., against the payment of assessment to the Retail Solid Fuel Code Authority. The writer states that the assessment is discriminatory, unjust, unfair, inequitable, and

useless. "The Retail Solid Fuel Industry Divisional Code Authority for New Mexico has not functioned and appears to be incapable of functioning."

3. Charcoal and package fuel distributors trade: Cleveland Charcoal Supply Co., Cleveland, Ohio, protests budget and assessment under the Charcoal and Package Fuel Distributors Trade; states that this is unconstitutional, especially since the assessment is based on sales prior to approval of the code.

4. Retail tire and battery: The Petersen Standard Battery Co., Inc., Hempstead, N. Y., protests assessment. They have already paid assessment to the Electric Automotive Sales Code.

5. Radio wholesaling: Times Appliance Co., Inc., New York City, protests the assessment of the above industry.

6. Scrap iron, nonferrous scrap metals, and waste materials: West End Auto Wrecking Co., Duluth, Minn., protests against assessment of the Code Authority for the above industry.

DIVISION 6

1. Baking: E. H. Rasmussen, Omaha, Nebr., protests assessment of the above Code Authority.

DIVISION 7

1. Graphic arts: Wm. H. Zepp, Fairhope, Ala., protests paying assessment to the Graphic Arts Code for the reason that he is 73 years old and his net profit last year was not more than $50. Feels he is not doing a volume large enough to pay any assessment.

2. Graphic arts: H. H. Heath, the Herald, Hot Springs, N. Mex., submits a list of prices which shows that Montgomery Ward Co. quotes letterheads and the Government offers printed envelops at under half of what he can sell them. "Perhaps 'benefits' is the right word—but to whom do they go? This is what the small printer, with his little all tied up, has to face and then is asked for assessments to pay cost of their own ruin."

3. Senator Nye encloses a letter from B. L. Colvin, superintendent of schools, Finley, N. Dak., protesting assessment of $10 by the Graphic Arts Code Authority in connection with a mimeograph machine in the court house, which is used by various county officials, relief organizations, private charitable organizations, etc.

4. Commercial relief printing: John S. Ogden, Gettysburg, Pa., protests assessment. States nothing has been done to aid fair competition in his section.

PUBLIC UTILITIES DIVISION

1. Merchandise warehousing: Senator Hugo L. Black transmits letter of E. E. Wheeler, 361 Depot Street, Asheville, N. C., protesting the code authorities who are exacting from everyone using a warehouse for any other use save their own, a code charge of $36 annually. He is subject to the Brokers' Canned Goods Code, Flour and Feed Code, the Salt Code, and others and finds it impossible to finance all of these matters. Calls attention to the budget of $117,715 for this industry, carrying large salaries such as secretary, $7,500; assistant secretary, $5,000; assistant secretary, $4,800; and chairman, $5,000; the entire budget embracing salaries and expenses.

2. Merchandise warehousing: The Fidelity Warehousing Co., New York, protests the method of assessment by the Merchandise Warehousing Code Authority. Although the big man cannot be assessed on square feet of floor space over 810,000 the little man is assessed a minimum of $36 "altogether out of proportion." "This method is obviously so unfair and unjust that we cannot understand why it is approved or permitted."

3. Trucking: Mr. William Payne, Marionville, Mo., in the trucking business, complains that he has been inequitably assessed by the Missouri Truck Terminal Association.

CHEMICAL DIVISION

1. Package medicine industry: Neilsen Laboratories, Inc., Elyria, Ohio, protests payment of $23 assessment to Code Authority of the Package Medicine Industry, stating that the assessment is unjust as applied to them. Operating loss of $3,949.82 for 1934. Their balance sheet lists an accumulated operating deficit of $10,109.06 compared with a capital stock of $10,000. They are virtually bankrupt to the extest of $109.06.

MISCELLANEOUS

1. Al D. Krebs, Wichita, Kans., writes regarding National Recovery Administration code assessments that they are having hard enough time to meet their expenses and paying taxes without contributing to an organization that is proving a positive detriment to small business. The writer states that if he tried to meet the assessments and adhere to code prices, he would very shortly be forced out of business. If National Recovery Administration continues its present policies, the writer says he and many other small business concerns will be compelled to quit altogether. (Industry not mentioned.)

In addition to the above, code authorities report the following failures to pay assessments:

Bituminous coal	32
Builders' supplies	12
Ice manufacturing	5
Job galvanizing metal coating	17
Preserves and glace fruit	37
Screw machine products	6

In connection with Administrative Order X-36, Senator O'Mahoney referred a telegram from the Wyoming Highway Contractors Association, protesting their inclusion under the jurisdiction of the Crushed Stone, Sand, Gravel, and Slag Code.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. LANSBURGH REGARDING COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NO. 139 (COVERING JAN. 14, 15, AND 16)

JANUARY 16, 1935.

DIVISION 1

1. Crushed stone, sand, gravel and slag: Senator J. C. O'Mahoney encloses letter from C. W. Tagger, president, Wyoming Contractors Association, Cheyenne Wyo., protesting the necessity of the highway contractors having to report to this code authority and pay assessment. The highway contractors are supporting the National Recovery Administration 100 percent in Wyoming and he feels an order exempting the highway contractors from reporting or paying assessment to any other code is the only way to secure continued support.

2. Crushed stone, sand, gravel and slag: John Fvers, Green River Lumber Co., Green River, Wyo., asks that general contractors who are operating under the General Contractors Code be exempted from paying assessments to the Crushed Stone, Sand, Gravel, and Slag Code Authority. "As long as we are compelled to contribute to both codes, it places a double burden on us."

3. Bituminous road materials distributing: A. L. Cook, Ottawa, Kans., protests budget for the Bituminous Road Materials Code which amounts to $400,000. The writer feels that this large sum cannot be spent in any legal or legitimate connection with the code. The writer also protests clauses of this code which are contrary to regulations imposed by State highway departments.

4. Bituminous road materials distributing: Mr. W. T. Gilbert, president, W. T. Gilbert, Inc., Torrington, Conn., regards as an unjustifiable expense the proposed budget of $325 provided in the proposed code for the bituminous road materials distributing industry.

5. Wood turning and shaping: W. H. Clement, Clement Toy Co., North Weare, N. H., protests twenty-one-hundredths of 1 percent assessment on total sales. The National Recovery Administration has nearly put them out of business and many of their orders have been canceled. If they raise their prices according to the code, the customer gives up the job.

6. Shoe last and shoe form: Jos. A. Schub, secretary, A. R. Anderson & Co., Forest Street and Laurel Avenue, Arlington, N. J., advises that they have finally managed to accumulate enough to pay their initial assessment. They have no complaint to offer other than that participation has been of absolutely no benefit to them and raising their small assessment is too heavy a drain on their limited resources. They therefore ask permission to withdraw from membership to this body. This will not in any way effect their compliance with this code.

DIVISION 3

1. Plumbing contracting: Mr. Louis Asselin, Worcester, Mass., complains against the assessment of the above code.
2. Plumbing contracting: Garrett Spoor, Redlands, Calif., protests attitude of secretary of Plumbing Contracting Code, zone no. 12. The code works a hardship in assessment matters and fees paid upon filing any bids.
3. Roofing and sheet metal: Rhode Island Roofing Co., Inc., Providence, complains that due to depressed business conditions, they are unable to pay their code assessment.

DIVISION 4

1. Retail solid fuel: Zipf Bros. Coal Co., Chicago, protests that they are assessed on sales to small dealers who are in turn assessed on their sales. They protest this double assessment.
2. Retail solid fuel: The Hahn Coal Co., Albuquerque, N. Mex., protests assessment for above code as being discriminatory and unfair. They say the code is not functioning.
3. Retail solid fuel: Hudson Fuel Co., Yonkers, N. Y., protests assessment of $973.30 by Divisional Code No. 3, of the Retail Solid Fuel Industry. States charges are unfair and unreasonable and have been paid under protest.
4. Retail lumber: J. E. Embry, Ashville, Ala., claims the code assessment for above code is a burden he cannot stand financially.
5. Retail lumber: Brobeck, Phleger & Harrison, attorneys, San Francisco, enter protest against above assessment on behalf of 40 clients (retail lumber dealers) named individually in the protest. Claim this is unlawful and is deprivation of property without due process of law.
6. Retail lumber: R. C. Kuhlman, agent, code authority, southwestern division. State of Ohio, district no. 7, State of Kentucky, Cleveland, Ohio, protests approval of Administrative Order 9-299, which would make the members of this industry liable for costs of code authority administration during the period from April 1 to October 4, 1934. If approved as a unit they will appeal to a court of competent jurisdiction to test the legality of this action.
7. Retail monument: Ruth Randall, De Ruyter, N. Y., protests assessment. She says she received nothing from the Code Authority until October and feels she should not be assessed prior to this.
8. Retail tire and battery: Pagel Tire Shop, Fayetteville, Tex., protests paying assessment to the above code for the reason that said code has not been of any benefit. The writer states that it is a drawback to his business.

DIVISION 6

1. Wheat flour milling: Barnes Mill & Elevator Co., Mountain Park, Okla., operating a small mill which occasionally grinds wheat for farmers, received a letter from the code authority for above industry levying an assessment. This is "only one of the detestable things brought about by National Recovery Administration, along with various reports sent to the various code authorities."
2. Wholesale tobacco trade: B. Gustate, Chelsea, Mass., requests exemption from above assessment on the ground that they are classified as subjobbers.
3. Bottled soft drink: The Elgin Products Milk & Butter Co., Elgin, Ill., protests assessment of the above code authority.
4. Coffee: North Conzantino, Eagle Coffee Co., Baltimore, Md., states that as they are only a small concern employing only two persons, they ask to be excluded from a contribution which will work a hardship on them.
5. Peanut butter: The Brundage Bros. Co., Toledo, Ohio, protests against the payment of assessment to the Peanut Butter Code for the reason that they are contributing to the Merchandise Warehousing Code which covers their principal business.

DIVISION 1

1. Graphic arts: Representative Brooks Fletcher encloses a letter from Mr. Fred K. Dix, publisher of the Prospect Monitor, Prospect, Ohio, stating almost every day he is receiving annoying bulletins and letters from some code authority relative to the above code; that he has paid his assessment and is endeavoring to comply in every way; that these threatening letters read as though he had not complied. Writer states that the major portion of the enormous code budget $449,000, goes for salaries, and this looks bad to the small printer who cannot make ends meet. He has paid his assessment but no receipt has been received.

2. Graphic arts: The Leader-Vindicator, New Bethlehem, Pa., claims that they have heard the President numerous times over the radio telling employers that towns of 2,500 are exempt, but now the Graphic Arts Code Authority is threatening court action for failure to pay assessment.

3. Graphic arts: George H. Shaeffer, printer, Lebanon, Pa., writes that he is financially unable to pay his share of expense to the above code authority. He complains that he cannot get National Recovery Administration prices for his work because of the larger firms underbidding him.

4. Graphic arts: The Hamin Co., St. Johnbury Center, Vt., H. J. Thurber, printer, protests paying assessment to the above code for the reason that he believes the code to be the means of driving out small businesses like his.

5. Graphic arts: C. C. Watson, Midland, Tex., protests paying assessment to the Graphic Arts Code for the reason that the code has injured his business and is all written in favor of big business.

PUBLIC UTILITIES DIVISION

1. Merchandise warehousing: E. F. Raseman, National Storage Co., Kalamazoo, Mich., protests the budget of the above code authority. "We do not think that the small merchandise warehousemen in the smaller cities have received one single benefit from this code. All we can say is that we think it is nothing more than a plan to make it harder for smaller warehousemen in smaller cities to operate their business at a reasonable profit."

TEXTILE DIVISION

1. Schiffli embroidery industry: The Phoenix Hosiery Co., Milwaukee, Wis.' protests assessment under this code. They say it is not their principal line of business and they are contributing to the Hosiery Code.

2. Schiffli embroidery industry: Emil Helg, Union City, N. Y., writes in protest of the 1-percent donation to the code authority for the above industry. Also protests the 8-hour rule during the season. Mr. Helf further states that the enforcement of the code is not in the right hands as they have done more harm than good.

3. Luggage and fancy leather: Lind, Schlinek, Marks & Brin, attorneys, New York, object to the above budget, "particularly in reference to allowance for counsel, for the reason that counsel has now become unnecessary except in the event of litigation, and then only to a limited degree."

In addition to the above, code authorities report the following failures to pay assessments:

Bituminous coal	43
Crushed stone, sand, gravel, and slag	17
Commercial relief printing industry	9
Handbag frame manufacturing industry	11

There were two protests from shoe manufacturers against the application for exemption of the Set-Up Paper Box Code Authority from Administrative Order X-36, and two protests from highway contractors against assessment by the Crushed Stone, Sand, Gravel and Slag Code Authority.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. LANSBURGH REGARDING COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NUMBER 136 (COVERING JAN. 3, 4, AND 5)

JANUARY 5, 1935.

DIVISION 1

1. Crushed stone, sand, gravel and slag: Senator Hayden encloses copy of a telegram from David Rubenstein, secretary of the Associated General Contractors of America, State of Arizona, protesting against assessments which it is asserted have been unfairly levied on general contractors doing highway construction under the above code.

2. Crushed stone, sand, gravel, and slag: Congressman E. C. Moran of Maine, refers letter from Wyman & Simpson, Inc., Augusta, Maine, protesting against an assessment which they consider unfair and unjust. They are registered under the Construction Code and have paid full assessment.

3. Crushed stone, sand, gravel, and slag: Senator Homer T. Bone of Washington refers letter from the Spokane chapter of the Associated General Contractors of America asking that the above code be amended in such a way that general contractors producing sand and gravel for their own use on highway work shall be exempt. In forming the Sand and Gravel Code No. 109 it is stated that the purpose of such a code was to force the small producer and the portable plant producer out of business by a set-up of code fees so exorbitant that only the heavy producer could afford to pay the fees. They state they object to paying more than one fee, that being the fee for the general contractors.

4. Bituminous road material and distributors' industry: Senator Capper of Kansas encloses letter from A. S. Cook, Ottawa, Kans., protesting against provisions of code including assessment.

5. Bituminous road material and distributors' industry: Illinois Bituminous Distributors' Association, Chicago, protests against proposed basis of contribution as being too high on road oil distribution. States provisions under this regulation are too high and should be modified, adding that this protest is joined by highway contractors who also protest budget and basis of assessment of this code authority.

6. Lumber: Charles H. Dietrich, New Orleans, protests action of Lumber Code Authority in trying to collect regular assessments; this works a hardship on the small dealer. Prior to the set-up of the code authority, the writer donated small sums to the association in order to further code work, but the small lumbermen have never benefited by the code.

7. Wood turning and shaping: N. J. Rousseau, Rousseau Wood Turning Co., Fitchburg, Mass., protests against assessment by the above industry. "We feel that a concern employing less than three is not subject to the code."

DIVISION 2

1. Motor vehicle retailing: Thomas H. Elliot, New Paltz, N. Y., seeks exemption from the assessment by the National Automobile Dealers Association Code. (Letter referred from the White House.)

2. Special tool, die, and machine shop: Hartwell Iron Works, Houston, Tex., protests suggestion to place a minimum assessment on all firms under the above code.

MANUFACTURING DIVISION

1. Furniture manufacturing: Universal Cabinet Co., St. Louis, Mo., protests assessment of $12 for above code. Total sales of furniture in 1933 amounted to $752.50.

2. Furniture manufacturing: Marsh Furniture Co., High Point, N. C., opposes any assessment whatever, "for we regard the code authority as an unnecessary, totally useless, and futile activity." This writer is opposed to codes generally.

3. Beverage-dispensing equipment: Republic Brass Co., Cleveland, Ohio, protests assessment under above code. This is based on 1933 operations, which were discontinued in 1934.

DIVISION 3

1. Plumbing: Congressman David J. Lewis writes Mr. Williams, enclosing a letter from Mr. S. Leslie Shafer, a contractor and builder at Middletown, Md., stating that he had a small building business and in order to earn enough money to support his family, added a plumbing shop, but he is still unable to make enough to carry on and has to borrow to the full on his life insurance to meet expenses. Now he is assessed by the Plumbing Code Authority and faces further seeking of funds to comply with this code. He states the plumbing assessment is in contradiction of the pledge of the President that there was no hardship to be worked on either employer or employee (second paragraph of ch. 10, Plumbing Contracting Division).

2. Roofing and sheet metal: Senator Shipstead refers letter from the Day Co., Minneapolis, Minn., protesting against a notice of assessment for $300, which they have received from the National Code Authority for the above industry.

DIVISION 4

1. Builders' supply: Portland Stone Ware Co., Boston, complains that the above budget is excessive.

2. Retail lumber: Vineland Lumber & Coal Co., East Boulevard and Pear Street, Vineland, N. J., protests assessment of $20.40 for Retail Lumber and Building Materials Code.

3. Retail tire and battery: Cochran & Cell, Oakland, Calif., protests assessment under above code, stating that they contributed to Automobile Retailing Code.

4. Retail monument: J. C. Sutten, Memphis, Tenn., writes that in his region those who do not care to pay assessment "just pass in any excuse and get by with it."

Article IV, section 9 is being violated without hesitancy and nothing done about it. In view of this situation, the writer does not intend to pay any more assessments and intends to prevent others from doing so also. In his opinion, if the code were enforced, there would be much benefit from it.

DIVISION 6

1. Retail grocery: Mrs. Flora Babiner, Chicago, complains that she is unable to pay the code assessment for the Food and Grocery Distributors Code Authority. (Letter referred from the White House.)

DIVISION 10

1. Men's clothing: Joseph A. Wenskaites, Baltimore, Md., seeks exemption from assessment by the Men's Clothing Code Authority. He complains that if he is required to pay the assessment, he will have to discontinue business. (Letter referred from White House.)

CHEMICAL DIVISION

1. Furniture and floor wax and polish: Devoe & Reynolds Co., Inc., New York City, protests assessment of the above code authority.

In addition to the above, the Administration member of the Drapery and Upholstery Trimming Code Authority writes: "It has been reported to me that several members of the code authority have paid no assessment whatever."

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. LANSBURGH REGARDING COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NUMBER 132 (COVERING DEC. 20, 21, AND 22)

DECEMBER 22, 1934.

DIVISION 1

1. Picture moulding and picture frame: Turner Manufacturing Co., Chicago, protests payment of assessments to this code authority because it is felt that the money is spent improperly and without approval of the industry.

DIVISION 2

1. E. P. Lawson Co., New York City, protests the one-tenth of 1 percent assessment for Packaging Machinery Code. This seems unfair to support a few men in soft-code authority jobs, especially when these men use the ones who wrote the code.

2. Portable Light Co., New York City, protests assessment for marine equipment manufacturing industry. It is excessive and benefits the few code authority officers drawing large salaries; there are too many taxes to be met by the small manufacturers today.

DIVISION 3

1. H. A. Draffur Roofing Co., Leominster, Mass., protests the payment of assessment to Roofing and Sheet Metal Code Authority due to the irregular and arbitrary manner in which the budget was promulgated.

2. G. H. Spencer Roofing Co., Providence, R. I., protests the payment of assessments to the Code Authority for the Roofing and Sheet Metal Industry. They consider the assessment excessive and decline to pay until the trade has been given further opportunity to study the budget.

3. Joseph G. Rauth, Worcester, Mass., protests paying assessment to the Roofing and Sheet Metal Code for the reason that the industry as a majority has never approved the budget.

4. Representative Roy O. Woodruff encloses a letter from M. C. Wolfe of Big Rapids, Mich., asking to be advised as to the legality of certain assessments

imposed upon the painters and decorators of Mecosta County, Mich. He asks specifically whether or not Harry E. Lowes of 262 West Forest Avenue, Muskegon, Mich., and L. S. Hazen, the parties who made the demands mentioned, have authority to do so.

5. Mr. A. F. Crowley, Long Island City, N. Y., objects to assessment by the Plumbing Code Authority. (Letter referred from the White House.)

DIVISION 4

1. Retail tire and battery: Weaver Garage Co., Oil City, Pa., operating under the Motor Vehicle Retailing Code, protests an assessment by the Tire and Battery Code Authority.

2. Retail tire and battery: R. H. Galle, Reedley, Calif., protests assessment of the above code authority.

3. Frank Meck Paper Co., Knoxville, Tenn., are unable to pay the assessment to the Paper Distributing Code. They are only a small concern and last year failed to make money. If there are any lawsuits instituted by the code authority, all their creditors will also foreclose.

4. Industrial supplies and machinery distributors: Geo. H. Dirst, executive secretary, Metropolitan Mill, Marine and Contractors Supply Institute, New York City, protests against the budget and basis of contribution for the period December 8, 1934, to December 7, 1935, inasmuch as no provision is made for the support of the regional committees of the code authority, because upon them falls the real burden of code administration.

5. Electrical wholesale trade: J. L. Block, treasurer, Ontario Electric Corporation, 427–431 East Genessee Street, Buffalo, N. Y., writes that inasmuch as they have already contributed to the Radio Wholesalers Code, they protest against a duplicate assessment to the electrical wholesale trade.

DIVISION 6

1. Wholesale tobacco trade: R. D. Cordrey, manager, W. F. Coulihan & Bro., Inc., Cumberland, Md., protests payment of assessment to the code on the grounds that they are contributing to the Wholesale Food and Grocery Code.

2. Mrs. Charles Stoff, Sutter, Ill., has a few incubators in her own home and hatches eggs for neighbors. She wants to be excused from any code which might apply. The local code authority demands that she pay assessment of $6. She is unable to pay the assessment.

DIVISION 7

1. The Finch Engraving Co., Boston, Mass., protests on behalf of the engraving and die-stamping houses, the Graphic Arts Code assessment. No reason given for protest.

2. Representative J. Roland Kinzer writes relative to an assessment against Mr. Gruger, who is the sole proprietor of a small print shop conducted and operated by himself; he has employed no one for years, and what work comes his way he does himself; his total gross income from his business does not amount to $600 a year and it is impossible for him to pay this assessment.

3. Dewberry Engraving Co., Birmingham, Ala., protests Code Authority for Copper Plate Engraving and Printing Industry under control of large engravers who have levied excessive assessments and are now trying to fix prices which will only cause the small industries to be thrown into bankruptcy.

4. F. A. Buchner, Burlington, Vt., runs a one-man printing shop and protests that he is unable to pay the assessment.

MISCELLANEOUS

1. Representative Robert L. Bacon encloses a letter from Mr. S. H. Oliver, of Flanders, Long Island, complaining of his inability to pay assessment ordered by a Mr. Foley, stating that unless he signed up he would be liable to a jail sentence. Mr. Oliver states that he cannot pay this assessment. He is a poor man; his business barely makes a living for his wife and three small children. He does not state the nature of his work.

In addition to the above, the Crushed Stone, Sand, Gravel, and Slag Code Authority reports 10 failures to pay assessment and the Powder Puff Code Authority reports 2.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. HENDERSON OF COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NUMBER 107 (COVERING SEPTEMBER 24, 25, AND 26)

DIVISION I

1. Scrap iron and steel trade: J. M. Paper, Paper Calmanson & Co., 975 East Seventh Street, St. Paul, Minn., re sum in excess of $50,000 to be spent in policing the labor provisions and enforcing the code. In the first place $50,000 would not commence to police everyone connected with this business. Most of this business is handled on the brokerage basis, whereby one broker sells to another broker, or consumer, and industries and railroads sell direct to consumers and there is no labor attached. It appears the Institute of Scrap Iron and Steel is simply becoming a racket. A hearing should be held before such a proposal is put into effect.

2. Price Iron & Steel Co., Chicago, protest against the proposed budget for the Scrap iron and steel trade. Writes that they as a brokerage house would pay more than their share and receive absolutely no benefits.

3. Ladenson Metals Corporation, Philadelphia, objects to the budget of the scrap iron and steel trade as "entirely unfair and excessive."

4. Hyman Michials Co., Chicago, Ill., protest the budget for the scrap-iron trade, stating that policing of this industry is not necessary. A medium-salaried secretary is all that is needed.

5. Luria Bros. & Co., Inc., Philadelphia, Pa., protests basis for assessment on gross volume of business for the reason that they believe a considerably larger amount will be raised for the scrap-iron trade than is called for in the budget.

6. J. D. Talleker, Butler, Pa., protests the payment of tax on a ton of coal to the National Code Authority, divisional code authority and the subdivisional code authority. Writes that after he pays all of these code authorities and the other expenses he hardly has enough to run his mine.

7. M. A. Friedman Co. of Ashland, Ky., protest the budget amounting to $50,140 per year; only necessity for policing codes is the item of wages. The writer believes that the Institute of Scrap Iron and Steel can act as a code authority with more efficiency.

8. Bishop & Co., Broad and Chestnut Streets, Philadelphia, Pa., protests assessment rate under the code for scrap iron and steel trade. Charges on a dealer doing a close business up to $500,000 a year are 50 cents per $1,000 while on the large dealer it is only 20 cents per $1,000.

9. David J. Joseph Co., Cincinnati, Ohio, protests that the budget for the scrap iron and steel trade is excessive and could be administered with 15 or 20 percent of the proposed amount.

10. Protesting proposed assessment of one-twentieth of 1 percent of sales, by the Nonferrous Scrap Metal Trade Authority: This assessment would be a tremendous burden, particularly on the larger dealers. Suggests establishment of a minimum assessment of $10 and a maximum assessment of $100.

11. Louis Popper, Popper Iron Works, Chicago, Ill., protests the method of assessment for the scrap-iron industry, stating that the amount is satisfactory but the method of assessment is wrong because several assessments will be levied upon the same shipment of iron and this is wrong in practice and in spirit; urges that the method be changed so that a final assessment would be placed against the completed invoice to the consumer and that this change be made in code provisions.

12. Commercial Metals Co., New York City, writes that they have just heard through an article in one of the trade papers that the budget for scrap iron and steel trade is in excess of $50,000. This proposal has never been presented to the industry as a whole insofar as Commercial Metals Co. is concerned, and further, this company thinks that the amount is entirely out of proportion. Therefore, Commercial Metals Co. request that consideration be given the above statements.

13. Lumber and timber—assessments: (Emmons-Hawkins Hardware Co. Huntington, W. Va., asks to be exempted from two divisions' assessments for the above industry.

14. The Victor Cushwa & Sons, Inc., Williamsport, Md., state: "As a duly appointed and registered regional distributor for the Consolidation Coal Co., whose principal line of business is the mining and merchandising of its own product, operating under the rules and regulations of code authority, Eastern Subdivision of Division No. 1 and the Northern West Virginia Subdivisional Code

Authority: We hereby protest against the payment of any contributions to the Wholesale Coal Code Authority for the reason that our principal line of business is the merchandising of bituminous coal produced by our principal member, the Consolidation Coal Co., who is already contributing to the expenses and administration of the Code of Fair Competition for the Bituminous Coal Industry.

15. Subdivisional No. 1, Coal Code Authority of Western Pennsylvania, Pittsburgh, encloses protests made by the Spring Valley Coal Co., Zenith Coal Co., and the Cosco Gas Coal Co., all of Butler Pa., against the payment of assessment to this code authority. These companies list four reasons why the assessments are unjust and illegal.

DIVISION 2

1. General tool and implement: G. E. Ruhmann Manufacturing Co., Schulenberg, Tex., protests assessments under this code. They say they are operating under the fabricated metal products which comprises 65 percent of their business.

2. Pace Manufacturing Co., Chicago, Ill., protests budget of code authority for the coin-machine industry, two-tenths of 1 percent excessive for such a small industry; the budget is for $15,000, which will be used for furthering plans of the association to which the writer's firm does not belong. They claim this code was secured through misrepresentation and that the money paid to the code authority goes into the associations treasury.

3. Union Station Motors, Charlottesville, Va., protests the payment of assessment to the Motor Vehicle Retailing Code, inasmuch as their principal business is in the sale of petroleum products.

4. Fabricated metal products: F. Ehrsam, the Victor Tool Co., South Twenty-second Street, Reading, Pa.: "It doesn't seem reasonable, under the claim of assisting the small manufacturer, to tax them with an assessment of $12 for the period of 3 months during which they employed two men, or at the rate of $48 per year. Consider this a hardship entirely unwarranted.

5. The Shand & Jurs Co., Berkeley, Calif., say their objections to codes in general are that they impose too much detail on the small manufacturer. They point out that to carry out the spirit of the Administration, they consider it necessary to operate under three codes. These they think could easily be consolidated into one and this would save the Government and the manufacturer a great deal of time and expense. (B. S. King.)

DIVISION 3

1. Iver J. Erickson, Inc., Worcester, Mass., protests the assessment of 1 percent of gross volume in the budget for the roofing and sheet-metal industry. Request that a copy of the budget be sent them and that a public hearing be held so they may voice their objections.

2. Mohl Sheet Metal Works, San Gabriel, Calif., protests the assessment for the roofing and sheet-metal industry. (Letter referred from the White House.)

3. Radio wholesaling—R. B. Dunning & Co., Bangor, Maine, say this code is unjust to them. They protest paying a $40 assessment on $8,000 gross business.

4. Westinghouse Electric Supply Co., 113 North May Street, Chicago, protests assessment by code authority, radio wholesaling trade. Their 1933 radio sales were $200,488 which were only 4 percent of their total sales.

5. Westinghouse Electric Supply Co., San Francisco, Calif., protest the payment of assessment to Radio Wholesaling Code Authority inasmuch as they operate under General Wholesaling and the Electrical Wholesaling Code.

6. Westinghouse Electric Supply Co., Los Angeles, Calif., protest against the assessment for radio wholesaling for reason that this company is under the general wholesaling and electrical wholesaling supplement, signed August 23, 1934.

7. Electric Supplies Distributing Co., San Diego, Calif., protest paying assessment to Radio Wholesaling Code for reasons they have received notice that they will be expected to contribute to the code for electric wholesaling.

8. The Columbus Ignition Co., Columbus, Ohio, protest against paying assessment to Radio Wholesaling Code, inasmuch as they are already paying assessment to the Wholesale Automotive Code.

9. Morris Distributing Co., Inc., Binghamton, N. Y., protest paying assessment to the Radio Wholesaling Code Authority. Feels that the National Recovery Administration has increased the cost of doing business to such an extent that the payment of this excessive assessment would cause a very serious hardship.

10. Don's Automotive Service, New Bedford, Mass., states that they have received notice of assessment from division code authority, Radio Wholesaling Trade, Chicago. They protest this assessment on grounds that their business is principally wholesale automotive and they cannot afford to contribute to other codes.

11. Paper distributing trade (complaints): R. H. Buel Co., San Diego, Calif., protests contribution to this code in region no. 7, stating that since the code has been in effect prices have been cut by competitors until they have been unable to continue in this line of business without great loss. These conditions did not exist before the code was put into effect.

12. Bolter Paper Co. of Pittsburgh, Pa., protests assessment of paper distributing trade; the charge per employee having a tendency to cause employer to get rid of his workers. The National Recovery Administration should investigate this budget, since it is larger than many for large industries.

13. The Grand Bag & Paper Co., New York City, protest the contribution asked by the code authority for the paper distributing trade on the grounds that it is unjust and they have already contributed to the Tissue and Toilet Paper Converters Code Authority.

14. Paper distributing (complaint): W. W. Hinrichs, president Metropolitan Bag and Papers Jobbers' Association, Inc., New York City: At a meeting of this association a resolution was passed protesting assessment of $8.41 per employee and $0.841 per $1,000 for 1933 gross sales. This is excessive and unwarranted and they recommend such action as may be necessary to reconsider and reduce substantially their assessment.

15. Beacon Paper & Specialty Co., Chicago, protest assessment of paper distributing trade for reasons that this firm fails to see where the code has offered any protection against unfair competition. Due to Beacon Paper & Specialty Co.'s inability to buy in carload lots, this company cannot compete with the larger companies. Therefore, the price differences make it impossible for this company to contribute.

16. Ostermeyer Paper Co., Indianapolis, Ind., protest payment of assessment to Paper Distributing Code Authority, feeling that the basis of assessment is unfair.

17. Paper-distributing trade: The Robins Paper Co. protest assessment under this code. They say they are mill agents and representatives and confine their sales entirely to the wholesale and jobbing trade.

18. Farmers Union Cooperative Grain Co., Venango, Nebr., protest against paying assessment to the Retail Solid Fuel Code for reasons that they have paid assessment to the grain elevators, and grain and feed constitute about 99 percent of their business.

19. W. D. Sayler, Elsie, Mich., in the coal business, seeks exemption of the assessment by the code authority.

20. Bristol Retail Coal Merchants' Association, P. O. box 522, Bristol, Va.-Tenn., protest payment of contributions to the code authority for the retail solid fuel industry. Code is unfair in demanding payment of assessments to keep in force a policy that instead of helping the industry has practically demolished it. Code is unfair in that it does not give protection against cutthroat competition from trucks hauling direct from mine to consumer, and from operators or agents shipping direct from mine to consumer. Cost of coal at the mine has doubled in past year for legitimate coal merchants, trucks are buying from truck mines at less than half this price. Public and local authorities are not cooperating with merchants operating under this code. Truckers violating code; no action taken against violators. Unless some action is taken every legitimate coal merchant will have to close up. Three are already closed. This association consists of 12 dealers.

21. G. C. Lambert, Terre Haute Barber Supply Co., Terre Haute, Ind., asks exemption from the barber and beauty supplies code administration's assessment. (Letter referred from White House.)

22. J. F. Douglas & Co., New York City, writes that expense of administering the code for the woolens and trimmings distributing trade will add a burden on an already overloaded industry. Feels that the amount of traveling and also for legal advice is unjustified an unnecessary.

DIVISION 6

1. Isaac Lehte & Sons, Hancock, Mich., protest against paying assessment to the Retail Food and Grocery Code, inasmuch as this firm is already contributing to another code.

2. Retail food and grocery: Joseph Lala, 931 Clouett Street, New Orleans, La.: Re notice of contribution past due. He and his family are struggling to exist. His small grocery store with a stock of $50 does not afford them a living. Trusts he will be exempted from this contribution. (Complaint.)

3. Food and Grocery Distribution Code: The Culter-Dickerson Co., Adrian, Mich., state that they have received a notice from the National Food and Grocery Distribution Code Authority demanding that they contribute to their code authority. The Culter Co. protests such a contribution because they are not distributors of food. They are millers of flour and as such are contributing to the code authority for the Wheat Flour Milling Code.

4. Wholesale food and grocery: J. S. DaFoe, 724 East Foothill Boluevard, Monrovia, Calif., protests the paying of $1 to this code. His business has not earned a dollar in 5 years. Claims, the code has only helped corporations and monopolies and oppresses the individual. (Complaint.)

5. Wholesale food and grocery: Emily O. Lloyd, 2321 Cooley Place, Pasadena, Calif., protests the paying of $1 per worker per year. In the first place she operates a small chicken ranch and for this reason she feels she does not come under the Wholesale Food and Grocery Code.

6. Wholesale confectioners: Rochester Area Wholesale Confectioners Association, 456 State Street, Rochester, N. Y., protests signed by several members of this association, protesting the method of assessment. The exempting of wholesale grocers, tobacco jobbers, and wholesale drug houses is absolutely unfair and discriminatory. This gives them about 35 percent of the candy business at no cost for the upkeep of the code. (Complaint.)

7. Paris Dairy Products Co., Paris, Tenn., protests the payment of assessment to the Bottled Soft Drink Code Authority, inasmuch as their principal business is the bottling and distributing of milk.

8. J. W. Zimmerman & Co., Charlotte, N. C., is a small concern and member of the Wholesale Fruit and Vegetable Code. Their revenue from refrigeration is about $1,000 per year. They protest against paying the assessment of the Refrigerator Code Authority.

9. Candy manufacturing: The Powell Candy Co., Curley Candy Co., Baynton Candy Co., E. E. Johnson Co., Cunningham Candy Co., Johnson Candy Co., Olseen Candy Co., Fisher Nut Co., of St. Paul and Minneapolis, protest the budget of this industry. They say it is excessive and in their opinion should be cut to $105,000.

10. The J. M. Clayton Co., Cambridge, Md., writes in protest of the additional assessment under the Fresh Oyster Code, also the two-tenths of a cent per pound on crab meat sold as asked for by the Crab Code. This amount is in addition to the one-tenth of 1 percent assessment on gross sales already paid. The J. M. Clayton Co. states that as far as they are able to see no good has come to them from the code.

DIVISION 7

1. Graphic Arts Code: Van Vick Paper Box Co., Duluth, Minn., state that they have received a notice of a local branch of the Graphic Arts Code Authority demanding $18 dues. They protest such an assessment and ask if it is necessary for them to recognize this charge. They are now paying dues to both the Folding and Set Up Paper Box Codes. Their printing department is used only for printing on boxes manufactured by themselves.

2. The Acme Press, Knoxville, Tenn., protests the payment of $18 assessment to the Graphic Arts Authority. Believes it to be unjust inasmuch as they operate only one small press.

3. R. E Hefferman, a small printer, Louisville, Ky., claims his assessment is 23 percent of his annual pay roll, while larger concerns pay but 3 percent.

4. Graphic arts: The College Press, Topeka, Kans., protests assessment of $25.38. They say this is based on a budget of $200 per month; that the budget submitted by the regional association was $50 per month. They say the $200 budget was never authorized by the regional association and was adopted without the consent and knowledge of the association.

5. Graphic arts assessment: S. Rosenthal & Co., Cincinnati, Ohio, protest that the basis for contribution is unjust as applied to them.

6. B. F. Barr, Altoona, Pa., protest an assessment notice received from the Graphic Arts Code Authority demanding a $12 contribution. He states that he has a small shop and does all of the work himself and has an income of only $50 per month.

7. Graphic arts: O. G. Dunn, New Bern, N. C.: While he is paying his assessment and complying with the code he feels he is about the only printer in his section who is complying and the money spent for code authorities is wasted. His dues of $18 per month are outrageous, and he only pays it because the law requires it, but it does not make them feel any more kindly toward the administration which has put this extra expense on them.

8. Journal Printing & Stationery Co. of East St. Louis, Ill., protests budget for the Graphic Arts Code; at the present time it is unenforcible and only adds to the expense of overtaxed individuals.

9. Ovid Bell Press, Fulton, Mo., protest assessment to Graphic Arts Code; they object to paying any salary to officials of the Typothetae of America and to paying of salaries to the Cost Estimating Bureau in St. Louis, Mo.

10. Morris Nogrady, New York City, writes that he has protested before to M. D. Walsh, deputy administrator, National Recovery Administration, that in paying assessment to the Graphic Arts Code, he considers any contribution to this code as taking "bread and butter" away from himself and only paying for a rope with which the Code Authority will hang him.

11. J. B. Lyon Co., publishers, New York City, protest $600 monthly assessment asked by the Code Authority for Graphic Arts Industry; this is about three times the amount ever paid to the Typothetae group. They have never received any benefits of the code, violations go unpunished, and there is a great deal of uncertainty regarding future and policies of the National Recovery Administration. These are all good reasons for objecting to this heavy assessment.

12. Hugh W. Radford, Cincinnati, Ohio, protests the payment of assessment to the Franklin Typothetae of Cincinnati, and asks exemption inasmuch as the work he does is for a church and he makes no special charges.

13. Graphic Arts, printing, budget: Southern Printing Co., Charlotte, N. C. "We are of the opinion that any contribution to the budget is simply charity or graft, inasmuch as no good whatever has resulted from the Printing Code.

14. Wayne Paper Box & Printing Corporation, Fort Wayne, Ind., protest that the assessment by the Commercial Relief Printing Code Authority is excessive and they cannot afford to pay so much, especially since they have to contribute to two other code authorities.

15. Stafford Photo Engraving Co., Fort Worth, Tex., protests that the budget for the Photo Engraving Code Authority for that district is unnecessarily high, unfair, and unreasonable. They are paying willingly to the National Association, but feel that to pay more than double to the local organization is all out of reason.

16. Shreveport Engraving Co., Inc., 408-10 Marshall Street, Shreveport, La., proposed assessment under budget for the photoengraving industry entirely out of line and unfair. Feel some one is trying to make a good job for himself at expense of the industry.

17. Trade Mounting and Finishing: R. Ellars, Columbia Steel Rule Die Corporation, 270 Lafayette Street, New York City, protests six-tenths of 1 percent assessment on gross sales as being too high in comparison with one-tenth of 1 percent charged them by the Special Tool, Die, and Machine Shop Industry. They were assessed 1 percent on their April and May sales which they paid with the understanding if an adjustment was made, the difference would be credited to them.

TEXTILE DIVISION

1. Silk Manufacturers Association, by Max M. Baker, secretary, Paterson, N. J., protests the proposed budget for the Silk Textile Code Authority as submitted.

2. The Elite Co., New York City, protest against payment of an assessment to the Silk Textile Code for reasons that the methods involved are unjust and out of line, particularly when merchandise such as this company manufactures is assessed again when the customers get it.

3. Salumbriar & Valate, Inc., New York City, protest against the assessment for the throwing industry on the grounds that the notice purporting to be a notice of contribution dues does not comply with the requirements of administrative order X-36, and further, throwing is not the principal line of business with this firm.

CHEMICAL DIVISION

1. United States Shine-Stik, Inc., New York City, protest against paying assessment to the shoe and leather finish polish and cement industry for reasons that this firm is hardly able to live on the profits now made and cannot possibly pay any amount toward this cause.

2. The Pulverized Manure Co., Chicago, Ill., protest assessment of 4 cents per ton on manipulated manure for fertilizer. This is unfair and diciriminatory against the small manufacturers, they feel.

3. Fertilizer: The Shoe Fertilizer Co., Plant City, Fla., protests assessment under this code. They say their business is local and they do not compete with any of the members of the industry.

4. Royal Mounters, Inc., Long Island, N. Y., protest the payment of assessment to the Photographic Mount Code Authority. State that it is impossible to bear this added burden and remain in business, especially since the price-fixing provisions has been discarded.

MISCELLANEOUS

1. Savini Films, Atlanta, Ga., complain that they have been assessed $16 per month for membership in the National Recovery Administration. Their organization employs only one outside party and business does not warrant such assessment. They therefore resign from National Recovery Administration codes, effective immediately.

2. Samuel Weber, artist, New Haven, Conn., protests that he is unable to make any payment to the National Recovery Administration office at Hartford as demanded. Will do so when and if he obtains the cash.

In addition to this there were 15 protests against applications of code authorities for exemption from administrative order X-36. Three milling companies, a member of the Cotton Glove Industry and the Paint Industry Recovery Board send general protests againt the approval of such applications. The United States Wholesale Grocers Association, the Paint, Varnish, and Lacquer Code Authority, and one other writer protest against the application of the Book Manufacturing Code Authority. The National Wholesale Druggists Association and one other writer protest against the application of the Commercial Relief Printing Code Authority. The Radio Wholesale Code Authority protest against application of the Electrical Wholesale and Hardware Wholesale Code Authorities. There were two protests against the application of the Grapic Arts Code Authority and one protest against the application of the Button Jobbers Code Authority.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. HENDERSON OF COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NO. 102 (COVERING SEPT. 6, 7, AND 8)

SEPTEMBER 8, 1934.

DIVISION 1

1. Smallhouse Marble Works of Bowling Green, Ky., protest action of district 8 regional code authority, who is reducing the 1-percent assessment to three-fourths of 1 percent but tacking on a minimum of $1 monthly fee. This is, the writer feels, another move by the large dealers to injure the small. (Fogg.)

DIVISION 2

1. Dakota Equipment Co., Sioux Fall, S. Dak., protest payment of $6.93 to the construction machinery distributing trade on the grounds that they have not exercised any privileges nor shared in the activities of the code authority and they are operating under the road machinery manufacturing industry.

2. Imperial Casket Co. of Leesville, S. C., protests the assessment of 15 cents per casket levied by the code authority. This works a hardship on small firms who produce cheap caskets, while those producing few expensive caskets pay comparatively nothing. The writer states that formerly the old casket manufacturers' association had an assessment proportionate to the amount of business in dollars and cents, but a certain group of manufacturers who deal in expensive products now control the code authority.

DIVISION 3

1. Senator Walsh of Massachusetts forwards a letter from the Watertown Electric Co. of Watertown, Mass., protesting assessment of the Electrical Contractors Code Authority. They are asked to pay 1 percent of their monthly pay roll; also on every bid they submit they are taxed additionally. The writer wishes to know whether the code authorities can sue and collect through civil courts for nonpayment.

DIVISION 4

1. Funeral service: H. S. Roth, Middletown, Pa., protests any contributions to this industry, in view of the fact that they have contributed to the Furniture Industry Code, which embraces their principal line of business. They do not feel justified in contributing to a code from which they derive no benefit.

2. Funeral service: Armand Hiscox, Lincoln, at Fifth Street, Wayne, Nebr., protests paying of $12 or any other fee in connection with this industry. This is a town of 2,350 and he had less than 50 funerals during 1933.

3. Funeral service: Walter E. Fitzgerald, Ware, Mass., and William R. Lange, Fennimore, Wis., protest assessments under this code.

4. National Funeral Home, Memphis, Tenn., encloses five copies of a protest against the levying of any contribution in support of the funeral service industry. Would be glad to have an opportunity to be heard on this protest.

5. Retail solid fuel: George Horn, 23 Norwich Ave., Providence, R. I., protests assessment under this code. He says his margin of profit since the code went into effect has been cut in two.

6. Mrs. Z. F. Fisher, Berry, Ky., operates a general merchandise store and sold coal as a side line. The divisional code authority of Louisville has assessed her $15.38 for the few months. They have informed Mrs. Fisher that she is liable for assessment according to Federal law. She protests the assessment and requests a ruling immediately.

7. Pittsfield Iron Works & Coal Supply, Pittsfield, Mass., writes that inasmuch as there have been no benefits offered or derived from the Retail Solid Fuel Code, they do not see why it is necessary for them to pay assessment.

8. L. C. Knox, Columbia, S. C., writes in protest of the assessment for retail solid fuel, stating that because he does not belong to the association he does not feel that he should contribute.

9. Retail Monument Code: Joseph J. Brooks, West Philadelphia, protests a recent assessment of 1 percent on gross orders. He is sole owner of small business selling memorials. Gross business does not exceed $6,000 per year. He contends that $60 per year is excessive to his business which is already burdened with real estate, mercantile, and other taxes.

10. Shoe rebuilders: Mr. Patsy Derrico, 8 West Main St., Rockaway, N. J., says a man representing himself as an inspector for the shoe repair shop asked for a fee of $9. He wants to know if he has to pay this or not. He says he paid some money.

DIVISION 6

1. Mayonnaise, assessment: Brockelman Bros., Fitchburg, Mass., protests assessment by the above industry.

2. Blanke Baer Co., St. Louis, Mo., protests against the assessment of the Mayonnaise Code Authority and asks that assessment be changed to comply more closely to the needs of the industry. Complains especially with regard to those firms who handle mayonnaise as only part of their business.

3. A. E. Wilkenson, Wilkenson Grocery, Fort Worth, Tex., encloses notice of assessment past due from the local Food and Grocery Distributors Code Authority. The writer claims that he has already paid $2 and cannot afford to pay more.

4. Coffee, assessment: Mannings, Inc., San Francisco, protests assessment by the above industry committee. They state that they have already paid assessment to the retail food and grocery trade.

5. Galbon & Co., Inc., New York City, complains that they have received a notice of assessment for $10 from the Wholesale Fresh Fruit and Vegetable Distributive Code Authority. They explain that they are exporters and importers and are not subject to this code.

6. Sea-food division, Crisfield Chamber of Commerce, Crisfield, Md., states that oyster packers in that city protest the increased basis of contribution for the maintenance of the Oyster Code, stating that such an increase is uncalled for and unnecessary.

DIVISION 7

1. Mitchell Printery, St. Petersburg, Fla., protests the payment of assessment to the Graphic Arts Code Authority local association in addition to the national association.

2. Graphic arts: The Acme Art Co., 342 West Sixty-ninth Street, Chicago, Ill., protests assessment of $2 per month. They say their gross business is only about $150 per month. (J. E. Williams.)

3. Graphic arts: C. C. Ward, River Rouge Herald, River Rouge, Mich., forwards copy of protest sent to C. A. Baumgart, 134 North La Salle Street, Chicago, Ill., re Budget assessment: They have no printing plant. Their's is a free-distribution newspaper, practically a handbill, as far as coming within the scope of this organization, because they have no subscription list and do not do job printing. There are no provisions to increase their revenue, so why they should contribute to a cause that forces payment of more money without any return benefits, is beyond them. Asks if they will be forced to pay same. (Complaint.)

4. Photoengraving: F. J. Rieger & Son Co., Toledo, Ohio, protest the assessment under this code. They say they are out of proportion to their business. They say they are loath to pay more than their share and are thinking of returning their "blue eagle."

TEXTILE DIVISION

1. Miss Sylvia Scharf, of New York City, states that inspectors have visited her father's small store and have demanded that he buy NRA labels for caps at 15 cents. The inspectors have threatened Mr. Scharf and if he is compelled to purchase the labels he must close his shop.

CHEMICAL DIVISION

1. The Huntington Laboratories, Inc., Huntington, Ind., complains that the code authority for the Furniture Floor Wax and Polish Industry is making demands on them for a contribution to their code expense.

2. Dry color industry: E. M. & F. Waldo Co., Muirkirk, Md., protest the assessment under this code. They say it is unconstitutional, they cannot afford it, and they receive no benefits from the code administration. (Dahlberg.)

In addition to these protests there were four protests against applications of code authorities for exemption to Administrative Order X-36. The Fabricated Metal Products Federation, Washington, D. C., protests against the application of the Buffing and Polishing Wheel Composition Code Authority. The Farmers' Cooperative Association Dawson, Nebr., protests against the granting of exemption to the Retail Solid Fuel Code Authority. There was one protest each against applications of the following code authorities: Scientific apparatus, and automotive parts and equipment manufacturing.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. HENDERSON OF COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NO. 101 (COVERING SEPT. 4 AND 5)

SEPTEMBER 5, 1934.

DIVISION 1

1. Bituminous Coal Code: The Benwick Fuel Co. of Flemington, W. Va., states that they have received many requests for payments of assessments from the northern West Virginia code authorities for months of June and July. They have been threatened by national code authority, State code authorities, and county authorities. They cannot possibly pay the required assessment.

DIVISION 2

1. Metal treating: Auto Engine Works, St. Paul, Minn., protests being subject to assessment and code provisions of above code.

2. Fabricated metals: Durkee Manufacturing Co., New York, protest payment of above assessment.

3. Sparta Foundry Co., Sparta, Mich, protest the payment of assessment to the Gray Iron Foundry Code Authority, inasmuch as they pay assessment to the Auto Parts Equipment Manufacturing Code, which covers the major part of their industry.

4. Wheelan Studios, New York City feel that in view of the fact that only $8,000 per month was necessary for the first 4 months of code operation, the contemplated $18,000 per month for the next 5 months, or $215,000 a year seems excessive for the operation of the Photographic and Photo Finishing Code Authority.

5. Construction machinery distributing trade: Arkansas Tractor & Equipment Co., Little Rock, Ark., protest assessment by the above industry as they are operating under Foundry Equipment Industry and Read Machinery Manufacturing Industry. (Cope.)

DIVISION 3

1. General contractors (Stanford): A. R. Johnston Co., Center Stratford, N. H. He has had this particular job 3 days and he is informed by the divisional code authority for General Contractors, Inc., for the State of New Hampshire that he is to pay one-tenth of 1 percent on the total amount of the job. This job is for $4,350.98. They submitted bill for even $5. Due to competition it is almost impossible to figure a bid and come out even, without additional cost of supporting, he does not know how many, code offices. (Complaint.)
2. Contractors Code: C. A. Stigelman, Millersville, Pa., reports that he has received four threatening letters requesting assessment to General Contractors Association.
3. L. M. Broadrick, Houston, Tex., protests the payment of assessment to the Painting, Paperhanging and Decorating Code Authority, stating that he does not average $5 per month and cannot afford to pay.
4. The Tidewater Plumbing and Heating Association, Norfolk, Va., writes that quite a few of their members are complaining that they are being assessed $5 for placing the Plumbing Code in effect. Are at a loss to know why they are being assessed at this time, since they are receiving no benefit from the code.

DIVISION 5

1. Funeral service: W. W. Mason, Chicago, states he is unable to pay the above assessment as his business does not provide him enough to keep his family.
2. E. E. Jameson, Fairgrave, Mich., and Wilmot & Cook, East Thetford, Vt., protest assessment under funeral service industry. They both do only a small business and Mr. Jameson says he has to pay the same as his neighbor who has 100 funerals a year. (Patrick.)
3. Funeral service (Patrick): Andrew Dow, Elwood, Nebr., advises he is sending 50 percent of his annual assessment under protest as he considers it a most outrageous and uncalled for tax to small undertakers. Also feels the officers of the code authority have shown themselves to be very selfish in voting such salaries and per diem expenses to themselves. (Complaint.)
4. O. I. Tuell, Tacoma, Wash., protests payment of $6 to funeral-service industry.
5. Laflin-Ward-Soper Co., Barryton, Mich., protests assessment to funeral service industry; impossible for small undertakers in small towns to meet assessment.
6. Mrs. A. Elice, Masonic Theatre, New Washington, Ind., writes that she joined Motion Picture Code without knowing that there were such assessments to it. The theater is open only 1 night each week and for only 1 show and the admittance is only 10 and 15 cents. Requests that the assessment of $15 per year be lowered.

DIVISION 6

1. Michigan Bakers, Grand Rapids, Mich., protest the assessment for the Baking Code, especially the $10,000 per year rental for offices of the code authorities. The entire amount is out of proportion.
2. Charles Wiesmantel, Mineola, Long Island, N. Y., writes in protest of the bakers' code assessment and requests that time be extended for him to read over the proposals. Mr. Wiesmantel would like to have the time extended to October 1, 1934.
3. The Coston Co., Inc., Hampton, Va., protest against the assessment for the blue-crab industry, stating that more than half the industry want the code abolished. One more protest was received, the writer's name not having been recorded.
4. Mayonnaise: 727 J Street, Sacramento, Calif., the Columbia Market protests assessment by this code authority. They say it is only a small part of their business. (Q. E. Riley.)
5. Griscom Bros., Trenton, N. J., protest paying assessment to the Mayonnaise Code on the grounds that they have already paid $11 to the Meat Code.
6. Albemarle Peanut Co., of Edenton, N. C., protests the budget for the Raw Peanut Milling Code; the industry is not large enough to stand these levies. (Carlson.)

DIVISION 7

1. Graphic arts (Walsh), Talmadge Dunlap, owner, Dunlap Printing Shop' Tad, W. Va., re assessment of $12 received from the Graphic Arts Code and the Appalachian Ohio Valley Printers, Inc., Parkersburg, W. Va. He cannot pay this bill, in fact, he told the man when he signed this code he was doing it under protest. His principal business is covered by the Retail Code, which he has signed. Dunlap Printing Shop is only a trade name; in July he did not do any print jobs and in August only $68. The little printing they do is a side line. If forced to pay, he will close the shop at once. (Complaint.)

2. Graphic arts, assessment: Pacific Mills, Boston, protests assessment for this industry. State they operate under Cotton Textile and Woolen Codes.

3. Lithographic printing, assessment: Rayner, Dalheim & Co., Chicago, protests assessment by the above industry.

4. Commercial relief printing (Walsh), Albert O. Wells, the Seminary Press, 2535 Seminary Avenue, Oakland, Calif.: It seems he will be forced out of his shop. He is told by the Associated Printers under the guise of the N. R. A., that he will have to pay $2 per month and threaten him with court proceedings if he does not report his mechanical pay roll. As he has employed no help and has done his own work he sees no way of acceding to this demand. All information he has previously given this association has been used to his disadvantage. (Complaint.)

TEXTILE DIVISION

1. Northwest Leather Co., Seattle, Wash., writes in protest of the assessment for Leather and Shoe Findings Code. This group feels that the expense in this area is too great for the administrating of the code. Others same as above, Duncan & Sons, Inc., Seattle, Wash.

2. Ready-made furniture slip covers, budget: Paroma Draperies, Inc., New York, protests the above proposed budget as excessive.

3. Ralph T. Barney, Canaan, N. H., writes that he cannot understand why the National Recovery Administration has the right to compel him to pay tribute to the Furriers Code. Writes that his fur-dealing business has not yielded enough in the past 4 years to meet bare living expenses and these code restrictions only add to the difficulties.

PUBLIC UTILITIES DIVISION

1. Trucking industry: L. M. Ward, of Glens Falls, N. Y., states that a certain man has been holding meetings for truckmen in this town and claims to be working for National Recovery Administration. He is demanding that all truckers pay $3 for each truck. Several have paid the $3 but have not received emblem or receipt.

CHEMICAL DIVISION

1. Furniture, floor wax, and polish: The Clifton Chemical Co., 246 Front Street, New York City, protests assessment under this code. They say it constitutes less than 5 percent of their business and that they are operating under the Soap and Glycerine Code. (George L. Berry.)

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. HENDERSON OF COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NUMBER 94 (COVERING AUG. 9, 10, AND 11)

AUGUST 11, 1934.

DIVISION 1

1. H. L. Ruppert & Co., St. Louis, Mo., submits copy of letter to Investment Bankers Code Committee protesting budget and attorneys fees of $44,000 as unreasonably large; $7,500 for publicity uncalled for; $34,000 for salaries unnecessarily large.

2. The Southwestern Plywood Association, Mempnis, protest the approval of the budget of the Plywood and Veneer Association for the period from January 1, 1934, to December 1934. The Southwestern Plywood Association, with an estimated gross income of $10,000, cannot administer the Code or even exist if it is forced to remit $6,000 direct to the Plywood and Veneer Association.

3. Feldspar: The Orford Soap Co., New York City, protest the charge of 1 percent of the dollar sales as being excessive. This will substantially increase the cost to the consumer. Also objects to that part of the budget which compels the purchaser of feldspar to act as a check-off for the purpose of collecting the fees of the code authority. Unless some more sensible plan is worked out, it will tend to destroy the good work which has been accomplished by National Recovery Act.

4. Metropolitan Store Fixture Dealers Association, New York City, protest assessment of the Commercial Fixture Code Authority as being too high.

5. Lumber and timber products: Archie Wood, Darsey, Ill., protests any assessment being made against him. On his 40 acres of land he has timber that was torn up by a cyclone, and he has sawed about 7,000 feet in the last year, and he still has part of it now. He didn't sell enough to pay his store bill.

DIVISION 2

1. Marking devices: Edw. R. Simmons, Bristol, Conn., protests any assessment by the International Stamp Manufacturers Association of Chicago.

2. E. Muerdter, advertising specialties, Philadelphia, protests that the assessment for the Advertising Specialty Code is unfair, unjust, and outrageously high. Says that it is higher than any Federal, State, or income tax.

3. Max Stern, New York City, protests against paying assessment to the Precious Jewelry Code Authority, because he is not doing any precious jewelry business and he has been overrated.

4. Business furniture, storage equipment and filing supply: I. M. Levy, Art Steel Co., Inc., New York City, writes: "The budget is terrifically out of line and represents a figure in excess of what is required to comparatively administer the code. There are approximately 45 concerns, with about 28 that are active. If you assume a per capita cost on the total 45, each concern would be charged in excess of $1,000. First. The amount of $21,000 for clerical help is excessive with chief executive's salary of $11,000 representing more than 53 percent of the amount set aside for clerical help. Also $18,000 for traveling expenses represents about 37 percent of the total budget."

5. Robert Merkle, of Grand Rapids, Mich., protests assessment received from Precious Jewelry Producing Code Authority.

6. Max Jellenick, New York City, protests the sum of $15 assessment for the Precious Jewelry Producing for reasons that the code authority has no right to assess him because, as a dealer, he (Jellenick) does not come under the code.

7. Michel Mutchnik, New York City, protests as above.

8. Alex Kosman, New York City, protests as above.

9. The 14K Fixing Co., New York City, protest assessment of $25 by the Precious Jewelry Code. They say they are members of the Medium and Low Priced Jewelry Code and are contributing to it.

10. Deelette Jewelry Novelty Co., New York City, protest paying $75 assessment to the Medium and Low Priced Jewelry Code, stating that this firm is operating at present under two codes and do not see any reason why a third should be forced upon them.

11. Medium and low-priced jewelry: M. Bierman, New York City, in compliance with Executive order X–36 protest the attempted levy by the Medium and Low Priced Jewelry Code Authority. They are now contributing to the button jobbers wholesalers' trade, which embraces their principal business. The Medium and Low Priced Jewelry Code is a manufacturing code and is not applicable to their business.

12. Chatham Button Corporation, New York City, decline to pay the $60 assessment to the Medium and Low Priced Jewelry Code Authority because they are not a member of that code.

DIVISION 3

1. Frank L. Lilly, of Belfast, N. Y., protests against submitting to the Roofing and Sheet Metal Code. He has been notified of an assessment of $10 from Clarence J. Meyer, State code authority, chairman of New York State.

2. Pacific Chemical Co., Los Angeles, Calif., asks to be relieved of assessments to Furniture and Floor Wax Code. Business under this code represents only 3 percent of their total sales for 6 months ending May 31, 1934.

3. The Old Town Co., of Old Town, Maine, protests against paying an assessment levied on them by the Food Dish & Pulp and Paper Plate Code Authority on the grounds that they are paying assessment to the Paper and Pulp Code Authority and deem it excessive to submit to any other code.

DIVISION 4

1. Retail solid fuel: Independent Coal Co., Kingston, N. Y., protests assessment by the above code authority as being a burden to their business in present circumstances.

2. Kroll Co., importers of diamonds, protests an invoice for a $25 assessment.

3. Rug-Tex Corporation, Chicago, operates under and pays assessment to the hair and jute felt industry. They have been informed that they also have to pay to the Covered Carpet Padding Code Authority. Request information.

4. Novelty Curtain, draperies, bedspreads, and novelty pillows: The Majestic Curtain Co., New York City, protests the proposed method of assessment.

5. Manufacturing Jewelers and Engravers Association, Louisville, Ky., protest the Retail Jewelry Code Authority trying to assess this group, claiming they only do trade work for the stores of this city, therefore should be exempt.

DIVISION 5

1. Rosebud Manufacturing Association, New York City, claim they never have seen a copy of the budget and they do not know for what purpose the moneys are to be expended, therefore they protest paying their assessment.

2. Javits & Javits, New York City, writes in protest of the budget and basis of contribution submitted by the Code Authority for the Millinery Industry.

3. Artificial flower and feather: Dr. H. Dux Co., Inc., Jacksonville, Fla., protest the budget for the above code authority. They believe that $40,000 could not be used properly for administration of this code for a period of 6 months. They refuse to sanction such a sum until an itemized budget is submitted. Ten more such protests were received.

4. John H. Gleason, New Brunswick, N. J., states that the Middlesex and Somerset Counties Funeral Directors' Association protests the proposed budget for the Funeral Service Industry, stating that enforcement of this code is lacking and urges the budget be revised before finally enacted.

5. The Monarch Pictures Co., Detroit, Mich., protests assessment by the Motion Picture Code Authority of $12 per month. They say their business cannot stand it.

DIVISION 6

1. John Joseph and Benjamin Lange, owners J. & L. Bottling Works, protest the assessment of $10 by the Bottled Soft Drink Code Authority in view of the fact that they have a total investment of less than $500.

2. The Star Bottling Works, Inc., Philadelphia, protest assessment by the Wholesale Beer & Wine Distributors' Code Authority. Seventy percent of their business is soft drinks, and beer constitutes only a minor part of their activities.

DIVISION 7

1. Graphic arts: Harold W. Brown, Brown Art Co., Schenectady, N. Y., protests the minimum assessment of $5 per month, regardless of how small the printer, or how little work he might do. The assessment should be in direct proportion to the actual pay roll.

2. E. W. McClelland, Minneapolis, Minn., writes in protest of budget for the graphic arts. Twenty dollars per thousand per month on the mechanical pay roll is too much. Some of the larger companies, Mr. McClelland states, are refusing to pay the assessment on account of it being too high. The price paid officials is excessive.

MISCELLANEOUS

1. C. G. Gilmore of Roswell, N. Mex., protests paying an assessment the notice of which was received from the code authority. The amount was $10, which Mr. Gilmore contends is unjust. (Industry not recorded.)

2. Two additional protests against code authority assessments were received. In neither case was the industry protested recorded.

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

MEMORANDUM TO MR. HENDERSON OF COMPLAINTS ABOUT CODE AUTHORITY BUDGETS AND FEES FROM BIWEEKLY MAIL SUMMARY NO. 88 (COVERING JULY 19, 20, AND 21)

DIVISION 1

1. Retail tire: A. E. Caldwell, vice president and general manager Atlas Supply Co., Newark, N. J., representing Colonial Beacon Oil Co., Standard Oil Co. of New Jersey, Standard Oil Co. of Pennsylvania, Standard Oil Co. of Louisiana, the Standard Oil Co. (Ohio), Standard Oil Co. (Kentucky), Standard Oil Co. (Indiana), Standard Oil Co. (Nebraska), Standard Stations Inc., Utah Oil Refining Co., protests method of assessment as provided under proposed budget of retail rubber tire and battery trade. This plan is unfair and discriminatory in that an outlet selling over $50,000 from 1 store would pay an assessment of $25, while if same volume of $50,000 were done through 100 outlets doing a volume of $500 per year, the assessment would be $100 or four times the amount.

DIVISION 2

1. Concrete masonry: The Norristone Lawn & Garden Furniture Studios, Rochester, N. Y., protest an assessment of the concrete masonry industry. They state that they do not come under this code.

2. Die casting: C. O. Skinner, secretary, C. A. Automotive Parts and Equipment, 800 Michigan Theater Building, Detroit, Mich., protests members of the industry being assessed by the die casting manufacturing industry.

3. Milbradt Manufacturing Co., St. Louis, Mo., writes relative to the Code Authority for Power and Gang Lawn Mower Industry, stating that this firm protests paying assessments to the code authority on the grounds that this group are competitors of theirs and further, two of the code authority members are having complaints of violations filed against them by the Milbradt Manufacturing Co. Until changes are made, the Milbradt Manufacturing Co. feels they are being assessed unfairly, and request is made to consider their views on the matter.

4. Lumber: Ralph P. Johnson of Hargus & Johnson, attorneys, Osceola, Mo., protest attempt to include and assess ($50 code authority assessment), and tax (65 cents per hundred feet) small lumber mills owned by farmers, who saw a few thousand feet during the fall and winter, sometimes on shares, sometimes for 50 to 60 cents per hundred. To pay the code fee will put them out of business.

5. Special tool, die and machine shop assessment: Marion Machine, Foundry & Supply Co., Scottdale, Pa., protests requests for payment of assessment under the above code unless it is determined that they should be considered a member of this industry. Operate now under both the Gray Iron Foundry and M. A. P. S. Codes.

DIVISION 3

1. Justis Grun, 580 Fifth Avenue, New York City, protest $50 assessment by Code Authority of the precious jewelry producing industry. Assessment unjust because investment in jewelry has never exceeded $50,000.

2. Sobel & Kalesko, 71 Nassau Street, New York City, protests $100 assessment under this code.

3. Joseph F. Sulger of New York City returns a notice of assessment for $15 from the Precious Jewelry Producing Code Authority. They quote a capital rating of $4,000 and they contend that this is excessive.

5. Construction: R. L. Kent Co., Van Nuys, Calif., protests (to White House) assessment for this industry by submitting copy of letter addressed to "Code Officers, 350 Chamber of Commerce Building, Los Angeles."

DIVISION 4

1. Narrow fabrics: Columbia Narrow Fabrics Co., George P. Clark, Shannock, R. I., writes in protest of the $50,000 per year budget for Narrow Fabric Code Administration. Mr. Clark further protests that he will be in worse financial condition if this is allowed, than before National Recovery Act.

2. Narrow fabrics industry (Feibel): A. Lifelone, President, Lowell Covered Rubber Thread Co., Inc., 217 Jackson Street, Lowell, Mass., protests being taxed one-fifth of 1 percent on their net dollar sales, for the support of the chief executive officer of the code and others connected with it. They expect to spend $57,000. In his estimation it seems ridiculous to have a whole office staff which is mainly used in sending out bills and collecting the dues for the support of these

officers. While he wishes to cooperate, he feels that they are taxed too high and it should be cut down to one-tenth of 1 percent.

3. The Ettenger Manufacturing Co., Chicago, Ill., protest against the budget for Light Sewing Code which amounts to $8,390 and request to be relieved.

4. The Albatross Quilting Co., Cicero, Ill., writes in protest of the excessive amount proposed by the Code Authority for Light Sewing ($8,390), and requests relief from this assessment.

5. Light sewing: Ajax Quilting & Manufacturing Co., Chicago, Ill., writes in protest of the budget for Light Sewing Code administration which amount is $8,390, and this company requests to be relieved of this burden.

6. Retail jewelry: Jack Wessel, diamond cutter, 87 Nassau Street, New York City, protests assessment of $25. He says he never employed more than one man and he is on part time.

7. Retail jewelry: Charlotte Jewelry Co., 176 Essex Street, New York City, protest assessment of $1 per year by Local Retail Jewelry Association. They say they only employ 1 person 1 day per week.

DIVISION 5

1. Cotton glove: D. A. Puls, treasurer, Frontier Glove Co., Buffalo, N. Y., protests the assessment of one-half of 1 percent as unreasonably high. One-eighth of 1 percent should be the most that is paid for any of the code authorities.

DIVISION 6

1. Food warehousing: California Warehousemen's Association, San Francisco, Calif., writes in protest of the $3 assessment imposed on that part of the grain warehouse industry that operates one, two, or three separate warehouses. The other $3 assessment is satisfactory.

2. Blanke Baer Extract & Preserving Co., 3224 South Kingshighway, St. Louis, Mo., protests assessment of $175 by the Mayonnaise Industry Code Authority. Code authority budget is not as yet approved; neither is their application for exemption from order X-36.

3. Food and grocery: West Newton Milling Co., West Newton, Pa., protests assessment under the above code.

4. Peanut butter, preserve manufacturing, assessment; Stone Mountain Products Co., Atlanta, protests assessments by the above industries, stating they pay assessments under Mayonnaise Code.

DIVISION 7

1. Graphic arts: Harry Goodman of 2307 Jefferson Street, Philadelphia, Pa., protests an assessment made by the Typothetae of Philadelphia.

2. Graphic arts: Wm. G. Behe, Millers Falls, Mass., protests emphatically against the $10 assessment sent by the Graphic Arts Association. He has a 1-man print shop and such assessment is burdensome.

3. Graphic arts: Harbison & Harbison, Oceano, Calif., protests assessment of $10 by National Code Authority.

4. Graphic arts: Local printers, Sacramento, Calif., write in protest of the budget set by local Typothetae board as being unfair and excessive for minor duties to be performed.

3. Graphic arts: George J. Witzel, protesting the budget for the code authority believes that the amount could be cut 30 percent giving the following reasons: (1) Believes there are too many committees; (2) believes the pay roll is greatly padded; (3) believes the cost of operation is entirely too high; (4) believes the printing industry of the United States cannot pay the necessary assessments to support such a topheavy organization.

6. Graphic arts: James J. Kennedy, Patchogue, N. Y., enters protest against contribution to the graphic arts industries as unjust as applying to himself. He entered printing business 2½ years ago to satisfy quest for hobby. He has a hand press and total net income over 2½ years has been $27.38. A $5 assessment is excessive in this instance and Mr. Kennedy asks exemption.

7. Graphic arts: Petition signed by Richmond, Va., printers against the local budget submitted by the Richmond Typothetae of Richmond, Va. The amount which is $1,200 for 6 months. The petitioners pray that this budget will not be approved.

8. Graphic arts: Stafford Lowdon Co., Fort Worth, Tex., writes in protest of the proposed budget for graphic arts in zone 10. The amount is entirely out of line, inasmuch as at the present time this company is paying about one-third

of the total amount contributed to the Graphic Arts Association at Fort Worth, Tex.

9. Printing: The Rogers Printing Co., 610 Bienville Street, New Orleans, La., protests assessment of $24 per month by the Typothetae. They say their gross business is only about $25,000.

10. Graphic arts: The Butler Press, Cooperstown, N. Y., has received another assessment notice from Graphic Arts Code Authority. They feel that such an assessment is unjust.

11. Graphic arts: W. R. Turner Printing Co. writes in protest of the budget assessment under the United Typothetae of America (a–1) $27 per year. Mr. Turner claims the set-up is discriminating and requests a review of this matter before approval of same.

12. Graphic arts: The University of Colorado protests graphic arts assessment. They do not believe that they should be subject to an assessment as they do only their own printing and jobs are pro rated at cost to the various departments.

13. Graphic arts: William F. Dougherty, Wichita, Kans., protests an assessment of $3 monthly.

14. Graphic arts (Walsh): J. F. Parma, Cameron, Tex., having received a notice of assessment as a printer, protests the same on the grounds that he only prints his handbills listing his grocery prices. In 1933, expense of printing and distributing these handbills was $135, so his expenses were greater than his receipts.

15. Commercial printing: The Multi Colortype Co., 4575 Eastern Avenue, Cincinnati, Ohio, protest assessment commercial relief printing industry. They say it is discriminatory.

16. The director of publications, University of California, Los Angeles, Calif., protests assessment under the Graphic Arts Code. They say the Bruin is a nonprofit publication and has no pay employees.

17. Periodical publishing: The Wilson Publishing Co. of Saline, Mich., protests an assessment to the Periodical Publishing Code Authority.

18. F. W. Dunbar & Co., 620 Atlantic Avenue, Boston, Mass., protests budget for photo-engraving industry. They say it is extravagant.

19. Back Bay Electrotype & Engraving Co., 172 Columbus Avenue, Boston, Mass., protests $20,000 salary for executive secretary, Code Authority, Photo-Engraving Industry, as proposed in budget.

20. Electrotyping and sterotyping assessment: Toledo Bottle Cap Co., Toledo, protests assessment of $15 under this industry stating they are members of the Paper Disc Milk Bottle Cap Industry and that their dues to the latter are amounting to over $5,000 a year.

21. Electrotyping and stereotyping assessment: General Manifold & Printing Co., Franklin, Pa., protests assessment by above industry code authority, claiming to be a contributor and member of the graphic arts industry.

MISCELLANEOUS

1. Trave-Taylor Co., 408 Sixth Street, Oklahoma City, Okla., protest budget and assessment of the regional budget. They say it is too high. That in their opinion any zone assessment is confiscatory. They say $36 per $1,000 mechanical pay roll is entirely too much (industry not reported).

2. Joe Daley, Los Angeles, Calif., protests the salaries on the proposed budget as being out of line with the present-day conditions (industry not reported).

A. R. FORBUSH,
Deputy Administrator, Correspondence Division.

(Whereupon, at 5:40 p. m., recess is taken until 10 a. m. Thursday, Apr. 18, 1935.)

INVESTIGATION OF THE NATIONAL RECOVERY ADMINISTRATION

THURSDAY, APRIL 18, 1935

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

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

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

The CHAIRMAN. The committee will be in order.

Senator CLARK. Mr. Chairman, I ask to have inserted in the record a telegram from Mr. Elmer Scheuer, general manager of the Bloch Co., Cleveland, Ohio.

The CHAIRMAN. That will be inserted in the record. If it can be done, it will follow Mr. Vincent's testimony if his testimony has not already been printed. (See p. 495.)

(The telegram is as follows:)

CLEVELAND, OHIO, *April 2, 1935.*

Senator BENNETT C. CLARK,
Committee on Finance, United States Senate,
Washington, D. C.,

I have just received copy of record before your committee on Senate Resolution 79. Deputy Administrator Vincent's testimony regarding the Bloch Co., page 1335 and thereafter, is untrue and misleading, as official records of various hearings to which the company has been subjected will show. First bill, of $21,000, was sent April 11, 1934. The bill of $37,000 was sent May 2, 1934, not April 11, as Vincent testified. The second bill was sent because the company refused to admit correctness of first bill and said it would appeal. The company was at the same time threatened with the withdrawal of labels, which meant economic death. Neither bill calculated according to the code, and neither bill calculated like bills sent to other companies, as the code authority has since admitted. Nevertheless, code authority demanded the company put up the money with them in escrow and agree not to contest validity of National Industrial Recovery Act, and they would then consider case on equity. The $16,000 bill was sent September 24, 1934, and testimony that this bill contains an allowance is untrue. Last bill is based on hypothetical formula not contained in code or interpretations. Vincent also testified that case is now before Compliance Division. If so, the company has not been advised either by code authority, Vincent, or Compliance Division of such action, although last hearing took place 5 months ago. The Bloch Co. has been threatened and harassed for over a year and put to large expense in defending itself. Urge you to insist that Compliance Division, if it has case, hear it immediately at open public hearing without secrecy and find the company either guilty or innocent without procrastination, so that the company can plan its business. The company has for 30 years operated union shop under contract with United Garment Workers. It has never had a strike and has always had cordial, friendly relations with labor. I will welcome an opportunity to place company records before your committee and testify, as I consider that Vincent's testimony is damaging the reputation and the business of the company.

(Mr. Scheuer submitted the following statement:)

STATEMENT OF ELMER SCHEUER, GENERAL MANAGER THE BLOCH CO., CLEVELAND, OHIO

SECTION I. INTRODUCTION

I submit this statement in lieu of oral testimony. Permission to file it was granted by Mr. F. M. Johnston, clerk of this committee, in a telegram dated April 4, 1935 (exhibit 1), after I offered to testify. (See exhibit 2 for my offer.) The purpose of this statement, by recounting the experiences of the Bloch Co. with the National Recovery Administration, is to show the oppressive character of code administration by the Men's Clothing Code Authority, to refute and correct misleading, half-true, and untrue statements of M. D. Vincent, Deputy Administrator, who recently was a witness before your committee, to suggest lines of inquiry, and to suggest the form and nature of future National Recovery Administration activity.

SEC. 2. THE BLOCH COMPANY CASE BEFORE THE MEN'S CLOTHING CODE AUTHORITY DISCLOSES ADMINISTRATIVE OPPRESSION AND ABUSE

I am general manager of the Bloch Co. of Cleveland, Ohio. The Bloch Co employs approximately 800 people; it has for the past 30 years been under contract with the United Garment Workers of America, affiliated with the American Federation of Labor. It has practiced collective bargaining during that entire time; it has never had a strike; it has been publicly acclaimed by union labor for its outstanding record on labor relations. The Bloch Co., during the entire time that the National Industrial Recovery Act has been in existence, has faithfully carried out the intents and purposes of the act.

In January 1934 an investigator from the Men's Clothing Code Authority made an inspection of the plant and records of the Bloch Co. to determine compliance with article 2-b of the Men's Clothing Code. This clause reads:

"The existing amounts by which wages in the higher-paid classes up to classes of employees receiving $30 per week exceed wages in the lowest-paid substantial classes shall be maintained."

This provision of the code had been carefully studied by the company and changes had been made in its wage rates to carry out the plain intent and purpose of the provision. The investigator, however, claimed the Bloch Co. was not complying. I immediately protested his findings and arranged a conference with the code authority in New York for January 31, 1934. The executive director, Mr. George Bell, at this meeting, admitted there might be some justice in my contentions; the comptroller, H. K. Herwitz, suggested that additional data be furnished in support of my contentions. This was done.

On April 11, 1934, the Bloch Co. was notified of an allowance of 17.7 percent for waiting time (a term descriptive of nonproductive time); but despite this allowance, the code authority claimed a deficiency of approximately $21,000 for a 16-week period. This allowance for waiting time was less an act of grace than appears on the surface, because the code authority concealed from the Bloch Co. at that time, and for long thereafter, that the application of article 2-b made in its case was entirely different from the application to other manufacturers and was highly discriminatory as against the Bloch Co.

I protested the assessment, and another conference was arranged on April 30, which continued into the next day (May 1). Mr. Bell, executive director; Mr. Drechsler, secretary and general counsel; and Mr. Herwitz, comptroller of the code authority, were in attendance. At the close of the conference the threat was made that unless the Bloch Co. accepted the $21,000 bill of April 11, its code labels would be withdrawn, the allowance for waiting time would be thrown out, and an increased bill sent. I inquired about an appeal and was told by Mr. Bell that a so-called "2-D" committee would hear the case. I stated that an appeal would probably be made. This statement was met with the astounding reply by Drechsler (counsel for the code authority):

"It will not do you any good, because the committee will do exactly as Mr. Herwitz and I tell them to do; and furthermore, the only thing that the committee will consider is whether your piecework rates are as high as your competitors'."

Mr. Bell then told me that pending an appeal the code labels could not be withdrawn.

It is extremely significant that on the following day (May 2) the code authority sent the Bloch Co. a letter which claimed a deficiency of approximately $37,000 for the 16 weeks then under consideration. (Note that Vincent testified (p. 1336) that the $37,000 bill was sent the same day as the $21,000 bill—one to correct the other.)

On June 2, 1934, George Bell, executive director of the Men's Clothing Code Authority, visited Cleveland and demanded of counsel for the Bloch Co. that it place in escrow with the code authority the entire $37,654.44 set forth in the bill, after which the code authority would hear the Bloch Co. on the basis of equities, providing that the company would agree in writing not to contest the validity of the National Industrial Recovery Act or the Clothing Code or interpretations of the Clothing Code. This preposterous demand, of course, was refused.

On June 12 a formal hearing was had before members of the 2–D committee, and the above facts and a large mass of data were presented. No conclusion was reached, and the hearing was adjourned to a later date.

Among other things, I testified on June 12 as to the conference on May 1, 1934, and the statements made to me by Mr. Drechsler. Although Drechsler was present when I testified, he took no exception to my testimony. Not until November 5, 1934 (even though another hearing of the 2–D committee intervened, at which he was present), did he challenge my testimony. It is my belief that my testimony given on June 12, as contained in the record taken at that time, was not attacked by Drechsler until after he learned that I had testified in connection with a deposition to be used in the case of L. Greif & Bros., and that this deposition was filed in the Federal Court at Baltimore and thereby became a public record.

Subsequent to the June 12, 1934, hearing, the company, at large expense to itself, including the employment of accountants, engineers, counsel, and visits to other manufacturers, discovered that other methods of computing the differential and other interruptions of the 2–b clause had been used by the code authority. It was definitely established that the Bloch Co. bill had been improperly and incorrectly figured. Upon the basis of the application of the 2–b clause to other manufacturers, there was no liability by the Bloch Co.

At the adjourned hearing before the 2–D committee, held at the code authority offices July 9, 1934, proof as to other applications of the 2–b clause was presented and when the evidence upon this fact was beyond any contradiction, the administrative staff of the code authority finally admitted that other methods of computation and application had been used. At the conclusion of this hearing it was agreed that the Bloch Co. would submit additional data and statistics and that the old bill of $37,000 was to be completely discarded by the code authority.

On August 16 the Bloch Co. received a telegram stating that the mass of figures already submitted were not satisfactory and demanded additional data, including a complete description of all manufacturing operations, a statement of piecework rates, and a record of all rate changes since March 24, 1934. (Note record p. 1417. In the *Greif case* the Research and Planning Division did not allow this kind of information to get into the hands of the code authority.) The telegram further stated that the 2–D committee would meet on August 20 (4 days later) and that a decision would be made in the case whether or not rates were submitted by that time. This arbitrary demand was protested by counsel for the Bloch Co.; the code authority was invited to send an investigator to Cleveland to examine the records and secure such information as was desired. The investigator appeared a few days later and took with him copies of the company records.

On September 24, almost a month later, the Bloch Co. was notified that "the total amount due to your employees for the period week ending December 2, 1933, through week ending July 14, 1934, is $16,062.44." This is a 32-week period. The preceding bill of $37,000 for 16 weeks (rate of $2,350 per week) was reduced to $16,000 for 32 weeks (rate of $500 per week). This reduction again was still no act of grace. The bills of $21,000 and $37,000 were admittedly figured on a wholly improper basis, as we discovered through our own industry and resourcefulness. The new bill of $16,000 was again figured on a basis not applied to other manufacturers. It is based upon a formula and hypothesis having no justification whatever in the code, in the interpretations of the code, or in the illustrations developing the interpretations. (Vincent implies in his testimony, (p. 1336, that this $16,000 bill was the result of an allowance. It contains no allowance of any kind; on the contrary, it is again loaded.)

Furthermore, this bill of $16,000 is dated back to November 26, 1933, even though the interpretations became effective June 7, 1934. It is important to note that in the *Greif case* the settlement was made as of June 9, 1934.

The Greif settlement was made on August 31, 1934. The last Bloch Co. bill is dated September 24, 1934, nearly a month later. As late as November 5, 1934 (the date of the last hearing on the *Bloch Co. case*) the Men's Clothing Code Authority was concealing from the Bloch Co. the nature of the Greif settlement. Of even more importance to the company is the fact that the code, for which is claimed the validity and dignity of a law, was given an application that was not uniform and the very application on which Greif was haled before the Compliance Division was denied to the Bloch Co.

I call to the attention of your committee the fact that the Bloch Co. has contended from the very beginning that there was no liability upon it for 2-b deficiency—that it based its contentions upon grounds other than the fact that the interpretations became effective June 9, 1934. I claim that even if the interpretations were effective as far back as November 26, 1933, the Bloch Co. has complied with 2-b and has no liability.

Still another hearing was held by the 2-D committee in the Bloch Co. case on November 5, 1934. A tremendous mass of data was again submitted at this hearing by the company, all of which sustained its contentions that there has been no violation of article 2-b. On December 10, 1934, the 2-D committee again found against the company, notwithstanding the indisputable character of the evidence.

The Bloch Co. does not know the present status of its case, although 5 months have passed since the hearing and 4 months have passed since it received notice of decision by the 2-D committee. Mr. Vincent, who seems to have private information on the matter, stated before your committee that "the matter is now before the Compliance Division."

I believe that the failure of the code authority (and the Compliance Division, if it has the case) to press the matter further is due to the pendency of investigation by your committee and the present efforts to renew the National Industrial Recovery Act, and I call to your attention my telegram (exhibit 2 attached hereto) asking for an immediate, open, public hearing without secrecy.

The foregoing is the history of the Bloch Co. bill which Vincent says was $37,000, reduced to $16,000 by the 2-D committee upon an overtime allowance. (See p. 1336 transcript of hearing before your committee.) Neither in his secret report nor in his testimony before your committee does Mr. Vincent give the real facts. He insinuates that the Bloch Co. is guilty of code violations and is the recipient of acts of grace from the code authority in the reduction of a $37,000 bill to $16,000. Mr. Vincent's testimony has a color and texture which can only be the product of partisanship and bias, notwithstanding the fact that his position calls for impartiality.

I will pass without comment Vincent's "secret report" to the National Recovery Administration, which is more in the nature of a prosecutor's indictment than an impartial fact-finding analysis, which it purports to be. I do call attention, however, to the fact that in his secret report he said of the *Bloch Co. case* that—

"The last data sent in by the plant (Bloch Co.) officials was received by the code authority on August 4, 1934. The deficiency for which the plant was billed was $37,654.44 and the appeal is still pending."

On July 9, 1934, the 2-D committee expressly agreed that the $37,000 bill was discarded. Mr. Vincent's statement above quoted would make it appear that as late as August 4, 1934, the Bloch Co. was a violator of the code. This is typical of the treatment of facts by Vincent in his secret report and in his testimony.

SECTION 3.—SUGGESTED LINES OF INQUIRY IN CONNECTION WITH THE MEN'S CLOTHING CODE ADMINISTRATION

Some of the major abuses in the administration of the Men's Clothing Code lie in the fact that new agencies, wielding large power, have used such power for improper purposes, for the oppression of a minority group and for the aggrandizement of particular interests, especially those in control, and for the development of monopoly. I submit the following lines of inquiry for your committee in this connection:

1. The Amalgamated Clothing Workers, a union headed by Sidney Hillman, who is also a member of the National Recovery Board and the Men's Clothing Code Authority, controls the Amalgamated Banks of New York and Chicago. How many members of the Men's Clothing Code Authority or their firms are or have been indebted to these banks? How many men in key positions in the National Recovery Administration are or have been indebted to these banks?

2. To what extent has the Amalgamated Clothing Workers subsidized certain publications to secure favorable publicity and to carry on other propaganda work?

3. Who paid for the full-page advertisement which appeared in the New York Times on March 22, 1935, purporting to express the desire of enumerated small business men for the continuance of the National Recovery Administration; how many of these business men ever heard of the advertisement before it was printed; how many of them were consulted about it; and how many, if any, have paid anything toward its publication?

4. To what extent is the Men's Clothing Code Authority staffed with persons having affiliation or connection with the Amalgamated Clothing Workers, or relatives of such persons?

5. The New York Contractors' Association fixes the selling price in the New York market for various types of garments. Such prices are reached by agreement between the New York Contractors' Association and the Amalgamated Clothing Workers. These prices are published in the trade papers. To what extent does such action result in a restraint of trade and constitute a violation of law?

6. What would be the effect of the proposed wage amendments to the Men's Clothing Code upon manufacturers in the decentralized markets? These amendments, I submit, are inspired by the clique which controls the Men's Clothing Code Authority, and, if adopted, will result in economic death to many businesses in the decentralized areas. The amendments are unjustifiable. Special attention is called to the fact that although the figures, presumably in support of the amendments, were prepared under supervision of the Division of Research and Planning of the National Recovery Administration, this division did not assume responsibility for the conclusions as to such figures. No code authority should be so dominant in personnel as to use a governmental research agency as a cat's-paw for the purpose of assembling figures and thereby give them official character, and yet bar such agency from making an independent analysis.

7. Is it true that Dr. A. G. Silverman, chief statistician of the Labor Advisory Board, was "fired" in July 1934, because he refused to doctor a statistical report for Sidney Hillman? (See Nation, July 11, 1934.)

8. Upon whose order did Mr. Howard, special agent of the Department of Justice, terminate his investigation of the administration of the Men's Clothing Code and why was his report buried in the files of the National Recovery Administration?

9. Why was the investigation taken out of the hands of a trained Department of Justice investigator and placed in the hands of a person without qualification in determining facts?

10. In view of the fact that the investigation related to purported abuses by the Men's Clothing Code Authority, why did Vincent limit his contact to the Men's Clothing Code Authority itself and fail to contact persons who made the complaint?

11. Is it true that the salary of $25,000 per year of George Bell, former executive director of the Men's Clothing Code Authority, was guaranteed by three clothing manufacturers?

12. Vincent testified that approximately 35 or 36 other codes under his charge contained provisions for equitable adjustment of wages for higher paid groups (similar to article 2-b of Men's Clothing Code). To what extent has Vincent attempted to secure enforcement of these equitable adjustment provisions in codes other than the Men's Clothing Code, and if none, why?

13. Why were the details of the Greif settlement kept not only from the Bloch Co. and the industry, but from some members of the Men's Clothing Code Authority? Is it conducive to sound industrial relationships that a code should be administered without uniformity and under a seal of secrecy?

14. Does your committee approve of ex post facto application of codes as attempted by the Men's Clothing Code Authority and applied by the Compliance Division? Attention is called to the fact that interpretations of the Clothing Code first given official sanction on June 7, 1934, are applied retroactively to November 26, 1933.

15. Does the fact that the New York market has under the code been able to increase its share of all clothing manufactured in the United States from 32.6 percent of all clothing cut to 39 percent constitute the "economically and socially constructive and stabilizing" influence which Mr. Vincent acclaims?

SECTION 4. CONCLUSION

The foregoing statement detailing the experience of the Bloch Co. with National Recovery Administration agencies, including Men's Clothing Code Authority, indicates that I am qualified, from protracted and bitter experience, to make

recommendations as to National Recovery Administration. On the basis of such experience, the following recommendations are made:

1. If National Industrial Recovery Act is extended in any form, it should be limited to provisions for minimum wages, maximum hours and unfair trade practices.

2. If National Recovery Act is allowed to exist in its present form, administrators should be chosen on the basis of business experience, nonpartisanship, and judicial temperament.

3. If code authorities are allowed to exist under the new act, (a) their activities should be limited to recommendation to some branch of the Government (i. e., Department of Labor and/or Federal Trade Commission) which can act in an unbiased, unprejudiced and judicial manner; (b) they should be composed of members reflecting all variations of the industry as to manufacturing methods and geographical location. This is important (certainly in the clothing industry; quite likely in other industries) because long-standing differences in factory technique have resulted in well defined and proper competitive conditions, the destruction of which inevitably points to monopoly; (c) economic boycott by means of insignia, such as "blue eagle" and/or code labels, if deemed justifiable at all, should be applied impartially and not used for the extinction of an unfavored minority group.

I am firmly convinced that as presently constituted and under the sanction of National Industrial Recovery Act, code administration has crystallized into an unbearable bureaucracy. The economic life of the country is imperiled by the usurpation of legislative, judicial, and executive powers by interested groups using National Industrial Recovery Act for personal ends and as an instrument for oppression of unfavored groups and individuals. This is certainly true of the Men's Clothing Code. The same danger exists as to all other codes. It is a danger that can be remedied by prompt and decisive action.

Respectfully submitted.

ELMER SCHEUER.

EXHIBIT 1

WASHINGTON, D. C., *April 4, 1935*.

ELMER SCHEUER,
General Manager the Bloch Co.,
Cleveland:

In re your telegram. Time of Committee so limited and number of witnesses so large committee can hear you only for few minutes Wednesday morning April 10 at 10 a. m. If you prefer and will do so you may submit a statement explaining your position which will be incorporated in record and which will receive attention of committee.

F. M. JOHNSTON,
Clerk Committee on Finance.

EXHIBIT 2

APRIL 2, 1935.

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

I have just received copy of record before your committee on Senate Resolution 79. Deputy administrator Vincent's testimony regarding the Bloch Co., page 1335 and thereafter is untrue and misleading as official records of various hearings to which the company has been subjected will show. First bill of $21,000 was sent April 11, 1934. The bill of $37,000 was sent May 2, 1934, not April 11 as Vincent testified. The second bill was sent because the company refused to admit correctness of first bill and said it would appeal. The company was at the same time threatened with the withdrawal of labels which meant economic death. Neither bill calculated according to the code and neither bill calculated like bills sent to other companies as the code authority has since admitted. Nevertheless code authority demanded the company put up the money with them in escrow and agree not to contest validity of National Industrial Recovery Act and they would then consider case on equity. The $16,000 bill was sent September 24, 1934, and testimony that this bill contains an allowance is untrue. Last bill is based on hypothetical formula not contained in code or interpretations. Vincent also testified that case is now before compliance division. If so the company has not been advised either by code authority, Vincent, or compliance division of such

action although last hearing took place 5 months ago. The Bloch Co. has been threatened and harassed for over a year and put to large expense in defending itself. Urge you to insist that compliance division if it has case hear it immediately at open public hearing without secrecy and find the company either guilty or innocent without procrastination so that the company can plan its business. The company has for 30 years operated union shop under contract with United Garment workers it has never had a strike and has always had cordial friendly relations with labor. I will welcome an opportunity to place company records before your committee and testify as I consider that Vincent's testimony is damaging the reputation and the business of the company.

ELMER SCHEUER,
General Manager of the Bloch Co.

(The chairman received the following letter, with accompanying data from M. D. Vincent, Acting Division Administrator, Textile Division, National Recovery Administration).

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 9, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR HARRISON: Senator Robert J. Bulkley of Ohio has furnished me a copy of a night letter sent by the Bloch Co. of Cleveland, Ohio, to members of the Senate Finance Committee under date of April 2, 1935, criticizing statements made by the writer when testifying before your committee.

For your committee's information and record I am enclosing herewith copy of a statement which the code authority of the men's clothing industry prepared at my request, giving a detailed account of the Bloch Co. case. Enclosed also are copies of correspondence between the code authority and the Bloch Co. relating to the case.

Your committee will find in the enclosed statement and correspondence a quite full and an accurate account of the actions and proceedings taken by the code authority upon its charge against the Bloch Co. of noncompliance with article II (b) of the Men's Clothing Industry Code.

Sincerely,

M. D. VINCENT,
Acting Division Administrator Textile Division.

An investigation of the Bloch Co. was made by the code authority in January 1934. Under date of January 18 we received a report from our investigator stating that the average hourly wages of the 20 percent lowest substantial class was 18 cents per hour, and that the difference to be maintained was $6.51. The investigator also reported that the firm had made a horizontal increase of $1.50 per week, and that credit should be given said firm for such increase, and that the net difference to be maintained therefore was $5.01.

On or about January 31, 1934, and before there had been any analysis of the investigator's report or any communication with the firm, Mr. Scheuer of the Bloch Co. called at the offices of the code authority and stated that, in his opinion, in calculating the obligations of the firm under the provisions of II (b), allowance should be made for waiting time. He was informed that such information could be presented to the committee, provided for under article II (d), commonly known as the "II (d) Committee."

Under date of February 6, 1934, such information was submitted. Copy of this letter is attached. I direct specific attention to the fourth paragraph of his letter which reads as follows:

"I am submitting this data for the purpose of having it presented to the committee provided for in section II (b) (obviously the reference is to II (d)) of the code for review of what is properly required of us in reference to section II (b), in the light of all the circumstances."

An analysis of the information submitted in this letter and in subsequent letters was made by the staff, and on the basis of such analysis, the memorandum letter of April 11, 1934, was written.

It is clear from the letter written by the Bloch Co., in submitting the information with respect to their claim for waiting time, and the code authority letter of April 11, that all discussion of waiting time was for the purpose of presenting

same to the committee on II (d). The letter of April 11, copy of which you presented at the hearing before the Senate Finance Committee on March 28, 1935, on page 1339 of "Report of Proceedings," stated in part "If the amount of waiting time, as above determined is taken into account * * * the deficiency amounts to $21,715.52." The letter further went on to state "I shall be very pleased to discuss any phase of this matter with you personally so that we may secure a fair and equitable adjustment of the requirements under the code. If there is any additional pertinent information to which we have not had access and which would enable us to arrive at an early adjudication of this matter, I would appreciate it if you would put this information at my disposal so that it could be considered fully to the end that we may arrive at a solution within the letter and spirit of the code."

Under date of April 19, in reply to a letter from the firm stating they were studying the figures, and desired a conference, Mr. Bell wired as follows:

"Replying your letter 16th previous conversations not disregarded but calculations based on our best understanding situation. Agree with you discussion of matter advisable. Glad have you here Tuesday or Wednesday next but certainly urge you send on your figures at least one day in advance so we can study same thus saving your time and ours when meet for discussion. Please wire collect when you plan to be here and when figures can be sent."

Pursuant to the last paragraph of the letter of April 11, a meeting was held at the code uathority offices on April 30 and on May 1. At that time counsel for the code authority gave it as his opinion that, in making up a bill against the company for deficiencies, the staff should not take into account so-called "waiting time", and that a bill should be sent to the firm on the basis of the investigator's report within such allowance.

Accordingly, on May 2 the first bill to the firm was sent, stating that on the basis of the investigator's report and pay roll reports available, the amount of such deficiency was $37,654.04.

Under date of June 5 the firm asked for a hearing before the II (d) committee, and such hearing was held on June 12. At that hearing it was brought out that the code authority had identified workers by clock number for the purpose of the bill, since the pay-roll reports submitted by the firm did not give the name of the worker but merely the clock number.

Evidence disclosed at the hearing showed that in many cases different employees at different times had the same clock number; that when a worker left the employ of the firm his clock number was given to another worker who may or may not have been a newly hired employee. The firm also presented evidence with respect to the classification of certain employees, that they were nonmanufacturing rather than manufacturing employees, and that therefore should not be included in the bill for underpayments.

As a result of the hearing on June 12, and the hearing on July 9, the firm asked for a reinvestigation to clear up any disputed matters of fact.

Such reinvestigation was made on August 21 and August 22. This investigation disclosed that the average hourly wages of the lowest 20-percent class was 18 cents an hour, as had been reported in the original investigation. However, the investigator reported that a number of workers who had been included as being covered by the provisions of article II (b) should be eliminated from the calculations for various reasons.

Accordingly, on the basis of this information, a new bill was drafted and sent to the firm under date of September 24, 1934, in the amount of $16,062.44.

The firm, under date of September 29, acknowledged receipt of this bill and asked for a hearing before the II (d) committee, and said it would present analysis of such figures and such other evidence bearing on the case as soon as possible.

The firm had a full and complete hearing on its contentions on November 5 before the II (d) committee. After full review by the various members of the II (d) committee, a request for relief from this bill on the grounds of equity was denied and the firm was so notified on December 10. (Copy of December 10 letter attached.)

The firm was certified to the National Compliance Council for underpayment of said amount found due, under date of January 15, 1935. The matter is now pending before the Regional Compliance Council at Cleveland. No date has been fixed for hearing.

H. K. HERWITZ.

THE BLOCH CO.,
Cleveland, Ohio, February 6, 1934.

Mr. H. K. HERWITZ,
New York, N. Y.

DEAR MR. HERWITZ: Since I saw you in New York last Wednesday, I have been confined to bed with a case of grippe and therefore was unable to write you previously.

In accordance with your suggestion, we have prepared figures covering a 4-week period prior to the filing of the Men's Clothing Code and comparative figures for a 4-week period after the code became effective. These figures are for the purpose of establishing the nonproductive time prior to the filing of the code.

We discussed with Mr. Bell the report of your investigator, Mr. Harry Wolff. I expressed the opinion to you and to Mr. Wolff that the number of hours shown in Mr. Wolff's figures did not reflect the amount of time lost in waiting for work and therefore, these figures do not adequately indicate what the rate per hour would be if a flow of work was relatively constant. Prior to the adoption of the code, it was our policy to spread the work and this was done in accordance with our understanding with the local representatives of the United Garment Workers.

I am submitting this data for the purpose of having it presented to the committee provided for in section II-b of the code for review of what is properly required of us in reference to section II-b, in the light of all the circumstances.

We submit to you herewith two exhibits. Exhibit no. 1 shows the number of hours, by weeks and in total, for the 4-week period ending July 1, 1933. Exhibit no. 2 shows a comparative period, for the period ending October 28, 1933.

In each case, these figures show the number of hours expended on coats, vests, and pants, and the number of garments produced. You will note that at the bottom of each column, we have itemized the number of sack coats, number of topcoats, and number of overcoats produced.

The figures used to determine the number of hours per cost unit were established by figuring sack coats as 1 coat unit, topcoats as 1.36 coat units and overcoats as 1.50 coat units. You will understand, of course that in order to get an exact comparison, it was necessary to arrive at a common denominator. The figures used were determined by ascertaining the relative time and rates for sack coats, topcoats, and overcoats.

We, therefore, arrive at comparative figures, as follows:

	Period ending July 1	Period ending Oct. 28
Hours per coat unit	6.93	3.86
Hours per vest unit	1.11	.79
Hours per pant unit	.94	.82
Total	8.98	5.47
Difference, 3.51 hours or 64.2 percent.		

The above figures, together with the exhibits attached herewith, have been prepared under the supervision of our engineers, Norris & Elliott, and it is their opinion that these figures truly demonstrate the great amount of nonproductive time which prevailed in our shops prior to the adoption of the code.

As Mr. Wolff expressed it, we were running a "club house" and you can readily see from these figures that the rates prevailing prior to the code were such that had our employees put in all of the time they spent in the plant producing, the earnings would have been a great deal higher.

For instance, on the basis of these figures, if we assume that Mr. Wolff's calculations are correct and that 18 cents per hour represented the earnings of the lowest 20 percent of our employees, it is evident that this 18 cents would be increased by 64.2 percent or an increase of 11.5 cents per hour, giving us a minimum pay of 29.5 cents per hour or, on the basis of a 44-hour week, a weekly earning of $13.

The writer believes that the figures speak for themselves and that no further explanation on our part is necessary to convince you of our intent.

As explained to Mr. Bell and yourself, we feel that a great injustice would be done us if the report of your examiner were allowed to stand without explanation, because we have always endeavored to run our business on a fair basis and to give our employees as much consideration as possible at all times.

The writer will very much appreciate if you will give this letter your immediate attention and let us know as quickly as possible if our contention is upheld.

Cordially yours,

THE BLOCH CO.,
By ELMER SCHEUER,
Per VERNON G. KAY.

DECEMBER 10, 1934.

The BLOCH CO.,
2320 Superior Avenue, Cleveland, Ohio.

GENTLEMEN: Pursuant to your application for exemption from the operation of the provisions of article II, subdivision (b), of the Men's Clothing Code, our committee held hearings at which your firm appeared with counsel, and submitted testimony in support of its claim for exemption.

The report of the investigation made by the Men's Clothing Code Authority, from which you claim exemption, covered wages paid to the workers of your establishment for the period commencing the week ending December 2, 1933, and ending the week ending July 14, 1934. This report resulted in a charge against your firm for underpayments to its workers who properly came under the protection of article II (b), in the sum of $16,062.44 for which an itemized statement showing the amount due to each worker was mailed to your firm on September 23, 1934.

After a careful study of the record and exhibits in this case, the committee as a whole, one member dissenting, was of the opinion that the firm did not present facts sufficient to warrant the finding that it is entitled to be relieved from the making of the underpayments to its workers as found on the investigation, and as the same appears on the itemized statements submitted to the firm on September 24, 1934, and voted against granting relief.

Accordingly, the application of the firm is denied, and you are directed to send to the code authority your check for $16,062.44 on or before December 17, 1934.

Very truly yours,

MEN'S CLOTHING CODE AUTHORITY,
By VICTOR S. ROSENFELD,
Acting Chairman of the Committee on II (d) of the Code of Fair Competition for the Men's Clothing Industry.

The CHAIRMAN. General Johnson, will you be sworn?

TESTIMONY OF GEN. HUGH S. JOHNSON, FORMER ADMINISTRATOR, NATIONAL RECOVERY ADMINISTRATION

(Gen. Hugh S. Johnson having first been duly sworn by the chairman, testified as follows:)

The CHAIRMAN. Do you prefer, General, to make a general statement first before we proceed to question you?

General JOHNSON. I do; I have prepared such a statement. I would like to request that I be allowed to finish, and then subject myself to such examination as the committee wishes.

The CHAIRMAN. Very well; the committee will comply with your request.

General JOHNSON. I have had some experience in organizing N. R. A. and running it through its first phase of code-making. I know little about code administration since I left N. R. A. I am speaking for myself alone.

I have had the record of these hearings analyzed and digested to learn what questions are in the minds of Senators and answer them as well as I can. I have a statement prepared with this in view.

I think the fundamental questions are:

1. What conditions were we trying to meet by N. I. R. A.?
2. In what has N. I. R. A. succeeded and failed?

3. What should or constitutionally can be done to remedy N. R. A.?
Specifically on the general question no. 2:
(*a*) As to little fellows.
(*b*) As to labor.
(*c*) As to consumers.
Specifically on the general question no. 3:
(*a*) Why go beyond mere hours and wages regulation and into fair-trade practices?
(*b*) Can and should N. R. A. attempt regulation within a State?
(*c*) If fair-trade practices are governed by codes, what restrictions should be placed by statute to insure against injustice to competitors, consumers, and labor?
(*d*) What improvements should be made in organization and administration of N. R. A.?

I. CONDITIONS ADDRESSED BY N. R. A.

In early 1932, our capitalistic system was in collapse because it no longer afforded purhasing power.

(1) Production, employment and farm income were at the lowest point since prewar and, as I believe, the lowest relative point in history.

That is shown on three exhibits that have been prepared by the Statistical Department of N. R. A. This one, exhibit 1, is on factory production that runs back to 1900. The lowest point here [indicating] just before the war and the present was 1921, but it was not as low as this point [indicating].

The total employment in the United States is shown by this chart, 1–A, which runs back to 1910. Manufacturing wage earners are shown clearly at the lowest point since 1910, also the total employment is at the lowest point since 1910.

This chart, 1–B, shows farmers' net income and the prices received by farmers, which shows that that was the lowest point since 1910.

(2) Real wages were at the lowest point in this century. Chart 2 shows real wages. These are real factory pay rolls. The actual factory pay rolls corrected in cost of living and going back to 1900 and showing clearly a lower point than at any time in the century.

(3) Actual wages were lower and hours of work were longer than at any time since the war and as I believe relatively lower than at any time in this century.

These figures in chart 3 are the figures on the hours per week, and here are the figures on ordinary wages going back to 1920, showing the lowest point and the dips.

(4) Business concerns were being wiped out by failures at the most rapid rate in recent history—and especially small enterprise.

This is shown first on exhibit 4, which is a month-to-month exhibit and shows the fluctuations in business failures of total concerns, which, of course, is highly seasonal as demonstrated by these peaks occurring about the same time each year [indicating].

The failures ran up to the highest point on the chart in 1932. They started downward after a seasonal peak beginning in 1933 and have gone steadily downward except for a small seasonal peak in the beginning of 1934.

An examination of that chart is very interesting in comparing the depths of that small peak [indicating] with the depths even at the highest point of the boom, showing that something has happened here which has absolutely ironed out the trend of business failures.

This next chart, exhibit 5, is a running average chart to iron out those peaks, and shows the trend more clearly, and also shows the drop in the beginning of 1933, which has continued to this date and is still continuing as the most recent reports of Dun and Bradstreet show.

An interesting thing about this chart shows that this line [indicating] shows the number of failures in small concerns with liabilities under $25,000, and shows a more precipitous decline on the lower figure than those among the larger concerns with those over $25,000 liability.

The Senators have these charts in front of them in miniature.

(5) The net income of corporations had dropped from an average of 10 billion for the 5 years 1920–24 to 3.7 billions in 1932 and a lower figure in 1933—the lowest since the war.

The net of all this is simply that about two-thirds of the Nation's purchasing power and, hence its power to consume, produce, and employ labor, had vanished.

This was a terribly acute sympton but it was just the culmination of a long and highly destructive trend in American industry. In the period from 1909 to 1927 the ratio of small independent enterprisers in manufacture to the total population had been steadily reduced by almost two-thirds and the rate of their destruction was increasing.

These blocks in exhibit no. 6 are ratio blocks indicating the ratio of the number of independent enterprises and independent manufacture to the population. They have that figure right here [indicating] if it was one manufacturer to every 250 people, and in this case the figure was about 320. In 1929 that had gone up to one small enterprise and manufacturer to every 900 people—a very good indication of what was happening to the small enterprises and manufacturing in the United States ever since 1904.

For a long period of prosperity before 1929, a very large percentage of all corporations had been operating at a loss and the percentage was increasing during the boom period 1925–29.

This exhibit, chart 7, is a percentage chart and shows the number of returns rendered to the Internal Revenue Bureau that showed no net income or a deficit. These figures start out here [indicating] some place around 40, and on a gradual trend go up and continue to go up during the peak period, and, of course, go up very rapidly during the period of the depression, but the indication there is that regardless of the number of companies in this country, close to 50 percent of them continuously during this period rendered income returns showing that they were making no money.

In 1904, 50.2 percent, by number, of all manufacturing establishments were those turning out an annual production of $20,000 or less and only 16.9 percent were producing $100,000 and over. By 1929 the percentage of these little fellows had dropped to 32.9 percent of the whole number and the producers of $100,000 and over had increased to 31.5 percent of the whole number.

In 1904, only 1.3 percent of all concerns produced a million dollars or over annually and employed 26.1 percent of all wage earners. In 1929, the number of these million-dollar producers had increased

fourfold and they then employed 58.3 percent of all labor. In 1904, they produced 38.5 percent of all production and in 1929, 69.2 percent, based on Census of Manufactures, 1929.

It has been pretty clearly shown that a ridiculously small number of groupings control the corporate structure of the country.

At the time the antitrust acts were written it is doubtful whether the 100 largest general industrial corporations controlled a significant fraction of the corporate wealth of the country. Since then we have had the trust movement of the early 1900's and the merger movement of the 1920's, with the result that at the end of 1929, 200 large corporations, including utilities and railroads, owned 49.2 percent of all corporate wealth. Two years later (1931), the percentage had jumped to 55. If the question be limited to general industrial corporations, 100 out of the 300,000 such corporations in this country now control by direct or substantial stock ownership one-third of the general industrial corporate wealth, not counting wealth controlled indirectly.

The process of concentration continued unabated during the depression. In 1929 assets of these 100 corporations constituted 23.6 percent of the assets of all general industrial corporations; in 1932, 26 percent. Those are the latest available figures from Statistics of Income, Bureau of Internal Revenue. Meanwhile their smaller competitors were wiped out or crippled by the thousands.

These 100 corporations now emerge from the depression stronger than ever. Their cash holdings, at the bottom of the depression (1932) were practically as great as in 1929, and on the basis of Internal Revenue Bureau compilations of balance sheets for 1932, constituted one-third of cash and equivalent of all corporations.

Ninety-one leading corporations, selected by picking out the one or two largest corporations in each industry group, such as General Motors and Ford from the automobile industry, Eastman from photographic supplies, and so forth, increased their share of general industrial assets from 16.7 percent to 18.6 percent during depression. They had more cash at the bottom of the depression than in 1928, while lesser corporations lost 23 percent of their cash.

With this situation, genuine competition is impossible, and recommendations to "go back to unregulated competition" don't mean anything. While some lulled themselves, in the twenties, with thoughts of "endless prosperity" as the fruit of individualism, and others commended themselves in the thirties, with praise of the "free economic system." Both of these things had long since ceased to be. There is no small competition against such concentrated power as this except on sufferance.

Agriculture has been on a nonpaying basis since 1921. The actual figures on unemployment are practically worthless, but, between 1919 and 1927, with a decrease in wage earners in manufacture of 7 percent, there was an increase in output of 11 percent. The quantitative output per worker in all industries increased in the first quarter of this century, 83 percent, while population increased 54 percent and employment in all industry increased only 35 percent. (Commerce year book 1928.) It used to be the fashion to say that all this lag of employment, caused by greater use of horsepower and labor-saving devices, had been taken up in trades, service, and pro-

fessions, but there is no accurate statistical warrant for this statement since there are no adequate figures.

I don't mean to draw too many ultimate conclusions from these fragmentary statistics, but I think they are enough to show, over a long period of years, a strong tendency to elimination of small enterprise, a progressive failure of industrial employment, and a gross unbalance of agriculture, going back at least to the war period and, in my opinion, many years farther back. I believe honestly, and I am far from being a radical, that it discloses a slow and implacable disintegration of the profit system and especially of unregulated and uncontrolled operation thereof, as a reliable plan for keeping our people employed.

When that structure smashed in 1929 it was not a sledge hammer cracking up a solid brick. It was the collapse of an empty shell.

The charts I have already referred to show what happened. The obscured tendencies of the preceding 10 years simply became more acute. Five types of concerns only could survive much of this.

(The charts referred to above on file with the clerk of the committee.)

(1) The concern with the big war chest and a swollen surplus.

(2) The natural momopoly.

(3) The dealers in indispensibles, such as food products.

(4) The sweatshop.

(5) The ghoul—buyer and operator of bankrupt stocks and assets.

After the crash of 1929, the murderous downward spiral consisted in wage cutting, hour extension, oppression of labor, and vast destruction of weaker competition by any cutthroat method that could be invented or applied. There is no argument about this. It is so clear on the face of these charts and records that I have submitted that there is not a child who could fail to understand it and not a brain-trust expert who could contest it.

These figures show the hours of labor extending; they show wages dropping; they show the slaughter of economic innocents by the tens of thousands, decreasing prices reduced at the expense of agriculture, and labor and falling to ridiculous figures recording a swift vanishing of the combined purchasing power of the country. It is a picture of the frustration of the old Adamic curse that we earn our bread in the sweat of our labor. Under our system as it has been operated, we cannot.

The other figures I have cited show the destruction of small enterprise proceeding ever since the war and a veritable holocaust after 1929. They show a vast coalescence of monopoly and concentration of control over practically every essential industry in the country into a very few strong hands.

This is where our economic system was trending from before the war and to its utter and complete collapse in March 1933.

This is what happened to us under the antitrust act, the Federal Trade Commission, and the doctrine of laissez faire and it happened uninterruptedly and with no relieving incident for a period of 25 years.

I don't know a great industrial country that does not recognize the necessity for taking some control of this tendency which is going on all over the world.

I will freely admit the faults and errors of the N. R. A. and I will fight as hard as anybody to correct them. But it was the first intelligent attempt ever made by this Government to check this tendency.

I won't admit its failure. Especially I won't accede to any madness that would remove its control and go back to the unregulated condition of futility that preceded it. No more explosive act of destruction could be committed than to kill it now and go back to the utter futility of the system we had here before 1933.

From my travels up and down this country, and my correspondence I wouldn't like to go home with any of the blood of its destruction on my hands.

I think we have got to keep control of this economic machine and prevent and turn back many of the tendencies of the past 25 years. I have never seen any attempt by Congress to do that except N. R. A.

I used to have a little kitten which amused itself and me by turning around in circles trying to catch its tail. As yet, it hasn't succeeded but yet I hear economists say that the way out for us is to remove all props against downward dives and to all prices and all wages—reduce costs through reduced wages but increased consumption. I look at these figures of the greatest downward dive in history and think of this cat.

I don't think the kitten would catch up with his tail any quicker if he turned around and chased it the other way, and I don't think we will catch up with prosperity by trying artificially to boost all wages and all prices. But I do think that both we and the kitten would be wiser to stop running around in these circles.

I think we should try to bring prices and income nearer to a balance so that consumption and production could proceed to fill all needs and I think the way to do that is to try to lift up the depressed segments and level off and hold down the runaway segment.

If it is the policy of Congress to go back to that of course I bow to it superior wisdom but in doing so I cannot withhold the observation that there is here recorded a complete failure of the capitalistic system under the old controls. It is a fallacy that this cannot be improved upon. But if we go back to that fallacy, the capitalistic system is on its way out in my opinion in the very near future. For this is the proof of its inability:

1. To maintain the right of workers and farmers to earn their living in the sweat of their labor.

2. To protect the right of men to operate as individual adventurers, and to prevent the absorption of their enterprise by monopolies.

There is nothing new about the N. R. A. idea.

May I read here into the record from committee print no. 3 of the Nye Munitions Committee a recommendation I made in submitting a draft report for the War Industries Board. That document was written in December 1918, 1 month after the Armistice. I quote:

> This fifth lesson is perhaps the most clean-cut and incontestable demonstration of the war. Conservation, priority, curtailment, price fixing, all required such cooperation and agreement within each industry that the Government was constantly exhibited as requiring in its hour of peril the very things which it had been for years denouncing as criminal. That the abuses that plagued the country in the absence of the Sherman and the Clayton Acts required the most drastic treatment is unquestionable. The only question is whether there is not some cure for those abuses this side of an absolute inhibition of such cooperation in industrial effort as blankets our national efficiency and withholds from our people the prosperity to which their efforts and their natural circumstances entitle them. In short, is prohibition of cooperation necessary and is not regulation possible?
>
> During the war, industry became organized in associations of trades, designed for mutual help and not for profit, possessing no capital stock, and open to mem-

bership by all without discrimination. In these organizations the Government had no part.

When the War Industries Board contemplated the inauguration of any policy affecting one of the industries the representatives of the industrial organization were called into consultation and the projected policy discussed to obtain a view of all its possible hearings. It was then decided upon or modified and adopted. After that, as specific directions were necessary in carrying out the policy, these organizations were called together and the instructions were issued to them. Sometimes these orders involved an agreement to sell within certain price limits, sometimes to sell only under certain conditions and to certain classes of purchasers, sometimes they involved curtailment in production and sale throughout the industry, sometimes standardizations of type, restrictions in the use of material, and instructions as to shipping. In a few instances the Government actually directed a monopoly in a particular commodity.

Now, save for the fact that the Government itself was a party, all these were violations of the Sherman and Clayton Acts. Even the cooperative agencies, or war-service committees, as they were called, were perhaps of doubtful validity, and certainly the agreements and pledges to restrain or control commerce were technical violations of statute.

No one will contend that there can ever be any peacetime necessity or reason for such close-held control over industry as was practiced during the war, when, under price fixing, allocation, and priority policies, the manufacturing facilities of the Nation were almost as effectively transformed into governmental agencies as though the Government had absorbed them. Their production was scheduled and allocated, their compensation was fixed, and their contracts directed. Still the great lessons remain; efficiency is attainable only by cooperation; second, industry is susceptible of such regulatory control as would absolutely destroy it and therefore it is surely susceptible of such regulatory control as would prevent the abuses aimed at by the Sherman Act and yet attain the efficiency of cooperation without impairing the advantages of individual initiative.

Nor need these principles be stated in any vague and general terms. What is needed is a statute:

(a) Validating trade organizations for mutual help, not conducted for profit and open to all.

(b) Validating acts done by these organizations or members of them in pursuance of agreements with, or directions by, Government.

(c) Authorizing license by the Government to individuals to pursue specific courses of conduct shown to be in the public interest, validating acts done in pursuance of such licenses, and providing for the revocation of such licenses whenever their continuance appears to be not in the public interest for any reason whatever.

There is in this statement, which will be in the record, a discussion of the possibilities of a mechanism, as well as the possibilities of a high court of commerce composed of an organization with a member each for food, fuel, raw materials, finished products, labor, railroads, shipping, finance, imports, and exports.

(The same is as follows:)

To administer such an act a mechanism is required, an organization set up on a different theory than any permanent organization we now have—not a policeman, not a passive or negative agency, but a cooperator, an adjuster, a friend—in short, an agency set up on the theory of the war organizations, the Food, Fuel and War Industries Administrations.

Difficulties are apparent. Such a mechanism must be nonpolitical. The essence of its effectiveness must be mutual confidence and singleness of purpose. That such a consummation is not idealistic is proven to repletion by the experience of the last few months. It may be said that patriotism was the compelling motive during the war. But is patriotism adjourned with the signing of the armistice? Has the Government ever appealed to the spirit of public service in just the way that it was appealed to during this war?

The need, of course, is for men. Do we dignify public service in such a way as to inspire a desire for it? In each branch of public service touching a particular profession or calling, is the highest ambition of every individual to attain that public service? It is in one branch and in one alone—the Supreme Court of the United States. Effort should be made to preserve the awakening of the war. We should try to secure the services of men and to set up a mechanism to deal with these questions, so fundamental to the national welfare.

Such an organization should be composed of a member for each of the proven divisions of the task, food, fuel, raw materials, finished products, labor, railroads,

shipping, finance, imports, and exports. Each member should be the head of an administrative organization, greatly reduced from but modeled on the war organizations of the same name. Their contract should be made with trade organizations such as the war-service committees.

The whole should be served by a central bureau of planning and statistics, with a central mechanism for the investigation of costs and prices and for the study of conservation and standardization. The Federal Trade Commission should be retained as a separate body to investigate abuses and to report and recommend action to the central agency. It should serve in close cooperation, but it should not be a part of the central agency, which should report to the President direct. Duplicated functions in executive departments should be removed from them and given to the central agency. It would be entirely possible to make the concentration and readjustment by reorganization of the Department of Commerce under such a designation as the Department of Commerce and Industry, but the demonstrated necessity of taking such an organization out of partisan politics should be studiously considered.

There is your N. R. A. idea complete. Its difficulties forecast and its essential logic stated 16 years ago.

I sometimes don't agree with Senator Nye, although I have the greatest respect for him. For once I do. On January 5, 1932—a year and a half before N. I. R. A.—he introduced a bill "to amend the Federal Trade Commission Act to provide for 'trade-practice conference agreements.'"

Under this bill the Commission can assemble "trade or industry or any complete group or geographic division thereof" for consideration and submission to the Commission of voluntary agreements; these assemblies being known as "trade-practice conferences." Agreements are limited in substance to prevent "unfair methods of competition", which are not in that bill defined, establishment of "business practices" which "tend to keep the channels of commerce free from the use of unfair method of competition * * * restraints of trade * * * monopoly * * * and * * * establishment of discontinuance of any business conduct or practice which would, in the judgment of the Commission, tend to promote the public interest and the use of fair methods of competition."

Senator, I would like to skip a part of this because it is going into the record, to save time.

The CHAIRMAN. Very well.

(The same is as follows:)

The duration of these agreements is determined by majority vote at the conference but cannot be less than 1 year. The Commission reviews the agreement and if it finds that it doesn't "unreasonably restrain trade or tend to create a monopoly", it approves it. Such approval then becomes "conclusive evidence of the legality of individual or concerted action conforming to its terms, taken by any member * * * represented at the conference." If the Commission finds that any of these Agreements tend to "restrain trade or * * * create a monopoly" it informs the members of their opinion and provision is made in the manner of a consent decree to get a decision by the courts; then—"All provisions of existing law inconsistent with * * * the provisions of this section * * * are hereby suspended and repealed to the extent that such provisions of existing laws are inconsistent with or repugnant to or limit the effectiveness of this section."

General JOHNSON. On the same date, Senator Nye introduced a bill to establish a Federal trade court, very much like the high court of commerce that I just referred to.

This bill sets up a central Federal trade court, with a chief justice and 11 associates appointed during good behavior, and so forth, and 10 circuit courts presided over by one of the associates or the chief justice.

These courts "have jurisdiction over all suits, actions, or proceedings, civil or criminal at law or in equity, arising under or authorized by * * * the antitrust laws and the Federal Trade Commission Act." This jurisdiction is exclusive and divests the district courts and the circuit courts of their jurisdiction in these cases. These courts have the power to enforce, set aside, or modify orders of the Federal Trade Commission.

He also introduced on that day a bill to amend the Federal Trade Commission Act, which bill prevents selling below cost in certain circumstances and provides for the revocation of trade practice conference agreements.

Part of the language of that bill was [reading]:

It shall be an unfair method of competition under this section for any person in the course of commerce (a) to sell or offer to sell, as a trade incentive or for the purpose of injuring a competitor, any article or commodity at or below his cost price * * * to be determined in accordance with the best accounting practice in the trade or business or in accordance with any basis or method prescribed by the Commission; (b) to discriminate in price between different purchasers * * * not including discrimination made in good faith to meet competition * * * (c) to violate any rule adopted at a trade-practice conference by the industry of which he is a member.

(NOTE.—This makes the trade practice conference rules applicable to those who do not participate therein, which is not covered in the first bill. The requirements for full representation at such conferences, etc., are not nearly so stringent as those developed under the National Recovery Administration and the Commission does not participate in the conference as the National Recovery Administration does.)

Any person who, within one year from the date any trade practice becomes effective as to him, finds * * * an undue hardship in the conduct of business, may file * * * a petition * * * to revoke such rule * * * if in the opinion of the Commission said rule is unduly oppressive the Commission shall revoke the same.

I have just looked over a speech which Senator Nye made in the Senate May 23, 1934, in which he attacked me for preserving monopolies by the codes and not taking the opportunity furnished by the licensing provision of preventing monopolistic practices so rife in American industry. I will go into that a little later. Just now I am inclined to agree with Senator Nye that some of this criticism was justified. At the time he made that speech we were still in the throes of making codes, and a good deal of abuse crept in.

Many groups which were already in a relatively monopolistic control of the processes of trade or industry still had and some retained that control—not because of the codes but in spite of them. This control was created and continued to exist year after year under the antitrust laws and the Federal Trade Commission. Our definitions of monopoly and monopolistic practice in 1933 and 1934 were up in the air and were clearly in disagreement with the Federal Trade Commission. I may anticipate myself by saying that I am not sure that Senator Nye was not more nearly right in his three bills than was N. I. R. A.

There was excellent suggestions in the Copeland bill, introduced in May 1932, defining "unfair price competition"—and the lack of that definition has been one of the greatest difficulties of the N. R. A.—as any [reading]—

price action tending (a) to mislead or deceive or in any way to wrongfully impose upon or prejudice the purchasing public, or (b) to unduly undermine or lessen or prevent competition or in any way to wrongfully injure a competitor or com-

petitors, or (c) to create a monopoly in any line of business in commerce. The term "unfair price competition" as used in this section does not mean a price reduction made in good faith for a legitimate merchandising reason or for a necessary or reasonable business purpose.

Here follows in my statement a discussion of the Walsh bill, which I shall ask to have inserted in the record but not take the time to read.

(The same is as follows:)

The Walsh bill defined as unfair competition, price discrimination, bribery espionage, design piracy, enticing, procuring breach of contract, false or disparaging statements, intimidation, concealed subsidiaries, bogus independents "selling at or below gross cost, including selling expense, overhead, and other proper charges, except sales in good faith to dispose of slow-moving or out-of-date goods" all acts tending to deceive the competitors or the public, false advertising and similar misstatements and claims as to character, purposes, properties, etc., of the product, untrue claims to be selling at reduced prices, "all acts which artificially or intentionally enhance or depress prices", and also all "sales above or below the price fixed by a contract approved by the commission, as hereafter provided", and "specific trade practices * * * from time to time * * * designated as unfair by the commission." This list is not to be exclusive.

The rest of this bill provides that the Commission can approve "contracts among persons and groups of persons if the Commission is of the opinion that the contract is in the public interest and it will be "presumptive evidence that such contract is in the public interest if it results in a fair and reasonable compensation to producers of average ability and efficiency and to labor and does not result in a selling price of the goods or commodities * * * in excess of a fair and reasonable price based on all fair and reasonable items of cost plus fair and reasonable profit." Such contracts can fix prices, consolidate ownership, control or proportion production or pool them or "do any acts which are prohibited or which might be considered prohibited by the antitrust acts."

Senator Walsh also introduced a bill in the Seventy-third Congress, S. 1556 (introduced May 1, 1933) entitled, "To encourage planning in industry by permitting controlled cooperation and protecting agriculture, labor, and consumers, and to supplement the powers of the Federal Trade Commission."

Under the Nye bills price fixing would be possible but the questions "What is monopoly?" and "what is interstate commerce?" and what is "free competition" and what are "unfair methods of competition?" are still left open. The Nye bills recognize the need for additional legislation to prevent and control monopolies with which I heartily agree.

I have perhaps been misleading in relating the doctrine to 16 years ago.

Since the time when trade first developed and laws were made, there has never been absolute freedom of competition. All commercial laws restrain, to a degree, individual competition.

General JOHNSON. Centuries ago, there developed in England the necessity for cooperative action by the merchant princes of that period. First, for the purpose of purging business of unfair competitive practices, and second for the protection of the public interest. The device chosen for the accomplishment of these ends was through societies made up entirely of merchants' guilds. The method employed was the codification of fair-business practices that had successfully withstood the scrutinizing censorship of customs and usage. This codification is commonly known as the "law merchant", from which we derived much of our present commercial law.

Under this commercial common law there developed restraints upon free competition which were necessary in the public interest and for the preservation of commerce. Some of these restraints prohibited misrepresentation, commercial bribery, defamation of competitor, false marking or branding, false invoicing, espionage by competitor, enticement of employees, imitation of trade marks, piracy of style or design, threats of litigation. These restraints, no doubt,

have a familiar ring. They should have. They constitute the bulk of trade-practice regulations appearing in codes.

Senator GORE. General, you referred to the history of competition. Do you have some particular history in mind?

General JOHNSON. It is just what I drew from a good deal of reading on the subject. However, I could give you the references to that. I could not give you them offhand.

It must be understood at this point that these restraints upon free competition were governmental restraints designed to further the public interest as opposed to restraints upon free competition by private individuals against the public interest. This latter is what is commonly known as a "monopoly" and was illegal even under the engrossing statutes in England. In the era of rapid industrial expansion in this country, the growth of private restraints on trade, or monopolies, increased at so rapid a rate as to endanger the existence of any competition. As Justice Harlan said in the *Standard Oil case:*

> All who recall the condition of the country in 1890 will remember that there was everywhere, among the people generally, a deep feeling of unrest. The Nation had been rid of slavery—fortunately, as all now feel—but the conviction was universal that the country was in real danger from another kind of slavery that would result from aggregations of capital in the hands of a few individuals and corporations controlling, for their own profit and advantage exclusively, the entire business of the country, including the production and sale of the necessities of life. Such a danger was thought to be then imminent, and all felt that it must be met firmly and by such statutory regulations as would adequately protect the people against oppression and wrong.
>
> * * * * * * *
>
> Guided by these considerations, and to the end that the people might not be dominated by vast combinations and monopolies, having the power to advance their own selfish ends, regardless of the general interest and welfare, Congress passed the antitrust law of 1890 * * *

This Sherman Act, however, made no distinction between restraints of competition in the public interest and restraints of competition by groups of individuals for their own selfish advantage. It blanketly declared any restraint of trade illegal.

In contrast to this, the British decisions upheld restraints—

> If reasonably necessary for the protection of the interests of the parties and * * * not adverse to the interest of the public.

This quotation was taken from the decision of Lord McNaughton in *Maxim Nordenfeldt and Bun Ammunition Co.* v. *Hordenfeldt.*

Australia passed a statute known as the "Australian Industries' Preservation Act", which recognized two factors:

1. That the producer, laborer, and distributor as well as the consumer, are part of the public to be protected.

2. The intent to injure the public was a requisite of a violation.

This statute has been interpreted to permit restraints of free competition in the public interest.

The Sherman Act, weak as it was, was thoroughly emasculated by the Supreme Court in some of the decisions which followed.

In the *Knight case,* it was ruled that the Federal Government did not have jurisdiction because manufacture was not commerce.

The *Standard Oil case* injected the "Rule of reason" in holding that the Standard Oil Co. of New Jersey was not in violation of the Sherman Act.

The *United States Steel Corporation case* indicated a complete means of evading the Sherman Act by the fiction of holding companies.

The *Trenton Potteries case* pointed out that a group of members of the industry could not stop a cutthroat price war by fixing a reasonable price which would allow independent units to remain in business thereby forcing the group into a loose-knit holding-company arrangement similar to the United States Steel Corporation, thus actually fostering a monopoly. The Supreme Court did, however, point out that—

> The choice between rival economic philosophies is exclusively a function of Congress.

Because of the inadequate guides of the Sherman Act and the uncertainties resulting from the numerous interpretations under the law, more legislation was urged. The Federal Trade Commission and Clayton Acts were therefore enacted. Congressional hearing indicated clearly the intent of these laws to relieve legitimate business of the uncertainties which previously existed by having the Federal Trade Commission pass in advance upon trade agreements. The Federal Trade Commission chose the path of least resistance and refused to take such action. In this connection, I want to contrast the healthy growth of the Interstate Commerce Commission which stabilized the railroad and shipping industry by passing upon these agreements in advance of their decision by a court.

Our attempts to legislate restraints upon competition in the public interest have failed—thereby allowing restraints upon competition against the public interest to flourish. The results of this failure—the price wars, absorption of smaller enterprises, sweating of labor and all other evils—we have had with us in 1932 and 1933.

I have tried to state the conditions in the country and the state of mind of at least some of our legislators as to what should be done about it as we approached the utter collapse of early 1933.

The purpose of N. R. A. was—

(1) To stop the downward spiral of purchasing power, production, and of mortality among small companies.

(2) To substitute for the old and destructive system of absolutely unregulated competition, a control and organization for the elimination of those faults which we thought were wrecking our economic system.

The methods selected for this purpose were:

(1) To build up the collective power of labor in order that it might resist any competition at the expense of hours and wages by trying to secure for labor full rights of organization and representation without interference or coercion.

This and the minimum wages and maximum hours were the noblest concepts of N. R. A. They were nothing less than an attempt to take the living standards of labor out of the field of predatory competition.

Forty-one years ago Congress declared that human labor is not a commodity of commerce. N. R. A. is the only gesture Congress has ever made to make that assertion anything more than a sterile but pious generality.

(2) To create immediate purchasing power and push the then utterly degraded condition of labor back to where it was before the vast destruction of 1932 by an immediate and unusual spreading of employment by shortening hours, thus maintaining and increasing purchasing power by increasing hourly wages.

(3) To bring about industrial planning and administration under Government sanction and supervision, the idea being that every act should be under the eye of Government, subject to the veto of Government, and that any act not authorized by Government should automatically pass under the full punitive power of the antitrust and Federal Trade Commission statutes and also under new and far swifter and more effective punitive powers provided in N. R. A. itself.

That is the basic plan of N. I. R. A. Of course, it was a tremendous task—I know of no greater one. There was no trained personnel for such a job. We started it on June 16, 1933, from the buff without much help or any precedent, guidance, or rule of action.

By October 15, through the emergency devices of the President's Reemployment Agreement and the Blue Eagle, 96 percent of that part of American industry which was subject to N. R. A. had accepted the hours, wages, and collective bargaining features of N. I. R. A., had engaged to cooperate in submitting fair-trade practice provisions at once and had, according to a general questionnaire census which we took at that time created 2,785,000 jobs and increased their annual pay rolls by 3 billion dollars.

In the meantime a flood of codes rolled in. They could be handled only by a rapid increase in personnel. In 2½ months N. R. A. employees increased from zero to 2,000. Of course, their selection was helter-skelter.

I have been accused of going to big industry alone for assistance. The fact is that my immedate staff was evenly balanced as between labor and in industry. The first deputies included:

Two college professors; 2 lawyers; 1 labor leader; 1 Army officer; 1 scientist; 3 industrialists.

I had to select in early control positions men I knew and trusted.

By the end of 1933, codification was about 60 percent complete. I left in October 1934 with the process of codification almost finished.

Now I do not for one moment contend that there were not serious lapses in this rapidity of progress, that rotten provisions did not creep into codes, that personnel was not far from perfect, that code authorities were properly organized, that administration has been perfect or even very good.

But I do contend and I think I can show that such faults as arose were due to my bad administration rather than a bad law, that many if not most of these errors of mine are in process of effective correction. I am very sure that to destroy N. R. A. because there are these creaky joints in its structure would be like burning down your house to get rid of a few rats in the attic.

So much for a statement of the conditions N. R. A. was addressing, what it tried to do, and how it tried to do it.

II. IN WHAT HAS N. R. A. SUCCEEDED AND FAILED?

(*a*) *The little fellow.*—In the first place N. R. A. has succeeded in arresting the destruction of the little fellow in business. May I call your attention again to exhibits 4, 5, and 6, which I have already explained to the committee, especially exhibit 5?

They are the record of commercial failures over a period of years. When business activity is high, failures are low and this is true in every period on chart 5 except one and that one occurred with the advent of the "new deal."

The vast progress of merger and absorption has been stopped. This is indicated by the figures on corporate financing (exhibit 9).

I do not mean to say that this is a definite condition, an affirmative curve, but, of course, we know that this curve taken in connection with the curve of business failures and disappearance of individual companies was affected always by new capital issues of domestic corporations on the stock market. It has turned from 1919, which shows a constantly increasing number of those issues and volume of those issues, dropping to almost nothing in the year 1933 and 1934 where it remains.

Failures in business and especially failures among small enterprises are shown on chart 5 at the lowest level for all the years in that chart although business continues at about the same rate as at the beginning of 1932 and but little better than a year ago. Yet the failures are at a lower rate than any period on that chart. Most significant of all is the fact shown on the chart that the greatest decline in failures is in the field of small enterprises, which, to my mind, proves that we have removed the process of economic slaughter among them.

Recent figures of Dun & Bradstreet show a continuation of this remarkable trend in 1935. Insolvencies are 9.3 percent less than 1934.

All figures available to us indicate that retailers generally enjoyed an increase in sales in 1934 over 1933. Hardware stores, which represent a type of small store, made an increase in sales for 1934 over 1933 of 22 percent—the largest increase of any retail group. Retail business in places of less than 30,000 population showed a sales increase of 21 percent above 1933, while larger stores, represented by mail-order houses and department stores, showed an increase for 1934 over 1933 of only 13 percent. The number of failures in the retail trades in 1934 was only about one-third of that in 1933. The indications are further that this decline in failures has continued in the first 2 months of 1935 and that failures in the retail trades declined more during the first 2 months of this year than did failures in the manufacturing trades.

There were more retailers at the end of 1933 than in 1929 in spite of the tremendous number of failures in 1929–32, and in spite of the decline in these enterprises in all but a few classes over a number of years.

These figures seem to indicate that retailers and especially the small stores are making better headway against the depression than any other enterprises and, therefore, whatever lesser hardship they may have suffered since the inception of the N. R. A. has been rapidly offset by improved operating results, which are due in no small part to the operation of the codes.

These figures are of especial interest in view of the appearance here of the chairman of the Hardware Association who said that his group did not want the Retail Code.

That group is alone in this. Of course, you are aware that your committee has before it a petition of all other retail divisions requesting extension of N. R. A.

At this point, may I insert in the record some telegrams, letters, and resolutions adopted by trade and industrial associations expressing group sentiment in favor of a continuation in new legislation of the principles upon which the National Industrial Recovery Act is based. These documents have been brought to my attention by various per-

sons and organizations, and I have been given authority to release them publicly as an expression of group sentiment with relation to the National Recovery Administration. So far as I have been able to determine they do not include letters or expressions of opinions from individuals, and they have not been previously referred to in the record. The documents are as follows and will be included without reading as exhibit 8.

(The same are as follows:)

EXHIBIT 8

(1) Copy of a resolution of the Federal Wholesale Druggists Association, representing 16,000 retail druggists as stockholders and members, doing an annual business of $60,000,000. I am informed that this resolution was adopted by the association at its convention in New York on March 15, 1935.

(And the same is as follows:)

RESOLUTION CONCERNING THE INDUSTRIAL RECOVERY OF THE NATION

Whereas it is proposed to restrict the application of the National Industrial Recovery Act to major industries engaged in interstate commerce; and

Whereas the Sherman Act, the Clayton Act, and the Federal Trade Commission Act do not protect large or small enterprises from unfair and destructive competition in intrastate commerce; and

Whereas the trades and industries generally have suffered from unfair and destructive competition in intrastate commerce more during this general business depression than ever before in the history of the country; and

Whereas this and other trades and industries attribute this general business depression more to unfair and destructive competition than to any other one cause: Therefore be it

Resolved, That the Federal Wholesale Druggists Association, representing 16,000 retail druggists as stockholders and members, doing an annual business of $60,000,000, respectfully urges the Finance Committee of the United States Senate, all Members of Congress, and the President of the United States to strengthen rather than weaken the existing laws so that wholesale and retail distribution generally, which is an integral part of interstate commerce, may keep its indispensable place in the economic picture and continue to function in the interest of the consuming public and thereby prevent monopoly of production and distribution; and be it

Resolved, That the loss-limitation clause as embodied in the Retail Drug Code has been of great help; in fact, the only help that the retail-drug industry has had to improve that industry and hasten national recovery is the loss-limitation clause. For that reason we urge that the general principles of that clause at least be preserved; and be it further

Resolved, That a copy of this resolution be immediately forwarded to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the President of the United States Senate, the Speaker of the United States House of Representatives, and the President of the United States, and that a copy be furnished the public and trade press.

---

(2) Copy of a resolution of the Oregon Mayonnaise Manufacturers Association.

(And the same is as follows:)

OREGON MAYONNAISE MANUFACTURERS ASSOCIATION,
Portland, Oreg.

Whereas dispatches from Washington, D. C., indicate a belief current in some official circles that small business is opposed to the National Industrial Recovery Act, and whereas this association has operated under the National Mayonnaise Code for the last year and has had an opportunity to compare conditions with and without a code of fair practice: Therefore be it

Resolved, That the Oregon Mayonnaise Manufacturers Association, in meeting assembled this 16th day of March 1935, approves the general principles of the National Industrial Recovery Administration system, including the minimum-wage scale, and likewise affirms the belief that in order to continue the principle of fair minimum wages it is necessary that the small manufacturers be protected

from destructive price cutting and unfair methods of trade competition and that removal of one or both of these principles from the average code would make the code ineffective; and be it

Resolved, That this resolution shall be spread upon the minutes of this association and that the secretary be instructed to send copies to the members of the Oregon congressional delegation.

K. C. ELDRIDGE, Jr., *President.*
H. P. EDWARD, *Secretary.*

---

(3) Copy of a letter of the Printer Board of Trade, San Francisco, Calif., to the National Committee for the Elimination of Price Fixing and Production Control.

(And the same is as follows:)

GENTLEMEN: One of our members to whom you sent the enclosed card brought it into me and in view of the fact that the organization here has taken a vote on this matter, he felt that it would be better to express the unanimous opinion of the Trade Association.

Incidentally the printing industry of the far West is very definitely in favor of Codes of Fair Competition and with some method of cost determination and more control of unfair trade practices. They are also not opposed to fair wages, hours, and working conditions arrived at by collective bargaining.

Our industry has generally felt that business will come to regard the Codes of Fair Competition very much as industry today regards the regulation of child labor, the industrial accident regulation, and insurance. It would be very much more helpful to have some cooperation in the matter of making life more worth while to the average business man than it has been, especially the smaller enterprises. We feel that most of the opposition to the codes is coming from certain special interests rather than from the average American business man.

Yours very truly,

L. A. IRELAND, *Secretary.*

---

(4) Letter of the National Association of Book Publishers to Mr. Donald R. Richberg, executive director of the National Emergency Council.

(And the same is as follows:)

MARCH 8, 1935.

DEAR MR. RICHBERG: We hope that in drafting detailed recommendations for the new National Recovery Administration law, you will include provision for retaining a code such as the Retail Booksellers' Code, whose principal clauses were formulated to stop the use of new books as "loss leaders" and establish fair competition in the bookselling trade. The Consumers' Advisory Board after most careful consideration last spring gave the code price rulings its full approval. May we point out that these provisions do not constitute price fixing, merely price maintenance, and that similar provisions have obtained in the book trade in principal European countries for years?

Book prices have not advanced since the inauguration of the code; in fact, publishers have made every effort to keep prices down, despite increased manufacturing costs. It should be stated, too, that compliance has been general in the case of the booksellers' code; the few instances of noncompliance have been due to misunderstandings and have been speedily cleared up.

In the opinion of our executive committee the code should be continued for a further trial period. Abandoning it at this time would seriously affect the very real improvement in wholesale and retail booktrade conditions. A survey among our members, made in January, showed a substantial increase in book sales to retail stores during 1934 and our interest in continuance of the code is based on the belief that it is serving to strengthen and increase the number of outlets for the books we publish.

The National Booksellers' Code Authority has received hundreds of letters from booksellers in all parts of the country stating that the code has aided them. Most of these are "small enterprised," a class of business which we believe you are especially anxious to protect.

The cultural life of the country is sustained by wide distribution of books. If, in the new law, there is to be provision for the abandonment of many codes, we trust that you will recommend the insertion of clauses permitting the continuance of codes which have a special function to perform, valuable to the industry itself, and from the standpoint also of service to the general public.

President Roosevelt referred to the unfortunate practice some stores have followed in the past of using books as "loss leaders", at his press conference on January 25 last, according to an item in the New York Herald Tribune.

Sincerely yours,

W. W. NORTON, *President.*

---

(5) Copy of a resolution of the National Association of Ice Industries adopted at its meeting March 9, 1935.

(And the same is as follows:)

At the conclusion of a 3-day conference held in the city of Washington and attended by 96 men chosen by 44 unit ice associations of all classes—manufacturers, harvesters, and distributors and covering every section of the United States—to inquire carefully into the workings of the Code of Fair Competition for the Ice Industry, after 1½ years' experience, the following resolution was unanimously adopted: Be it,

Resolved, That the ice industry of America heartily approves continuance of the National Industrial Recovery Act practically without change, at least for industries, the great majority of the components of which desire to continue operation under codified regulation.

Be it further resolved, That the ice industry is preponderantly in support of the National Recovery Administration and the Ice Code with its present provisions intact, and hereby authorizes the National Association of Ice Industries to make such use of this resolution as its executives may deem proper.

NATIONAL ASSOCIATION OF ICE INDUSTRIES,
LESLIE C. SMITH, *Secretary.*

---

(6) Copy of a resolution of the National Association of Tobacco Distributors, adopted February 23, 1935.

(And the same is as follows:)

CHICAGO, ILL.

Resolved, That the members of this National Association of Tobacco Distributors, Inc., in national convention assembled, do hereby strongly urge the renewal or extension of the National Industrial Recovery Act by the Congress of the United States of America; and, it is

Further resolved, That the board of directors of this association be and they hereby are authorized, empowered and directed to take such action as they deem advisable to carry out and effectuate the foregoing; and, it is

Further resolved, That the members of this National Association of Tobacco Distributors, Inc., in national convention assembled, do hereby pledge to the President of the United States and the members of his Administration, their support of the policies of the Administration in rehabilitating the industrial life of the Nation through the National Industrial Recovery Act.

---

(7) Letter of the National Association of Cotton Manufacturers to Hon. Charles A. Buckley, dated March 27, 1935.

(And the same is as follows:)

BOSTON, MASS.

DEAR MR. BUCKLEY: At a meeting at which over 90 percent of the spindles in the northern section of the cotton industry were represented, it was voted that the abandonment of the principles of the National Industrial Recovery Act at this time would bring about a more serious and chaotic condition than now exists, and it was urged that, with such modifications as appeared necessary, the National Industrial Recovery Act be continued after the date of expiration of the present Act.

The cotton textile industry has had more experience operating under a code than any other industry, and without question it has been of much benefit to both employees and employers.

When this matter comes up for consideration we trust it will receive your support.

Yours very truly,

RUSSELL T. FISHER.

(8) Letter of the National Handbag and Accessories Salesmen's Association to Hon. Charles A. Buckley, dated April 1, 1935.

(And the same is as follows:)

NEW YORK, N. Y.

SIR: The National Handbag and Accessories Salesmen's Association in behalf of its 200 members engaged in selling the products of the ladies' handbag industry, are unanimously in favor of granting the request of the President of the United States to continue the National Recovery Act.

Most of our members are residents of the city of New York, and they appeal to you as our representative in Congress that you give your support in favor of the continuance of the National Recovery Act for 2 years more.

The salesmen in the ladies' handbag industry possibly were the first in the industry to feel the effects of the depression because of the lowering of prices and the reduction in sales volume. They will probably be the last to benefit through recovery in the industry. Yet, they feel that what improvement has been made in the industry during the past year, was due to the National Recovery Act, and the proper enforcement of the code for the industry. If the National Recovery Act were allowed to expire in June, the industry would return to conditions even worse than what existed prior to the approval of the code.

We request that you do everything you can to make possible the early approval of the National Recovery Act. We assure you of our appreciation of your efforts in support of our request.

Respectfully,

BEN SHAPIRO, *President.*

---

(9) Copy of resolution of the United Infants' and Children's Wear Association adopted March 26, 1935.

(And the same is as follows:)

NEW YORK CITY, N. Y.

The following is a resolution duly adopted at a meeting of the United Infants' and Children's Wear Association, held at the Hotel McAlpin, New York City, at 8 o'clock of Tuesday, March 26, 1935.

Resolved, That the United Infants' and Children's Wear Association give public expression at this time of its appreciation for the help which this industry has received from the National Industrial Recovery Act and through the code authority for the infants' and children's wear industry, created thereunder, in the maintenance of the standards of wages and hours; in the abolition of child labor; in the elimination of unfair trade practices; injurious alike to consumer, manufacturer, and retailer and in the general stabilization of our industry.

Resolved further, That even though the infants' and children's wear industry has been under code jurisdiction for less than 1 year, and though there are apparent shortcomings in the code and the enforcement thereof, it is nevertheless the consensus of opinion of this association that sufficient industry value has been demonstrated to insure to us opportunity by self-government to overcome these shortcomings: Be it further

Resolved, That this association places itself on record as unanimously approving the recommendation of the President of the United States that the National Industrial Recovery Act be extended for an additional period of 2 years and it is further, our firm conviction that to abandon the National Recovery Administration at this time and not to create legislation which will regulate wages, hours, eliminate child labor, and establish fair trade practices would cause such chaos to prevail that this industry would suffer to immeasureable extent, and be it further

"*Resolved*, That copies of this resolution be sent to all Members of the House of Representatives and the Senate of the United States."

I, Max H. Zuckerman, executive secretary of the United Infants' and Children's Wear Association, do hereby certify that the above is a true copy of a resolution duly adopted at a meeting of the United Infants' and Children's Wear Association on the 26th day of March 1935.

Dated, New York, April 1, 1935.

MAX H. ZUCKERMAN.

(10) Copy of a resolution of the National Skirt Manufacturers Association, Inc., dated April 6, 1935.

(The same is as follows:)

NEW YORK, N. Y.

Whereas the National Skirt Manufacturers Association, in meeting assembled, are in favor of a continuation of the National Industrial Recovery Act with modifications tending toward greater flexibility in industrial self-government and in administration; and

Whereas the association is unanimous in its support of the President of the United States in his recovery policy; and

Whereas the Code of Fair Competition for the Skirt Manufacturing Industry has raised standards in labor relations and in business conduct, which, without reenactment would be destroyed: Therefore be it

Resolved, That the members of the National Skirt Manufacturers Association are unanimously in favor of the proposed extension of the National Industrial Recovery Act; and be it further

Resolved, That copies of this resolution be forwarded to the members of the Senate Finance Committee.

Certified as correct.

MACK SEPLER,
Secretary National Skirt Manufacturers Association, Inc.

---

(11) Copy of letter of St. Joseph Valley Typothetae, Inc., to the President of the United States, dated April 4, 1935.

(The same is as follows:)

SOUTH BEND, IND.

Master printers assembled, representing commercial relief printing establishments in the St. Joseph Valley of northern Indiana and southwestern Michigan, strongly advocate the continuance of the National Recovery Act and codes of fair competition without fundamental changes provided that governmental agencies will enforce code regulations without distinction or discrimination as between labor and fair-trade-practice provisions.

To eliminate the maintenance of fair-competition provisions would mean the return to selling below cost of production which would make hour and wage regulations unenforceable.

To return to the cutthroat practices which have partially been corrected is unthinkable. Future improvements depend upon ending uncertainty and initiation of more vigorous enforcement with equal emphasis on all code provisions.

We would be pleased to learn that the future National Recovery Act will incorporate these policies.

We have the honor to remain,

Yours respectfully,

ST. JOSEPH VALLEY TYPOTHETAE,
R. DWIGHT HARPER, JR.
Executive Secretary.

---

(12) Copy of letter of Philadelphia Resilient Flooring Association to Hon. James J. Davis, setting forth a resolution adopted by the association on March 26, 1935.

(The same is as follows:)

At a meeting of the Philadelphia Resilient Flooring Association which was held in Philadelphia, Tuesday, March 26, 1935, the following resolution was passed which we are submitting for your consideration.

For your information, the Philadelphia Resilient Flooring Association consists, of approximately 20 resilient flooring contractors who operate under the Code of Fair Competition for the Resilient Flooring Contracting Division of the Construction Industry (244-10). Each member would normally be classified as a "small business man."

Resolved, That the Philadelphia Resilient Flooring Association give public expression, at this time, of its appreciation for the great help which this industry has received through the National Recovery Act, in the maintenance of standards of hours and wages; in the elimination of unfair trade practices, injurious alike to both the contractor and the consumer, and the stabilizing of the business in general. Even the short period in which this act has been in effect has been

sufficient to demonstrate, convincingly, the value, both present and prospective, reasonably to be obtained from the principle of self-government in industry: Be it, therefore,

Resolved, That the Philadelphia Resilient Flooring Association place itself on record as unanimously approving the recommendations of the President of the United States that the National Recovery Act be extended for an additional period of 2 years, and that copies of this resolution be sent to the Members of the House of Representatives and of the Senate of the United States from this district.

Very truly yours,

PAUL G. MUSSER, *Secretary.*

---

(13) Letter of Washington Trucking Associations, Inc., to Hon. Lewis Schwellenbach, dated March 26, 1935.

(The same is as follows:)

SEATTLE, WASH.

MY DEAR SENATOR: The trucking industry in this State is faced with an extremely serious situation, due to the lack of action by the Congress in regard to the National Recovery Act.

During the past 2 years this industry, as well as every other major industry in the State, has been engaged under the code system in the work of stabilization, reemployment, and the development of healthy business conditions. It was thought by the representatives of the various industries that the value of this work was such that when Congress convened, it would act quickly in this matter in order to avoid business uncertainty and confusion.

Unfortunately it begins to appear that no real progress has yet been made toward reenactment of the law, and as a result, or industries, actuated to some extent by the unfavorable newspaper dispatches, are faced with increasing uncertainty in all of their operations. If this uncertainty is continued, we are going to lose all of the progress we have made under the code system. We already find that due to the possibility of the codes being discontinued, there is an alarming tendency on the part of various operators and businesses to go back to some of the vicious practices which were outlawed by the code. Unless Congress acts quickly, wages are certainly going to be cut to meet the chiseling which is the result of the present uncertainty and hours are going to be lengthened for the same reason. The situation from this standpoint alone is extremely serious.

If the Congress is going to discontinue the act and require industry to write off its investment in the code system, it should do so quickly, so that we can immediately undertake to readjust our operations. On the other hand, if the National Recovery Act is to be extended, the legislation should be expedited so that industry can plan accordingly.

The various representatives of the 54 major codified industries of this State have clearly established the fact that the codes have been of tremendous benefit to both industry and labor and believe that the code system should be continued for at least another 2-year period. In our own industry tremendous progress has been made under the Trucking Code. If the revised National Recovery Act permits transportation rate stabilization and the establishment of a practical compliance system, our industry will certainly make even greater progress during the next 2 years both from the standpoint of capital and labor as well as reemployment.

The codified industries in this State are at this time considering engaging in a 2-year reemployment program, State-wide in scope. This program, of course, depends directly upon the reenactment of the national recovery law, which provides the machinery under which the program would be handled.

We would be extremely grateful if you can find time to give this matter your special consideration and let us know approximately when National Recovery Act legislation will be cleared by the Congress.

Yours very truly,

F. E. LANDSBURG, *General Manager.*

(14) Copy of resolution adopted by the Providence Chapter of International Society of Master Painters and Decorators, Inc., March 21, 1935.
(The same is as follows:)

PROVIDENCE, R. I.

Whereas the enactment of the National Industrial Recovery Act marked the advent of a new era in our industry; and

Whereas through this act and by the establishment of a code of fair competition for this industry, there has resulted the eradication of those unethical practices from which the public and labor have long suffered; and

Whereas the benefits obtained and the improvements noted bear testimony to the fact that this industry needs the National Recovery Act and that its continuance is absolutely necessary to maintain this progress and that its abandonment would be suicidal and result in disruption of this industry at this time; and

Whereas the national code authority for this division of the industry through its fair dealing and its honest and efficient administration has made a favorable impression on the members of this industry, and, the cooperation extended by the various National Recovery Administration staffs is also worthy of commendation: Therefore, be it

Resolved, That we, the Providence Chapter of the International Society of Master Painters & Decorators, Inc., assembled in Providence, R. I., this 21st day of March 1935, fully cognizant of the benefits derived from the National Recovery Act and well aware of the disaster that would follow its abandonment, do hereby unanimously endorse its continuance for at least 2 years more and strongly urge that our United States Senators, Peter G. Gerry and Jesse H. Metcalf, vote in favor of at least a 2-year extension; and

Further, That a copy of this resolution be sent the above Senators.

Unanimously passed and made a part of the records of this chapter, this 21st day of March 1935.

HOWARD J. O'DONNELL, *Secretary.*

---

(15) Certified copy of resolution adopted by the Folding Paper Box Association of America on January 10, 1935.
(The same is as follows:)

MINUTES OF THE ANNUAL MEETING OF THE FOLDING PAPER BOX ASSOCIATION OF AMERICA HELD ON JANUARY 10, 1935, AT THE PALMER HOUSE, CHICAGO, ILL.—CONTINUATION OF CODE AFTER JUNE 16, 1935.

The following resolution aodpted by the national board of directors at its meeting on January 9, 1935, was presented:

Resolved, That the national board of directors of the Folding Paper Box Association of America recommend to the association that it submit a petition to the National Industrial Recovery Board in Washington on behalf of the folding paper-box industry requesting that the code of fair competition for this industry be continued after the present expiration date of the National Industrial Recovery Act on June 16, 1935, for that length of time the Recovery Act itself is extended.

Upon motion duly made and seconded it was voted that the recommendation of the board of directors be approved and that the association submit a petition to the National Industrial Recovery Board in Washington requesting that the code of fair competition for this industry be continued after the expiration date of the National Industrial Recovery Act itself is extended.

This is to certify that the foregoing is a true and correct transcript from the minutes of the annual meeting of the Folding Paper Box Association of America, held in Chicago on January 10, 1935.

E. T. WILSON, *Secretary.*

This is to certify that E. T. Willson is known to me to be the secretary of the Folding Paper Box Association of America, and that he personally appeared before me this 19th day of March 1935, and acknowledged the due execution of the foregoing certificate.

E. V. SHERWIN, *Notary Public.*

---

(16) Copy of telegram forwarded to the National Recovery Administration by the Arizona Funeral Directors Association, March 29, 1935.
(The same is as follows:)

YUMA, ARIZ.

The Arizona Funeral Directors Association in session March 27, 1935, at Phoenix unanimously passed a resolution requesting you to continue our code of

fair practices in our profession as now existing. We are satisfied with the set-up and want to give it at least 2 more years of trial and then decide whether to be made permanent or not.

ARIZONA FUNERAL DIRECTORS ASSOCIATION,
By O. C. JOHNSON, *Secretary.*

---

(17) Copy of letter of Queens County Pharmaceutical Association, Inc., to chairman of the National Industrial Recovery Board, dated March 22, 1935.

(The same is as follows:)

DEAR SIR: At the last meeting of the Queens County Pharmaceutical Association held on March 14, 1935, a resolution was adopted expressing gratification over your reported desire to continue the Retail Drug Code in its present form.

The Queens County Pharmaceutical Association is an organization consisting of independent retail pharmacists actively engaged in the retail drug business. Against seemingly insurmountable odds, we had been struggling to maintain our economic existence. Conditions were steadily getting worse, the economic depression was deepening, and retail distributors in a desperate effort to maintain volume began a price-slashing campaign the like of which had probably never been seen before. There was an utter disregard of cost and overhead. Apparently we were headed for economic destruction.

At this juncture, President Roosevelt intervened with his plan for the economic rehabilitation of the country. The National Recovery Administration was established. Ruthless, uneconomic price cutting was to be stopped. Business was to be permitted to organize to restore profit to industry. Unfair trade practices were to be eliminated and the small merchant was to be once more restored to his place in the sun.

The retail druggist got his drug code with a provision that no merchandise could be sold below the manufacturer's list price. In other words, no one was permitted to sell below actual cost disregarding, of course, overhead. A bottom was placed below which no one could sell. The further downward trend of prices was stopped. It has not increased prices to the consumers nor has it worked an economic hardship on anybody with the possible exception of a small predatory group who thrive on the demoralization of an entire industry. It has been distinctly beneficial to the small independent pharmacist.

The Queens County Pharmaceutical Association is strongly in favor of the retention of the present retail drug code. We trust that you will continue to favor us with your support.

Yours very truly,

QUEENS COUNTY PHARMACEUTICAL ASSOCIATION,
CHARLES WIENER, *Corresponding Secretary.*

---

(18) Letter of the Envelope Manufacturers Association of America to Hon. Charles A. Buckley, dated March 23, 1935.

(And the same is as follows:)

NEW YORK CITY.

DEAR SIR: Facts prove National Recovery Administration helps small business.

Do codes hurt small businesses?

Not in the envelop manufacturing industry, where small businesses are 90 percent of the companies.

Attached figures show how, under the Envelop Industry Code:

Big companies' volume dropped 7 percent.

Small companies' volume gained 8 percent.

Very small companies' volume gained 20 percent.

If the National Industrial Recovery Act is not extended with provisions to restrain unfair competition, the small businesses in the envelop industry will lose their gains.

A second sheet of figures is attached showing how this industry of small enterprises has increased wages 28 percent, and the number of its employees 16 percent.

If Congress allows ruthless competition to come back, envelop manufacturers will find it hard to take care of their 9,000 employees.

Very truly yours,

ROLAND R. BLISS,
Executive Secretary.

Effect of code on small enterprises—Envelop (manufacturing) Industry Code No. 220, effective Feb. 5, 1934

	Number of companies	1934 volume of output in percentage to average of 1931-32-33	Volume of output in percentage of total industry output		Increase or decrease of relative position as to volume of output
			Pre-code average, 1931-32-33	Under code 1934	
		Percent	*Percent*	*Percent*	
Large companies: Output of each, over 20,000,000 envelops per month. Sales per company average, $1,026,000 per year.	15	91	59.5	55.5	Lost 7 percent.
Small companies: Output of each, 5,000,000 to 20,000,000 envelops per month. Sales per company average, $227,000 per year.	55	105	33.3	35.8	Gained 8 percent.
Very small companies: Output of each, less than 5,000,000 envelops per month. Sales per company average, $42,000 per year.	70	117	7.2	8.7	Gained 20 percent.
Total	140	.....	100.0	100.0	

NOTE.—Statistics audited and compiled by Envelope Manufacturers Association of America, 19 West Forty-fourth St., New York, N. Y.

EFFECT OF CODE ON EMPLOYMENT AND EARNINGS ENVELOP (MANUFACTURING) INDUSTRY CODE NO. 220, EFFECTIVE FEB. 5, 1934

The following statistics show the effects of the labor provisions of the code on employment conditions in the envelop industry. These figures cover all classes of employees subject to the provisions of the code, and include both northern and southern zones.

139 member companies reporting on 154 manufacturing plants

	June 1933	March 1934
All employees:		
Number of employees	6,976	8,122
Number of employees added	.....	1,146
Percentage increase	.....	16.4
Total pay roll (1 week)	$119,302.93	$152,667.39
Increase in pay roll (1 week)	.....	$33,364.46
Percentage increase	.....	28.0
Man-hours (1 week)	282,962.14	285,901.13
Increase in man-hours (1 week)	.....	2,938.99
Percentage increase	.....	1.0
Average working hours per week	40.5	35.2
Percentage decrease	.....	13.1
Average hourly earnings	$0.422	$0.534
Percentage increase	.....	26.5
Average weekly earnings	$17.20	$18.80
Percentage increase	.....	9.3
Employees receiving more than code minimum wage rates:		
Average hourly earnings	$0.575	$0.706
Percentage increase	.....	22.8
Average weekly earnings	$23.58	$25.71
Percentage increase	.....	9.0

The above results were not due to any appreciable increase in volume of output, as shown by the fact that total man-hours required for 1 week's production showed increase of only 1 percent statistics audited and compiled by Envelope Manufacturers Association of America, 19 West Forty-fourth Street, New York, N. Y.

(19) Copy of letter of the code authority of the Wholesale Monumental Granite Industry to Col. Harry S. Berry, dated April 10, 1935.
(And the same is as follows:)

WESTERLY, R. I.

Col. HARRY S. BERRY,
Washington, D. C.
(Attention Mr. Maguire.)

DEAR SIR: In accordance with our telephone conversation of last Saturday, the writer feels very definitely that the sentiment of the majority of the members of this industry at the present time is not to extend the National Recovery Administration in its present form after June 16.

If we could secure, as discussed with you over the telephone, a reasonable amount of Government regulation of the rates of wages paid in different sections of the country, the situation would be entirely reversed. The only benefits to the industry come about by whatever additional help the Government can give us in enforcing uniform labor rates. This, of course, has been continually discussed for a year or two and any help which the Government could give along this line would certainly be a great benefit. The competition between various centers which very largely sell in the same markets is dependent on their ability to exploit labor and any Government action to regulate this point would be most welcomed by a majority of the members of this industry.

Without this, we have a code which has a few trade regulations, the enforcement of which seems to be entirely voluntary. The benefits to be derived from this do not seem to warrant the necessary expense to carry on the code as now constituted.

If there is any further information which you care to have me give you on this subject I would be very glad to do so.

Yours very truly,

EDWARD W. SMITH, *Chairman.*

---

(20) Letter of the Muscatine County local code agency of the National Code Authority for the Painting, Paperhanging, and Decorating Division of the Construction Industry, Inc., addressed to Hon. Louis Murphy, dated March 21, 1935.

MUSCATINE, IOWA.

DEAR MR. SENATOR: We are writing to urge that you work and vote for a 2-year extension of N. R. A. It is our experience that N. R. A. has done a very great deal for us and could, with proper enforcement, do much more.

Our code has, in our opinion, standardized business practices in the trade, has resulted in additional employment of labor and has improved our industry's service to the public. Improved employment conditions for the employee has resulted and it has very definitely rehabilitated our industry.

Our feeling is that small people in the trade have not suffered but on the contrary the only fault we have to find with conditions is that the small "chiseler" has interfered with complete working of the code.

We have spent our good money in setting up this code and do not want it torn to pieces at this time.

Very truly yours,

CHARLES C. BIERMAN,
Secretary Local Code Agency.
S. F. PHILLIPS,
President Master Painters Association.

---

(21) Copy of letter of the National Booksellers Code Authority to the President of the United States, dated March 7, 1935:
(The same is as follows:)

NEW YORK CITY.

DEAR MR. PRESIDENT: N. R. A. and one of its outcomes, the Booksellers Code, has been of enormous help to the book industry in the judgment of this code authority and the vast majority of retail booksellers and publishers. The retail book business has been sufficiently stripped of the unfair competition resulting from the use of books by department stores as loss leaders so that, as long as the Booksellers Code is continued, the vast majority of retail booksellers can look forward to staying in business.

Without the Booksellers Code the old loss-leader practices will inevitably return and small enterprise booksellers will be unable to meet the loss-leader competition and many of them, especially the small ones, will inevitably pass out of existence. Not only will this result in increased unemployment, but it will result in the drastic reduction of the educational and cultural advantages which small book stores bring to communities—advantages which in our present troubled civilization are sorely needed by all peoples.

We beseech you to continue the N. R. A. and the Booksellers Code.

Yours respectfully,

CEDRIC R. CROWELL,
Chairman National Booksellers Code Authority.

---

(22) Copy of resolution adopted at a meeting of the exectuve committee of the Optical Retail Code Authority, held March 18, 1935.

(The same is as follows:)

NEW YORK CITY.

Whereas the members of the code authority in charge of the administration of the Optical Retail Code have given generously of their time and efforts in the development of a code of high ethical standards for the guidance of those engaged in the distribution of ophthalmic products, and

Whereas through various rulings and official orders promulgated by the National Recovery Administration, the code authority through no fault of it own was greatly delayed in effectuating adherence to the above-mentioned code, and

Whereas the code authority has been in official existence for approximately only 4 months, and

Whereas approval of the code authority budget permitting the collection of necessary funds for code administration was received only 40 days ago, and

Whereas the code authority after four meetings devoted largely to the perfecting of its organization in accordance with N. R. A. procedure is just getting properly settled for efficient functioning, and

Whereas the public prints are rife with rumors of more or less questionable authenticity regarding the abolition of certain N. R. A. codes or their consolidation into large unwieldly groups; be it hereby

Resolved, That the Optical Retail Code Authority hereby respectfully petitions that the Optical Retail Code, approved N. R. A. Code No. 454, be continued in full force and effect in order that the good already accomplished may be continued and extended; and be it further

Resolved, That the period of time since the approval of most codes and the proper establishment of their administering body has been too short to permit full benefit thereunder commensurate with the strenuous effort already expended in the early development and later promulgation of rules of fair competition and therefore it is the unanimous opinion of this code authority that the Congress of the United States should extend the National Industrial Recovery Act in its present form beyond June 16, 1935; and be it further

Resolved, That the secretary of this code authority be, and is hereby, instructed to furnish copy of this resolution to the National Recovery Administration and the clerk of the United States Senate and House of Representatives.

---

(23) Copy of a letter of the El Paso Retail Grocers Association to Hon. Morris Sheppard, dated March 6, 1935.

(And the same is as follows:)

DEAR MR. SHEPPARD: There is not the slightest doubt in our minds—nor in the minds of our employees—that the National Industrial Recovery Act has had a most stabilizing effect on business and that its provisions in general, as well as the labor and fair trade practice provisions of the Code of Fair Competition for the Food and Grocery Distributors, both wholesale and retail have improved vastly the conditions both of our small merchants and of the employees in our trade.

Nevertheless, we learn daily through the news dispatches from the Nation's Capitol that this part of the recovery program is seriously endangered. It may be true, that the program in certain industries has not worked out as expected, undoubtedly due to defects in individual codes. It may also be true that such defects may have caused antagonism, both within such industries and from their consumers. However, it should be possible to remedy any such defects without

jeopardizing the whole structure and returning us to the chaotic conditions that existed before June 1933.

We wish to point out that one of the principal reasons for the successful operation of our code has been the trade-practice provisions. Due to these the pernicious customs of loss leaders and selling below cost have been eliminated entirely and have helped many a small, struggling store to stay in business and earn a living for its owner and his family. Our code does not establish any definite prices, leaving each individual grocer free to exercise his best efforts in open competition, thus absolutely protecting the interests of the consumer. The only provision regarding the price set-up on our trade, is the labor mark-up of 6 percent. Anyone can readily see that the labor mark-up can in no way constitute an obnoxious feature, as it is only a small part of the actual cost of doing business.

Furthermore, it does not tend to establish any definite price structure, as it is added to the individual cost of each retail grocer, thus leaving the field wide open for fair competitive operation. But it has resulted in a definite protection of the workers as it was intended to do, providing a means for the small independent merchant to pay his employees the living wage to which they are entitled. Without this small mark-up provision many small merchants would be unable to meet predatory competition from larger competitors and, not only would they be unable to pay the wages required under the N. I. R. A., but they might very easily be definitely forced out of business, a very definite trend that existed prior to the N. I. R. A. and which was only stopped by the protection afforded by the code provisions.

Every one of the more than 400 owners of retail grocery stores in El Paso may definitely be classed as a "small" merchant. Claims have often been made in the press and elsewhere that the codes tend to oppress the small merchant. We do not pretend to speak for other trades—though we are entitled to our own and very definite opinion on the matter—but we can and do speak for our own people and we may assure you most emphatically that, to the last man we are lined up behind the N. I. R. A. and our code of fair competition, and in this stand we are backed by every one of the employees working in our stores.

Consequently, at a meeting of this association, held last night (Tuesday, Mar. 5), upon due motion made and unanimously carried, it was resolved that:

Whereas the National Industrial Recovery Act has been a stabilizing factor in this trade and the associated branches of the food and grocery industries; and

Whereas the codes of fair competition approved for the retail and the wholesale food and grocery distributors have materially helped these trades and their workers and employees; and

Whereas these codes do not promulgate any definite price maintenance, but do tend to eliminate selling below cost and the pernicious system of loss leaders; and

Whereas the provision calling for a mark-up to take care of a part of the labor cost is rather too low than too high: Be it

Resolved, That the National Congress, through our representatives in that body, be urged and requested to extend the National Industrial Recovery Act in its present form, or as closely as possible to its present form, so that none of the fair rights and advantages of the trades and its employees provided under said act be endangered, and that no change in this legislation be made, or new legislation enacted, that again would—directly or indirectly—permit the pernicious and unfair trade practices, which have been eliminated under the present act and the Food and Grocery Codes thereunder approved, thus constituting a safeguard to the interests of the worker and the small merchant alike; and that copies of this resolution be forwarded to our representatives in both Houses of our National Congress.

Again assuring you that any change in the legislation that would deprive us of the protection afforded us at present would be deeply regretted by employer and employee alike in our trades, I am,

Sincerely yours,

EL PASO RETAIL GROCERS' ASSOCIATION,
C. H. STOCKS, *Chairman*.

(24) Resolution adopted by United Typothetae of America, the National Code Authority for the Commercial Relief Printing Industry, adopted in October 1934.

(The same is as follows:)

WASHINGTON, D. C.

Whereas the United Typothetae of America, the National Code Authority for the Commercial Relief Printing Industry, assembled at its forty-eighth annual convention at Chicago, Ill., has had an excellent opportunity, during its experience in administering and enforcing one of the codes adopted under the provisions of the National Industrial Recovery Act, to observe and comprehend the benefits that may be derived by labor, industry, and the taxpaying public by reason of the adoption of codes of fair competition for business and industry; and

Whereas numerous attacks are being made upon the National Recovery Administration and the codes adopted under said act by persons and groups who would destroy the entire undertaking because of a misunderstanding of the aims and intent of the said act: Therefore, be it

Resolved, That this convention hereby approves the intent and purposes of the codes of fair competition; and be it further

Resolved, That this convention hereby affirms its faith in the codes in general, and pledges its support to His Excellency, Hon. Franklin Delano Roosevelt, President of the United States, and to those to whom he has assigned the task of bringing about recovery by maintaining and enforcing codes of fair competition; and be it further

Resolved, That copies of this resolution be forwarded to the President, to Hon. Donald R. Richberg, to Mr. S. Clay Williams, and to the press.

FRANK J. SMITH, *President*.

Attest:

JOHN J. DEVINY,
Executive Vice President.

---

(25) Telegram forwarded by the Tax Industry Code Authority to A. L. Bobrick, Assistant Deputy Administrator, National Recovery Administration, on April 2, 1935.

(The same is as follows:)

Urge you wire immediately to Cotton Textile Institute, 320 Broadway, New York City, as follows: "We endorse fully resolution adopted March 20 by consumers' goods industries committee for extension of National Industrial Recovery Act and presented by George A. Sloan, chairman, to Senate Finance Committee.

TAG INDUSTRY CODE AUTHORITY BAXTER.

---

(26) Copy of telegram of Anawha Coal Operators Association to the executive assistant of the National Emergency Council, dated April 10, 1935.

(The same is as follows:)

Anawha Coal Operators Association, with an annual production of 12,000,000 tons of high volatile coal and employing twelve to fifteen thousand miners, in session yesterday adopted a resolution approving National Recovery Administration Coal Code Extension. This organization is probably the most influential of its kind in the State of West Virginia.

F. WITCHER MCCULLOUGH,
State Director.

---

(27) Copy of telegram of National Association of Custom Milliners to the President of the United States, dated March 8, 1935.

(The same are as follows:)

Newspaper propaganda has created consternation in our membership ranks. This association, which is composed of custom milliners engaged in business in 48 States, are unalterably opposed to any drastic modification of the National Industrial Recovery Act. We urge that it be continued, with recommendation of greater and joint enforcement through governmental agency. To radically modify the act as originally adopted would create chaos in this industry. We recognize the urgent need for codification and without reservation pledge our-

selves to unitedly support a movement for an extension of the National Recovery Act.

NATIONAL ASSOCIATION OF CUSTOM MILLINERS,
SAMUEL GOTTESFELD, *Chairman*.

---

(28) Copy of a letter of the Queens Retail Food Dealers Association, Inc., to the President of the United States, dated March 15, 1935.
(The same is as follows:)

RICHMOND HILL, N. Y.

MY DEAR PRESIDENT ROOSEVELT: In the humble position that I hold as president of the Queens Retail Food Dealers Association, an association consisting of 450 independent retail grocers, I make this appeal to you, knowing that your train of thoughts run for the benefit of the independent merchant.

I learn from newspapers and certain rumors that the National Recovery Administration code is about to be eliminated. I hope and pray that there is no truth to that rumor, for the National Recovery Administration code, with its minimum price mark-up in our trade, has been the salvation of our business. It has put the independent grocer on a plane where he could see a decent living for himself and his family. There is no need for me to go into detail nor to explain the chaos that has existed in our business. Before we had the minimum mark-up clause, somehow or other it seems that any individual who has a desire to chisel or cut prices falls right into the grocery business and thereby forcing the legitimate grocer to fight for existence. The enforcing of the code has been an instrument in doing away with the unethical business methods.

I plead with you, as a representative of many hundreds of grocers who have faithfully followed the rulings of the National Recovery Administration, to use your efforts and influence in seeing that the National Recovery Administration code should remain as it is today.

Your obedient servant,

SOL KATZ.

---

(29) Copy of a letter of the national warm air register manufacturing industry to National Recovery Administration, dated March 1, 1935.
(The same is as follows:)

COLUMBUS, OHIO.

DEAR MR. KING: As the secretary of the National Warm Air Register Manufacturers' Institute since its formation of a few years ago, I trust I am not out of order in expressing to you the hope that the National Recovery Administration will be continued, as it has proved helpful in eliminating many abuses which were detrimental to the manufacturers, their customers, and the public.

You may be interested to know that our industry has not objected to the advance in wages and the regulation of hours the National Recovery Administration has required because the same was imposed on all of the manufacturers in the industry.

We have benefited greatly from the rule that all purchasers of one class must be sold on the same basis. This has protected the small dealer and consumer.

The writer does not believe it would have been possible without the National Recovery Administration to have brought the members of the industry into a contact which has been the means of eliminating such manifestly unfair trade practices as are indicated in article VIII of the industry's code and to have had them sustained as the rules without the aid of the National Recovery Administration.

I assisted in formulating the code of fair competition for our industry and was, therefore, in position to appreciate the uniform courtesy and helpfulness of yourself and your assistants, for which I know all the members of our industry, small and large, as well as myself are very grateful.

Yours sincerely,

ALLEN W. WILLIAMS, *Secretary*.

(30) Copy of a letter of the Brick Manufacturers Association of America to Chairman of the National Industrial Recovery Board, dated April 5, 1935.

(The same is as follows:)

CLEVELAND, OHIO.

DEAR MR. RICHBERG: Mr. George A. Sloan, chairman of the consumers' goods industries committee, sent us a copy of the resolution adopted by that committee in New York on March 20.

I have today sent to Mr. Sloan the following telegram:

"Executive committee of Brick Manufacturers Association of America endorses resolution of consumers' goods industries committee. Am forwarding copies of this to Richberg and others."

The members of this industry feel that this resolution accurately expresses their attitude toward a continuation of the National Recovery Administration.

I have also canvassed the cold storage door manufacturing industry which we represent in this office, and they also have unanimously endorsed a resolution to continue the National Industrial Recovery Act in practically its present form.

It is important to know that in the Brick Manufacturers Association and in the brick industry as a whole, somewhere between 90 and 95 percent of all of the concerns are small firms. It is true in the several industries which I represent that a majority of all the concerns are small concerns, and I find that these are the ones most benefited by the stabilization and the restraints from unfair competition which the National Recovery Administration has effected.

In my judgment, all of the gains that have been made will be immediately swept away if both the labor provisions and the fair practice provisions of the codes are permitted to lapse on June 16.

All of the vast publicity against the National Recovery Administration as a result of the attitude of certain politicians is comfort to the most illegitimate type of business man. Your one radio broadcast did much to counteract this adverse publicity, but you should speak again and frequently until this protective measure has been reassured to industry.

Very truly yours,

RALPH P. STODDARD, *Secretary-Manager.*

---

(31) Copy of telegram of Pennsylvania Retailers Association to the National Retail Dry Goods Association, dated March 15, 1935.

(The same is as follows:)

Advise Mr. Richberg of deep interest and concern of Pennsylvania retailers over present discussion of National Recovery Administration at Senate hearing. We strongly favor continuance of National Recovery Administration for further period in the opinion that it is sound in its purposes and principles and for the best interests of the consumer, worker, and employer. Recognize defects in the drafting and administration and practical operation of codes yet there have been undoubted advantages obtained for workers and owners through shorter hours, higher wages, improved standard of business practice and some return to profitable operation. After such a limited trial period believe it would be unwise to endanger certain advantages gained by return to former deplorable methods of unregulated destructive competition. We favor consolidation of codes for distributive trades. We favor simplification of present codes to secure more efficient administration and satisfactory operation. There should be permitted a fuller measure of self-regulation and prompt endorsement of code rules should be secured. Express appreciation of Mr. Richberg's able arguments for National Recovery Administration continuance.

WILLIAM H. HAGER,
President Pennsylvania Retailers Association.

---

(32) Copy of telegram of North Carolina Horological Society to the President of the United States dated March 20, 1935.

(The same is as follows:)

We strongly oppose repeal of any section the retail jewelry code particularly pertaining fair trade features. Please favor us by referring this message to both North Carolina Senators and Senate Finance Committee and the National Industrial Recovery Board.

LAWRENCE G. BALLARD,
State Secretary North Carolina Horological Society.

(33) Copy of telegram of California Retail Jewelers Association to Donald Richberg dated March 19, 1935.

(The same is as follows:)

The jewelers, large and small, of the metropolitan Los Angeles area are in favor of the Retail Jewelry Code and urge its continuance.

DURWARD HOWES,
First Vice President California Retail Jewelers Association.

---

(34) Copy of telegram of Metropolitan Retail Jewelers Association to the Chairman of the National Industrial Recovery Board dated March 14, 1935.

(The same is as follows:)

I appeal to you in the name of the Metropolitan Retail Jewelers Association representing over 300 small retail jewelers of New York County to do all in your power to have our code continued. We have derived many benefits through the code and would hate to lose it.

H. GOLDSCHMIDT,
President Metropolitan Retail Jewelers Association.

---

(35) Copy of telegram of the National Retail Jewelry Code Authority to the President of the United States dated March 13, 1935.

(The same is as follows:)

At its meeting yesterday the chairman of the National Retail Jewelry Code Authority incorporated was authorized by unanimous vote to inform you that as a result of a questionnaire to retail jewelers and of general observation it is the opinion of this national code authority that retail jewelers and especially the small retail jewelers of the Nation are in favor of the extension of the Retail Jewelry Code of Fair Competition.

WILLIAM D. MCNEIL, *Chairman.*

---

(36) Copy of telegram from the Oklahoma Retail Jewelers Association to the President of the United States dated March 19, 1935.

(The same is as follows:)

Jewelers from the entire State of Oklahoma realize that the National Recovery Administration has been their salvation in protecting them from unfair competition and urge you to use your efforts for its continuance and enforcement. They feel that it would be a backward step to eliminate the Jewelers Code.

GEORGE B. GOLDFARB,
President Oklahoma Retail Jewelers Association.

---

(37) Copy of telegram from the Chicago Credit Jewelers Association to the President of the United States dated March 14, 1935.

(The same is as follows:)

This association representing more than 100 retail jewelry organizations in Chicago area, urges that you use your influence to continue in force the retail jewelry code. This code has greatly helped our business and we do not wish to have it discontinued.

CHICAGO CREDIT JEWELERS ASSOCIATION.
CHARLES F. BAUMRUCKER, *President.*

---

(38) Copy of telegram from National Association of Credit Jewelers to the National Industrial Recovery Board.

(The same is as follows:)

The National Association of Credit Jewelers, representing more than 1,500 retail jewelry organizations, earnestly urges the continuance of the Retail Jewelry Code of Fair Competition under the National Recovery Administration. This code has been an inestimable benefit to all retail jewelers and its discontinuance at this time is highly undersirable to the trade. We are counting on your influence to prevent the discontinuance of this Retail Jewelry Code.

NATIONAL ASSOCIATION OF CREDIT JEWELERS.
WILLIAM GIBSON, *President.*

(39) Letter and memorandum of Apparel Industries Committee for the renewal of the National Recovery Act addressed to Hon. Franklin D. Roosevelt dated April 5, 1935.

(The same is as follows:)

DEAR MR. PRESIDENT: I have the honor to present to you, on behalf of the Apparel Industries Committee for the renewal of the National Recovery Act, the enclosed memorandum prepared on the basis of questionnaires sent to various branches of the apparel industry and upon published statistics of the Department of Labor.

The memorandum sets forth the reasons why, to our industry composed almost entirely of small men, it seems of utmost importance that the continuation of the National Recovery Act for which you have asked be granted as expeditiously as possible.

Respectfully submitted.

J. R. MCMULLEN,
Chairman, Apparel Industries Committee for the renewal of N. R. A.

We are a group of manufacturers representing the apparel industry. Our business interests lie in varied and even unrelated types of manufacture, participating in an industry that maintains nearly 20,000 units (most of them operated by small business men), employs over 600,000 workers, absorbs approximately 16 percent of the national income, and contributes more than 2 billion dollars annually to the national wealth in the form of the merchandise it manufactures. We join together in the firm belief that the National Recovery Act has conferred benefits upon our industries, and that its withdrawal constitutes a common danger for all of us. Knowing the results of the National Recovery Act from our own first-hand business experience, we can properly value its advantages and defects. National Recovery Administration must be discussed in terms of fact and not in political generalities, and we present the facts pertinent to our industry so that those who must ultimately judge may first accurately know them.

Our industries are referred to as the "needle trades", and proverbially as the "downtrodden needle trades." Ours has been, in the past, the outstanding example of an economic cock-pit business of the most bitterly competitive character. It covers a field in which there have been in the past an almost total absence of decent restraints to prevent the less scrupulous in the struggle for existence from setting the standard which must be followed by all. Ours has been a business in which the sweatshop has longest survived and thrived. Ours now is the experience and conviction that the collective action which we have been authorized to take and are now taking under National Recovery Administration has been enormously helpful as an aid to decency in the establishment of fair standards and in the breaking down of ancient abuses.

Let us look at the facts. How were these apparel industries affected by the depression? According to the Federal Bureau of Labor Statistics, during the years 1929 through 1932, employment dropped by 25 percent and pay rolls were cut in half.

What happened after National Recovery Administration? During the years 1933 and 1934 the number of men and women earning a livelihood in our industries increased by 7 percent. Our pay rolls were augmented by 21 percent. Thus, while labor's share has increased by over one-fifth, the cost of living between June 1933 and November 1934 has, according to the Bureau of Labor Statistics, risen by only 8 percent. The more remarkable is this when we consider that these employment figures represent not only a rise in themselves, but a complete reversal of the violently depressive tendencies during the preceding years.

Then, the fair trade practice provisions of our codes have, for the first time, given us a chance to make the conduct of business in our industries more self-respecting. They have strengthened our hand against the grinding economic pressure of superior bargaining power.

Criticism that the National Recovery Administration fostered monopolies is utterly without point in our industries. There could be no monopolies constructed, even if our manufacturers were permitted to do so. Our product is too varied, too impossible to standardize, our manufacturers too individualistic. Although our pay rolls have swelled by 21 percent during the past 2 years, the prices of apparel to the consumer have increased by only 12 percent. Not a monopolistic tendency but the very opposite has been the case. According to a study made by the code authority of the coat and suit industry, since that code went into effect, there have been fewer business mortalities and a greater number of new entrants into that industry than during the preceding year.

Other glibly used criticisms of the National Recovery Administration are equally without foundation in our industries. Some have talked about oppres-

sive regulation by code authorities. The fact is that if the regulation of fair competition is better than a brutal competitive anarchy, respectable powers of control must be placed in some suitable agency. We would rather have those powers vested in our own representative code authorities than in some distant officialdom, remote from an understanding of our peculiar problems and unresponsive to our true needs. Complaints of oppression by code authorities generally do not come from those who play fair, who accept in good faith their industry's standards of fair competition and abide by them.

Also, some critics have lost sight of the design of the whole project by picking on details and exaggerating them out of their true proportions. It should be remembered that the National Recovery Administration has been in existence less than 2 years, and most of our codes for a much shorter period. Industrial self-government cannot be expected to spring into existence fully developed. Like all government, it is an object of cultivation and growth. Let it be recalled that our very Constitution was the result of nearly a decade of governmental difficulties in a loose federation of 13 colonies before our present Government was established. Under an extended National Recovery Administration, we could use the experience of the past 2 years to perfect an instrument for the self-regulation of business.

Then, again, some critics have pointed to the National Recovery Administration label as placing men at the mercy of a legalized boycott. Do they not realize that without some distinction between the product of the chisler and legitimate merchandise, we shall all be at the mercy of the sweatshop? Since the beginning of the century, interested groups of consumers have wanted to know the conditions under which their purchases were manufactured. The National Recovery Administration label is a symbol to the conscientious consumer.

Possibly, the loudest and most hollow criticism has been that the National Recovery Administration is oppressive to small business men.

We are small men. In the 20,000 establishments of the various apparel industries throughout the country, the average number of workers employed totals 30. Many of the employers were themselves factory workers before establishing their own small businesses. Contrasted with the great concentration of economic wealth and power that exist in American industry today, and that can so readily and loudly express themselves on all political changes affecting them, our industries are scattered and inarticulate. Rather than have others express solicitude for the small men, we prefer stating their case which is our own in the apparel industries.

We want the National Recovery Administration. We do not want sweatshops in our industries, but without National Recovery Administration, we shall have to compete with them. We do not want to beat down the wages of labor, but without the National Recovery Administration we will not otherwise be able to sell our products. We do not want to engage in unfair trade practices, but our buyers will press us to yield if they can wrest such unfair concessions from a few competitors.

We know that the major sentiment of our industrial project would mean nothing but a return, so far as we are concerned, to the old tooth-and-claw methods of destructive and relentless competition, immensely injurious to the multitudes of workers who depend upon our industries for their support. Its abandonment would mean something more. The savagery of the old business warfare would be aggravated by the shattering of the promise of a new industrial ideal, immensely helpful to us and consistent with fair dealing of just men and women.

In our opinion, National Recovery Administration has made a contribution not to men in these industries alone, but to the general character of American business. We ask Congress to recognize this contribution, and by continuing National Recovery Administration to preserve and perfect the values already demonstrated.

Permit me also to insert here the result of a referendum by the National Retail Code Authority which I should like to read [reading]:

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 enlosed 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 no. 1 of the National Industrial Recovery Act, subject to changes which may be recommended by the constituents trade associations.

Very truly yours,

NATIONAL RETAIL CODE AUTHORITY, INC.,
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, 8 votes: Limited Price Variety Stores Association, Mail Order Association of America, National Association of Music Merchants, National Association of Retail Clothiers and Furnishers, National Council of Shoe Retailers, National Retail Dry Goods Association, National Retail Furniture Association, and National Shoe Retailers Association.

Opposed, 1 vote: National Retail Hardware Association.

ATTITUDE OF TRADE TOWARD RETAIL DRUG CODE AND NATIONAL RECOVERY ADMINISTRATION

The following is a tabulation of the answers which have been received to questionnaire sent out by the National Retail Drug Code Authority on December 6, 1934. This represents reports from 80 code authorities spread throughout the country in 33 States. It gives a very good cross-sectional view of over 3,000 retail druggists.

The facts were obtained either by submitting questionnaire to the trade in such area or by seeking a meeting at which the retailers voted directly.

Question	Vote	
	Yes	No
1. Should National Industrial Recovery Act be continued after June 1935?	3,090	521
2. Is collective bargaining of any importance to you?	1,132	2,281
3. Has the Drug Code been of value to the trade?	3,022	616
4. Has reemployment increased?	2,203	1,234
5. Have wages been increased?	2,683	840
6. Have trade practices improved?	2,780	737
7. Should the Drug Code be continued?	3,006	550
8. Should some other form of business control replace the code?	619	2,461
9. Should retailers in towns of less than 2,500 population be exempt?	1,240	2,064
10. Are the provisions governing hours of labor satisfactory?	2,296	1,183
11. Should they be increased?	1,045	2,045
12. Should they be decreased?	502	2,418
13. Are the minimum wages satisfactory?	2,161	1,225
14. Should they be increased?	794	1,971
15. Should they be decreased?	579	2,119
16. Should the present loss limitation provision be continued?	3,073	386
17. Are the other trade practice provisions satisfactory?	1,978	1,133

MOTOR, THE AUTOMOTIVE BUSINESS MAGAZINE,
New York, N. Y., October 29, 1934.

Hon. FRANKLIN D. ROOSEVELT,
The White House, Washington, D. C.

DEAR MR. PRESIDENT: I know you are profoundly interested in the extent to which industry and trade are ready to accept self-government through codes. In order to determine exactly how the motor vehicle retailing trade stands in respect to its code Motor sent a questionnaire to the 28,450 recorded automobile dealers in the United States asking them (1) if they were in favor of the code

provided it could be fully enforced and (2) whether they believed their factories should back up the code.

Returns are not yet completed, but we already have received 15,098 ballots. Seventy-seven percent declared themselves in favor of the code and 79 percent in favor of factory support. It is highly probable that fully 85 percent of the total dollar vllume of automobile sales in this country is handled by the dealers who voted for the code.

Incidentally, it may interest you to know that the 15,098 dealers who cast their ballots employ 188,686 persons in all departments of their business.

It is obvious that the greta majority of automobile dealers are in favor of self-government through their code with the cooperation of manufacturers.

Respectfully,

JAMES DALTON, *Editor.*

It has been charged that the big members of industry have come to Washington, dictated the provisions of their codes, and forced the N. R. A. to accept them—all without any participation on the part of the small members—I don't know what happened after I left, but I do know that no important action in the formation of codes was taken without days and days of public hearing at which nobody, not even the most insulting of the country's agitators, was ever deprived a hearing or prevented from saying anything germane to the issues.

The most persistent and consistent opponents of codes have been the big interests, while the most zealous advocates of codes have been the small business men. To be quite definite let me take specific examples.

Why, do you think, are there no codes for the meat packers and their subsidiaries? I'll tell you; it is because these packers have a highly organized "institute", as they call it, which has resisted every effort of the little fellow to get codes of fair-trade practices for the many industries in which the packers are interested. I have seen a letter from their official representative in which he states that "in view of the foregoing considerations, the industry is of the opinion that nothing will be gained, either by the N. R. A. or by the meat industry or by producers or consumers by submitting a code of fair competition."

They take great credit for voluntarily adopting the P. R. A. with substitutions and claim that they are living up to all its provisions. This they have not done. In their agreement with the President they promised "to cooperate to the fullest extent in having a code of fair competition submitted by their industry at the earliest possible date, in any event before September 1, 1933." Instead of cooperating they are using all their great influence to prevent the adoption of codes.

When the independent—and no word could be more ironical—members of their industries attempted to get a code, these packers, through their highly developed organization, succeeded invariably in blocking them. How could they? Because the big fellows were representative of a large volume of the business involved—they were well financed—and, through expert lobbyists, most articulate.

No code for the meat packers—none for the sausage manufacturers, although the "independents" begged for one. Who was it who opposed the egg and poultry codes—the dairy products code?

Why didn't we of the N. R. A. do something about this state of affairs? Because we live in an economic democracy—the majority rules—business must not be coerced—keep government from forcing regimentation upon industry and a lot more arguments for the benefit of the obstructionists.

But the packers are not the only big fellows content with things as they are. Did anyone notice the cigarette manufacturers rushing the N. R. A. in order to get a code, which—according to suggestions made here—would have enabled them to get together and crush the little fellow into the ground? No, it was only after more than a year and a half's efforts that we were able to get them under any code—and that is a poor specimen which makes some provision for labor but none for the little fellow by way of fair-trade practice provisions. Why? Because 8 members of the industry do 94 percent of the total business, and 4 of these do 85 percent. They don't need any code. Why should the big fellows want a code? Because they found unrestricted competition—those sacred laws of supply and demand—the great American rugged individualism, so much to their liking.

The net profits of the tobacco manufacturers amount to over $100,000,000. The labor cost of cigarettes is 1 mill to a package of 20. The total amount paid to producers of tobacco for all types of tobacco in Virginia, cigarette, smoking, chewing tobacco and snuff, for 1932 was $4,744,000. The total amount paid to these producers in the nine principal tobacco States didn't equal the net profits of the big four cigarette manufacturers in 1932. Why should the big fellow want a code? It is interesting to note that the price of tobacco for these States has risen from $107,821,000 in 1932 to $240,937,000 in 1934. How about giving the "new deal" some credit for that?

In 1927 there were 37 establishments in this industry and in 1933 there were 28. The number of cigarettes produced in 1927 was 100,000,000,000 and in 1933, 112,000,000,000.

The annual pay envelop of the worker in the tobacco industry was $857 in 1929 and the annual wages decreased until in 1933 they were $670 or 22 percent less. At the present time they are doing the greatest business of their history. Is the N. R. A. responsible for these conditions or is it by any chance due to the virtues of the grand and glorious doctrine of laissez faire?

Corporation returns for the year 1932 of manufactruers of tobacco products showed 286 of the 336 firms reporting losses while 4 corporations showed net profits of $123,936,000. The firms showing losses were the smallest members of the industry, while the four corporations doing the largest business received the major share of the net profit.

The total wages of this industry could be doubled without its having the slightest effect on the price of the product to the consumer.

Why didn't the N. R. A. bureaucrats do something about all this? Because we must not interfere with self-government in business—because Adam Smith and John Stuart Mill said something about the laws of supply and demand—because Mussolini did something in Italy—Lenin in Russia and Hitler in Germany—and perhaps because Sidney Hillman was born in Russia. These are the conditions that make necessary the presence of the Blue Eagle—and these are the conditions responsible for the growth of some other and queerer birds.

The big meat packers and cigarette manufacturers are not peculiar in their opposition to so-called "government regimentation." There are two schools of thought among the big fellows. One school opposes codes per se; the other, thinking codes inevitable, tries to have a code

as it wants it and thereafter be the controlling factor in its administration. I have cited a few examples of the former.

Some in the latter category with highly organized trade associations have attempted to dictate all the provisions of their codes and when N. R. A.—alleged representative of big interests—has refused to submit, it has been subjected to the most violent attacks because of dilatoriness, inadequacy, and incompetency.

When we first organized the N. R. A. Food Division, the president of the American Grocery Manufacturers' Association—known as Agma—came to N. R. A. and said that he had been "drafted" to help get through a master code for grocery manufacturers—that a code satisfactory to everyone was completed and that all the division chief would have to do was to sign it, that it had been subject to much unnecessary delay and that he could start off his work with great eclat by immediately putting it into effect. It wasn't signed.

It had been drafted by the big fellows. The little fellows were against it. It has never been signed. It is interesting to note that when the Consumers Goods Committee reported through Mr. Sloan as being in favor of the extension of the N. R. A., Mr. Francis, first vice president of the General Foods, Inc., one of the greatest units of grocery manufacturers in the United States, and a Morgan company, joined with Mr. Du Pont against the extension of N. R. A.

If this is an example of domination of the N. R. A. by the big fellow then we ought to have more of it.

Generally speaking, it is the big and not the little merchant who objects to open-price provisions. This is natural. He is the one who wants his rebates, special prices, and purchase-control provisions which are his principal weapon against his small competitors. In most cases the smaller manufacturer would be glad of an opportunity to be able to refuse to give these special rebates. Of course, he does not dare come out in an open public hearing and protest against these practices lest, the following day, he receive cancelations of orders which he can't afford to have canceled.

N. R. A. is constantly informed by manufacturers that their true opinion on this if published would hurt them with their big buyers. I know of one case where, through opposition of a manufacturer to an unfair-trade practice, $6,000,000 worth of orders was canceled by one company alone. This turned out to be a blessing in disguise, for the manufacturer who had been sitting back taking these large orders and making no attempt to develop his normal markets thereafter had to get out and hustle, with the result that he not only increased his business but threw off the yoke of his big customers, who, toward the end, had been dictating to him most arbitrarily.

In some industries and under certain conditions open prices and a waiting period may result in virtual illegal private price fixing. In such cases the administration should see that prompt action is taken against the guilty parties and that the code is amended.

On the other hand, lack of an open-price provision may well cover the very conditions you wish to eliminate. Let me be specific and give you an example of an amazing coincidence in prices between competitors—and this in an industry whose code has no open-price provisions. I refer to the can manufacturing industry.

In the can manufacturing industry two organizations suppy 70 percent of the food packers' can needs. To be quite specific, the American

Can Co. sells the packers about 44 percent of their total requirements and the Continental Can Co.'s business amounts to 26 percent of the total.

I have seen the American Co.'s price list for plain coke sanitary cans, from January 1926 to January1935, inclusive.

The standard price is based on the so-called "no. 2 can", but I am giving the prices for nos. 1, 3, and 4 as well.

On January 2, 1934, and unchanged for 1935—the American Can Co. set its prices as follows, per thousand cans, carload lots, f. o. b. factory: No. 1 cans, $15.60 the highest price since January 1927; no. 2 cans, $21.67 the highest price since January 1929; no. 3 cans, $29.14 the highest price since January 1929; no. 4 cans, $64.21 the highest price since January 1929.

These price advances went into effect on January 2, 1934, at the very time when the administration was attempting to get more for the farmers' products, a living wage for labor, and a reasonable profit for the employer.

Before anyone rushes in and charges this to the N. R. A. let's look at the record.

As far as I have been able to ascertain, the total value of the tomato pack for 1934 was about $35,802,000, based on 80 cents per dozen, no. 2 cans. Of this, the raw stock is estimated at $8,206,000 or 24.8 percent; cans, including cases and freight for empty cans, are estimated at $14,200,000 or 42.8 percent; direct labor, $4.949,000 or 14.9 percent; and brokerage, overhead, and so forth, $5,805,000 or 15.5 percent; total, $33,160,000.

In other words the cans cost three times as much as labor receives in wages—and about 75 percent more than the food itself. I am further reliably informed that in canned tomatoes the cost of the can varies from 40 percent to 60 percent of the total cost of the product.

Now, of course, the N. R. A. and the codes are not responsible for these outrageous prices. But before assuming this let us examine the profits of the two members of the can manufacturing industry who do 70 percent of the business:

First and largest, the American Can Co. profits year by year:

1927	$13, 055, 000	1932	$10, 957, 000
1928	19, 863, 000	1933	15, 357, 000
1929	22, 725, 000	1934	19, 523, 000
1930	22, 884, 000		
1931	15, 530, 000	Total	139, 894, 000

Senator GORE. What is the number of cans they sold each year?

General JOHNSON. I have not got that here. I will get it for you, Senator.

Next let us look at little "Orphan Annie", the Continental Can Co., which does only 26 percent of the business—profits rising from $4,439,000 in 1927 to $10,707,000 in 1934:

1927	$4, 439, 000	1932	$4, 819, 000
1928	6, 691, 000	1933	7, 547, 000
1929	8, 968, 000	1934	10, 707, 000
1930	8, 738, 000		
1931	5, 671, 000	Total	57, 580, 000

I was discussing the harm to the little fellow from open-price provisions in codes.

There is no open-price provision in the Can Manufacturing Code, therefore the members of this industry cannot possibly know what

their competitors are quoting and so there must be some difference in their prices. Of course, if there were an open-price provision and then they had identical prices it would be called price fixing, and would go to prove the iniquitous results of the N. R. A. There is no open-price provision in the Can Code:

For your information I am showing you the sales contracts and price lists of these two companies for the current year, pointing out that every purchaser must agree to buy all his cans for all his establishments from the seller for 3 years. Provision is made for quantity discounts for the little fellow, but when it gets up into the field of the big producers, prices are to be arranged by negotiation:

AMERICAN CAN CO.

Size	Plain cans price per thousand	Base boxes	Differentials per thousand
			Cents
No. 1	$14.85	1.83	18
No. 2	20.67	2.66	27
No. 2½	25.06	3.43	34
No. 3–4⅞	28.14	3.76	38
No. 10	62.21	7.49	75

CONTINENTAL CAN CO.

No. 1	14.85	1.83	18
No. 2	20.67	2.66	27
No. 2½	25.06	3.43	34
No. 3–4⅞	28.14	3.76	38
No. 10	62.21	7.49	75

May I respectfully point out that the prices quoted are identical to the penny in each instance. Professor Einstein will have to figure the probability of this happening by chance.

The farmer of this country, the laborer in the canning factory, and the consumer would be benefited if some of these profits were taken out of the can and directed into the product.

Food prices are going up—of course they are—food has been so cheap on the farm that it wasn't worth while sending to market. And besides, what difference does it make how cheap a commodity may be if one hasn't any money with which to buy it?

However, you can't justly blame the increasing cost of food on the codes. Many misinformed persons do, but I have been attempting to give this committee facts. You know that many food industries are not under codes, due to the opposition of the big fellows.

Divide food industries into two groups, one codified, the other not under codes. Prior to the approval of codes, the at-present codified industries' products had increased in price at a greater rate than those at present uncodified had increased during the same period. Since codification, this codified groups' prices have become more stabilized and the increase in prices on coded industries is less than the increase in prices of the uncodified industries. This is an exact reverse of the condition before codes. Price meat, butter, eggs, milk, cheese. They are way up. Ask your dealer why, and its 3 to 1 he will say N. R. A.—Yet none of them has a code?

This applies to both retail and wholesale prices. The rise in retail prices is:

Uncodified industries	31.3
Codified industries	26.2

In the wholesale trade the increase in uncodified industries was three times what it was in uncodified industries.

There is another question of price as affecting the little fellow that has been the subject of much loose talk—provisions preventing the use of so-called "loss leaders."

To my mind one of the outstanding accomplishments of the codes has been the elimination of loss leaders. Take cigarettes as an example.

Before the retail tobacco code was approved, the nationally advertised cigarettes were the favorite loss leader used by chain stores, cut-price department stores, drug stores, and even clothing stores. In New York City this practice, by those outside of the trade, resulted in cartons of cigarettes being sold for the amount of the tax alone.

As the cigarette business amounts to as much as 65 percent of the small retail tobacconist's sales, you can easily see what this practice was doing to him. This situation existed all over the country. When he attempted to meet competition he lost on the major volume of his sales—particularly as the big distributors, who were guilty of this procedure, were buying for much less than could the little fellow. In addition the cigarette losses were an infintesimal part of the price cutters' total sales and the increased sales in other commodities made up for losses on cigarette sales many times over.

With the elimination of this practice, the small retail tobacconist's business throughout the country has been saved to him. Imagine his feelings when he contemplates returning to the old order. And there are between 750,000 and 800,000 of this particular brand of little fellows.

Exactly the same principle applies to many items of retail trade. It is one of the principal weapons of chain and high-pressure merchandising to eliminate small competition and yet it has been practically abolished under N. R. A.

There is a good deal of material in the record about the effect on the little fellow of the Amusement Codes. The first is the Legitimate Theater Code. This code which was no. 8, in order approved by the President, was signed not only by the representatives of practically every legitimate theater in the United States, but also by the representatives of every branch of labor in the theater. For the first time, conditions of employment were safeguarded for the employees and a minimum wage prescribed, even for actors. For the first time in the history of the theater, restrictions were put upon rehearsal periods and pay provisions; an earnest attempt was made to protect the public against ticket gouging, but I cannot say much for the result of that attempt.

The next code in the amusement division was that for the motion-picture laboratories, and under this code, for the first time, so far as I know in any code, a provision is contained which requires an employer to pay immediately a guaranteed minimum wage for a week, even though the employee may not work a sufficient number of hours during the week to earn that minimum guaranteed compensation, at

the hourly rates of pay. This code also was signed by the overwhelming majority of the employers in the industry and by every labor organization in the industry.

The outstanding code in the amusement field is, of course, the Motion-Picture Code. This code was one of the most difficult to work out in N. R. A. The code not only applies to exhibitors, of whom this committee has heard something during its sessions, but applies also to all producers and all distributors of motion-picture film as well.

For the first time in the history of the motion-picture industry, a common forum was set up wherein producers, distributors, exhibitors, the public, actors, labor, and the administration are all represented. There has never been a representative trade association embracing the three economic divisions of this industry and there still does not exist any such trade association. It would have been a comparatively easy thing for N. R. A. to have secured a separate code for producers, a separate code for distributors, and a separate code for exhibitors, as was the case with almost all other integrated, but yet economically severable, industries. But under three codes N. R. A. could never have been given even the slightest bit of relief to the independent exhibitors, of the Nation—and that is where the great problems were—since it is an impossibility to take under one code from those who possess rights under another code.

The distributors are essentially sellers of film, the exhibitors are buyers. To make any headway against the antagonistic interest of these buyers and sellers toward each other, it was necessary to use the highest degree of skill, tact, effort, energy, and persuasion, but it was done. For which, of course, I give credit to the divisional administrator.

Exhibitors under this code have been given rights and privileges which they never could have achieved except by a change in our copyright laws or by a statute regulating the transportation of film in interstate commerce. As proposal by proposal was placed before the distributors, they took the position that N. R. A. had no power to make provision in derogation of their legal rights as copyright proprietors and they insisted that they were entitled to have their rights taken from them only by court action, changes of statutes or by their acquiescence and voluntary consent. N. R. A. secured their voluntary acquiescence and consent.

Let me give but one example. The *United States Circuit Court of Appeals in Paramount* v. *the Federal Trade Commission* refused to enjoin practices against which the Federal Trade Commission had issued a cease and desist order, that is, the practice of block-booking was a legal and lawful method of sale and the Supreme Court of the United States refused certiorari and that decision of the circuit court of appeals stood as the law of the land.

The N. R. A., however, felt that some effort should be made by it looking toward the voluntary relinquishment of their rights by the distributors who sold films in blocks. It was finally successful. It secured for the exhibitors of the country a 10-percent cancelation clause. It, therefore, became lawful, by the consent of the distributors, to refuse the privilege granted by the code, although legally there was no way on earth, without changes in the fundamental law to accomplish this result. To date these exhibitors have canceled

approximately 18,000 pictures under this provision for their benefit.

Another example, if you were the big theater owner and had, as all chain aggregations have, buying power, you could buy up all of the motion pictures of every motion-picture producing firm whether you used them or not and could thereby deprive the small and independent exhibitor from having any picture to show. And if you did this in the regular course of your business and in order to assure yourself of the pick and the choice of pictures, there was no way that such an exercise of your buying power could be stopped or hampered. But the code remedied this.

One of the very first cases before the Motion-Picture Code Authority was one brought by an independent exhibitor in Madison, Wis., against theaters owned and operated by the great and powerful Warner Bros., Pictures Corporation. The Warner Bros.' houses had bought substantially all of the worthwhile products of all the producing companies. When the case came before the Milwaukee Grievance Board, set up under the Motion-Picture Code, and that board upon which sits representatives of exhibitors and distributors and a representative of the public, unanimously ordered the Warner Bros.' theaters to surrender to the complaining independent exhibitor sufficient first-class, worth-while pictures so that he could compete on an equal basis against these chain theaters. That case was appealed by the Warner Bros. to the code authority and on the code authority sat a representative of Warners Bros. who, under the code, had no right to sit in that particular case, because that company's interests were involved. The code authority, after hearing the case on the very same day, unanimously with the exception of the Warner Bros. representative who did not vote, upheld the Milwaukee Grievance Board and the pictures were thereupon, in conformance with the code provision, delivered to the independent exhibitor who thereafter enjoyed them.

I state, unqualifiedly, that the independent exhibitor could not have secured that relief in any court in the land or under any statutes written in any of the statute books.

Just one more example, with respect to the independent exhibitors, because there are innumeral provisions in the code designed and applied in their interest. A practice of the large chain theaters was to take clearance over the small independent exhibitor so that he could not run his picture until an unreasonable time had elapsed following the showing in the larger theaters. No suit at law was possible because that independent would either buy his pictures under such a provision in his sales contract, or he could not buy them at all. The code gives relief, and for the first time the independent has a forum, the clearance and zoning board in his territory, which is empowered to grant him relief and as the facts and figures with respect to the determination of these cases show, he has secured relief and substantial relief in innumerable cases.

Prior to February 1, 1935, there was no substantial, accurate data as to the number of motion-picture theaters in the United States. On that date, the Bureau of Foreign and Domestic Commerce of the Department of Commerce, reported that there were 10,143 bona fide motion-picture theaters operating in this country.

The so-called "antagonism" of independent exhibitors to this code must be well concealed because out of the 10,143 theater exhibitors,

9,116 have actually signed the code and 340 additional have taken its benefits without signing, so that 9,509 out of 10,143 have either signed or accepted the affirmative benefits of this code.

But this exhibitor-distribution-relationship is not the only thing embraced under the Motion Picture Code. Every form of labor from that in the studios to that in the theaters is protected by the code provisions.

Every organization of labor, having anything whatsoever to do with the motion-picture industry was and is a signatory to this code. For the first time in the history of this business the extras in Hollywood, chorus girls in the movie theaters, and all types and kinds of employees have been given protection. The unions in the theaters, signatory to the code, have agreed not to strike and the employers not to lock them out, and a system of arbitration and conciliation which has worked extremely successfully is provided for in the code provisions. Labor committees who handle disputes have been set up under the code mechanism and their record is one to be proud of. Ask labor, if you doubt this statement.

Finally, with respect to the movie code, I want you to know that no one in this industry pays any assessment whatsoever unless the firm has signed the code or an exhibitor has taken its affirmative benefits, such as the privilege of cancelation from the block of film purchased.

I call this code one of our great voluntary codes and I believe that in its operation it constitutes a real experiment in industrial self-government. At the same time it is well to point out that prosecutions may still be brought and are still being brought by the Department of Justice where a combination or conspiracy in violation of the antitrust laws is charged, and that there is not one provision in the code which, so far as I know, constitutes such combination in restraint of trade as would be indictable under the Sherman Act.

The code probably requires some revision and I understand that N. R. A. based upon its experience on the code, is prepared to go forward with such revision. But when a code authority composed of such divergent elements as this one, with the interests of affiliated and independent, big and small producers, distributors and exhibitors, buyers and sellers, can cast approximately 94 percent of its votes on divergent subjects unanimously, I should say that the code had worked pretty well.

I need not mention the codes for the Radio Broadcasting Industry or for the Burlesque Theatrical Industry, except to say that these are also charters for industrial self-government and are similarly signed not only by the overwhelming majority of the employers, but also by every organization of labor working within such industry.

Respecting their labor provisions alone, the codes in the Amusements Division would be valid agreements between employers and employees by reason of the signatures attached thereto, even if they were not in the status of codes of fair competition.

I am advised by the N. R. A. Legal Division that no Federal court has ever found that N. R. A. discriminates against the little business man. The Industrial Appeals Board has been constantly open and in not one single case has such discrimination been shown. The impartiality of the courts can certainly not be questioned and I have heard no one question the impartiality of the appeals board.

It is beyond my comprehension how anyone who pretends to be interested in the little fellow can advocate throwing away the only instrument for his protection and leaving him to the competition which is becoming more and more ruthless, making it impossible for him to have any chance of survival.

Only yesterday the papers carried the news of the formation of a supertrade body called the American Retail Federation. This is not an N. R. A. organization. I quote:

> The backbone of the federation is expected to be called the national retail associations represented by the Retailers National Council, headed by Herbert J. Tily, president of Strawbridge & Clothier of Philadelphia.
>
> The little fellows will control the American Retail Federation and present a unified voice in defense of their businesses.

Let's look at the executive committee which drafted the organization plan:

Louis E. Kirstein, chairman.

George M. Gales, Liggett Drug Co; that little chain of 400 drug stores, a company selling $7,000,000.

C. W. Kress, S. H. Kress & Co.; another little 5-and-10-cent chain, 230 stores, $65,000,000 sales.

Fred Lazarus, Jr., F. & R. Lazarus & Co., Columbus, Ohio; a big department store, selling $12,000,000.

Albert H. Morrill, president of Kroger Grocery & Baking Co., the second largest chain of food and grocery stores in the United States; 1,400 stores and $205,000,000 sales.

Samuel Robinson, American Stores; a very large chain in the middle Atlantic States.

Lessing Rosenwald, Sears, Roebuck & Co.; that pigmy mail order and chain house selling $290,000,000; the greatest destroyer of independent merchandising in the business.

E. C. Sams, J. C. Penney & Co.; another national chain organization of general merchandise, selling $179,000,000 through 1,466 stores.

Percy S. Straus, president of R. H. Macy & Co., the largest department store in the United States and the most ruthless price-cutter of them all—their slogan for years having been that they would undersell anyone in their competitive area, regardless of the price—$112,672,000 sales.

How much voice is the little independent retailer going to have in the regulation of the affairs of this gigantic organization?

Another example of what the independent operator is up against is the cooperative organization recently organized by a group of the biggest food and grocery chain stores in the country—with the exception of A. & P.—having an outlet of 16,000 stores. This "cooperative" organization is "to be used for the benefit of the little fellow"—perhaps.

Is it possible that the big chain organizations have begun to feel the effects of the fair trade practice provisions in the codes?

I happen to know that some of the biggest chains have found that their business is not increasing at its normal rate, notwithstanding the fact that the total business of their industry has increased.

From this it will be seen that the little independent operator is at last getting some of the protection—under the codes—which he has so long sorely needed.

A witness before this committee testified to the dreadful effects of the N. R. A. on the flour milling industry—that it is being administered in such a way as to put the little miller out of business at the rate of 300 each month. He failed to point out that all the trade practice provisions in his code were drawn up the A. A. A. and that it was only two weeks ago that the President, by Executive order, transferred this code to the N. R. A.

One of the most insistent witnesses before you was a man named Nichols, of the Menzies Shoe Co. Stripped to its essentials what he wants is to avoid the hours and labor provisions of his code.

N. R. A. investigations while I was there disclosed that he was paying his labor 6 cents to 9 cents an hour for a 60-hour week—less than State and Federal penitentiaries pay convicts, and the Government feeds, clothes, and shelters them—Mr. Nichols does not. Yet this man attacked N. R. A. personally and officially as an oppressor of the little fellow.

The lumber code of which many complaints were made to you disintegrated principally on account of the unwillingness of some employers to pay wages of 10 cents an hour.

Much of the protests of clothing manufacturers were made by bulk exploiters of labor—sweatshops in the grand manner as evidenced by Mr. Curlee representing Greif and the so-called "Industrial Recovery Association." (Save the mark!)

Most of the complaints before you were the routine complaints which N. R. A. is composing every day by the hundreds, in most cases to the satisfaction of everybody. What you have had here is the backwash of run-of-the-mill N. R. A. administration.

My first attempt to do this was the Darrow Board which I set up in good faith. It was not in good faith. It was a political wailing wall and it came out and recommended Communism. There was not one fair hearing before it.

They disregarded N. I. R. A., packed the record with framed testimony, disregarded every judicial rule of fairness known to man, solicited and accepted unsupported statements, restricted or ignored testimony unfavorable to their purposes, hazed witnesses on that other side, insulted N. R. A. officials, and for this spent $50,000 of Government money.

I would not mention these things if this committee had not seemed to accept a great deal of testimony from Mr. Darrow and Mr. Mason as important or had it called Mr. Sinclair of that board who resigned in protest and disgust over these proceedings. Monsignor Ryan testified before you that there was not one single case made before the Appeals Board that had not been immediately rectified.

You have almost nothing before you of concrete substantiated evidence of a little fellow hurt by N. R. A. except that little fellows don't like to pay code wages for code hours. You have apprehensions and unsupported assertions.

I want to examine briefly some of the only colorable cases before you.

Swenstrom of Duluth made a complaint of injury by the basing-point system. An amendment to that code relieved him in May 1934. His statement that the amendment making Duluth a basing point did not help him is untrue. Before the amendment the price to him was $43.60; afterward it was $39.50.

Pitts Camden, South Carolina, says the textile code oppresses small operators. Before the code 82 small mills were idle. The code brought 50 of these to production. His statement that the code authority controls production is wrong. N. R. A. itself controls that. A committee of the N. R. A. controls it and has the final say.

Mr. O. Bear, Purity Ice Co., claims discrimination against the small enterprise because he could not produce a certificate of convenience and necessity. Of course, this may be wrong if production control is wrong, but it has nothing to do with the little fellow complaint.

The real question there was whether there was room in the community for another ice company.

Mr. Pharis, a cut-price tire maker, says the code won't let him sell tires at a price lower than first-grade tires. There is no such provision in that code.

Now, due to various conditions in the industry, there is a considerable overproduction which results in an unstable price situation. The rubber-tire industry therefore suffers from intensively competitive price wars. A particularly disastrous price war in the retail tire field occurred in the winter and spring of 1934. When the retail tire and battery code was approved on May 3, 1934, an emergency in the retail tire field was declared, by action of N. R. A. on its own motion, and minimum retail prices established below which tires could not be sold to the ultimate consumer.

In declaring this emergency, it was the purpose of the National Recovery Administration to provide temporary protection to thousands of small dealers who were being crowded out of business and reduced to unemployment by destructive price cutting on the part of the larger dealers whose buying price and credit resources permitted such tactics as a means of reducing competition. This emergency continued in existence for 5 months. If it resulted in any hardship to the Pharis Tire & Rubber Co. or any curtailment in their sales it must have been because the Pharis Tire & Rubber Co. was principally selling mass distributors and large retail outlets who were obtaining their business upon a price basis only and underselling the small independent dealers whom the National Recovery Administration was trying to protect.

I may say parenthetically that at that time we were getting the effects of the entry into the retail tire business of some of the big oil companies who were using some of their filling stations as tire stations, and also from the increasing competition of the mail-order houses, which was just wiping little fellows in the tire business out by the thousands, and we put that provision in there to offset an emergency, and purely as a temporary proposition.

After the emergency had been in effect approximately 3 months, the National Recovery Administration held a public hearing on August 3 for the purpose of determining the effect on all classes of manufacturers and distributors of the emergency provision.

Following a showing of cause by small manufacturers, the National Recovery Administration issued a modification of the original emergency order (Administrative Order No. 410–15) effective August 22, which established differentials amounting to approximately 10 percent between the minimum price established for the nationally known most publicly accepted brands of tires and the products of the class of

smaller manufacturers (such as the Pharis Tire & Rubber Co.) which were either not so well known and favorably received or were sold to large distributors under privately owned brands. The purpose of this order, as publicly announced by the National Recovery Administration, was to give the smaller manufacturers, such as the Pharis Tire & Rubber Co., a competitive area in which it could operate with greater freedom at price levels slightly below those established for the product of their large and better-known competitors. Mr. Butler failed to call this to your attention. This order remained in effect for the duration of the emergency period, or until October 1, 1934. The above facts indicate that the claim cannot justifiably be made that the declaration of emergency prices was arbitrary and discriminatory in its effect, and that the welfare of smaller units in the industry such as the Pharis Tire & Rubber Co. was not taken into consideration.

Vita Foods complains that prices fixed in the Mayonnaise Code were too high. The code fixed no price. A destructive price war caused the National Recovery Administration to call a public hearing and announce a floor price pending determination. This ended price war and the restriction was withdrawn.

Leon Johnson complained that a provision in the retail code prohibiting sales at less than a 6-percent mark-up on invoice cost did not enable him to make a profit. He could have marked up as much as he wanted to. The real complaint was there that we did not provide in this mark-up to cover as well as expense, a larger mark-up on the invoice cost.

Keal Plankerton, plumber, of Williamsport, complained that the code prohibited him from buying direct from manufacturers and that Sears, Roebuck undersells him. As I understood that case, the complaint there was that provided a maximum discount, and the maximum discount was not enough, and therefore that he could not buy from the manufacturers at as low a price as Sears, and Sears could undersell him and put him out of business.

All that the code does is to permit preexisting quantity discounts. N. R. A. can't prescribe the quantity discounts if not in the code.

Anthony Lorano, of Brooklyn, says the Ice Code won't let big manufacturers sell peddlers at low enough prices. The code leaves prices free, requiring only price filing, so that there would be no secret rebates and that the actual prices charged by the manufacturers to their customers is known to everybody.

The *Perkins-Tracy (cost accounting) case* is one of code authority abuse—harm done by the code authority in violation of the code. The injured person could have secured redress by N. R. A. if all the facts brought before this committee had been brought before it.

These are a few examples. The mass of material before you is composed of similar stuff. Indeed, I could learn of no better case that was presented to you than those which I have discussed.

Many were cases of enterprises dependent for existence on the sweating of labor or some other practice which it was the unquestioned duty of N. R. A. to obliterate.

Up to the time I left N. R. A., I had yet to hear of a little fellow complaint that did not resolve itself into a statement of inability to pay code wages for code hours. I earnestly believe that a careful study of the cases presented to your committee will disclose that this is the real complaint in all but a negligible few and that even as to

these few, nearly every one could be cured by proper and alert administration and without substantial change in the law, for if any one thing is clear, it is that, if a little fellow can pay code wages for code hours, and still sell at a lower price than a larger competitor on the terms of well-recognized commercial equality—then any code provision that prevents his doing so is a bad provision and any administration that permits that to continue is bad administration.

But that goes to method and not to law, and, in view of the overwhelming proof of trends in commerce operating on the little fellow before and after N. I. R. A., which shows unquestionably that the destructive processes of a quarter century have been checked and revised, I feel sure that you will find some way in legislation to remedy our few evils and save the overwhelmingly predominating good.

Of course, if it is the policy of Congress to abandon hours and wages provisions and return to what John Lewis called competition based on a test to see how little a worker can eat, that is the business and responsibility of Congress. But when we do that, I earnestly hope we shall make it perfectly clear what we are doing and not advance the undemonstrated woes of the little fellow in business as a reason for striking down the N. R. A. and its protection of the real little fellow—the child or woman toiling 14 hours a day in a sweatshop for bare starvation wages, the black man working in a steaming lumber swamp for 7 cents an hour—and such conditions of competition at the cost of living standards as almost destroyed our economic system in February 1933.

I think N. R. A. should speed a better, simpler, swifter method of appeal, that little fellows should have better representation on code authorities, and that an active little fellow guardian should be added to the N. R. A. staff.

It has been suggested that the exemptions of hours and wages as to small towns and employers of more than 2 or 3 be extended. You can't do it without abandoning a large part of the benefit to labor. After all why should you do it. Less than $12 or $13 a week for 40 hours a week for human labor whether the employer is large or small is sweatshop stuff.

There are a great many relaxations of the provisions of the code which I think should be applied to small enterprises and also to operators in small towns. I go into that a little bit later in my statement.

(b) Has N. R. A. fully insured the rights intended to be granted to labor?

Candor compels me to answer this question "No."

It has done much for labor—more, I think, than any other law or organization or administration in our history.

I don't know how this could be more clearly and incontestably shown than by exhibit 3. The striking thing about this chart is that it relates itself directly to N. R. A. Here are the averages of the hourly wages [indicating]. Here [indicating] is what began to happen to them in the depression; they went down. Here [indicating] are the hours per week, and the downward trend is due to the sharing of the work. But the wages went down until this point [indicating] which represents the coming of N. R. A. From that time on you have this remarkable effect shown in that chart. The immediate precipitate increase in wages and a constantly increasing real wage

for the factory pay roll. That is chart 3 that you have before you, which relates the vast 1933 change in reduction of hours and increase in hourly wages directly to N. R. A. and the data of promulgation of the President's Reemployment Agreement.

No matter what black marks may be smeared across the record of N. R. A., nothing can ever take away from it the accomplishments shown on that chart.

As I have said before, it stopped the upward sweep of hours as employers began to turn out increased production by increased hours and by an almost vertical increase of 33⅓ percent in hourly wages created a $3,000,000,000 increase in pay rolls and by both means 3,000,000 jobs.

But when we turn to the bright hope with which we started, that labor would be permitted to organize on a broad scale for representative bargaining, I think we must admit that it has been largely frustrated.

It enters a field of too much controversy and too little definition for me to attempt to say why I think this happened and although I have ideas of my own about that, they are controversial.

I can only address the situation as I find it now and recommend what I think would improve it.

Section 7 (a) is so obscured by conflicting interpretations that it does not and cannot be construed as a definite labor policy.

I think the first thing needed is a definition of labor policy so clear that none can be in doubt. I think that this could and should be worked out in the first instance, or attempted to be worked out by an unofficial conference, officially called, between the most liberal and broad-minded leaders in labor and industry. I think that they could work out something that they could advocate, the industrial leaders to labor, and the labor leaders to industry. Perhaps they could not, but I think it is worth a try.

I can only express a single individual opinion as to what I think it should be:

1. No coercion on either side.

2. When a majority in any shop or department chooses a particular union—no other union to be recognized.

3. Membership in no union to be made a condition of employment.

I think the Government should encourage but not compel vertical industrial unions in the principal industries with complete intraindustry tribunals for settlement of disputes, their decision to be final and both strikes and lockouts to be barred.

I think unions should also submit codes.

I think labor tribunals should not be in or under the influence of any other department of Government.

I think section 7A has substantially failed of its original purpose.

I believe that new legislation should incorporate the following fundamentals with regard to collective bargaining.

Membership or nonmembership in any union shall not be a condition of employment and no one shall be discriminated against on account thereof.

Employers will, on application of any representative of their employees, submit to and cooperate in an election to be held outside of their property under the auspices of a Government agency to select representatives for collective bargaining. In no case will employers in any manner attempt to influence or coerce any such election.

Employers will deal with representatives so elected.

In the event a truly representative number of employees at any such election in any shop or department, including at least a majority thereof, choose individual representatives of a particular union, such employer will not thereafter, without a new election, recognize any other representative but will deal individually with such of their employees as do not at such election express a desire for that or any representation in collective bargaining.

Of course, this whole question brings up the question of the Black bill with objects of which I am in entire sympathy but to the inflexibilities of which I have not been able to bring myself to agree. Yet I am firmly of the opinion that we will never have full employment and prosperity in this country without further reduction in hours and increases in hourly rates, and I think that control of this must be kept in Government.

Since the goal is maximum absorption of the unemployed by private industry as rapidly as possible, Congress might legislate a flat minimum wage rate and a flat maximum hour provision to be applied to all industry. However, if we have learned anything from N. R. A., it is that such a rigid fiat would be fatal unless sufficient elasticity is allowed to meet the infinite variety of factual situations in different localities and different industries.

What we want to attain by such legislation is the maximum pay roll and maximum reabsorption of the unemployed feasible in each industry.

If a blanket wage minimum is low enough to effect the maximum possible pay-roll benefits in one certain industry and locality without so burdening that industry as ultimately to cause less pay rolls, that minimum may be much too low to have any effect at all on the purchasing power of labor in all the rest of industry. In fact, there might be a harmful tendency for other industries to come down to that minimum level. Thus the greatest possible increase in purchasing power would occur in one industry only. Conversely, if the minimum wage was just high enough to effect maximum pay-roll benefits in one industry, it might be too high for all other industries, with the result that the maximum pay-roll benefits will be attained in none of them.

The same is true of maximum hours. Any flat regulation high enough to meet the absolute minimum practical requirements in one industry may be too high to effect any reemployment in the rest of the industry and may have a tendency to decrease employment. Similarly, if the flat maximum hour rate is too high, certain industries may suffer to a point where unemployed are not being absorbed at the fastest rate possible in that industry.

The solution is for Congress to set a workable yardstick or to define a goal to be attained and give a mandate to an administrative agency to point to that goal. Administrative discretion should be directed to obtain the maximum benefits in the way of reemployment and increase purchasing power possible in each industry. These maxima can only be attained by a search for the point of diminishing returns—a point which varies greatly in different industries and different localities. The yardstick could provide that there must be a finding of fact that the minimum wage is the greatest that can be borne by the industry without resulting in an ultimate decrease in total pay rolls paid and

similarly that the maximum hours will accomplish maximum reemployment without so burdening the industry as to result in an ultimate increase in unemployment.

This is not a delegation of legislative power, but the approved method of administrative law to apply announced legislative policies to the facts as found by an administrative agency.

The yardstick might be strengthened by providing that no wage provisions shall be approved under 35 cents an hour or maximum hours over 36 hours per week, unless facts can be proved to show that these requirements would not effect maximum reemployment and increase in pay rolls.

Provision should be made in all cases for time and a half for overtime.

Much more should and could be done to improve labor conditions, other than mere hours and wages, such as the continuing elimination of child labor, establishment of standards of safety and health, establishment of rules with regard to prison labor, apprentices, and so forth. But most of these problems vary so much from industry to industry that, again, fiat legislation by the Congress would have to be so general as to be of little or no effect. Again Congress should give a mandate of the goal to be attained and leave to an administrative agency the application of this mandate to the facts in each case.

(c) To what extent has N. R. A. protected or failed to protect consumers?

To say, as has frequently been said, that N. R. A. ignored the consumer interest is grossly unfair. In the first place, everybody is a consumer. The consumer's interest is just another way of saying the public interest. A man can't be a laborer, a farmer, or a producer when he received the benefits of N. R. A. and then kick as a consumer when he is asked to share its burden. The President and the whole administration is the real consumer's council.

Yet we didn't stop at that. Specific duties to protect consumers were assigned to some very able people and they were carried out by them.

The ultimate question as to what happens to the consumer goes to price—this includes the monopoly argument, the whole price argument, and nearly all the kicks against N. R. A. But the consumer is not entitled to the lowest price he can get regardless of all other consideration. If he is, then the chaos of February 1933 was a consumer's paradise and every effort of this administration to raise prices to the 1926 level should create a revolution. Father Coughlin's Nye-Sweeney bill should be burnt by the public executioner and the silver bloc in Congress should walk the plank.

What the consumer really wants is stability of price and balance of price with income to insure maximum production and consumption.

Exhibit 10 is the most eloquent argument for N. R. A. on this score of which I am aware. It shows the extreme fluctuations of the farm and food prices and all commodities as affected by them. But it also shows a much different result as to "other commodities"—the commodities affected by N. R. A.

It indicates a very steep rise up to the time the N. R. A. codes became effective in the latter part of 1933. From that time on it shows the most stable relation we have had at any time since 1928–29.

And as to the consuming power of workers which is their real wages—the effect on their actual wages of the cost of living (exhibit 2) shows a steady and an almost vertical rise from the day of N. I. R. A. to the immediate present.

As to the effect of codes on the price of those foods which N. R. A. touches, I have already shown a much greater stability of price in coded than in uncoded industries.

I think that these are the ultimate barometers of the consumer question and I can find nothing in any of them that does not show N. R. A. operating altogether in the consumer's favor.

So much for ultimate result. I do not mean that, in reciting that ultimate, there were not all kinds of hurts to consumers. I do not mean that there is not great room for improvement. But I do mean that considering vast ultimate good against insignificant bad, however irritating, the net conclusion is not to scrap N. R. A. It is to improve and if possible perfect it.

To sum up my conclusions on my first question—

Where has N. R. A. failed as to small enterprise, labor, and consumer?

I think that to all it has brought a vast balance of good. In each it has brought some harm and some of the harm is avoidable. The little fellow has suffered from having to pay higher wages but he has benefited by being preserved. To the extent that he has been hurt by bad administration, we must cure that. Labor has been immensely helped. It has been hurt by not getting the benefit intended by section 7 (a). We should cure that. The consumer has been helped by being given the power to consume at all. He was on the verge of losing it.

On the whole question my conclusion is clean up N. R. A.—don't destroy it. Let us scrub our infant offspring vigorously but let us not throw the baby down the drain pipe with the dirty water.

3. WHAT COULD CONSTITUTIONALLY BE DONE TO IMPROVE N. R. A.?

(a) *Why have any fair trade practices?*—There are those who say: "Hours and wages, if established, will affect maximum reemployment and purchasing power." This establishes minimum labor costs which will sufficiently stabilize prices. So long as competition does not cut below this level, it is salutary and desirable and any restriction of it is "price fixing" or "production control" or otherwise "tends toward monopoly—and is therefore undesirable."

This is not true either in fact or in theory. As a matter of fact, I seriously doubt whether the labor provisions would be enforceable in the face of the immediate and pressing temptation to cut into labor costs which would be brought about by a return to the destructive competitive practices prevailing before N. R. A.

Business operates for profits. If you want to eliminate profits, then we are not talking about the same thing. N. R. A. was an attempt to make the profit system work. No one makes profits by selling his goods at just the price to meet his pay roll. When that happens, he goes out of business and there are no more pay rolls there.

The predatory big fellow and the monopolist can do it, however, for a limited time and in limited fields, he constantly does do it to eliminate small competitors as I have shown in discussing loss leaders.

It was done generally under the antitrust laws before N. R. A. Say a big manufacturer has five lines of products. He can take losses on one line long enough to freeze out his less well-heeled competitors and then boost the price to where he pleases and yet show a profit on the undertaking because of his other lines. He then may do the same with each of the others.

This is the type of practice we must control if we want to support the labor provisions of N. R. A. I will admit that it cannot be done without some different approach to the antitrust laws.

Let me give you some examples to prove the necessity for fair-practice provisions to support labor provisions. When we first tackled bituminous coal miners' wages were so low that no spread of work without enormous increase in wages would provide even the means of life.

Yet in a very efficient mine, on the basis of those low wages, a ton of coal costs $1.06 to get the pit mouth. Some railroads which practically controlled the life of some mines had imposed contracts as low as 60 cents and the whole market was in such chaos that, unless we could engineer a marked rise in price, there was no human possibility of saving the miners from slow starvation.

John Lewis knew that. No strike could save that mess.

I presented the case to the President who knew all about it anyway from personal observation and experience. He didn't waste 5 seconds on a decision.

It was a clear case of absolute necessity of fair-practice provisions to support wages and hours provisions.

Some of the same thing was true of the lumber industry. Wages were just a disgrace. We got them up under the code but on account of the constant bickering and pull and haul, the lumber code was recently emasculated. Let me show you what happened to its wages and hours provisions.

I am not going to take up the time of this committee in view of the length of this document to read a perfect flood of telegrams that came into National Recovery Administration in the last few days showing that the disintegration of the fair trade practice provisions of the Lumber Code resulted in the labor provisions just going to smash all over the country. Some of the larger companies are maintaining labor provisions but generally speaking they are gone.

(The telegrams are as follows:)

CHARLESTON, S. C., *April 16, 1935.*

Estimates approximately 20 percent members lumber and timber industry complying in South Carolina.

JOHN W. CALIFF, *Executive Assistant.*

RICHMOND, VA., *April 16, 1935.*

Not more than 5 percent of employees in lumber and timber products industry now employed under code condition in Virginia. Trade members here opine code collapsed and suspended.

JOHN J. CORSON,
Acting State National Recovery Administration Compliance Director.

ATLANTA, GA., *April 16, 1935.*

Estimate 10 percent Georgia members lumber and timber industry complying present time.

D. B. LASSETER, *Executive Assistant.*

LOUISVILLE, KY., *April 16, 1935.*

Our estimate 25 percent lumber and timber products industry observing code.

EDW. F. SEILLER, *Executive Assistant.*

NASHVILLE, TENN., *April 16, 1935.*

Not more than 50 percent is our estimate of members complying Lumber and Timber Industry Code. Respondents show uniformity of indifference concerning complaints.

J. A. FOWLER,
State National Recovery Administration Compliance Officer.

CHARLESTON, W. VA., *April 16, 1935.*

We believe all large and important lumber firms this State still complying but they believe only matter of short time until they will have to go off code unless compliance is compulsory and held constitutional. Have had very few complaints as yet. Suspect 10 to 20 percent now compliance among smaller firms and contractors employing less than 30 men each.

F. WITCHER MCCULLOUGH,
State National Recovery Administration Compliance Director.

NEW ORLEANS, LA., *April 16, 1935.*

My estimate percentages of members lumber and timber industry complying with code at present time is 65 to 70 percent, due probably to greater proportion of large mills to small mills this area.

ARTHUR B. HAMMOND,
State Compliance Officer.

BALTIMORE, MD., *April 16, 1935.*

Estimate 80 percent of members were complying with code up to February 1 at which time small loggers and members of wooden package and veneer division on eastern shore went off the code. Seventy have lost "blue eagles" for not paying assessments.

ARTHUR H. HUNGERFORDS,
National Recovery Administration Compliance Director for Maryland.

LITTLE ROCK, ARK., *April 16, 1935.*

Estimate 75 to 90 percent big companies are fully complying. Estimate 50 to 75 percent small mills are on the code. Believe best compliance in southern pine division worst in hardwood division.

J. J. HARRISON.

OKLAHOMA CITY, OKLA., *April 16, 1935.*

Consensus opinion this office not over 30 percent members lumber and timber industry Oklahoma complying with code present time. Percentage figure would be much higher if based on total production as three firms in compliance produce over 60 percent production this State while balance produced by scores small producers many itinerant.

B. J. WILSON,
State National Recovery Administration Compliance Officer.

DALLAS, TEX., *April 16, 1935.*

Various estimates indicate as high as 90 percent compliance wage-hour provisions Lumber and Timber Code until last week. Reported that several large mills went entirely off code this week, reducing mill labor from 23 to 17 and 15 cents. Several firms formerly complying wage-hour provisions reported as abandoning code today. No semblance of compliance with trade-practice pro-

visions during recent months. Local code authority states: "After Belcher case our code considered weak and our entire set-up discredited. National Code Authority has shown no activitiy and issued nothing in last 30 days."

SHERWOOD H. AVERY,
State Compliance Officer.

JACKSONVILLE, FLA., *April 16, 1935.*

Answering cypress hills and large pine mills claim 80 percent present production complying with code. Very general feeling among this class urge enforced compliance. Large number smaller mills full 70 percent not complying. Many of these desire enforced compliance. Condition growing more. (Sic.)

INDIANAPOLIS, IND., *April 16, 1935.*

Lumber Timber Products Code Authority this district estimate not more than 40 percent of 1,146 lumber establishments in district complying with code at present time. This 40 percent represents approximately 60 percent of production code authority reports. Wave of adverse feeling and difficulty in obtaining compliance due to dropping *Belcher case.*

FRANCIS WELLS,
Acting State Compliance Officer.

DETROIT, MICH., *April 16, 1935.*

Compliance of members lumber and timber industry excellent in Michigan basis of volume business; 90 percent are complying scrupulously. Some violations limited to very small producers. Mr. Feingold, adjuster of this office, just returned from trip through northern peninsula and reports excellent compliance and wherever cases of noncompliance reported secured adjustment without difficulty. H. B. Osgood, in charge code compliance Lumber and Timber Products Code Authority, Oshkosh, Wis., confirms the above and states 90 percent volume of business Michigan area in full compliance.

ABNER E. LABNED,
State National Recovery Administration Compliance Director.

General JOHNSON. Let me also read you a summary of correspondence on the same subject, which I shall insert in the record at this point.

(The summary referred to is as follows:)

Letter from Delaware Compliance Director, October 27, 1934, showing abandonment of wage and hour provisions of the code by 40 small sawmills in Sussex County, Del., which grew out of wage and hour violations prevalent in Maryland.

Attempted abandonment of code on January 15, 1935, by Southeastern Hardwood Manufacturers Club.

Attempted abandonment of code on January 21, 1935, by 100 small sawmill operators in eastern Georgia and South Carolina.

Report of January 30, 1935, of Labor Advisory Board investigator, Meyer L. Lewis, covering trip of investigation of conditions among small mills in Georgia.

Letter of January 30, 1935, from employee of Brown & Sons, Caryville, Fla., showing wage reductions and maximum hours of labor extension made February 1, 1935.

Letter of February 14, 1935, from Stover Manufacturing Co., Mobile, Ala., showing forced shut-down of operation growing out of competitive wage violations.

Letter of March 7, 1935, to Mr. S. Clay Williams, from Hon. Graham A. Barden, of Georgia, repeating telegram from 11 sawmill operators, alleging less than 50 percent code observance in their district. Letter from State Director Wells of March 18, 1935, confirming this statement.

Letter of February 22, 1935, from Miss Emmie Geeslin, secretary of district no. 3, Georgia Retail Lumber & Building Supply Association, Inc., alleging demoralizing effect in Retail Lumber Code compliance in that district, brought about by wage and hour violations of sawmills under jurisdiction of the Lumber Code.

Copy of clipping from Memphis, Tenn., paper showing abandonment of code provisions by Anderson-Tully Co., C. M. Gooch Lumber Co., and Nickey Bros., Memphis, Tenn., affecting 1,200 employees.

Copy of clipping from Memphis, Tenn., paper showing strike of 1,500 employees of Chicago Mill & Lumber Co. plants at West Helena, Ark., and Greenville, Miss., resulting from reduction of wages and extension of hours. Also, clipping from West Helena, Ark., paper, and memorandum from Lumber Code Authority showing that this walkout affected more than 1,500 employees.

Extract from Memphis, Tenn., paper stating that more than 5,000 lumber workers in and around Memphis face a 20-hour increase in work hours with no increase in income, as a result of the withdrawal of the *Belcher case*.

Copy of wire from James H. Morrison for employees of Hammond Box Co., Hammond, La., advising that about 150 men were being paid 12 cents per hour and working 60 hours a week.

Copy of memorandum, dated March 13, 1935, from Arthur B. Hammond, State National Recovery Administration Compliance Officer for Louisiana, giving survey of compliance situation in that section following decision of Judge Wayne G. Borah in the *Hammond Box case*, and recommending that wage and hour provisions in the veneer package division of the Lumber Code be stayed in Louisiana until after a decision in the *Belcher case*.

Copy of wire, dated March 23, 1935, from the Swings Co., Ridgeley, Md., requesting temporary exemption from wage and hour provisions in order to compete with violators.

Copy of wire, dated March 15, 1935, from the Indianapolis Wire Bound Box Co., Indianapolis, Ind., requesting exemption from wage and hour provisions of code for their Fernwood, Miss., plant, in order to compete with plants that violated these provisions because of decision in *Hammond Box case*.

Copy of wire, dated April 1, 1935, signed by 31 employees of Patten Package Co., Calypse, N. C., stating that their employer told them that morning that women employees would be paid a maximum of 12½ cents an hour. The men were working for 18⅘ cents per hour; employer declined to state new wage for men. Told employees to work or quit. Also copy of wire, dated April 3, 1935, from Committeeman Rivenbark for employees of Patten Package Co. stating that over 100 employees of that company ceased work and asking for investigation.

Clipping from local Westwood, Calif., paper containing notice from the Red River Lumber Co. of their intention to resign from the Loyal Legion of Loggers and Lumberman.

Copy of letter of March 21, 1935, from J. W. Ethridge, Linden, Ala., showing breakdown of wages in a planing mill.

General JOHNSON. Let's take another case of a reverse intendment. I fought price fixing in the Petroleum Code until the code was taken away from me and price fixing allowed. But the idea I had was not that all control except wages and hours was unnecessary. I felt that if we really controlled production there would be need for only a maximum price to protect the public and not a minimum price to protect the industry.

I cite this merely to show that there is no magic whatever in the name "natural resource industry". The extent to which you need fair trade practices to protect wage schedules is not a question of natural resource, or no natural resource or processing or even of selling. It is a question of the circumstances of each particular case in every field of commerce and industry.

Take cotton textiles: Under the merciless competition of a vast excess capacity, wages and hours conditions had been degraded to a point that would have been shameful to any industry. The slightest reflection on those figures of wages and hours and of the prices of the cotton textiles industry at that time will show that without immediate and drastic action curtailing the use of facilities there was not the slightest chance of rescuing the disgraceful labor conditions in that industry.

Look at the showing of destruction of small enterprise on these charts—and the vast rescue of small enterprise also shown to have

been had by code fair practice provision. Can any man look at that evidence and contend that naked wages and hour provisions in this vast pool of potential employment, would have done anything less than wipe out both employers and employees by the tens of thousands overnight?

Why, the very bulk of the complaint by little fellows of the bare subsistence wage provisions of the code proves that if you had relied on that alone and not given the little employer something wherewith to protect himself against the scythe-like slaughter of the preceding decade you couldn't have gotten any result from N. R. A.

We cannot consider destroying N. R. A., promulgating a naked hours-and-wages law, and setting the antitrust acts to work on the chaos thus created, unless you are willing to countenance a repetition of the deadly lethargy toward effective control of our economic system of the past quarter century, with its ensuing destruction of employment and small enterprise, and of every safeguard that justifies the existence and expense of national government. We have got to do something to preserve the capitalist system—and if we can't control economic tendencies better than they have been controlled by the antitrust laws and the Federal Trade Commission in this century—we don't preserve that system.

(D) CAN AND SHOULD N. R. A. ATTEMPT REGULATION WITHIN A STATE?

If N. R. A. be regarded simply as a vast educational effort, nothing like it ever happened in this country. It taught us beyond question that John Marshall was right when he said "in commerce we are one people."

The State of Texas, asserting her right to control the withdrawal of a vast pool of natural resource, deluges our country with oil, destroys the potentiality of other fields, threatens installations in all other States, upsets that whole vast segment of our economy which floats on oil. Does anyone seriously contend that the power of Congress to regulate commerce does not go to that?

New York City runs out its sweatshops. They simply move into the Connecticut Valley. New York manufacturers must go back to the e same vile conditions or go out of business. Is it to be supposed that the Nation is helpless against that?

The Birmingham gray-iron industry, paying labor scandalously low wages, pays the high freight rate to Detroit and threatens labor in the established gray-iron and cast-iron stove industry there with the wage, hour, and living conditions of Negro labor. Is there no national forum to which Michigan can appeal? A great public utility, manufacturing electricity at its coal mines, by merely moving across the Ohio River from Illinois, into Kentucky where labor is unorganized and starving, can pay disgraceful wages, take the markets of all surrounding and producing States for both electricity and coal and confront them with the choice of following suit or abandoning their entire development. Hasn't the Federal Government something to say on that?

We are faced by a new condition that transcends any legal theory.

There is a discussion of about three pages which is a legal argument, which I do not need to read at length to the very able lawyers on this committee. It is in my statement.

(The same is as follows:)

I think that a law which may be held unconstitutional for a reason such as that applying in the child-labor cases could be brought within the scope of the Constitution by a change of emphasis in the drafting of the act, that is to say, by establishing within the four corners of the act itself that the primary motive of Congress is to exercise its recognized power to defend and protect commerce and only incidentally to affect other objects. If, for example, in exacting the child labor law, Congress had been able to recite facts indicating that the employment of child labor had a prejudicial effect upon interstate commerce and that for the purpose of protecting and regulating interstate commerce it was necessary to prohibit child labor then the Supreme Court might have taken an entirely different view of the matter.

The special application of the foregoing to the problem now in hand is this: The present act speaks, among other things, of rehabilitating industry, improving labor conditions, correcting the industrial depression, etc., none of which are any legal concern of Congress as far as its enumerated powers are concerned. Labor conditions are traditionally within the jurisdiction of the State, as established among other things by the child-labor cases. But if Congress were to say (1) that the sweatshop and the downward spiral of wages and the upward spiral of hours, which inevitably uncontrolled competition in the sale of services, have a damaging effect upon interstate commerce; (2) that unfair competitive practices such as the use of loss leaders and destructive price cutting also impair, obstruct, and interfere with the free flow of interstate commerce; and (3) that for the purpose of protecting interstate commerce against damage through these industrial evils, Congress considers it necessary to regulate and control interstate commerce as affected by the practices which lead to these evils, then in that case, the stress of the legislation would be, not upon the regulation of prices or the regulation of labor provisions, but upon the regulation of commerce.

This, in the light of National Industrial Recovery Act experience is no strained construction.

As to regulatory powers of Congress apart from the interstate question:

Ever since the vast industrial control found necessary to national existence during the World War (and national existence includes the existence of butchers, bakers, and everybody else) cases have been arising in this field and have been generally determined adversely to regulation by a divided court.

These cases all rest principally on implications of the fifth and the fourteenth amendments about liberty of contract and due process of law—which might mean anything—rather than on any specific definition in the Constitution. I think also that the dissertations about the common callings base pretty heavily on an adventure in dicta in the *Wolff case*, decided 13 years ago. I fear that in turn that case ran even further back—as far back as the economics of medieval England for its philosophy

Let me quote briefly: "It has never been supposed since the adoption of the Constitution that the business of the butcher or the baker, or the tailor, or woodchopper, the mining operator or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by State regulations." And I quote this frankly for contrast with more recent language.

I think that (in the careful and very necessary flexible language which so distinguishes our highest Court) that our law is on the verge of reflecting more faithfully the problems of the present. It is my judgment that the law is abreast of our times and that the philosophy of the great dissenting opinion in the *Oklahoma Ice case*, or the controlling opinion in *Nebbia v. New York*, is likely to be the legal logic of our future.

I may be wrong—but may I quote in contrast to the old Sutherland opinions, based always on what fell from Justice Taft in the *Wolff case* (as I think inadvertently) only a few sentences from the Nebbia opinion:

"It is clear that there is no closed class or category of business affected with a public interest, and the function of courts in the application of the fifth and fourteenth amendments is to determine, in each case, whether circumstances vindicate the challenged regulation as a reasonable exertion of governmental authority or condemn it as arbitrary or discriminatory. The phrase 'affected with a public interest' can, in the nature of things, mean no more than that an industry, for adequate reason, is subject to control for the public good. There can be no doubt that, upon proper occasion, and by appropriate measures, the State may regulate a business in any of its aspects, including the prices to be charged for the products or commodities it sells."

Plainly, in the ordinary intendment of an English language, Mr. Justice Roberts, with the concurrence of the majority of the court, here goes all the way. I cannot believe that when the test comes in a proper case there will be any difficulty about the court enforcing Federally created fair-trade practices and labor regulations within a State.

General JOHNSON. The only question is a practical one: How far it should go in doing so.

I think there will be great difficulty in carrying regulation into small service industries which are merely units for local employment having no discernible relation to interstate commerce.

Furthermore, I do not believe that as a matter of practice these service codes can be enforced. I did not believe it when they were permitted. I allowed them only on the insistence of their proponents that they were entitled to a trial and that the law gave them an affirmative right to a code.

We did try and failed. It was one of the greatest mistakes of the National Recovery Administration. Ninety percent of complaints of lack of compliance and little fellow kicks arose out of that mess.

I thought they were wiped out completely.

I do think that in the future N. R. A. should recognize the difficulties of administration of small enterprises, especially where highly localized in nature or in small communities, and this was the reason for the President's Executive Order No. 6710, dated May 15, 1934, in which employers in towns of under 2,500 were exempted from certain provisions of all codes and agreements.

I think we could go further in this direction (but not on hours and wages). We could relieve a wider class from any duty to pay assessments, make certain burdensome reports, or comply with certain specific trade practices, such as price posting, for example, the administration of which will be more burdensome than any benefits to be derived therefrom. I think this same test should be applied to the codes for small industries—that is, each industry of comparatively small total capital investment or number of concerns or of employees or total production of volume of sales, do the benefits to be derived justify the expenses and burdens of administration?

But I am very sure if you carry the exemption of wages and hours provisions down to those small industries, there is such a bulk of them, and it is growing, that you will practically vitiate the benefits of the wage and hour provisions.

Furthermore, unnecessary duplication of codes in many cases causes hardship especially on smaller enterprises such as retail stores subject to five or seven codes. This condition should be eliminated by consolidation. But it should be done administratively and not by legislation.

However, I think that we should take the President's statement that "no one in this country is going to starve" at its face value and provide no exception to the rule with regard to wages and hours.

Let me make myself clear on this. Consider again the consumer service trades and industries. The unemployment and trade practice conditions were serious in those industries. No one could argue that the benefits to the whole country of bringing about substantial improvement in this vast segment of its population (14 million or more) would be worth almost any effort we could make. As I have said—with grave misgivings as to its administrative practicability—I signed the cleaning and dyeing code. It was designed to raise

wages, in many cases all over the country as low as $4 a week, when they were getting paid at all—over $600,000 was owing in back wages in New York alone—to the pitiful minimum's of 20 cents an hour, and from almost unlimited hours running in many cases 60 to 70 and even more a week to the rather high code maximum of 40 hours.

It was estimated that this would result in an absolute minimum immediate reemployment of 20,000 men.

Certainly this would be worth any administrative difficulty in bringing it about. At that time the Blue Eagle was effective and had the support of the public as a symbol of shorter hours and higher wages. But here was the rub: The cleaning and dyeing code contained a price-fixing provision, specifically designed to protect the independent small operator from the ravages of the price activities of great chains and other trade practice provisions intended to wipe out abuses in a trade which everyone knows is rife with racketeering of the worst sort. However, this was all the sweatshop employer and the racketeer wanted, as it turned out. A great chain had new Blue Eagles made up on which they stated they would gladly cooperate on wages and hours, but not on price—that despite N. R. A. they had a sacred duty to the consumer to give service at the cheapest price which they would do in announced violation of the code.

The State of New Jersey under its own laws and codes put a small tailor—Joseph Magod—in jail overnight against the desires and wishes of N. R. A.—we never have heard the end of that—although the same tailor, when the national code was explained to him, wired me that he was all for it.

We had nothing whatsoever to do with the persecution of Mr. Magod.

The Blue Eagle began to mean price not labor to the consumer and support of it in all cases waned because of the effects of the Cleaning and Dyeing Code.

We then pulled the price provisions, but we could not seem to explain this and to revivify the Blue Eagle. And we never have revivified the Blue Eagle from the illness he got from that.

All the codes for consumer-service trades lapsed, to all intents and purposes, because of this.

Now here is the point: It has been demonstrated that these trades are not practically administrable by a national code. But the wages and hours provisions might be enforced therein by a revivified Blue Eagle. Trade-practice agreements can be approved and administered on a local basis only and should have the full support of State legislation and State agencies.

My answer to my own question is that N. R. A. should attempt intrastate regulation through codes wherever it is clearly necessary to protect interstate commerce and not otherwise, and that it is not so necessary in service industries.

I have omitted to discuss price-fixing and production control. The term "price-fixing" has been used as an epithet along with "production control" whenever a hard criticism of N. R. A. was needed and no facts were available, or it was desired to avoid and disregard the facts.

The facts are these:

Price-fixing was provided in but one manufacturing code and was never put into effect. Article X of the Code for the Woodcase Lead Pencil Manufacturing provided that—

no member shall sell * * * at less than the fair minimum price

as found by the code authority and when approved by the Administrator.

That provision has never been put into effect, since it has never been found necessary to fix the price. So there has been no price-fixing there.

Price fixing was provided in the Petroleum Code under the circumstances I have related to you.

Prices were fixed in the Bituminous Coal Code for the absolutely unquestionably justified reasons I have shown you and a resale price maintenance provision was included in the Wholesale Coal Code to protect the price structure in the Coal Code.

These are the only cases of actual price fixing in N. R. A.—two cases which are really one of code price fixing and that is coal.

In addition, there are five codes which provided for various forms of rate fixing as distinguished from price fixing. These were in public utilities. They were domestic freight forwarding, inland water carrier, merchandise warehousing, motor bus, trucking.

In only two of these is rate fixing in effect, freight forwarding and inland water carrier. In the public-utility field for over 50 years it has been recognized that rate fixing is in the public interest.

So that there have been in all 9 codes in which there were any provisions for price or rate fixing, 4 of which have never been put into effect, which leaves in addition to the 2 public utilities, only bituminous coal, wholesale coal—really 1 case—and petroleum, for which I was not responsible.

There is no justified, substantiated case that has ever been brought to my attention of undue hardship to any concern because of these provisions in these codes, excluding the Petroleum Code, with the administration of which N. R. A. is neither familiar nor responsible.

I notice that it has been charged that the prices are fixed in the Graphic Arts Code because of trouble with accounting methods used in determining cost to prevent sales below cost. As I understand it, the N. R. A. has never approached the debatable cost items, and if there has been any abuse it has been an abuse on the part of the code authority, overstepping its powers, which should be rectified by prompt administrative action.

But it is said that there are price stabilization provisions other than price fixing in that there are provision depending on cost-accounting systems in 618 codes, and that figure of 618 has been bandied about without any reference to accuracy or even truth. All these codes required N. R. A. approval of any such cost system. Only 36 such systems were ever approved, and only 44 have ever been effective at any time—some of these have expired.

Price fixing under N. R. A. is just a big bugaboo.

The basing-point system of the steel industry existed under the Federal Trade Commission long before N. R. A. The steel industry was built upon it. The vast installations were located where they are because of it. It is not single in the steel industry. Dozens of industries have it in different forms. Every manufacturer maintaining branch houses and selling f. o. b. branch does it.

I have always condemned it. The first thing I did when I took over a big industrial company was to abolish it.

But you can't do that in government—by fiat—after you have sat twiddling your thumbs for 21 years, as the Federal Trade Commission has and allowed titanic industrial clusters to be built up on that basis.

What N. R. A. did was to require an increase in basing points in an already operating basing-point system. It was the only way to handle the situation. By a gradual accommodation to a mill base, you can eliminate allowing a reasonable time and an intelligent administration to prevent chaos and destruction.

Your attention is called to exhibit 11, which I hereby submit, which is a compilation of 20 small steel companies advocating continuation of the system. I accept it as it was handed to me and proposed it for the record, although some of the companies do not look exactly like pygmies to me.

I think it has also been called to your attention that 1934 corporate returns show most little fellows in the steel industry getting out of the red, while the big ones are still running deficits—5 big ones in the red and 25 medium and small companies, in the aggregate, operating in the black.

I was asked to submit this exhibit. In looking over these lists just before I came in, I am now convinced that all of these companies are very small.

(The following exhibit was presented:)

EXHIBIT No. 11

Miscellaneous letters received by Senators, the White House, and the National Recovery Administration endorsing the National Recovery Administration as a protection to small companies

Edward Ehlers, president Rockaway Rolling Mill, Rockaway, N. J.
F. F. Brehl, vice president Washington Tin Plate Co., Washington, Pa.
Albert P. Meyer, vice president Division Coke & Iron Co., Oliver Building, Pittsburgh, Pa.
T. H. McGraw, Jr., president Braeburn Alloy Steel Corporation, Braeburn, Pa.
Wyckoff Drawn Steel Co., post-office box 1066, Pittsburgh, Pa.
J. O. Rinear, vice president Universal Steel Co., Bridgeville, Pa.
James Lippincott, chairman West Leechburgh Steel Co., Pittsburgh, Pa.
John J. Tyler, general manager Ellwood Steel Corporation, Ellwood City, Pa.
Roy C. McKenna, president Vanadium Alloys Steel Co., Latrobe, Pa.
Floyd Rose, vice president Colonial Steel Co., Pittsburgh, Pa.
William P. Snyder, Jr., president the Shenango Furnace Co., Pittsburgh, Pa.
Jessop Steel Co., Washington, Pa.
James O. Carr, vice president Allegheny Steel Co., Brackenridge, Pa.
W. A. Hicks, vice president Penn Iron & Steel Co., Creighton, Pa.
J. M. Gillespie, president Lockhard Iron & Steel Co., Pittsburgh, Pa.
S. E. Bramer, president Copperweld Steel Co., Glassport, Pa.
Harry M. Reed, assistant treasurer Anchor Drawn Steel Co., Latrobe, Pa.
C. N. Johns, general manager Page Steel & Wire Division of American Chain Co., Inc., Monessen, Pa.
Edwark R. Crawford, president McKeesport Tin Plate Co., McKeesport, Pa.
R. H. Pauley, Pittsburgh Tool Steel Wire Co., Monaca, Pa.

THE ROCKAWAY ROLLING MILL,
Rockaway, N. J., March 12, 1935.

Mr. DONALD R. RICHBERG,
National Recovery Administration, Washington, D. C.

DEAR SIR: I notice that you are being ridden more or less by some politicians in the Senate who do not understand business thoroughly.

Please let me go on record as saying that the National Recovery Administration has given a small business such as ours, employing about 100 men, a chance to live, and on the other hand, I have not read in the newspapers of any of our large competitors, such as the United States Steel Corporation or the Bethlehem Steel Co. or any of the others, making any profit whatsoever under code operation. Hence, it is a fair conclusion to state that the codes have helped the little fellows and have not helped the big fellows. Hence, if the opponents of the National Recovery Administration want to hurt the vast number of small business men and do a great favor to the large corporate interests, then let them wipe out the working of the various codes under the National Recovery Administration. The code under which we are working not only benefits our small customers as against our large customers insofar that the small customer has a chance to buy on an equal basis with the large customer, but it benefits labor because, under the code and under the President's orders, we were all obliged to advance wages, in many cases 100 percent.

If you want any further facts regarding this, I can give them to you.

Trusting you will use the argument that the codes and the National Recovery Administration benefit the small man, we are,

Yours very truly,

EDWARD EHLERS, *President.*

WASHINGTON TIN PLATE CO.,
Washington, Pa., March 22, 1935.

Mr. DONALD RICHBERG,
Chairman National Recovery Administration,
Washington, D. C.

DEAR SIR: From the newspaper data which is coming out of Washington, we feel we should go on record as favoring the continuation of the National Recovery Administration; it having been our experience since the starting of the National Recovery Administration that it is not prejudicial to the smaller industries, but more in favor of them and to their betterment.

Being one of the smaller tin-plate manufacturing concerns, employing around 500 employees, we have found since the National Recovery Administration was instituted that we are in much better position to compete in our industry.

We are heartily in favor of the National Recovery Administration and trust you will bend your efforts toward its continuance.

Yours truly,

B. F. BREHL, *Vice President.*

DAVISON COKE & IRON CO.,
Pittsburgh, Pa., March 22, 1935.

Hon. PAT HARRISON,
Chairman of the Senate Finance Committee,
Washington, D. C.

HONORABLE SIR: It is difficult for us to fully describe to your committee the real benefits of the National Recovery Administration to our company. We read in the newspapers much about the hardships that the National Recovery Administration has worked on the small company, but frankly we, a small company, find that the National Recovery Administration so far as our business is concerned has been a wonderful help.

As a manufacturer of pig iron, we meet the competition of all the steel companies, including the largest, and may we say that the benefits we have derived not only through the uniform labor conditions, but also by reason of the stipulated code of fair practices resulting in stability in our markets, has enabled us to operate our plant during 1934 at a higher rate and given more employment than we have at any time since 1929.

We respectfully urge upon your committee the extension of this law, not only on our own behalf, but also that of our employees.

Very truly yours,

ALBERT P. MEYER, *Vice President.*

BRAEBURN ALLOY STEEL CORPORATION,
Braeburn, Pa., March 25, 1935.

Mr. PAT HARRISON,
Senate Finance Committee,
Washington, D. C.

DEAR SIR: Our company, the Braeburn Alloy Steel Corporation, is I believe, the smallest unit in the American Iron and Steel Institute operating under the Steel Code. It is possible that one other concern is smaller than we are.

Now, my attention has been attracted from time to time to the serious criticisms of National Recovery Act and the fact that the claim is made that the small concerns are not benefited and that their outlook and possibilities are circumscribed by the conditions of the code.

It is not my intention to enter into any other industries, except the one with which I am familiar, but I certainly wish to protest against any impression that may prevail that the small industry is getting the worst of it under the National Recovery Act. I heartily endorse the workings of the Steel Code, the method of marketing and the control over wage and hours, as prescribed under our code. We know definitely that our competitors are paying the same price, under the same conditions and the same working hours that we are. We further know that the price that we quote to our trade is uniform to one and all customers.

There may be some disposition to criticize a uniformity of price in the steel industry. I can readily understand that such a condition would obtain when the manufacturer of steel knows that he cannot reduce his price to one favored customer without making the reduction to the remainder of his customers. On this account, the price situation is very carefully studied and the price has been set during the last couple years by the larger manufacturers at a barely living wage. Naturally, they have all observed this low price as established. The lowness of the price is evidenced by the inability of many of our largest steel industries to even pay their bonded indebtedness or rather to earn their bond interest.

It is an unfair assumption to conclude that should an excessive price or a truly remunerative price exist that a uniformity of price by all of the steel people would naturally follow. It follows at the present time because it would be absolute "suicide" to go below the prices already quoted and the earnings of the steel company evidence the closeness of the price situation at the present time. Some disposition exists to consider that under all conditions of high price or low price, that a uniformity of price would exist. This is certainly contrary to any reasonable analysis of what may be expected because if a living margin existed between the quoted price and the manufacturing cost, there would always be an opportunity for either large or small companies to post a different price in the market and true competition can exist at any time although the price of the competing companies will be known one to the other.

The object of this letter is to protest against any repeal or denial of the extension of the Steel Code under the National Recovery Administration, and to endorse the American Iron and Steel Institute and the Steel Code; this endorsement coming from one of the smallest tool steel concerns in the institute, but one who is favorable to it in every sense of the word.

Very truly yours,

BRAEBURN ALLOY STEEL CORPORATION.
T. H. MCGRAW, JR., *President.*

WYCKOFF DRAWN STEEL CO.,
Pittsburgh, Pa., March 26, 1935.

Hon. PAT HARRISON,
Chairman Finance Committee,
Washington, D. C.

DEAR SIR: As a small nonintegrated manufacturer of the steel industry, we urge upon you to recommend to Congress suitable legislation to continue the principles of the National Industrial Recovery Act so as to permit the operation of the Steel Code for another 2 years.

Within the past 2 years, more constructive ideas have been worked out in the steel industry, which benefited producers, labor, and consumers, as a result of the Steel Code than have been accomplished in the last 30 years.

If, due to unfavorable legislation, the Steel Code was abandoned and Congress did not provide a suitable substitute for constructive cooperation among manufacturers, you would witness the most chaotic conditions imaginable.

At this particular time, we attribute the lull in new business in the steel industry to the uncertainty surrounding the future of the Steel Code and pending legislation of the National Industrial Recovery Act. We therefore, cannot urge upon you too strongly to give this matter your earnest and sincere cooperation.

Very truly yours,

———,
Vice President.

UNIVERSAL STEEL CO.,
Bridgeville, Pa., March 23, 1935.

Hon. PATRICK HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

DEAR SENATOR HARRISON: We have been following with growing concern the published debate concerning the continuance of the National Recovery Act, particularly as it relates to the continuance of the Steel Code.

It is our opinion the National Recovery Act, in such form as will permit the continuance of the Steel Code, should be continued for an additional period of approximately 2 years.

It is our opinion the Steel Code is creating stability in this important industry, and is prophesying industrial recovery, which is important to the success and prosperity of capital invested, labor employed in this industry, and consuming public which this industry serves. We do not believe it has been in effect for a sufficient time to permit the accomplishment of all those things which will be of substantial aid in general recovery.

It is also our opinion if the National Recovery Act were permitted to expire and the Steel Code be canceled, a chotic situation would result which would cause serious losses and an increase in unemployment.

We therefore solicit your influence in an effort to cause the continuance of the National Recovery Act, in such form as will permit the accomplishment of those benefits which have not as yet been fully realized.

Yours very truly,

UNIVERSAL STEEL CO.,
J. U. RINEK, *Vice President.*

ALLEGHENY STEEL CO.,
Brackenridge, Pa., March 28, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

MY DEAR SIR: We have heard that very strenuous objections are being made in Washington by some of the Senators and Congressmen to the effect that the National Industrial Recovery Act ought not to be extended for an additional period of time because it has been prejudicial to the smaller concerns in business, is monopolistic in character, and has in general not accomplished the purpose for which it was intended.

As one of the smaller concerns in the steel industry we wish to state definitely that none of these insinuations are correct. Everybody in the steel industry, and particularly the smaller units, recognize the fact that the National Industrial Recovery Act and the operation of the iron and steel industry under its code of fair competition, has been of very decided benefit to the steel industry. We all know that more men are now at work, the amount of wages paid per hour has been very substantially increased since 1933, and the amount earned by employees has also increased substantially over what they were prior to that time.

This National Industrial Recovery Act has had the tendency to stabilize the steel industry and it has done this without prejudice to consumers, whether large or small. Statements have been made that exorbitant profits have been realized on the sales of steel products due to the Recovery Act and the Code of Fair Competition but I venture to say none of the assertions can be proven. It is a well-known fact that only a few of the companies in the steel industry have been able to earn their fixed charges during the past 3 or 4 years and it also is a well-known fact that many of them have been operating at substantial losses even under the advantages which they have obtained under the Recovery Act.

Under all the circumstances, therefore, we are firmly convinced that it would be more or less disastrous to the steel industry to throw the Recovery Act overboard at this time and we believe it would be much better for all concerned if it

were extended for at least an additional 2 years, with the hope that by that time we may have something quite substantial in the way of recovery.

Very truly yours,

JAMES O. CARR, *Vice President.*

PENN IRON & STEEL CO.,
Creighton, Pa., March 25, 1935.

The Honorable PAT HARRISON,
Chairman Finance Committee, United States Senate,
Washington, D. C.

MY DEAR SENATOR: We favor continuance of the National Industrial Recovery Act because we consider it fair and just to employee and employer.

More men have been employed and, despite the higher wages paid, this company has been able to operate more efficiently than before. The additional costs of labor and materials have, however, exceeded the additional price which we have been able to secure for our products. Despite this latter fact, we feel that it would be a grave mistake to abandon the National Industrial Recovery Act at this state.

We solicit your most earnest and thoughtful consideration of the above subject.

Yours very truly,

PENN IRON & STEEL CO.,
W. A. HICKS,
Vice President Operations.

LOCKHART IRON & STEEL CO.,
Pittsburgh, Pa., March 26, 1935.

Mr. DONALD R. RICHBERG,
Chairman National Industrial Recovery Act,
Washington, D. C.

DEAR SIR: We are writing this letter in reference to the proposed continuance of the National Recovery Act for the additional period of 2 years.

This company is one of the smaller independent manufacturers of iron and steel products, and we thought possibly our experience might be helpful in deciding as to whether or not the continuance of the act, in its present form, for an additional period, is warranted and justified by past experience.

We feel that the National Recovery Act now in effect has been helpful to industry generally (this includes the small unit producer as well as the large manufacturer) in that it has had a tendency to serve as an economic stabilizer, in a manner not heretofore experienced during a depression such as we have been passing through; this stabilizing influence, in our judgment, applies particularly to the maintenance of hourly and daily wage labor rates, salaried employees, etc., as well as values of finished products.

Thanking you for your consideration,

Yours very truly,

LOCKHART IRON & STEEL CO.,
J. H. GILLESPIE, *President.*

COPPERWELD STEEL CO.,
Glassport, Pa., March 26, 1935.

Hon. DONALD RICHBERG,
National Recovery Administration,
Washington, D. C.

DEAR SIR: The Copperweld Steel Co. at Glassport, Pa., is a small organization employing approximately 700 men and women. Since the event of the code of fair competition, our company for the first time has enjoyed an equal opportunity with the larger institutions in securing a share of current business. It is the first time we have been able to compete on an equitable basis. Rebates and secret discounts, and preferential terms not disclosed to the industry have been practically eliminated, all of which aided the small manufacturer and enabled him to ascertain the current market price of the competitive larger producer. Thus, we have been able to meet such competition which, heretofore, was almost impossible.

We, as a small manufacturer, urge you to consider seriously the continuance of the code of fair competition in our industry, as we are certain that to discontinue

the code at this time would bring chaos and would eventually force us to reduce the standard wage level in order to meet unfair competition.

We are not in favor of price fixing as such, but we do favor price filing. We believe that an organization should be sincere in its quoted price and adhere to it. The standard of honesty should be on its highest level in American business and the Government should discourage dishonesty. It is dishonorable, to be sure, to have several prices unknown to the industry.

We again, as a small manufacturer, beg you to protect our industry and reestablish the code of fair competition.

Very truly yours,

S. E. BRAMER, *President.*

WEST LEECHBURG STEEL CO.,
Pittsburgh, Pa., March 26, 1935.

Mr. DONALD R. RICHBERG,
Chairman of National Recovery Administration,
Washington, D. C.

DEAR SIR: We are a relatively small company in the steel industry, employing only 1,000 to 1,500 men. We wish to definitely state, however, that the Steel Code, under National Recovery Administration, has been beneficial to us and we urge continuation of it in its present form. We do not like to visualize the chaos that would result if allowed to lapse in June.

Yours very truly,

WEST LEECHBURG STEEL CO.,
JAMES LIPPINCOTT, *Chairman.*

ELLWOOD STEEL CORPORATION,
Ellwood City, Pa., March 23, 1935.

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

HONORABLE SIR: There is considerable discussion and agitation about the National Recovery Administration as to benefits and disadvantages especially to small business.

We, of course, are in this class being small manufacturers of wire nails.

Previous to the National Recovery Administration, the selling price of our product was reduced continually; in fact there really was no price, the tendency of practically all of us being to secure what little business there was regardless of the price with the result that in many cases we accepted orders at ridiculously low prices.

To enable us to come as close as possible to breaking even on all transactions we naturally had to reduce wages and this was carried to such a point that we were almost ashamed to meet our workmen on the street.

The National Recovery Administration has remedied this wage proposition, and by so doing, has naturally caused the selling of our product to be increased, and inasmuch as hourly rates in the steel industry are now uniform, our selling prices are practically all the same due to the fact that we can no longer quote prices lower than our competitors and then make up the reduction by reducing wages.

The above two features alone we believe would justify continuance of the National Recovery Administration.

We operate under the rules and regulations of the Steel Code and we have found the American Iron & Steel Institute, which is the Steel Code Administrator, to be very fair, reasonable, and understanding in its dealings with the Steel Code members.

We are perfectly satisfied with the American Iron & Steel Institute treatment of us, for we have confidence in them by knowing that any rules and regulations adopted by them will apply to all members of the Steel Code alike.

There are, no doubt, some features of the National Recovery Administration which are not desirable but we must not overlook the fact that the National Recovery Administration is practically a new proposition and it takes some time to get anything new to working smoothly, but according to testimony given in the Senate, the new National Recovery Administration Administrator, Mr. Donald R. Richberg, is fully aware of the defects and he is working to remedy them as they

are brought to his attention, and we feel the National Recovery Administration, under his jurisdiction, will prove of considerable benefit to all of us.

We will, therefore, appreciate your efforts to have the National Recovery Administration continued and thanking you kindly for your indulgence of this plea, we beg to remain,

Respectfully yours,

ELLWOOD STEEL CORPORATION,
JOHN J. TYLER,
Treasurer and General Manager.

VANADIUM-ALLOYS STEEL CO.,
Latrobe, Pa., March 21, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

DEAR SENATOR HARRISON: From information we have received, it appears that there is a serious question whether the National Industrial Recovery Act will be extended.

We want to go on record for the continuance of the National Industrial Recovery Act for a period of 2 years.

We believe that the discontinuance of the National Industrial Recovery Act would be detrimental to the business interests of our country.

Yours very truly,

VANADIUM-ALLOYS STEEL CO.,
ROY C. MCKENNA, *President.*

COLONIAL STEEL CO.,
Pittsburgh, Pa., March 22, 1935.

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR SENATOR: For your information, the officers and management of the Colonial Steel Co. consider it of the utmost importance that the National Industrial Recovery Act be extended for a period of 2 years.

We believe that the National Recovery Administration has been beneficial to the smaller manufacturing units of the steel industry, and we ask that you use your influence to have the National Industrial Recovery Act extended for a 2-year period.

Very truly yours,

COLONIAL STEEL CO.,
FLOYD ROSE, *Vice President.*

SHENANGO FURNACE CO.,
Pittsburgh, Pa., March 22, 1935.

Hon. PATRICK HARRISON,
Chairman Finance Committee, United States Senate,
Washington, D. C.

DEAR SIR: Knowing that the continuance of the National Industrial Recovery Act is being given serious consideration at this time in Washington, I would, as one of the smaller manufacturers, like to speak in favor of it.

Our experience with the National Recovery Administration, of course, has come through our being a member of the Steel Code. There is no question in my mind that with conditions as they have existed throughout the country, that our industry has fared better working under the Steel Code, in compliance with the National Recovery Administration, than we were doing previous to the formation of the National Recovery Administration.

The Steel Code, with its commercial provisions has been of material help to our company in many instances, and I feel to the majority of other small manufacturers working under it.

While industry on occasion has taken exception to various matters which have arisen under the National Recovery Administration there are, however, many worthwhile results which have been derived which warrant its continuance at this time.

The iron and steel industry will, in my opinion, show better results working under a code, such as we have, than would be the case with the code discontinued.

I earnestly solicit your valuable support in connection with this important matter.

Respectfully,

WM. P. SNYDER, JR., *President.*

JESSOP STEEL CO.,
Washington, Pa., March 22, 1935.

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

DEAR SIR: The newspapers and the radio seem filled with the discussion, pro and con, as to the continuation of the National Recovery Administration and we would like to go on record as favoring a continuation of the National Recovery Administration.

Our company is a very small one. We make only the so-called "jewelry" of the steel business—tool steels and stainless steels, and similar grades, but the National Recovery Administration has been a life-saver to us. Prior to the establishment of the National Recovery Administration there was no limit to the price cutting in our particular industry. Under the National Recovery Administration, with prices the same by all manufacturers, we have had a chance to compete. The statement has been made repeatedly in the newspapers and over the radio that the National Recovery Administration is stifling the small manufacturer and favoring the large one. In our opinion this is just the reverse of the real facts. While undoubtedly the large manufacturer wields a greater influence than the small one, he has been held in check under the National Recovery Administration, and we sincerely hope that you will use your influence to continue this very valuable arrangement.

Yours very truly,

JESSOP STEEL CO.,
——— ———, *President.*

ANCHOR DRAWN STEEL CO.,
Latrobe, Pa., March 21, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

DEAR SENATOR HARRISON: We have received information of the possibility of discontinuing the National Industrial Recovery Act.

It has been our experience that the National Industrial Recovery Act has been very helpful to small industries such as our own, and we would like to go on record as favoring the continuance of the National Industrial Recovery Act for a period of 2 years.

Respectfully yours,

ANCHOR DRAWN STEEL CO.,
HARRY M. REED,
Assistant Treasurer.

PAGE STEEL AND WIRE DIVISION OF AMERICAN CHAIN CO., INC.,
Monessen, Pa., March 21, 1935.

Hon. GERALD P. NYE,
Chairman Congressional Committee on
National Industrial Recovery Administration,
United States Senate, Washington, D. C.

DEAR SIR: We are very strongly in favor of continuing the National Industrial Recovery Act and codes in their entirety as they exist today, with perhaps slight modification of detailed points which are inconsistant.

While there has been varying results from the codes in some industries they have, as a whole, proven most advantageous to all lines of industry, both small units as well as large. With full recovery still the ultimate aim we consider it quite essential that the codes in our industry, including the labor provisions, price filing, and basing points, be extended for another 2 years if the ultimate aim is to be accomplished.

We therefore recommend that these codes be continued and earnestly request your support in this objective.

Very truly yours,

C. N. JOHNS,
General Manager Page Steel and Wire Division.

McKEESPORT TIN PLATE CO.,
March 22, 1935.

Hon. PAT HARRISON,
Chairman Finance Committee, Washington, D. C.

MY DEAR SENATOR: Referring to the attention now being given by your committee, as well as others of the administration, to the whole situation as regards the codes under the National Recovery Act, we wish to add our endorsement to the Steel Code now in effect.

Our company has been a member of the Steel Code since its adoption, and we think it would greatly retard recovery if it were to be abandoned at this time. There has been an honest effort on the part of all steel makers to live up to the letter as well as the spirit of the Steel Code, and it is our opinion, at least, that we have been able to make a pretty good job of it. Wages have been increased materially in the whole steel business, and hours of labor have been materially decreased, as can be verified by the reports made from time to time to the code authority. While it is true that prices of steel commodities have been increased, a very careful, minute study of the whole situation will easily develop that they have not been increased enough to entirely overcome the increased cost of manufacture, as can be verified by an examination of the steel companies' financial reports, which, in most cases, show deficits rather than profits.

We realize that a great deal of criticism has been made publicly and otherwise, of the codes creating a monopolistic condition, and that they have had the effect of crushing the smaller business people. These views are entirely opposite to our actual experience in the steel business. We believe—in fact we are absolutely satisfied—that the code as far as the steel business is concerned, has been beneficial to the small manufacturer, as for instance in our own particular case, after our experience of nearly 2 years, we feel we can, without reservation, endorse the working of the code, and in our contracts with other small manufacturers we find they are unanimous in the opinion as expressed above.

The discontinuance of the code at this time would create nothing short of a chaotic condition in the whole steel business, which would tend to further unemployment and reductions in labor, bringing hardship to hundreds of thousands in making steel, and which it is devoutly to be hoped will not occur. Recovery would be greatly retarded, and the signer cannot express himself too strongly in favor of a continuance of the present code for at least 2 years.

If, after a careful study of this whole situation, your committee should, in its wise judgment, decide to recommend a continuance of the code, it is our opinion you would be on solid ground and acting in the interest of labor, as well as industry, both of which must of necessity go along together if we are to achieve the results we all hope for.

Respectfully submitted.

E. R. CRAWFORD, *President.*

PITTSBURGH TOOL STEEL WIRE CO.,
Monaca, Pa., March 22, 1935.

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

DEAR SIR: There are, of course, difficulties in blanketing all units, large and small, under a single code, and it would be too much to claim perfection for it or for any other mechanism of human construction.

We had no part in framing the Steel Code and take no part in its administration, but we feel that it is a righteous attempt to secure equality of opportunity as between all producers, regardless of their size or location, and with due consideration for the position of consumers of steel.

As one of the smaller units in the industry, and one which has been in business continuously for 33 years, we believe that the code has been fairly and impartially administered. At no time have we found the code authorities arbitrary or domineering when approached with our problems. On the contrary, their attitude has been uniformly helpful and considerate.

We believe that the Steel Code, under National Recovery Administration, should be extended for another period.

Yours very truly,

PITTSBURGH TOOL STEEL WIRE CO.
R. H. PAULEY.

The CHAIRMAN. How much more time will it take you to finish this statement?

General JOHNSON. I think it will be about 10 minutes more.

The CHAIRMAN. If you can finish in 10 minutes, we will continue.

General JOHNSON. Perhaps I had better say 20 minutes.

The CHAIRMAN. If it is 20 minutes we will recess now until 2 o'clock this afternoon in this room.

(Whereupon at 12 noon a recess was taken until 2 p. m. of the same day.)

AFTER RECESS

The committee reconvened at 2 p. m., pursuant to the taking of the noon recess.

The CHAIRMAN. The committee will come to order.

TESTIMONY OF GEN. HUGH S. JOHNSON—Resumed

The CHAIRMAN. All right, General, you may proceed.

General JOHNSON. It was called to my attention during the recess that in enumerating the codes that had real price-fixing provisions I neglected to mention one division of the Graphic Arts Code, the Division of Relief Printing. That is one of the divisions out of three divisions and several subdivisions, which has a price fixing on minimum prices in it, which I omitted to mention.

That provision I think is a bad provision and ought to be taken out.

I believe in no price fixing but in a general principle that a consistent practice of selling below cost is suspect. I hope to see developed a method of open price-posting with no waiting period but absolute publicity on all quoted prices, terms, rebates, and discounts. If we could have that, then anybody who wanted to make a complaint of predatory price slashing could do so, and if the accused couldn't explain his prices he would be ordered to cease and desist.

But open prices have been another popular target of late. There are two phases of the open-price question. One is that it gives competitors in an industry an opportunity to know market conditions, that is, the prices which they will have to meet in order to get their fair share of business. I must confess that this phase has left me cold. The other is that open prices prevent unfair discrimination between buyers. Rebates, advertising allowances, diversion of brokerage, are all common methods of discriminating in favor of special customers. The chain stores are common recipients of these benefits. I have known of instances where a manufacturer has been forced to give a case of his product free to each chain-store outlet and on top of that make a $7,000 cash payment before the purchasers would stock his product. The manufacturer was supposed to make his profit on the reorders.

Imagine the small retail grocer demanding such a thing.

In the food division, for example, open prices mean open prices, and the quantity discount means a discount measured by actual savings resulting from quantity buying. If the little fellows can't get together, and, by pooling their purchases buy in the same quantities as the chain stores and other big buyers, they should be entitled to buy at the same prices in order to compete with their chain-store

competitors on an equal basis. Does anyone object to this obviously fair arrangement for the little fellow? Is there anyone so naive as to believe that without open prices the independent merchant buys as cheaply as the big organization?

In my opinion an open-price system is enough. I do think and have sometimes said as the result of my experience in N. R. A. that we concentrated too much on selling provisions in codes and not enough on buying provisions, because there is as much attainment of an advantage against small enterprises through the power of mass buying, not exercised solely to absorb the saving due to volume, but exercised for very many other very oppressive reasons.

Production control.—There are very few real production controls in N. R. A. There is more economic nonsense on this subject than on any other—this talk about a "new deal" economy of scarcity.

If your country will only eat about 600,000 bushels of wheat, if the price of your surplus determines the price of your domestic crop, and there is no market for that surplus that will return the farmer half of his production cost, why should he produce half again as much as our people will eat?

Or why should the East Indies produce more rubber or Brazil more coffee than the world wants? They can't without ruining all the labor and capital engaged in production.

Why should we withdraw and waste our expendable resources of petroleum?

And why in the face of a vast unemployment should we invoke every invention to end employment?

Why, with the worst labor conditions in major industry, should we insist that double the number of spindles necessary to clothe us glut our market with unmanageable and unconsumable surplus?

You can't do these things without further degredation and unemployment of labor and a new collapse.

We can't make another mistake like 1929 to 1932—one more and the fat is in the fire. If we can't regulate this economic engine, it has already proved that it has no governor. The next step will be absolution of the profit system, and page Mr. Stalin.

May I here interject that Senator Clark, I think it was, asked one witness whether or not he had ever known of a code budget or a salary for a code executive being reduced by the N. R. A.? A few examples from the Food Division alone may answer that question.

	Budgets	
	As submitted	As approved
Restaurant	$109,764.73	$87,881.38
Macaroni	184,060.00	172,040.00
Dog food	48,900.00	37,900.00
Wholesale lobster	28,005.00	22,028.00
Atlantic mackerel	3,600.00	3,450.00
Retail tobacco	1,000,000.00	400,000.00
Wholesale confectionery	500,000.00	278,336.50
Retail kosher meat	233,000.00	202,427.32
Bottled soft drinks	142,850.00	111,850.00
Retail meat	486,000.00	152,520.00

In passing, I might point out that it has been frequently said that it will cost industry $41,000,000 to administer the codes, disregarding the fact that if it did it would be an infinitesimal price for industry

to pay for recovery. But I want to point out that in no case has industry been able to collect 100 percent of its assessments--and the $41,000,000 merely constituted the goal at which industry was shooting.

(4) What can be done to improve N. R. A. and N. I. R. A.?

We can't get out of the fog in administration of this vast new project without some specific definition of "monopoly", "unfair competition", and "interstate commerce."

I can only suggest the following:

Assuming that competition should be regulated to the extent necessary not only to protect labor standards but, in many other ways, to prevent the many evils and abuses of so-called "free competition", and that the antitrust laws must accommodate that, and I think I have proved this—what is a more practicable, reasonable, and constitutional way in which it can be done?

Certainly not by any flat statutory provision. The same reasons why there must be administrative discretion in applying labor standards are even more strongly evidenced here.

Since the antitrust laws must be applied in a different way, some administrative agency must be set up to see that in their relaxation the abuses which they sought vainly to eliminate are not allowed. But what legislative definitions and mandates can be given the administrative agency to insure that these abuses are eliminated without being so rigid as to hinder the administrative agency in accomplishing the purpose for which it was created, and what type of administrative agency can be trusted with this duty?

Monopoly: As to monopoly, I think that a definition that would cover the point that I mentioned would be the substantial control by a private interest of the sources of raw material or of the processes or facilities of production or distribution or over the market for consumption of any commodity of commerce or the power to fix the price thereof to the detriment of the public or to restrict the production thereof constitutes a monopoly and a burden on commerce among the States and with foreign nations and should be forbidden by any new legislation.

And as to unfair methods of competition, any devices, practices, acts, or courses of conduct, the effect or tendency of which is to create, protect, or preserve a monopoly, as defined above, and any devices, practices, acts, or courses of conduct determined by an appropriate administrative agency to aggravate the recognized depressed condition of national business activity, employment, standards of living, or purchasing power, or to oppress or discriminate against small enterprizes, are "unfair methods of competition in commerce" within the meaning of the Federal Trade Commission Act, as amended, and constitute a burden on commerce among the States and with foreign nations and should be forbidden by the new legislation.

And as to interstate commerce, any act of manufacture, transportation, distribution, or sale, wherever performed, materially affecting commerce among the several States, and with foreign nations, or materially affecting similar acts performed in another State or States, is to be construed as interstate commerce.

New legislation should provide that no group should be recognized for purposes of code amdinistration unless it is not only representative by numbers and volume of business but also by the natural geographic

sections or regions in the industry. In no case should a trade association be recognized as the representative group unless there is almost unanimous membership and unless its governing body meets the above requirements, unless adequate provision is made for nonmember representation on the governing body and unless the smaller enterprises have at least one third membership.

The interest of labor and consumers must be conserved in code administration. In the past, too often there were no true representatives with whom we could deal, and we had to fall back on the Labor Advisory Board to represent the labor in a particular industry. Often the representation with which we did have to deal represented only the few organized employees in the industry. This was unavoidable at first, but the failure of labor organizations to proceed as rapidly as we expected made the administration difficult. As I have stated, a properly drawn collective bargaining clause, with a mandate to an administrative agency to effect it, will speed the contemplated organization of labor.

There should be on any Government agency set up to supervise any code, a well-qualified labor adviser and a consumer adviser.

There has been a lot of loose talk about "industrial self-government" and about code authorities. Many acts of the Federal Government have been attributed to code authorities and many unauthorized acts of code authorities have been attributed to the Government. The terms have been misunderstood. The term "code authority" should probably never have been used. "Industrial planning committee"or "code committee" would have been more appropriate to their actual functions.

The N. R. A. is an agency of the Federal Government, and a code authority is not. A code authority is an agency of the employers in an industry, and the N. R. A. is not. This distinction has by no means been kept clear. The best way to make the distinction is to list the problems of administration and see the part that each should play therein.

The problems of administration are:

1. Industrial planning.
2. Emergency administration.
3. Compliance.

1. Industrail planning: The main duty of the code authority should be to keep a constant watch on the operation of the industry under the code. For this purpose it should perfect its organization and channels of communication so that all interests are completely and quickly represented. It should develop automatic and uniform methods for gathering and dissemination of information so that it can plan intelligently to avoid dangerous trends and recurrences of unhealthy situations and keep all its members constantly informed.

It shoud make recommendations to the Government on the basis of its observations as to changes in the code necessary to carry out these plans. This should be a continuing and efficiently performed function. It is a thing which industry always complained it was not able to do for fear of the antitrust laws. Given the right to organize to accomplish this, they should take full advantage of it. However, in no case do these plans of industry become effective until they have been scrutinized and finally affirmatively approved or revised or disapproved by the Government and full opportunity has been had

for all conflicting interests to be heard. Then, in the light of all the evidence, the Government must decide whether or not it is in the public interest, that it is fair to labor and to the consuming public and to small enterprises, and that it tends to increase business activity and not to decrease it, and that it tends to distribute the benefits of increased business activity rather than to concentrate it in the hands of a few.

If the problem is one affecting labor, labor should be presented joinly after agreement by the representatives of organized employers and organized employees and should be subject to the same tests and should be effective only when approved by Government. In other words, industry plans and gathers facts and recommends action—only the Government should act affirmatively.

2. Emergency administration: Often situations occur in which relief from certain code provisions is requested by individuals or groups because the provisions are working hardships. In these cases, if consistent with the urgency, every effort should be made to get the recommendations of the code authority and of the labor group, if the problems affect them. If matters require summary action to prevent hardship relief should be immediately granted by the Government, but should be confirmed or reversed after receiving the recommendation of the industry or labor committee or both. Here again the only positive action is by the Government.

3. Compliance: There should in all industries be a trade practice complaints committee and an industrial relations board or labor complaints and disputes committee. The trade practice committee should be an employers' committee, and the labor committee should have representatives of both the code authority, that is, the employers planning committee and of the labor committee with a Government representative participating. These committees should make findings of fact and recommendations as to the action to be taken in all cases referred to them. But this should not deprive any complainant from putting his case directly before the proper agency of the Government or from going directly to the courts.

Labor complaints committees have hitherto been set up in but few industries because of the lack of labor organization.

The trade practice complaints committees have been somewhat more successful because there was more relative organization among employers but not as effective as they would be with proper organization and representation. There should never be the power in any of these agencies to make decisions even temporarily determining rights unless there is adequate Government representation on such agency.

There should never be the power finally to determine rights under the codes except in the courts.

This is in accordance with Senator Nye's proposal to set up under the Supreme Court special courts for this purpose.

This then is the line of demarcation between the powers and responsibilities of industrial self government and of the Federal Government. It is very clear in my mind and I am sure it could be made clear by appropriate legislation. Code authorities should have the power to perform only those educational, planning, fact-finding, and reporting functions placed upon them by the code. The administrative discretion delegated by the Congress should be jealously reserved to the appropriate agency of the Federal Government of the

United States and no price or production control should proceed from any other authority than the Government unit.

As I have said before, an attempt of this kind cannot be effective without the sanction and support of public opinion and of organized employers and employees. When the people as a whole fully understand N. R. A., as they did during its first phase of P. R. A., and before the air became befogged by confusing controversy, everyone wanted to cooperate to the fullest extent of their ability and they did, because they knew whom to support. There was an effective symbol of cooperation. If the consumer could know that this effort has resulted and is resulting in increased employment, purchasing power, general business activity and is working steadily for national prosperity, he would still be for it and supporting it now as then. He supported it then because he knew it was right and there was a symbol enabling him to support it.

The same is true now and if he knew it was right and if there was an effective symbol he would support it now.

A revivified symbol of public support, promulgated by the President and administered under a new law clarifying those doubts under which the people have been laboring for so many months, would resolve almost the entire compliance problem. Proof of this lies in the fact that one of the few continued compliance devices which has met with complete success has been a method which utilized this simple principle. I refer to the Executive order regarding Government contracts. It is, of course, absurd for the Government on the one hand to be condemning a man as a chiseler and on the other hand dishing out its money to him as a reward for the very violation of which he is guilty. Therefore, it was provided that no Government money would be paid to an employer who was unable to display the symbol of compliance. This has worked with great success. The same principle should be applied by all the States with regard to the expenditure of State funds and by all public institutions. But it should be extended further. Each code should contain a provision to the effect that it shall be an unfair trade practice under that code for a member of that code to deal with a member of another code who has been found to be in violation of that other code and who is therefore unable to display the symbol of compliance. However, under such a provision, the symbol should only be removed by action of the courts. Findings of fact made by administrative agencies should be received as prima facie evidence in a court hearing on such an issue.

Probably no word has been more misunderstood than the word "compliance." It has been said that compliance is the N. R. A. word for "enforcement" to avoid the unsavory implications of the latter word which it gained by its prohibition experience. And that is not true. Compliance is simply the activity of N. R. A. to effect adherence to code provisions without resort to enforcement. When complaints began to reach N. R. A. in any volume it was found that the vast majority were due to misunderstanding, either because the complainant misunderstood his rights under the code or the respondent was violating the code through misunderstanding of its requirements. In cases of this kind if the misunderstanding were bona fide, nothing was done except to see that the code was thoroughly understood as such so that a repetition of the misunderstanding could not arise.

There has never been at any time within my knowledge, any effort by N. R. A. to keep issues out of courts. In every case where we were convinced that there was a willful violation, that case was turned over to the Federal Trade Commission or the Department of Justice and the Blue Eagle was removed. It is true that the Federal Trade Commission and the antitrust division of the Department of Justice, having jurisdiction over these complaints, did not cooperate in bringing them to a speedy final determination in the courts. However, neither the Federal Trade Commission nor the Department of Justice nor N. R. A. could impair the inalienable right of anyone to get relief in the courts. On the contrary, the N. R. A. by its speedy device of exemption furnished a forum for obtaining relief much more rapidly than is possible under our court system. The records before you show that up to February of this year, the N. R. A. has granted relief of this nature in 1,171 individual cases and has granted similar relief to unestimated tens or hundreds of thousands throughout 614 general stays.

With proper organization of industry and labor for administration and with the line of demarcation between governmental and self-governmental functions clearly established and with effective means of compliance provided for, the problem of administration becomes so simplified that it is perfectly feasible for N. R. A.—with some changes suggested later—to successfully administer this law, provided however that it is clearly understood that it is but part of a huge program and that its efforts are coordinated with the rest of that program.

One of the most valid criticisms against the whole "new deal" is the fact that from time to time it has sorely lacked coordination. One agency has been vigorously pushing a policy in one direction while a coordinated agency has just as vigorously been pushing a conflicting policy in a diametrically opposed direction. Some of this was unavoidable and natural in a newly set-up organization of the scope and magnitude and with the tremendous national problem of these emergency agencies. But after 2 years we should be able to avoid them.

As examples, A. A. A., N. R. A., P. W. A., and F. E. R. A. were all given their mandates more or less simultaneously and told to push them vigorously. None of these could succeed alone. They all must complement each other. N. R. A.'s first job was to put 3,000,000 people back to work by snowfall. This it did. But A. A. A., with power far greater than N. R. A., was supposed to equalize the benefits so that the inevitable rise in industrial prices due to increased labor costs would not work to the disadvantage of the already pauperized farm consumer. This A. A. A. did not do in time. The shoe is now on the other foot and farm prices have risen faster and further than industrial prices. The industrial workers, such as there are of them, are by no means up to a level where we can say safely that they can bear this inequality.

Likewise, it was realized when this program was conceived that the benefits which might accrue to the capital goods or heavy industries under N. R. A. would be a long time in coming and P. W. A. was to give them an immediate shot in the arm. P. W. A. did not move fast enough and if anything these industries are worse off under N. R. A. This is lack of coordination. It must be rectified. Similarly, N. R. A. was to insure the maximum reabsorption of the unemployed into private industry as quickly as possible, leaving to F. E. R. A. the relief

of those still unemployed. Yet, C. W. A. was paying higher than code wages on several projects which diverted employees from certain industries to these projects, so that actual labor shortages occurred and relief funds were expended for this labor, where they could and should have been absorbed by industry. An even more fundamental lack of coordination lies in this fact, that we have unlimited capacity to produce and practically unlimited capacity to consume. Yet we aren't producing and we aren't consuming. The essence of the trouble is with our distribution machinery—our medium of exchange money. We aren't getting goods to those that need them and the prime difficulty is money.

One of N. R. A.'s main stumbling blocks was that industry found it difficult to finance the increased labor costs pending the ultimate return from the consumer, yet R. F. C. was empowered to make industrial loans and held preferred stock and other controls over a majority of the banks. There was lack of coordination. I have already mentioned the lack of coordination between N. R. A., the F. T. C., and the antitrust division of the Department of Justice.

At the root of the issue was, of course, the very price policy antitrust law issue which is now again before us. The significant point is that, if N. R. A. was operating under a fundamental misconception of what the act called for, that misconception should have been corrected the moment it arose. On the other hand, if it were not operating under a misconception, the F. T. C. and the Department of Justice should have proceeded vigorously to the enforcement of N. R. A.'s activities This they did not do. N. R. A. was in an impossible situation with regard to enforcement. If this single factor had been removed early in the game, the beneficial accomplishments of N. R. A. would have been at least doubled, and it must be removed if N. R. A. is to continue.

The trouble was that the various special industrial recovery boards, industrial councils, executive councils and emergency councils which succeeded and replaced each other in an effort to arrive at coordination were never really given the power to fix the policies for the administration of any agency other than N. R. A., and they failed to do this, despite the fact that the attorney general and the chairman of the Federal Trade Commission were members of several of these groups. Furthermore these so-called "coordinating councils" were composed of Cabinet officers and other heads of administrative organizations who either had to neglect the planning and policy and coordinating work of the council or neglect the administrative job for which they were responsible. So right off the bat, in order to resolve the doubts of Congress as to the safety of delegating the protections of the antitrust laws to administrative hands, there should be over this agency (as well as over all other engaged in coordinate activities) a body with the power to so direct their joint operations that they do not dissipate each others forces.

I would not go into too great detail in writing an N. R. A. statute. The trouble with the present one is too much language. What is needed is:

(1) Definitions of (a) labor policy; (b) monopoly or monopolistic practices; (c) unfair trade practice; (d) interstate commerce; (e) authority as between N. R. A., the labor boards, the Department of Labor

and Federal Trade Commission; (f) industrial self-government and Federal supervision.

(2) The extent to which Congress intends to limit (a) price control; (b) production control; (c) applications to small enterprise.

(3) Very simple provisions for code organization and administration.

I have tried to restrict these recommendations. I realize they are far too long. They do not cover half the field of N. R. A. experience and knowledge that should be at the disposal of this committee in redrafting this act.

In closing may I reiterate my belief that we must take our capitalistic system in hand. It is not in hand, is not any system of unlimited competition decreed by law. There is another extreme of administrative control by the States, and the medium line is N. R. A. industrial cooperation controlled by the Government. To my mind we should not go back to what has failed, we should not go forward to communism or facism, but we must do something, and let us stick to the middle of the road.

The CHAIRMAN. Are there any questions of General Johnson?

Senator LONERGAN. I would like to ask a question, Mr. Chairman. I judge from what you have stated before we recessed, you believe that Congress has no power to regulate commerce that is solely intrastate?

General JOHNSON. Senator, of course when we say "intrastate" you raise a question of definition.

Senator LONERGAN. Yes, sir.

General JOHNSON. I tried to say I thought possibly in this depression and before it had changed our concepts of what was intrastate and what was interstate commerce, and that any act within a State which clearly and obviously affected or burdened commerce among the States should be regarded as interstate commerce and subject to regulation.

Senator LONERGAN. And you would eliminate all other activity?

General JOHNSON. Yes; if they did not have a near relation to the interstate.

Senator LONERGAN. I think that is sound.

Senator BARKLEY. You would apply the Shreveport doctrine in railroad restriction to commerce?

General JOHNSON. Yes, sir.

Senator BARKLEY. Is there any reason, if the same constitutional provision authorizing Congress to regulate commerce, carries with it the power to regulate the instrumentality over which commerce is carried, even if it be intrastate, if it affects interstate commerce, that the same power is extended to Congress to regulate the instrumentality over which it is transported?

General JOHNSON. Yes, sir. I would even go further than that, and there has been a decision on it, and I think if we have manufacturing absolutely unregulated within a particular area it may degrade commerce three or four States away and in every State between, and I would go to the fullest extent by saying that any act in the manufacture, distribution, or sale within a State of anything in any State that would as a matter of fact burden commerce within other States is within the power of Congress to regulate.

Senator KING. General, you are not at variance, are you, with the decisions of the Supreme Court in regard to price fixing and restraint

of trade in *American Column & Lumber Co.* v. *United States*, 257 U. S. 377; *United States* v. *American Linseed Oil Co.*, 262 U. S. 371; *Maple Floorings Manufacturers Association, et al.*, v. *United States*, 268 U. S. 563; *Cement Manufacturers Protective Association, et al.*, v. *United States*, 268 U. S. 588, and several others of like character?

General JOHNSON. Senator, that is a pretty large order. I could not tell you what those decisions were. I could not say whether I am at variance with them or not.

Senator KING. In view of your definition of what was interstate I thought perhaps it would not be unfair to call your attention to these cases and ask you whether you were familiar with them.

General JOHNSON. I suppose I am familiar with them. I do not recognize them by title or citation.

However, I will say this: I very well know that much of the language of the Supreme Court is against the position I took, but I do believe in view of the revelations of the last 2 or 3 years that the Supreme Court will say that yesterday things which did not affect interstate commerce today do affect interstate commerce.

Senator KING. Are you in favor of the provision which is found in this bill before us, if I interpret it correctly, which practically repeals or makes noneffective the antitrust laws, and certainly subordinates the Federal Trade Commission to the code, or to the provisions of the law and to the provisions of the codes which may be adopted and which may be approved by the President?

General JOHNSON. Senator, I am not familiar with the language of that bill, but I can answer your question, I think, otherwise. I am not in favor of any relaxation of the antitrust law except that where the Government itself decides that a certain act, although it otherwise might be called a combination in restraint of trade, is in the public interest, and that the Government may license that act contingent on whatever conditions it decides to apply, and that any violation of those conditions incidentally brings into full vigor and effect the antitrust laws on that act.

Further, I want to say that I realize in reading this that I have not covered all the points thoroughly, and since I prepared this in the last 48 hours, I know it is very ineptly presented.

There seems to be an inherent criticism of the Federal Trade Commission in my testimony. I do not mean to do that. I do not mean to criticize the Federal Trade Commission. I think it is a wonderful body and has done wonderful work. But I think we have got to define these limits, and that within that field after they have been defined that the antitrust field ought to be even strengthened.

Senator KING. You said the Government should decide. What agency of the Government should decide whether it was fair practice or whether it was a violation of the Sherman antitrust law? Do you think a court should, or did you have in mind some administrative body?

General JOHNSON. Yes; I had in mind the continuance of some body such as N. R. A., which you gentlemen might decide in your wisdom to set up.

Senator KING. Then, if I understand you, you would give to that organization that power subject, of course, to the review by the courts?

General JOHNSON. That is correct.

Senator KING. The determination of whether certain conduct or certain practices was and were in violation of personal rights, or of the antitrust law, or of the provisions of the fair-trade practices as they had been inaugurated and carried into effect by the Federal Trade Commission?

General JOHNSON. I tried to say that, yes, sir. I do not think on ultimate rights you can take away or should take away from the courts and put in the hands of an administrative body those decisions. I think they have to do it in the first instance, as many other decisions, but I think they always have to be finally decided by the courts as to whether that body is exceeding its authority.

Senator KING. As I understood your address, your statement this morning, and it is very long, it covered many, many features, and I am not complaining about it, and I think we are indebted to you for such a comprehensive statement; do you not believe or, rather, did you not convey the idea that there should be, aside from the administrative organization, call it the N. R. A., or any other name that may be applied to it, an agency rather disassociated from the N. R. A. or that organization, and disassociated from the industry, and yet which should be a sole appellate court, or court of appeals, to review any important decision of the N. R. A. on any organization set-up before it was put into effect, particularly if it had punitive provisions—I use the word "punitive"—and as affecting the continuity of its business rather than the technical term, where it implies a violation of a criminal statute subject to punishment by imprisonment?

General JOHNSON. No, sir; I did not suggest a separate body in respect to an administrative body, but in respect to labor provisions.

Senator KING. Yes; I recall.

General JOHNSON. I also said I thought there should be a body set up to hear complaints like the oppression of small enterprises, which could be immediately heard, and where it was found that there had been oppression in violation of the statute their decrees should be accepted at face value by the administrative body and they should correct that abuse.

Senator KING. How would you prevent lock-outs and how would you prevent strikes?

General JOHNSON. You cannot do it. I tried to make clear by what I was saying that unless you have a vertical organization of industry alongside a vertical organization of labor with a tribunal for final appeal to a supreme body on labor disputes whose decision would be accepted by both sides.

Senator KING. Do you think there is any authority in the Federal Government or State governments to deny to labor, individual labor, or groups of labor, such as the Federation of Labor, the right to strike?

General JOHNSON. No, sir. But your question goes to something that is very intrinsic in my recommendations, and I think is intrinsic in N. I. R. A. Now those conditions are matters of an agreement. I do not believe if the labor in an industry and the employers in an industry agree that the trouble can be settled that they have lost any substantiative rights, but have sustained their own substantive rights.

Senator KING. You think the power of the court might be called into play to restrain a strike or lockout after an agreement had been entered into?

General JOHNSON. After the strike or lock-out and the body selected was agreed to by both sides, and a decision had been reached and handed down; yes, but not otherwise.

Senator KING. I suppose, General, perhaps it was a little exaggerated at the time, but do you remember saying in the newspapers that "N. R. A. is as dead as a dodo"? You did not quite mean that?

General JOHNSON. I sort of expected that. [Laughter.]

Senator KING. You expected N. R. A. would be as dead as a dodo, or that you would be asked that?

General JOHNSON. No; I expected the statement to be mentioned, and I remember about that; the fact of the matter is that I was misunderstood at the time, and I was in New York and told the press that "The administration of N. R. A. is as dead as a dodo."

Senator KING. Oh, yes.

General JOHNSON. And my belief of that is whenever you concede an administrative function into the hands of a board and tell it to function as an administrative body the board cannot function entirely satisfactorily, although I must say that after coming back and reviewing the N. R. A. for the purposes of this testimony I have found that there are things which those people have done in ironing out a lot of mistakes and errors which I left there which is very remarkable.

Senator KING. Then you understand it is still alive and a quiescent body, but perhaps needs changes?

General JOHNSON. I doubt whether under board administration that N. R. A. can ever more than wiggle.

Senator KING. Undoubtedly there were too many codes, were there not, six or seven hundred codes? It is possible to commence administering that number of codes, six or seven hundred?

General JOHNSON. Senator, there is no question about that at all.

Senator KING. You would eliminate a great many of the codes, would you not?

General JOHNSON. I would by consolidation.

Senator KING. You would by consolidation; yes.

General JOHNSON. I could go into an elaborate discussion on that if you wanted to. I admit that as a fact.

Senator KING. My recollection is I think we conferred together a number of times after the law was passed?

General JOHNSON. Yes, sir.

Senator KING. And during the early administration of it, and it was your view that the codes should be limited in number far below the number which have been attempted.

General JOHNSON. I sometimes think that if we had not done any more than put in the President's Reemployment Agreement and then keep that in effect and then limit these codes to probably not more than 20 it would have been better administratively.

Senator KING. Keeping in mind of course always the spirit, if not the letter, of the minimum wages and hours and so forth?

General JOHNSON. In the President's Reemployment Agreement 96 percent of industry signed an agreement that they would respect that. That was required by the law.

Senator KING. If that had been carried out I think all of this machinery would have been better, would it not, for the country and the industry?

General JOHNSON. I think it would. I think that was one of my mistakes.

Senator KING. We will assume all of us participated in that and acquit you of it.

Senator BARKLEY. General, in the courts as a rule all proceedings are between two people, one on one side and one on the other, one seeking a remedy of some kind against the other; to a large extent that is true in the Federal Trade Commission here, some aggrieved party bringing a complaint, some other party to right a wrong.

Whatever the decision may be either in the court or in the commission or any similar body it is technically binding only on the parties to the proceedings, and while it may be binding in a moral sense on everybody, in order to enforce that binding opinion you have got to go into court and probably get an order of some sort to cease and desist, or a judgment. Is there any way in an ordinary court proceeding, or in a proceeding before a commission between two parties to bring about a sort of mass compliance with what are coming to be recognized as fair practices, fair methods of competition, fair dealing between industry and labor, and all the things that have been attempted under the N. R. A. set-up?

General JOHNSON. Only if the Congress provides that as a result of an individual complaint that a ruling or a commission shall be admitted administratively from such a body as this, and then provides that an infringement of that will be an offense which will be punishable, so that you have a penal sanction also could what you suggest be done so far as I know.

I do think we have got to recognize we are up against a new proposition. I mean if there is not anything in this, taking the whole economic machine along the lines I tried to show, then there is not anything that is new.

Senator BARKLEY. My question is not to be interpreted in any way derogatory to the courts or the Federal Trade Commission, which I helped to create.

General JOHNSON. I understand that.

Senator BARKLEY. But it seems to me we have got to recognize that there must be an immediate and effective way where things can be done so as to affect large masses of people in our industries, and not have to do it piecemeal.

General JOHNSON. There is not any doubt about that.

But I think you have got some parallel in the difference between our courts declaring that a law is constitutional and the system in Mexico, which they call the right of empirio(?) before the last constitution, in which if you had a complaint you could go before the court and it would say the law was valid as to you, but not anybody else. I think we did blaze the way for that doctrine in our country. I think you have got the answer to that in your tribunal if it is satisfactory.

Senator KING. General, if I understood you in reply to my friend, notwithstanding agreements which may be entered into between employees and employers as a result of voluntary action upon their part, or as the result of some of the major coercive provisions of codes you could not deny to either employers or employees under our form of government an opportunity to resort to courts to determine his rights.

General JOHNSON. That is my belief.

Senator KING. You cannot by law deprive a man of his constitutional right to appeal to the courts where he thinks those rights, personal, or individual, or property rights, to have been violated?

General JOHNSON. I do not think you can or I do not think you ought to.

Senator KING. I do not think you ought to in a democratic form of government.

General JOHNSON. That is right.

Senator KING. You do not care how many agree to a voluntary line of conduct coercively if later on they agree they bartered away too much, as the law has been construed they have the right to appeal to the courts to determine the validity of the agreement and whether or not the terms have been made ethically, morally, and legally?

General JOHNSON. I have no question about that in my mind.

Senator KING. You do not quarrel with that at all?

General JOHNSON. No.

The CHAIRMAN. General, may I ask you this question: You touched upon it briefly. How you look upon this proposition, putting in this law, if it should be continued, that where N. R. A. authorities had found there were some unfair practices, or some cutting or prices below the cost of production and so forth that destroyed fair competition, that that certificate be made to the Federal Trade Commission, and immediately upon that certificate being received the Federal Trade Commission might issue an order of cease and desist, and that that order of ceasing and desisting should be operative pending the more full investigation of the Federal Trade Commission and so on? As I understand it now one of the troubles has been in the long investigation that might ensue from the Federal Trade Commission in looking into the proposition and so on without the authority to immediately issuing the order of ceasing and desisting.

General JOHNSON. Senator, I have thought about that suggestion. I have given it a great deal of thought. The more I think about it the more I like it. I cannot find anything the matter with it. I think it would be very direct and effective procedure. I think I have thought enough about it to even recommend surely it should be one of the provisions of any statute you might write.

The CHAIRMAN. Let me ask you about this P. R. A. That has been some time ago. We had almost forgotten about it. That was an order issued by the President following the enactment of the N. R. A. pending the formulation of these codes, was it not?

General JOHNSON. Yes, sir.

The CHAIRMAN. And of what did the order consist?

General JOHNSON. It was not an order. It was a suggested agreement under that clause of the act 4 (a) that permits the President to enter into an agreement with an individual.

Under a code what he does is enter into an agreement with an association. But he also can enter into an agreement with an individual under this act.

It was an agreement, proposed by the President, that everybody who signed it would immediately adopt certain maximum hours and minimum wages, which were stated in the agreement, and that they would comply with the provisions of section 7 (a) as individuals, agreeing with the President as to collective bargaining, and that they

would cooperate with other individuals as soon as possible to submit codes of fair competition. And it was hardly anything else. That was sent out broadcast, and the President made a radio appeal for everybody to sign it. We backed that up with the "blue eagle." Although I have been accused of originating a boycott there were 96 percent of the employers who signed that, which accusation was not very effective. Within 60 days we had industry under that agreement. by their own spontaneous agreement with the President, which everybody signed.

The CHAIRMAN. Do you believe that would be possible now?

General JOHNSON. You mean to go out and do that again?

The CHAIRMAN. Obtain the same results that were obtained at that time.

General JOHNSON. Of course, that would be just conjecture. Yes; I believe if the sentiment were built up there would be. I do not think you could now under this confusion. But if a lot of the uncertainties of this thing were first cleared up by a definition which would remove any possibility of conflict between the Federal Trade Commission and the N. R. A. as to what these practices were, I think that would give all industry a great jolt. I think that would be worth trying; yes. There are a lot of "ifs" to that.

Senator KING. If agreements were entered into between the President of the United States upon the one hand and industry and representatives of labor on the other do you not think there would be somewhat of a disposition on the part of those entering into an agreement to adhere to it more than those entering into codes?

General JOHNSON. I rather think so.

Senator KING. They would respect the President as standing forth as a sovereignty of the symbol of national power and authority?

General JOHNSON. I think this is true: We had no trouble with agreements hardly. The big fault was with the service codes. There is no question about that. Psychology was that there was a good deal more respect for the agreement, which was more than a code which merely a majority had agreed to.

Senator KING. Many people in the codes believe that the codes were rather superimposed upon them by large trade associations without due regard to perhaps a large minority or at least a minority.

General JOHNSON. Senator, I do not think people thought that so much, because I have, at least when I was there, attempted to give everybody a day in court when these codes were submitted, and all sides and every person interested had an opportunity to be heard and register any objections and they were considered, and I did not hear that when I left.

Senator KING. You disagree with this statement—I do not want to put you two distinguished gentlemen in juxtaposition—and I quote from a statement made by Mr. Richberg, on August 28, 1934, over the Columbia Broadcasting System network:

* * * The truth is that the codes have been written by hard-headed business men, the chosen representatives of trade and industry; and that the controversies developed in establishing and administering the codes have been seldom controversies between industry and government, but usually controversies between majorities and minorities of business men who were conscientiously laboring to protect their own interests and at the same time trying to accept a new responsibility to the public interest.

General JOHNSON. What is the date of that?

Senator KING. August 28, 1934.

General JOHNSON. No; I am afraid I do not agree with that. That was not my experience.

Senator KING. Then another statement from a speech of Mr. Richberg over a network of the National Broadcasting Co. on September 5, 1934:

> The Government did not itself attempt to write the new rules of the game. It called upon the representatives of business to write their own rules, which the Government would approve if they were really fair and in the public interest.

General JOHNSON. That is true. The law required groups or an association of business to propose the codes, but it did not require us to approve them, as I showed them in several cases here that I thought were effective cases. Of course, there were places I have no doubt in the world where some stuff was put over on the divisional and deputy administrators. There is not any question about that. The law requires that the codes be submitted by employers.

Senator KING. You will recall—I do not care to go further into that. Is it not a fact that there was, however, a great deal of complaint by minorities in industries, who claimed that large industries, large units of an industry, rather dominated the activities, which resulted in the codes?

General JOHNSON. Senator, I am giving you my own experience only. Somebody else may have had a different one. There were many apprehensions that certain provisions might bear heavily on minorities of small enterprises. As I tried to say here, I watched that as closely as I could, because I was under fire mostly on that. I do not think we should draw our final conclusion on what somebody apprehended but what happened. Of those instances along that line I know of almost none, and that is the literal truth.

Senator KING. Would you disagree with this statement by Mr. Richberg, made from his speech in September, September 19, 1934, before the Advertising Club of Baltimore, Md.?

> Probably the largest, most detailed regulatory code that has been written is the Steel Code, with literally hundreds of pages of basic code and supplementary regulations. It was written almost entirely by the industry. It is administered with a minimum of public control. Its administration requires the expenditure of $500,000 annually and a force of employees who, if established by the Government, would be called a "bureaucracy." * * *
>
> But if anyone desires to criticize the codes that have been written, and their administration, as being enmeshed in red tape and establishing bureaucracies, why in the name of honesty does he not criticize the business men who wrote the codes and set up bureaucracies for their administration? The National Government offered to industry an opportunity of self-government, and if the experiment needs revision, the principal difficulty does not lie in persuading the Government to do the job, but in persuading the business men of the country to simplify these complicated mechanisms which they themselves devised.

General JOHNSON. I agree with part of that, and part of it I don't.

Senator KING. Do you agree with this statement from a speech made before the American Academy of Political and Social Science, in Philadelphia, Pa., by Mr. Richberg, on December 7, 1934:

> We asked trade and industry to write its own laws of fair play; and we are willing to have many inconsistent, many unwise laws written in order to learn by trial and error what was best.

General JOHNSON. Senator, I have tried to explain that the law required the industries post their own costs. But we did not let them

put in the codes anything they wanted to. Before we sent it over to the President it was digested to the ultimate. Everybody that has a kick was allowed to make that kick—labor, the consumers, the small consumer, and everybody along the line. We permitted no code until after the most exhaustive survey as to whether or not the code as finally edited was consistent with the purpose of this act.

As I say, under as much of my administration as there was I know things were put over, but I am saying what was the earnest and sincere attempt of that administration. I do not believe it is fair to say these industries wrote their own codes. I know they did not. They proposed a code, but I know of no case where anybody proposed a code that went out the way they wrote it.

The CHAIRMAN. General, may I ask a question in that connection? What is your reaction to the suggestion if the codes are written through representatives of these various sections, equitably chosen and so forth, for industries and so on, both large and small, and finally approved by the N. R. A., that in the administration of those codes that it be done by Government agencies rather than the representatives of the industries themselves?

General JOHNSON. I tried to say that it was my belief on that up to the point of decision and action that they can plan, they can bring in all the statistical information they want to, they can use persuasion and that sort of thing, but up to the time where it comes to a price schedule, or something like that, I think that should emanate from the Government.

I think planning in industry can well be a function of industry, but I tried while I was there to see to it, and I frequently stated that I do not believe the Government should relinquish its punitive control or pass on its responsibility to see that the purposes of this act are fulfilled to any group outside of itself. There was a constant pressure of people with the argument that we ought to just have an inside industrial and economic authority. I fought that all of the time. I do not believe in it. I do not think we can ever release that supervisory control.

The CHAIRMAN. Senator Wagner, if there is anything you desire to ask the General you may do so at any time.

Senator WAGNER. No, Mr. Chairman.

Senator KING. I want to ask another question, General. I did not quite understand your view with respect to this flexibility, and may I be pardoned to directing your attention to the flexibility of price and hours, et cetera, and may I premise it by stating that you appreciate it as well as anybody, perhaps better than any of us sitting here at the table, that we have a large country with diversified industries, different climatic and other conditions, so that it would seem, applying human rules to human conduct, that a standardization of every industry with hours of labor and all such as that would be impossible with such great diversity of interest such as we have with the geographical division. Did I understand you correctly to state that the application of a uniform standard of wages and hours of labor would be difficult, if not impossible and unwise, in view of these differences to which I have so imperfectly alluded?

General JOHNSON. I think that it is impossible. I think you have got to have your flexibility. I think you have got to judge each one

on its own merits. But you cannot put a cast-iron rule over this whole country. That is the subject in N. R. A. which caused greater trouble than any other one subject. On the other hand, I think there are degraded segments, which regardless of the mortality, the Government has to move in regarding interstate control as to those things.

I think one of the most constructive things that could be done now would be to set up some sort of a commission to decide on questions of differentials. It was done piecemeal. We have now got the picture. I will say that it has not been make properly yet.

There must be differentials, in view of the different territorial sections, territorial differentials between big and small enterprises, and all those things have to be recognized.

They are there and you cannot make them not there by any fiat.

Senator KING. I suppose I have had several hundred letters from people in rural communities, and several from my friend's State of Kentucky, indicating that any policy adopted ought not to tend to the centralization of these big units of industry, such as in the garment trade in New York, Chicago, Detroit, or in Baltimore, and we ought to try to diffuse industry and build up industry in these rural communities and urban communities, for the welfare of these people.

Do you believe in a plan whereby we can build up and maintain industries in the remote parts of civilization?

General JOHNSON. Yes, Senator; if we know what we are talking about.

Of course, the favorite diversion of the sweatshop operators is to run out of a city and locate in a rural district, where they are not so closely supervised. I would not have that condition. There is a question where you should draw the line.

In general terms, I try to draw it this way: Where a number of cities have industries that leave for the rural communities, obviously for the purpose of exploiting labor, I do not stand for it. But we cannot forget our economic structure has been built up under certain economic conditions, in these cities, under climatic conditions, and so forth, and you cannot go in and wreck it.

Senator KING. You would not want to impose any impediments to prevent the development of industries in the various States?

General JOHNSON. No, sir; certainly not.

Senator KING. Recurring to the Federal Trade Commission, do you not think it could be made, while it has been highly useful, very beneficial; that its usefulness might be increased by prescribing, authorizing the prescribing of some—like the adoption of, recently, by the wholesale druggists, who, as I understand it, in convention, at which were present representatives of the Federal Trade Commission, worked out, or, rather, submitted a large number of trade practices, which I had the opportunity to read, which they affirmed to be fair, and others which they affirmed to be unethical and unfair, and they all assented to that, and while they did not receive, perhaps, the absolute approval of the Federal Trade Commission, there was a general feeling that those trade practices, if adhered to, would be entirely proper and would absolve the trade from prosecution by the Federal Trade Commission, or from investigation by the Federal Trade Commission?

General JOHNSON. Senator, if you took the respective officials of the N. R. A., and those of the Federal Trade Commission, and locked

them in the same room, and said, "You guys don't come out of there until you come to an agreement. Let us get this thing worked out." I think they could come out with a definition which might be the same definition of the powers of each, and you would have an ideal arrangement, because you would have made them practically one, when it came to working together.

Senator KING. Yes.

General JOHNSON. I think the functions of the Federal Trade Commission are to enforce the provisions of any acts you write and to see to it that they do not lapse over the restrictions you lay down, and it becomes, then, a sort of an enforcement agency.

And this other agency, which I think you will have to have, because the problem is great, becomes more of an administrative agency.

As to the definition on which there is to be checking, and the principles, it ought to be the same, as to the principles and the policy.

Senator KING. Mr. Chairman, in view of the statement made by General Johnson, and I do not mean to say his statement is not in accord with what is shown here on pages 101 and 102, of the Price and Price Provisions in Codes, prepared for the hearing on price provisions in codes of fair competition submitted by the National Recovery Administration, and without taking time to read it, I will ask that the parts which are marked be inserted in the record at this point.

(The statement referred to is as follows:)

The excerpts referred to from volume entitled, "Prices and Price Provisions in Codes", prepared for the hearing on price provisions of codes of fair competition, January 9, 1935, National Recovery Administration, Washington, D. C., are as follows:

FOREWORD

The fact that the prices of a great many commodities tend to be flexible has recently acquired considerable prominence in public discussions. In a period of rapid price changes price rigidity ought to be exceptional. Yet the prices not only of individual articles but even of whole groups of articles seem to be insensitive to the economic stresses of the last few years. Portions reproduced here of some of the price studies of the Research and Planning Division and other agencies indicate some measure of this rigidity, and seem to hint that greater productivity and employment would result if greater price flexibility were attained.

The material presented has been collected from many sources as an aid in discussion of price policies.

* * * * * * *

Five hundred and sixty of the six hundred and seventy-seven codes have some sort of provision relating to minimum prices and cost methods. Only 8 of these have provisions which cover all 3 of the chief types included in this analysis, that is, those prohibiting destructive price cutting, those providing for the establishment of minimum prices in cases of emergency, and those prohibiting sales below cost. Only 12 have provisions prohibiting both destructive price cutting and selling below cost; 66 have both a provisions for minimum prices in cases of emergency and a prohibition of sales below cost, while 82 have provisions for minimum prices in emergencies in conjunction with a prohibition of destructive price cutting. Three hundred and fifteen codes, or a substantial majority of those coming under the analysis as having some kind of provision relating to minimum prices and cost methods, have only the provisions restricting sales below cost. Six codes limit themselves to mere prohibitions against destructive price cutting and 32 have provisions for minimum prices only in cases of emergency.

In some groups of codes there is a high degree of consistency in the provisions. In the textile goods, for example, of the 75 which have some provision relating to minimum prices and cost methods, 54 have a prohibition against selling below individual cost, with an accounting or cost-finding method to be specified by the code authority. Similarly, in the Chemical Division, there are 31 codes in the

industrial paper, paper products, and rubber groups, all of which save one have nearly identical provisions. Again, in the 13 provisions found in the Construction Division 12 stipulate no selling below individual cost and all but one of these have attached a cost-finding system set up by the code authority with administrative approval.

* * * * * *

The high figures in the food codes are due largely to the fishery industry and its supplementary codes There are in fact 14 codes in this group containing either a general statement prohibiting destructive price cutting and/or the provision found substantially in office memorandum 228, 8 of these in the Fishery Industry Code and its 7 supplements. On the other hand, in the equipment group, with its 158 codes, there is no concentration of the 42 codes containing such provisions unless it be in the construction section of the fabricating industries subgroup, where 10 out of the 18 codes have such a provision.

Minimum prices in case of emergency only.—One hundred and eighty-seven codes have some provision for establishing minimum prices in cases of emergency and it is again in the food codes that the largest proportion are found, 44 percent. However, there is no marked concentration into any particular class in this division. The manufacturing and the equipment divisions also have a relatively large proportion of such provisions, 43 and 39 percent, respectively. The most marked concentration in the manufacturing group is in the fabricated materials subgroup in which 10 out of the 15 codes have some such provision; in the small hardware subgroup, where 10 out of the 13 have such a provision, and in the metal treating subgroup, with 4 out of the 5. In the equipment division the concentration is most noticeable in the plant machinery subdivision, with 6 out of 9, and in the construction subdivision (in the fabricating subgroup) with 10 out of 18.

Over 64 percent of the provisions relating to the establishment of minimum prices in cases of emergency only are either exactly as set forth in office memorandum of February 3, 1934 or closely patterned after it. According to this memorandum, the code authority, subject to National Recovery Administration approval, determines when an emergency exists and establishes a minimum price based on lowest reasonable cost. In the case of the equipment group, where the greatest number of provisions occur, the percentage is higher, 79 percent. The remainder correspond to office memorandum 228, with only few and minor variations, such as that National Recovery Administration should declare the emergency and establish the minimum price.

Power is given in 12 codes to the code authority, with or without approval of National Recovery Administration, to establish minimum prices at any time, no cost basis being provided.

Selling below cost.—Four hundred and three, or 59 percent of the 677 codes, have a provision prohibiting sales below cost. In 78 percent of these, or in 315 codes, this is the only provision of any kind in the code relating to minimum prices, but in 66 other codes it appears in conjunction with an emergency price provision. With the exception of the public utilities group and the finance, graphic arts, and amusements group, the relative number of codes in each group which have a "no selling below cost" provision is remarkably uniform, running from 52 percent to 65 percent. Of these 403 codes, 352 nondistribution codes have a prohibition of selling below individual cost. Included in this number are 14 which also prohibit sales below a minimum cost set up for the industry and 16 additional prohibit sales below a minimum price established for the whole industry. Most commonly in connection with a minimum price for the entire industry the specification is made that such minimum cost must be "reasonable." In most of the nondistribution codes, or 82 percent, no elements of individual cost are specified. Of the 87 cases in which they are, 54 codes specify "production and other costs." Thirty-six distribution codes are also included in the above 403, and in these the cost is defined most commonly as invoice plus transportation.

Practically all of the codes—all except 42—which prohibit selling below cost also provide for the establishment of a cost-accounting, estimating, or finding method. In 87 percent of these codes the method is to be determined by the code authority with, in practically every instance, or 92 percent, the approval of National Recovery Administration is required. In about one-fifth of the codes carrying such provisions, members are permitted slight variations from the approved accounting methods. Also in connection with the "no sale below cost" provisions, about one-sixth of the codes having such provisions require that cost data must be submitted to the code authority or impartial agent upon request. Relatively the greatest number of these appear in the chemical division, where one-half of the

codes providing for no sales below cost have such a provision. A few codes, totaling less than 10 percent of the total having "no sale below cost" provisions, provide for investigation by the code authority or impartial agent either at any time or in cases of violations or disputes only. The vast majority have no provision for cost filing (to be distinguished from pricing filing) or for cost investigation.

In this connection it should be noted that in addition to those codes in which accounting and cost-finding systems are established in connecting with "no selling below cost" provisions, 126 codes call for the establishment of such systems but without reference to their use as a basis for minimum prices.

Other than cost formulae specifically mentioned in codes, only 37 cost-estimating or accounting systems have been approved by the National Recovery Administration.

A large number of codes permit sweeping exemptions from all minimum price provisions, chiefly to meet competition. Two hundred and sixty-seven codes, or 48 percent of the total having some minimum price provision, permit exceptions to meet competition of other members although 111 of these 267 provide that only the prices of competitors not selling below cost may be met. Seventy-eight permit meeting the prices established by any competitor and a like number permit meeting prices of lower-cost competitors. Some codes, 65 in all, also permit selling below cost to meet competition of certain specified and definitely competitive products and/or of equivalent but nonindustry products. About one-half of these latter exceptions, 31, are in addition to the aforementioned provisions permitting sales below costs to meet competition. While most of the provisions permitting the meeting of competition impose no conditions upon such selling below cost, a few, 12, require that approval of the code authority be secured, and a somewhat larger number, 36, that the code authority must be notified of all sales below cost. A few codes set up other conditions.

Somewhat more common are the provisions permitting the selling below cost or below minimum prices of substandard goods, so-called "distress merchandise", or goods on special sale. Three hundred and twenty-three have such provisions, two-thirds of which require that notice to the code authority be given in cases of such sales. the other third require the approval of the code authority. This exception or exemption does not appear in any of the codes in the construction, public utilities, finance, graphic arts and amusements, or professions divisions.

Amendments: It is of some interest to note that most of the amendments have been in the textile division, six being incorporated in the codes to provide for minimum price in case of emergency, one to prohibit destructive price cutting, five to prohibit selling below individual cost, and three to provide for the use of cost accounting or cost finding methods specified by the code authority with approval of the Administrator. In the manufacturing division, four amendments have been made to prohibit destructive price cutting and a like number to provide for minimum prices in emergencies. In both the chemical division and the wholesale and retail division, three amendments to provide for emergency minimum prices have been made and in the former division three amendments prohibit sales below individual cost. Two amendments in the food division contain a general mandate against destructive price cutting. It may also be of some significance that 8 of the 13 amendments prohibiting destructive price-cutting follow office memorandum 228 exactly while two of the others follow it with some variations, and of the 19 amendments to make possible the setting of minimum prices in emergencies, 13 followed that memorandum exactly, and three others followed it with variations. There was a total of nine amendments prohibiting sales below individual cost and of six to provide for cost accounting or cost-finding methods there has been a number of diverse amendments providing for exceptions to minimum prices, the greatest number of which are to permit meeting the price of a competitor who is not selling below cost and to permit the sale of substandard or distress goods.

The following table shows the analysis in detail:

	1	2	3	4	5	6	7	8	9	10	11	Total
Total number of codes	27	94	83	69	158	115	21	14	15	7	74	677
I. DESTRUCTIVE PRICE CUTTING PROHIBITED												
A. General statement without explanation or qualification	10	1	3	....	29	1	1	....	....	....	6	51
B. As set forth in office memorandum no. 228, exhibit B, sec. 1 (forbids "willfully destructive price cutting" and sets up procedure for hearing and appeal to N. R. A. where complained of)	2	2	7	....	10	15	1	....	....	....	5	42
C. As patterned after office memorandum no. 228 but with variations in word or minor variations in substance	4	1	1	....	3	....	1	....	....	....	6	16
II. PROVISION FOR ESTABLISHING MINIMUM PRICES IN CASES OF EMERGENCY ONLY												
A. As set forth in office memorandum of Feb. 3, 1934 (code authority, subject to N. R. A. approval determines when an emergency exists and establishes minimum price based on lowest reasonable cost)	6	7	5	1	48	25	1	....	....	....	3	96
B. As patterned after office memorandum of Feb. 3, 1934, but with variations in substance	1	6	1	1	1	7	1	1	....	6	....	25
C. As set forth in office memorandum no. 228, exhibit B, sec. 2 (N. R. A. declares emergency and establishes minimum price)	5	2	3	4	13	16	1	....	....	11	....	55
D. As patterned after office memorandum no. 228, but with variations in word, or minor variations in substance	....	2	4	1	....	1	1	1	....	2	....	12
III. POWER GIVEN TO CODE AUTHORITY, WITH OR WITHOUT APPROVAL OF N. R. A., TO ESTABLISH AT ANY TIME MINIMUM PRICES												
No cost basis being provided	....	....	2	....	1	3	2	3	....	1	....	12
IV. PROHIBITION AGAINST SELLING BELOW COST												
A. Nondistribution codes:												
1. Definition of cost:												
a. Individual (individual member's own cost)	14	57	49	....	44	87	75	12	2	4	4	352
b. Specific minimum cost set up for entire industry	....	....	....	....	....	....	....	....	....	....	....	....
I, food; II, textile; III, basic materials; IV, chemicals; V, equipment; VI, manufacturing; VII, construction; VII, public utilities; IX, finance, graphic arts, amusements; X, professions; XI, wholesale and retail.												
(1) Lowest reasonable	....	2	....	....	....	1	....	4	....	....	1	8
(2) Reasonable	....	2	....	2	2	3	....	....	2	....	....	10
(3) Lowest representative	....	....	3	2	2	....	....	....	....	1	....	....
(4) Average	....	....	4	....	....	1	....	....	....	....	....	5
2. Elements of cost specified:												
a. Production or manufacturing costs only	....	6	5	....	4	1	....	....	....	....	....	16
b. Production and other costs	2	4	10	6	12	10	5	1	4	....	....	54
c. Specified percentage mark-up on a uniform base for overhead costs	....	....	2	1	3	4	....	....	....	....	....	10
d. Integrated producers must figure products of earlier stages at market price	....	....	6	....	....	1	....	....	....	....	....	7
e. No elements of cost specified	12	50	31	40	72	66	7	3	14	....	....	288
B. Distribution codes:												
1. Definition of cost:												
a. Invoice cost or cost of replacement plus transportation	....	....	2	....	....	....	....	....	....	....	28	30
b. Net purchase price	....	....	....	....	....	....	....	....	....	....	2	2
c. Wholesaler's list price	....	....	....	....	....	....	....	....	....	....	1	1
d. Manufacturer's list price	....	....	....	....	....	....	....	....	....	....	5	5
e. Mark-up for wages and other costs of doing business provided for; i. e., mark-up on "a", "b", "c", or "d" above to be determined by code authority with or without approval of N. R. A.	....	....	....	....	....	....	....	....	....	....	11	11
(1) For wages only	....	....	....	....	....	....	....	....	....	....	....	....
(2) For wages plus other cos's of doing business	....	1	....	....	....	....	....	....	....	....	3	4

	1	2	3	4	5	6	7	8	9	10	11	Total
IV. PROHIBITION AGAINST SELLING BELOW COST—continued												
B. Distribution codes—Continued.												
1. Definition of cost—Continued.												
e. Mark-up for wages, etc.—Contd.												
(3) Mark-up to be based upon cost finding, estimating, or accounting methods to be determined by code authority or without approval of N. R. A		1						1			10	12
(a) Individual cost		1						1			10	12
(b) Model cost											1	1
C. Provision for accounting, estimating, or finding methods to be used in determining costs in connection with the "no selling below cost" provisions of either "A" or "B" above:												
1. To be detremined by code authority	14	57	49	46	79	73	10	5	4	3	17	357
2. Approval of N. R. A. required	11	50	46	42	73	70	10	5	4	2	17	330
3. Methods named in and established by code	1	1	7	1	7	2			4			23
4. No method specified nor any provision for developing one		3	3		5	3	2	2	1	1	22	42
5. Individuals permitted slight variations from methods established	2	8	4	1	28	15	2	1	1		4	66
6. Preliminary rules established with or without approval of N. R. A. to apply prior to the approval of methods	4	2	6	27	1	2	4		3			49
D. Specific provisions for cost filing and cost investigation to be used in connection with the administration of the "no selling below cost" provisions of either "A" or "B" above:												
1. Cost date must be submitted to code authority or impartial agent at its request	1	6	8		23	12	10	1	1	1	1	64
2. Provision for investigation by code authority or impartial agent of member's costs at any time	1	1	2		4		2	1	1	1	1	14
3. Provision for investigation by code authority or impartial agent of member's costs in cases of violation of dispute only		1	2	3	4	4	3	1				18
4. No provision for cost filing or cost investigation	12	54	41	18	77	63	9	4	2	4	35	319
V. EXCEPTIONS PERMITTED TO MINIMUM PRICES ESTABLISHED IN "1", "2", "3", or "4" ABOVE												
A. To meet competition of other members of the industry:												
1. Types of competition:												
a. Any prices established by competitors	2	8	23	8	20	10	1		1		5	78
b. Prices of competitors not selling below cost	9	16	7	26	8	19	5		2		19	111
c. Prices of lower-cost competitors	3	18	11	1	24	18			1	1	1	78
2. Conditions under which competition of other members may be met												
a. After approval of code authority		3	3		2	3					1	12
b. Only upon notice to code authority	5	2	9	1	14	17			1		14	63
(1) At specified time prior to meeting of competition					1	4						5
c. Other conditions		3	3		1	1	1				3	12
d. No conditions	9	36	29	35	34	31	5		2	2	10	193
B. When selling substandard or distressed goods and during special sales:												
1. Approval of code authority required	3	19	11	27	32	12					12	116
2. Notice to code authority required	4	32	17	30	63	42					19	207
a. At specified time prior to the making of such sales	1		4	1	25	20					6	57
3. Other conditions	4	17	2	3	16	5	2				12	61
4. No conditions	1	5	4		4	2					5	21
C. Miscellaneous exceptions:												
1. Types:												
a. When introducing a new product	1			1		2						4
b. When meeting competition of certain specified and definitely competitive products				1	10	1						12
c. When selling to other members of the industry	1		2	1	1	5					2	12
d. When meeting competition of equivalent but nonindustry products		3	9	21	22						1	56

	1	2	3	4	5	6	7	8	9	10	11	Total
V. EXCEPTIONS PERMITTED TO MINIMUM PRICES ESTABLISHED IN "1", "2", "3", OR "4", ABOVE—continued												
C. Miscellaneous exceptions—Continued.												
1. Types—Continued.												
e. When fulfilling contracts made prior to effective date of minimum price provision	....	....	3	14	2	1	....	....	2	....	5	27
f. When selling to affiliates	....	....	1	....	....	1	....	....	....	....	1	3
g. Other	1	5	....	2	3	3	....	2	1	....	6	23
2. Conditions under which permitted:												
a. After approval of code authority	....	1	....	1	7	3	....	....	....	....	....	12
b. Only upon notice to code authority	1	2	....	4	1	12	5	....	....	....	1	36
(1) At specified time prior to making such sales	....	....	....	....	2	1	....	....	....	....	....	3
c. Other conditions	....	1	....	....	....	2	....	....	1	1	1	6
d. No conditions	1	3	....	9	15	19	15	....	1	1	11	75
VI. PROMULGATION OF COST FINDING AND ACCOUNTING METHODS PROVIDED FOR BUT USE AS BASIS FOR MINIMUM PRICES NOT MANDATORY												
A. As set forth in exhibit C of office memorandum no. 228 (methods determined by code authority with approval of N. R. A. shall be made available to members but are not to be used as basis for minimum prices)	4	5	....	8	1	9	12	2	2	....	8	51
B. Otherwise (methods which while mandatory upon members in respect to his own accounts are not used in connection with "no selling below cost" provisions as set forth in IV, "A" or "B" above)	3	7	5	5	42	4	2	2	1	1	3	75

DECLARATION OF EMERGENCIES

To further summarize the analyses of the price activities made in behalf of industry by the National Recovery Administration the following table should be added (it is self-explanatory):

Price emergencies granted

Industry	Effective date	Termination date	Renewal date	Termination of renewal date
Agricultural insecticide and fungicide	Nov. 11, 1934	Feb. 9, 1935	.....	.....
Cast iron soil pipe	July 16, 1934	Oct. 13, 1934	.....	.....
Ice:				
New Orleans	Aug. 8, 1934	Nov. 6, 1934	Nov. 6, 1934	Feb. 4, 1934
San Antonio	July 26, 1934	Oct. 24, 1934	.....	.....
New York	Sept. 27, 1934	Dec. 26, 1934	Dec. 26, 1934	Jan. 10, 1935
Lumber and timber products	July 16, 1934	Dec. 22, 1934	.....	.....
Retail tobacco trade	....do.....	Oct. 13, 1934	Oct. 13, 1933	Jan. 11, 1935
Tires	May 14, 1934	Oct. 1, 1934	.....	.....
Waste paper	Aug. 21, 1934	Nov. 16, 1934	Nov. 16, 1934	Jan. 7, 1935

Retail solid fuel, approximately 150 emergencies declared and lowest reasonable costs fixed, still in effect.

Referenda on price control

[New England manufacturers, polled by New England Council [1]]

Effect of code provision	Restriction against selling below cost		Price stabilization plan	
	Number	Percent	Number	Percent
"Helpful"	271	32	225	26
"Of no effect"	360	42	326	38
"Hurtful"	43	6	58	7
If voting "Of no effect" or "Hurtful": Amendment desired	128	15	88	10
Elimination desired	111	13	144	17

[1] Where percentages do not total 100, it is because the balance did not vote on the particular question.

NEWSPAPER AND FARM JOURNAL EDITORS

Does public opinion in your community favor the fixing of selling prices by the Federal Government for factory products?

	Replies	Percent
Yes	796	17.0
No	3,784	80.8
Doubtful	101	2.2
Total	4,681	100.0

Associated Business Papers, Inc. (Material from Washington Star, Jan. 6, 1933.)

American industry is against price-fixing by code. It might, however, favor a code-controlled open-price plan.

These conclusions appear evident as a result of a cross section of business opinion collected by the Associated Business Papers, Inc., which is sounding sentiment with an "economic ballot", printed in 17 member magazines. A large percentage of readers who voluntarily fill it out and mail it here are heads of their own firms.

The price-control question on the ballot reads: "In your line of business do you favor a plan for control of prices by a code provision establishing price-fixing? By a code provision establishing an open-price plan?" Definite price-fixing, thus far, has been voted down in the ratio of 4 to 1. In the steel industry alone, the total vote received up to today was 101 against price-fixing and 31 for it. Every other industrial group, however, registered heavier proportions on the "no" side. The oil industry was negative by a ratio of 11 to 3; show producers and retailers, 13 to 2; machinery producers, 6 to 2; hardware manufacturers and producers, 38 to 10; meat packers, 8 to 2; hotel and restaurant men, 4 to 1, and so on down the line.

On the question of code-controlled open-price plan, the division of opinion was 50–50. Paint manufacturers favored it 3 to 2; foundrymen, 5 to 3; oil refiners and distributors, 8 to 5, and hardware retailers, 19 to 14, but they were out voted by other trades. Meat packers were nearly 8 to 1 against it, the shoe industry, 9 to 6; steel makers, 6 to 5; bakeries and chemical plants, 50 to 50; machine shops, 5 to 2, and hotels and restaurants, 4 to 3.

Senator CONNALLY. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes, Senator Connally.

Senator CONNALLY. Under your view as to intrastate and interstate commerce, as expressed a while ago, even that extreme construction would not embrace these service codes, would it?

General JOHNSON. No, Senator, because I do not think as a matter of fact, the operation of a service code should have any real industrial value in an industry which is not buying anything or selling anything, but is just engaged in hiring men.

Senator CONNALLY. Exactly.

General JOHNSON. Not by any stretch of the imagination can you bring that into a definition. There might be a few of them that affect the commerce in the States, of course, in some cases.

Senator CONNALLY. Therefore, they ought to be left out of the codes, do you think?

General JOHNSON. I think so.

Of course, the argument is made against that, made by my friends in labor, which is that the unemployment in labor will burden Congress, and therefore an attempt ought to be made to enforce hours and wage conditions, because they affect interstate commerce.

Senator CONNALLY. Yes, but the statute itself says labor is not a commodity.

General JOHNSON. I know it says that, but it seems to me they said it in order to avoid complications in labor, and wanted to justify and wanted to permit.

Senator CONNALLY. For instance, dyeing and cleaning, and barber shops, and repairs of automobiles in garages, hotels, and things of that sort; they are not really interstate commerce.

General JOHNSON. It does not seem to me you can apply any definition to that, because they do not really affect interstate commerce.

Senator CONNALLY. Certainly not. If they do not affect interstate commerce, we have no real power over them, do we?

General JOHNSON. I do not think so, except that they can agree among themselves, or we may help them to arrive at agreement.

Senator CONNALLY. If they should agree, that would be a different matter.

General JOHNSON. Senator Connally, that is my opinion. There is very important opinion against that; I must admit that.

There is something that we have had a demonstration of here, which is that a vast unemployment does burden the Congress.

Senator CONNALLY. Oh, to be sure. There would not have been any N. R. A. if it had not.

General JOHNSON. For two urgent reasons; one is the logic of it, which is that you cannot, and we found in practice that you really cannot enforce one of these codes as a code unless there is a pretty strong national trade organization.

If you have a national code, and it has no influence with its own members, you are just all over the lot; you cannot get any agreement between any two in any one town, or all of them in one town to agree with those that are located in another town.

Senator CONNALLY. But, say, here is a little garage, out in the country, which pays no rent to speak of, and a fellow has a store in connection with it; the man in town pays high rent, pays high wages for employees, and of course he has to charge high rates, and you could not very easily, with any accuracy, standardize that kind of service, could you?

General JOHNSON. We tried every way we could think of, and I think there was more time spent on that than nay other one thing.

I think everybody extended themselves, as far as they could.

The fact is, the whole attempt at enforcement was a complete failure, all along the line.

Senator KING. General, I want to read you a line or two from your article in the Saturday Evening Post, which we all read with very great pleasure.

The CHAIRMAN. You will endorse that, General?

General JOHNSON. I do not know about the pleasure. [Laughter.]

Senator KING. That is, we read it.

The antitrust acts prohibit combinations——

I am reading from page 73, of the issue of January 1935—

in restraint of trade, but the National Industrial Recovery Act specifically prohibits—National Industrial Recovery Act specifically permits such combinations with Government sanction and supervision. There is not one single code that is not a combination in restraint of trade, and if codes are not permitted so to restrain trade, then the National Industrial Recovery Act should be repealed tomorrow. It does not mean a thing.

General JOHNSON. I still stick to that. I think that is absolutely true.

Senator KING. In the next column, another column, another sentence:

Of course, price control can be used as a weapon of monopoly. It has frequently been so used, and that use of it was the very reason for the antitrust acts themselves.

General JOHNSON. That is correct.

Senator BARKLEY. Those things are so good, why not put the whole speech in the record?

Senator KING. You may do it if you wish. It is not a speech. It may be copyrighted.

Senator BARKLEY. The whole article ought to go in, General Johnson.

General JOHNSON. If you want to take it, I have got a book, too, Senator. [Laughter.]

Senator KING. I read from another article of the Saturday Evening Post of January 26, 1935. I would rather read the book than this.

General JOHNSON. I am thinking of a biblical expression, about "O, my enemies should write a book." I do not know what is coming. [Laughter.]

Senator KING (reading):

I must call attention here to another fundamental of National Recovery Administration. In view of an uninterrupted course of Supreme Court decisions, we did not believe anybody could write the labor provisions of that bill into substantive law to be enforced by pains and penalties. Like the draft act, the whole law is written to depend on popular support, rather than on statutory complusion. That is the very basis of National Industrial Recovery Act and National Recovery Administration. It is what is being forgotten today. It must not be forgotten unless National Recovery Administration is to fail. Those provisions can no more be constitutionally included in this act now than they could then, and even if they could, they would be even more futile now than then.

You assent to that, still, do you?

General JOHNSON. Yes, sir; I do.

Senator CONNALLY. General, is it your theory of the subject with reference to the antitrust laws and restraints of trade, that they ought to be read into the famous rule of reason, so long as a restraint of trade exists? If an action is held to be a restraint of trade, that does not leave open in full plan all the processes of competition. But, so long as that regulation is not an unreasonable one and harmful to the public interest, your idea is it should be permitted under the code?

General JOHNSON. I would not like to go to that general explanation. As I recall, antitrust laws, consolidations, and conspiracies in restraint of trade, and every combination, I do not know of any that does not restrain trade, and I think the industry in the industrial act predatorially merged the provisions of the antitrust law.

Senator CONNALLY. I certainly do, as to those things approved by the President.

General JOHNSON. Yes; as to those things approved by the President, and the Congress placed on the President certain limitations.

But it was within the power of Congress, as to the supporting of certain monopolistic enterprises, and I think there should have been a sanction of two acts. I think it is the opinion of the Federal Trade

Commission that nearly every code is at least a suspect and should not, therefore, be permitted.

Senator CONNALLY. Would not any agreement with a labor union to raise wages be a restraint of trade?

General JOHNSON. That is what I am talking about.

Senator CONNALLY. Would not that be lawful unless it was unreasonable and harmful to the public interest, and ought not to be permitted?

General JOHNSON. Of course, I think this goes a little further with the statute.

Senator CONNALLY. Of course, the statute specifically permits anything under the present law, which is specifically suspended under the antitrust law.

General JOHNSON. Yes; I think that is true.

Senator CONNALLY. I think this ought to go in the new act.

Senator BARKLEY. Under the conditions under which this law was enacted, we had reached a point where we had to recognize, had we not, that there are some restraints of some trades that are not harmful to the public?

General JOHNSON. I tried to make that point in the beginning.

I thought we had reached a point of unlimited competition without any Government supervision at all, except governmental mandates by statute, and that it must, therefore, be left free.

Senator BARKLEY. Take the coal industry, which was vastly overdeveloped during the war, with an excessive capacity, and ever since a number of miners who cannot get employment, and of course any sort of production limitation would technically be a violation of the antitrust laws, and those who entered into it would probably be justified in fearing some department of the Government, which might immediately pounce upon them for a techincal violation by entering into an agreement to reduce or curtail production, which would not be harmful to the public, but which would be helpful to the public, helpful to the industry, and those who mine coal, and you could not induce men to come into that voluntary organization if they were keeping one eye open on the Department of Justice or some other department, for fear they would be prosecuted for a technical violation of the antitrust laws.

General JOHNSON. We have just had that case of a steel company which is under the code and under the processes of the Federal Trade Commission, and even the code is on trial. That is the point I made in saying we did not have sufficient agreement between these two bodies as to what should be done. They should not be operated in opposition to each other. They ought to be operated jointly.

Senator BARKLEY. There has been a great deal of criticism which we have all shared, that too many people were drawn out of the industry to Washington to enforce the codes, and to become officials of the code authorities, or of the N. R. A.

But, under the codes which existed, was there any adequate body of trained men, anywhere, not involved in the industries, who could have been drawn to Washington, and depended upon to write the codes and enforce the codes, without any fair knowledge of codes?

General JOHNSON. Senator, you put your finger on the whole point in the matter. No matter how good and loyal the employees are, if they are not typical, you are going to have great difficulty.

We started out on June 15 with four or five people who had been bootlegged in and who were trying to help, started with nobody; in 2 or 3 months had to have 2,000 employees with no selection at all. It was very difficult to find anybody who was equipped for this work. The whole thing was new, and was not simple. It was not like a lot of kids organizing a Phi Beta Kappa, because it was simple. You could not do that because it involved most of industry, and required some study and conference on policy. Whether it was in code authorities, in N. R. A. itself, or out in the codes, you just did not have people to do it. I think the condition is remedied now. I think they are getting some experts in N. R. A.

But, at first, everybody was stumbling around, including maybe myself as the worst stumbler.

Senator BARKLEY. Do you think a body of men who are attached to industries in which they got their training has been built up now to risk the handling of the situation or the enforcement by Government employees without regard to voluntary code authorities that now exist, drawn from the industries?

General JOHNSON. I hate to answer that question, absolutely.

I do think that an enormous amount of training has gone on, and I think some other very efficient people have been developed.

In order for a man to do that job perfectly, he has got to have a good deal of knowledge of the industry, yet he must not have any tie-back to it, or think about leaving it to go back to a job in the industry, and whether he is nfluenced or not, people think he is, and that is the difficulty in trying to get that kind of a man, even after this administration going this far, and that is the great question of N. R. A., as to whether or not the job is too big for human minds to attempt. That is the running of the economic structure of the United States.

I understood you to say, whether or not we had developed; I do not think completely, but I think we are on the way to doing it.

Senator KING. I have before me statements which have been prepared, based on the reports of the Labor Department, as to statistics showing in substantially all of the important industries all of the pay rolls, the employment, the profits, and so on, from every year from 1923 up to and including 1934.

May I say, generally, that they show a very much larger pay roll and a very much larger employment in those years up to 1929, and, in many instances, up to 1930, very much larger than 1934.

I suppose you concede that, do you not, General?

General JOHNSON. Yes.

Of course, in the first place I do not believe in those unemployment figures, but I think they are pretty good indicators of the trends.

With vast unemployment in this country in 1929, I think perhaps as much as 3,000,000 people, but we do not come to the depths of unemployment in 1929 or 1930; that we achieved right after that, as these charts show.

People tried to hold on to their employees pretty faithfully when the depression first came. You can recall there for quite a little period we had that share-the-work movement, which went pretty generally all over the country, in part by Government persuasion but mostly by people who did it themselves, and they checked pretty generally the employment until things began to get terribly bad in 1932, and then got the worst.

Senator KING. In 1924, 1925, 1926, 1927, and 1928 the employment was very much greater and the pay rolls very much larger than in 1924.

General JOHNSON. I am just speaking from my memory, but it is my recollection that there was a decline in employment, even on those figures, beginning, oh, I should say, about in 1924, in the number of people employed in the manufacturing industries, going right through the period of boom and excessive production.

Senator KING. A hasty examination of the records does not quite corroborate that. We are going to have an abstract of them put in the record.

General JOHNSON. I am talking about manufacturing figures.

Senator LA FOLLETTE. Senator King, you were not here when Mr. Hinrichs, Chief Economist of the Bureau of Labor Statistics testified, and he testified, so far as those figures for 1933 and 1934 are concerned, that they are not comparable with the figures submitted by N. R. A., because they have not been submitted to and verified by the census, and so far as he was concerned he said he would disregard the figures of 1933 and 1934 for that reason.

Senator KING. He is giving an example. I think that corroborates the inference I have drawn.

General JOHNSON. I think the most constructive thing lately was made in the press yesterday, which was a statement that we are going to have a census of unemployment. We do not know anything about unemployment.

Senator BARKLEY. Did they say that was a destructive statement?

General JOHNSON. Constructive.

Senator BARKLEY. I imagine it was.

Senator GORE. General, you may have discussed the question I am going to submit, and if you have, I do not want to trouble you to answer it.

But there is one section in the bill that undertakes to declare that a number of industries, including oil, for instance, as public utilities, which have not heretofore been regarded or treated as public utilities, and it declares they are affected with the public interest. Do you think that is advisable?

General JOHNSON. I am not familiar with that bill, Senator.

You say they are being declared as being public utilities?

Senator GORE. That is in this bill?

General JOHNSON. I have not seen that bill, except I have seen the outside of it.

What you are asking me is, What I believe coal and oil should be declared public utilities?

Senator GORE. Yes.

General JOHNSON. I do not think it is necessary to do it. I think you can regulate them without that declaration, for reasons I have stated, and I do not see any further object for making them public utilities. I do not think it makes much difference. I think you have got to regulate them ultimately.

Senator GORE. The question was, whether a business is affected with a public interest was a question of fact or was a question of law. In fact——

General JOHNSON (interposing). Senator, may I interrupt you a minute?

Senator GORE. Yes.

General JOHNSON. I mean, if people are using terms, when you say public utility to mean a business affected by the public interest, then I think there is hardly a large business in this country that is not affected by the public interest, as demonstrated in the last 3 or 4 years. I think the case you have in mind, of *Nebbia* v. *New York*, hardly goes that distance.

Senator GORE. The Supreme Court held that the question, whether a business was a business affected by the public interest was a question of fact and not a question of law.

One other question: The existing law, I believe, contains this phrase:

To promote the equalization of the productive capacity.

The language appears in the bill:

To promote the effective utilization of the productive and distributive capacity.

I do not know whether there is any special significance to the word, "effective", but this undertakes to extend the law to distributive capacity as well as productive capacity. Do you think that is desirable?

General JOHNSON. Yes, sir; I do.

Senator GORE: Do you think that would invade the jurisdiction of the Interstate Commerce Commission and the Communications Commission?

General JOHNSON. You mean as to pipe lines?

Senator GORE. I take this to be general. It is not qualified.

The word "distributive" is used in its generic sense, just like "productive capacity" is named in the present law.

General JOHNSON. Senator, I did discuss the matter you mentioned. I am perfectly willing to go through it again, though.

Senator GORE. I would not care to have you do that, General.

General JOHNSON. I said this: I believe our experience has shown, in N. R. A. and during the depression, that any act of manufacture, transportation, distribution, or sale which as a matter of fact obviously and substantially affected commerce among the States, or with another State, should be defined by the Congress as to be within the regulatory power of Congress under the commerce clause, which, I submit, is a blanket answer to all of the questions you asked me.

Senator GORE. There is one other phrase in this act;

Nothing in the act shall be construed to limit the power of the N. R. A. authority to render decision, judgment, and decrees, and so forth, consistent with this act."

Now, that would seem to impinge upon the authority of the Federal Trade Commission. It relates, as I say, to the Federal Trade Commission. Nothing shall limit the power of the Federal Trade Commission to render judgments, decrees, and so forth, consistent with this act. Are you familiar with that?

General JOHNSON. I am not; but I think I see what you are shooting at.

Senator GORE. What do you think the point is?

General JOHNSON. I think the point is to impose upon the Federal Trade Commission the interpretations of what N. R. A. means, to make those interpretations comport with what the Federal Trade Commission and the antitrust laws mean.

Senator GORE. It seems like, running through this bill, that is the purpose and that may be the desired object on the part of those in favor of it, to bring both productive and distributive capacities under the surveillance of this N. R. A. authority. This will include, as well, distributing and productive capacities of the industries of the country, and limiting the powers of the Federal Trade Commission to deciding questions under the existing law, but requiring it to conform to this particular act. This makes it in a sense a code itself, and the Federal Trade Commission rather an interpreter of this act, and subjecting to the control of the N. R. A. authorities both the productive and distributive capacities of the country, adding to that the declaration that all these different industries are declared affected with public interest. It looks like the point is to concentrate in this one authority a sort of power and supervision or a regulatory authority over all the industries in productive and distributive capacities in intrastate businesses which never before have been supposed to be affected with a public interest.

General JOHNSON. As I say, I am not familiar with the language which you are talking about.

Senator GORE. Yes.

General JOHNSON. But I have expressed myself as to what I think should be done.

Senator GORE. Yes.

Senator LA FOLLETTE. General, yesterday afternoon, the members of the committee who did not go to the ball game heard the testimony of Mr. Perkins, of York, Pa. Are you familiar with that case, and, if so, would you care to make any statement or comment about it?

General JOHNSON. I am familiar with the case as I have read the developments of it in the newspapers, as it arose while I was still there, and I have commented upon the general rule. I think Mr. Perkins' case, unless I am mistaken, rests upon the fact that he wanted to pay wages in a little battery company, very much below the minimum wages that were set by the code. I think the minimum wages set by the code are low enough, and I believe, harsh as it may seem, and what the President said was that he believes that any business that depended for its existence on paying less than a living wage had no right to exist in this country. That was the mandate that I received and followed in executing N. R. A., and I believe in it. I do not think that we can permit the minimum wage provisions to be sapped away by the hard cases that come up.

If there is more in that case than what I have said, then perhaps my answer is not responsive, but that is what I think.

Senator LA FOLLETTE. He admitted that it was the most celebrated case that had come up since the N. R. A. was passed, and said that he had spent 18 days in jail because he could not make bail, and then he testified that he had volunteer counsel consisting of John W. Davis, Newton D. Baker, the president of the Pennsylvania Bar Association, and former Senator Reed, of Pennsylvania.

General JOHNSON. They could have chipped in and paid the bail, I should think. [Laughter.]

Senator LA FOLLETTE. And James A. Reed of Missouri was also in the case. And Mr. Perkins said that his attorneys decided that he should not take the stand, and they offered no defense. I was wondering if you had any information concerning the activities of

the Legal Division in connection with this case, if they took any part in it?

General JOHNSON. Well, sir, I have not checked on that, and, of course, I have not been near N. R. A. since last October.

Senator LA FOLLETTE. I assumed you were there at the time this case came up.

General JOHNSON. I can get the answer to the question for you, because the general counsel of N. R. A. is sitting right here.

Mr. BLACKWELL SMITH. We did not engage in any special procedure there. It was a routine case so far as we were concerned, and it became important only because of the publicity that was given to it by those that were mentioned yesterday.

Senator BARKLEY. Did the testimony yesterday—I happened to be at the ball game and did not hear it——

[Laughter.]

Senator BARKLEY. But did the testimony yesterday show that while this man was claiming that he had to go to jail for 18 days before he could get bail, that his concern, according to Dun & Bradstreet, was worth a half a million dollars?

Senator LA FOLLETTE. No; I think the statement was that Dun & Bradstreet gave him a rating of $17,500, but he claimed that that was not true; that it was only $5,000.

General JOHNSON. I recall the case when it first came up in connection with negotiations of the code, and very strong representations were made, and I do not believe that he is a wealthy man, and I do not believe the company is a very prosperous company. That part of his statement is correct. But this element comes into it, whether a man, just because he does not want to pay the code wage, shall come in under this little fellow manner and get out of paying the code wages. If there is a case that involves a regional exemption, it would be something that would be investigated, and after a study of the situation, a special exemption might be granted, but if it was a direct challenge on the question of minimum wages, as I believe this was, I do not believe in that, because the whole basis is that you are going to take human labor out of competition to the extent that you provide for minimum wages under a code.

Senator KING. I am not familiar with the case, and I do not remember having read anything about it——

Senator GORE. Were you at the ball game?

Senator KING. I was not at the hearing. [Laughter.]

Senator GORE. If you claim privilege, all right.

Senator KING. I assume that the defense was—and Mr. Smith can advise me if my assumption is inaccurate, that it was purely intrastate. He had run a little battery station, was it not?

General JOHNSON. A manufacturer of storage batteries.

Senator KING. I assume that he contended that it was purely intrastate.

General JOHNSON. That may have been one of the contentions, but I rather imagine on account of the spectacular aspects of the case, that it is an attempt to bring up the very things we are talking about today. Not the question of interstate and intrastate.

The CHAIRMAN. If there are no further questions——

Senator BARKLEY. Let me ask you, General, if you can in a word or two or in a sentence or two state what you think would hapepn if Congress should decline or fail to extend N. R. A.? What would the results be?

General JOHNSON. I think you would have the results of complete chaos, and one of the things that I think leaves this Committee a little bit blind is that employees, not the people who are represented by organizations, but just the ordinary clerk and working man and hotel porters, all over this country, have had a day off for the first time in their lives, and they have had their hours reduced, and they come to me in every place I go to, in every part of the country and they say "What is going on?" "Are we going to lose this?" I think you are going to hear from a great big silent pool of millions and millions of people who think this act has done them good and do not want it to be taken away. They are not employers, but the people for whom the benefit of this act was devised, and I think it would be a very, very bad situation.

Senator KING. Is that statement not a little inconsistent with the statement I understood that you made that the N. R. A. was dead?

General JOHNSON. I said the administration of the N. R. A. was dead, and I tried to make that clear.

Senator KING. Mr. Chairman, I desire to insert in the record without stopping to read it, a number of pages from this recent publication of a review of the N. R. A. by the Brookings Institution, and especially the conclusions drawn, and certain pages in regard to price fixing and the administration, and so forth.

The CHAIRMAN. You have them marked?

Senator KING. Yes, quite a number of pages. I would like to have them inserted in the record.

The CHAIRMAN. Without objection, it will be done.

(The same will be found at the conclusion of the day's proceedings.)

Senator BARKLEY. Will we have the right to insert in the record anything else that we find in the Brookings Institution report that coincides with our views?

The CHAIRMAN. I think that should be put in also.

Senator KING. I do not think you will find anything.

The CHAIRMAN. I have a communication here from Mr. Rosenblatt relative to the testimony of Mr. John P. Davis, which he desires to have put in the record, and without objection, it will be inserted.

(The communication referred to is as follows:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 17, 1935.

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

MY DEAR SENATOR HARRISON: In his testimony before the Senate Finance Committee on Tuesday April 16, John P. Davis, representing the National Association for the Advancement of Colored People and the so-called "Joint Committee for Industrial Recovery," charged that the writer, Sol. A. Rosenblatt, had shown discrimination against the colored workers of the South and that the Compliance Division of N. R. A. had taken an attitude of discrimination against allegedly underpaid colored workers in the special instance of the Maidwell Garment Company Case of Forest City, Ark.

These charges and implications I flatly and unreservedly deny. The record of the case shows that Mr. Davis's testimony was inaccurate in important partic-

ulars as to the activities of the various offices of the N. R. A. Compliance Division and was not candid in that he neglected to mention the action that immediately followed his first interview with me and his later interview on April 12.

I knew nothing whatever of the case against the Maidwell Co. until Mr. Davis visited me in my office on April 1, 1935. Immediately after he left my office, I called for a complete report on the Maidwell Garment co. That report (exhibit A, attached) was sent to my office on April 3.

On receiving the report, I was advised that the Industrial Appeals Board of the National Recovery Administration had started an investigation of its own. This I confirmed with J. H. Ward, assistant chief of the compliance division and satisfied myself that the entire case was being handled in a proper manner.

Following a second talk with Mr. Davis, I directed that the Little Rock, Ark. compliance office should be informed of charges Mr. Davis had made with respect to the examination of the employees of this garment company and at my direction the following wire was sent to Little Rock:

BROOK HAYS,
Labor Compliance Officer, Little Rock, Ark.:

Re Maidwell Garment investigation charges made, you are taking testimony of employees in presence of Ash and Mass. You are to follow regular compliance procedure in not disclosing names of complainants. Testimony of employees must not be taken in presence of respondent or his attorney.

L. J. MARTIN,
Chief Compliance Division.

I further directed that this wire be sent for me to Mr. Hays at Little Rock (copy attached):

"Rosenblatt requests absolutely no deviation from normal procedure in Maidwell investigation.

"J. H. WARD,
"Assistant Chief Compliance Division."

The attached report (exhibit A) is conclusive answer to the charges made by Mr. Davis with respect to the attitude of N. R. A. toward the former workers in this factory, and corrects the numerous inaccuracies of date, inaccuracies of statement with respect to the various actions taken by the compliance division, and I submit this report, with the attached exhibits, with the request that it may be entered into the record of the hearings before the Senate Finance Committee.

Sincerely,

SOL A. ROSENBLATT,
Compliance and Enforcement Director.

EXHIBIT "A"

MEMORANDUM

APRIL 3, 1935.

To: Mr. Sol A. Rosenblatt, Compliance and Enforcement Director.
From: L. H. Martin, Chief Compliance Division.
Subject: Maidwell Garment Co. case.

The Maidwell Garment Co. case has been handled by the regional office in Dallas and the State office in Little Rock, Ark. However, I will give you a report on this case as I have gathered it from the various members of the compliance staff who have worked on it.

The respondent is a member of the cotton garment industry. It is a corporation located in Forrest City, Ark. The principal stockholders are Ed Ash, his wife and his nephew. We have no definite information as to the size of the plant, but we believe the number of employees is between 150 and 200.

I am informed that the respondent petitioned for an exception from the Cotton Garment Code late in 1933. Ed Ash, the principal stockholder in the company, made a trip to New York to discuss his petition with the Cotton Garment Code Authority. This petition was denied by the Cotton Garment Code Authority and Mr. Ash closed the greater part of his plant early in 1934. When this plant was closed, vigorous protests in the form of telegrams were made to the President and General Johnson by citizens of Forrest City, Ark. Because of these protests, a special investigator from Washington was sent to For est City to report on conditions there. This investigator reported that Mr. Ash

had worked out a method whereby he could make a higher-priced garment and pay code wages. The plant was then reopened for full operation and I understand that many of the colored women, who had formerly been employed, were not put back to work.

In February of 1934 Mr. John Davis, executive secretary of the Joint Committee on National Recovery, came into the Compliance Division in Washington and stated that complaints alleging violation of the Cotton Garment Code by this respondent had been filed with his committee. Mr. Davis claimed that colored employees then working for the company were not being paid code wages and that code wages had not been paid during December of 1933 and January of 1934. The Little Rock office was informed of the complaints and asked to make a complete investigation.

While this investigation was being made, Ed Ash went to Europe where he stayed for several months. The Little Rock office completed its investigation, after many delays caused by Mr. Ash's absence, and found that $115 in back wages were due the employees of the company. Mr. Ash, on his return, agreed to pay the $115 to his employees.

Following a report of the settlement which the Arkansas office proposed to make, the Compliance Division instructed that office to make a more complete examination of respondent's records for the period of December 1933 and January 1934.

At this time respondent refused access to his records and a representative of the Arkansas office, in order to obtain information as to the pay roll during that period, interviewed a group of persons who claimed to have been employed by respondent at that time. On the basis of the claims made by these alleged former employees, the Arkansas office determined that the amount of restitution due amounted to approximately $4,000.

The respondent absolutely refused to make restitution in accordance with the figures compiled by the Arkansas office and that office was, therefore, instructed to transmit the case to the Dallas regional office as an unadjusted case where proper hearing and a full investigation of the facts with all parties could be had. The case was received in the Dallas office on January 28, 1935.

A hearing on the case was held before the regional council on March 12. The council found that the respondent had been a flagrant violator for some time and recommended to the regional director that he require the respondent to surrender all "blue eagle" insignia and further recommended that the case be referred to the litigation division, with a recommendation that litigation proceedings be instituted at once.

It happened that on the day of the hearing, Regional Director Tutt was not in the office on account of illness and Administrative Assistant Smith was taking care of his duties. The recommendation of the council was approved by Mr. Smith and the respondent was notified that the "blue eagle" would be removed and labels withheld in 5 days because of the finding of violation. On March 14, 2 days following the hearing, Mr. Smith went to San Antonio to fill an engagement which Mr. Tutt was unable to fill because of his illness. During Mr. Smith's absence from the office, Mr. Keebler, the regional attorney, was advised by the respondent's attorney of respondent's intention to institute injunction proceedings against Regional Director Tutt, et al. Mr. Keebler discussed the case with the assistant litigation attorney and the chairman of the compliance council and all agreed that litigation proceedings should be instituted at once. Mr. Keebler called Mr. Tutt at his home and told him of their recommendation of this case.

Mr. Tutt stated that he knew nothing of the case and would have to rely on their judgment, since he had been away from the office on account of illness. Therefore, the case was taken over by the litigation division.

On March 14, during Mr. Smith's absence, Mr. Keebler wired me as follows:

"Regional director after lengthy hearing and unanimous recommendation by council has notified Maidwell Garment Co., Forest City, Ark., that its right to use labels will be withdrawn March 18. Respondent's attorney wires 'Advise necessary procedure to appeal from your board to Washington authorities if such is permitted; answer by wire.' Is Washington review permissible and, if so is label order suspended pending such review? Failure to review will probably precipitate injunction suit in unfavorable forum here. Please wire instructions immediately."

In reply, I wired him on March 15 as follows:

"Re tel. 14, Maidwell Garment Case. Office memorandum 344, dated March 6, stipulates industrial Appeals Board may hear complaints on all final administrative actions of N. R. A. Officials which may be unfair or discriminatory

against or oppressive of complainants. If Maidwell Co. appeals to and appeal is accepted by Industrial Appeals Board within 10 days labels should not be withheld pending further action by Industrial Appeals Board."

When Mr. Smith returned to the office neither he nor any one else attached to the regional office was aware of my instructions to Mr. Keebler that labels were not to be withheld if the company appealed to the Industrial Appeals Board within 10 days. Therefore, a telegram was sent by Mr. Smith to the respondent removing its insignia and withholding labels.

On March 18, Mr. Hoffpauir, who had gone to Arkansas in connection with the plannee litigation proceedings, telegraphed Mr. Keebler as follows:

"Maidwell filed bill Little Rock today and applied for restraining order, which was denied by Judge Martineau. Action names only Harrison and Hays."

On March 21, Mr. S. H. Mann, attorney for the Maidwell Garment Co., wired as follows:

"The Maidwell Garment Co. of Forrest City, Ark., desires to appeal from an order made on March 11, 1935, by Ernest L. Tutt, regional director, district no. 8, Dallas, Tex., to your board. We are wiring and writing formal prayer for appeal to the Dallas office also."

This wire was sent to the Industrial Appeals Board. The same day, Mr. Mann wrote a registered letter enclosing a formal petition for appeal. This was also sent to the Industrial Appeals Board.

Mr. Mann came to Washington and discussed this case with me and with Mr. Hoff of the Industrial Appeals Board. The Industrial Appeals Board accepted the case and I recalled the file from the litigation division and ordered that labels be issued in limited quantities, pending the decision of the Industrial Appeals Board, because the case had been sent to the litigation division and labels withheld contrary to the instructions given by my wire of March 15 to Mr. Keebler. The case is scheduled to be heard before the Industrial Appeals Board on April 15, 1935.

The file on this case is still in the regional office. Therefore, I am sending a copy of this report to the regional director and also a copy to the State director in order that they may advise me if any statements made in this report are incorrect or if I have omitted any of the pertinent facts.

L. J. MARTIN,
Chief, Compliance Division.

The CHAIRMAN. I have a letter from Mr. Leon Marshall of the N. R. A., which he desires inserted in the record relating to certain testimony of Mr. Edgerton before the committee. Without objection, it will be inserted.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 16, 1935.

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

MY DEAR SENATOR HARRISON: The opinion of the manufacturers who compose the Southern States Industrial Council is, of course, significant. Realizing this fact, we arranged with Mr. Edgerton, president of the council, for an analysis by our representative of the actual replies received by Mr. Edgerton. Mr. Edgerton having been courteous enough to cooperate with us by permitting this analysis, we do not wish to embarrass him, but since he saw fit to state publicly in the record on April 12, 1935, that our analysis practically verified the statement which he made, he has put us in the position of standing sponsor for his statements.

Knowing the facts as we do, we must bring to your attention the fact that our analysis does not verify (*a*) Mr. Edgerton's statement before the Senate committee in the form made, nor (*b*) the council's report which Mr. Edgerton put in your hands, in many substantial respects.

The following are some examples of the respects in which it would seem that Mr. Edgerton was in error:

Mr. Edgerton stated (p. 3784) that 85 percent of the manufacturers in the 14 Southern States studied, employed from 1 to 50 people. This is true, but the implication that 85 percent of those who replied to the questionnaire employ only 1 to 50 persons is not true. Our analysis shows that only 61 percent of those answering the questionnaire employed less than 50 persons.

Mr. Edgerton stated (p. 3791) that approximately 1,000 replied on January 4, the date of the report of the Southern States Industrial Council, which was placed in the record, only 537 questionnaires had been returned and at the time of out analysis, March 5, 1935, 760 questionnaires had been returned to the council.

Our analysis, therefore, is predicated on a larger number of answers than is that analysis of Mr. Edgerton, although neither of the two analysis is based on as many as 1,000 answers.

Mr. Edgerton also stated (p. 3788) that 22.4 percent of those answering the questionnaire expressed themselves as being in favor of the National Recovery Administration; 34.2 percent expressed themselves as being in favor of it with certain modifications, and 43.4 percent indicated they were against the National Recovery Administration in any form. Our analysis, based on a larger number of questionnaires, indicated that 37.5 percent were in favor of the continuation of the National Recovery Administration with modifications, and 44.5 percent expressed them selves as not in favor of the National Recovery Administration.

As a matter of fact, even this interpretation of the questionnaires is not altogether sound, since a much larger percentage of those answering the questionnaires were in favor of maximum hours and minimum wages. It cannot be said that 44.5 percent were against the National Recovery Administration in any form when the returns showed that 67.5 percent were in favor of maximum hours and 70.6 percent were in favor of minimum wages.

Although statistical data in this regard was not secured through means of the questionnaire, Mr. Edgerton (p. 3794) expressed himself as to the manner in which the costs in the South were elevated disproportionately to the costs in competing areas. As illustrative of this contention, he stated that in the cotton textile industry costs of male labor in the 14 States studied, increased 70 percent as against only 48.8 percent in the North and the costs of female labor increased 100 percent as against only 61.3 percent in competing areas (p. 3795).

The percentage of increase is, of course, misleading since it in no way indicates the actual increase in costs. The Bureau of Labor Statistics report, from which Mr. Edgerton secured his figures, shows that the actual increases were substantially the same. In July 1933 the average hourly wage rate in the North in this industry was 28.3 cents, while in August 1934 it was 42.1 cents, showing an actual increase after the code became effective of 13.8 cents. In the South the average hourly wage was 19.9 cents in July 1933, while in August 1934 the average was 33.9 cents, or an actual increase of 14 cents. In the North the average hourly rate for female labor in July 1933 was 23.1 cents, while it was 37.3 cents in August 1934, indicating an actual increase of 14.2 cents. In the South the average hourly rate was 16.1 cents in July 1934, while in August 1934 the average was 32.1 cents, showing an actual increase of 16 cents.

It is also indicated in the Bureau of Labor Statistics report that in other industries the actual increase in the South has not been in excess of the increase in the other competing areas, although the percentage increase is much larger due to the smaller base in the South, against the larger base in the North. For example, in the lumber industry the average hourly rate in the West (other competing area) in July 1933 was 36.8 cents and in December was 53 cents, showing an actual increase of 16.4 cents and a percentage increase of only 48.4 percent. In the South, in July 1933, the average hourly rate was 15 cents, while in December 1933 it was 29 cents, showing an actual increase of 14 cents per hour, while the percentage increase was 93.3.

Mr. Edgerton also contended (p. 3795) that the National Recovery Administration had not given due regard to geographical differentials. As a matter of fact, approximately 90 percent of the employees affected by the codes work under codes in which there is some type of geographical wage differential.

I am attaching hereto a copy of our analysis of the questionnaires on which Mr. Edgerton's testimony and the report of the Southern States Industrial Council are predicated.

Very truly yours,

L. C. MARSHALL,
Executive Secretary,
National Industrial Recovery Board.

ANALYSIS OF QUESTIONNAIRES OF SOUTHERN STATES INDUSTRIAL COUNCIL

I. BACKGROUND OF THE SURVEY

In December 1934 the Southern States Industrial Council sent to 6,000 manufacturers and contractors on its mailing list a questionnaire designed to ascertain the opinon of southern manufacturers on the future of the National Recovery Administration. This mailing list was compiled from lists furnished by the National Manufacturers' Association and various chambers of commerce, and represented about one-fifth of the total numbers of manufacturing establishments in the South according to the United States Census of Manufactures (1931).

By March 5, 1935, 760 questionnaires had been returned representing 12.7 percent of the total number of the questionnaires sent out and 3.0 percent of the total number of the firms in the South.

Questionnaires were received from a wide variety of industries (see supplement, table V) and from each of the 13 Southern States roughly in proportion to the total number of manufacturing establishments in each State (see supplement, table VI). Questionnaires were received from firms of widely varying size as measured by the number of persons employed by them. The proportion of the large firms (with more than 50 employees) to small firms replying was greater than the porportion of the total number of large to small firms in the South. The 1929 Census of Manufactures indicates 26,922 of the 31,425 manufacturing plants in the South employ from 1 to 50 persons, that is, 86 percent; 464 of the 760 manufacturers who returned questionnaires, or 61 percent, employ from 1 to 50 persons (see supplement, table VII).

II. ATTITUDE OF SOUTHERN MANUFACTURERS TOWARD CONTINUATION OF NATIONAL RECOVERY ACT AFTER JUNE 16, 1935

Question 1 of the questionnaire sent out by the council asks the following questions:

"Are you in favor of continuing the National Industrial Recovery Act to June 16, 1935? After that date?"

Tabulation of the answers to the latter part of the question which relates to the continuation of the National Industrial Recovery Act, after June 16, 1935, is shown in table I below:

TABLE I.—*Attitude of southern manufacturers on continuation of National Recovery Act after June 16, 1935*

[Source: Questionnaires sent out by the Southern States Industrial Council, December 1934. Analyzed by the Division of Research and Planning, National Recovery Administration]

Attitude	Number	Percent
In favor of National Recovery Act	422	55.5
As is	285	37.5
If modified [1]	137	18.0
Not in favor of National Recovery Act	338	44.5
Total	760	100.0

[1] Specifically qualified approval upon modification.

III. MODIFICATION OR SUBSTITUTES FOR NATIONAL RECOVERY ACT PROPOSED

Questions 2 and 4 of the Council questionnaire ask the following:

Question 2: What modifications would you propose, if you are for its continuation?

Question 4: If you are opposed to the continuation of the National Recovery Act what recommendations would you make to Congress in the form of Federal legislation to replace it?

Analysis and tabulation of the comments offered in response to these questions are shown in table II below:

TABLE II.—*Tabulation of proposed modifications and substitutes*

[Source: Questionnaires sent out by the Southern States Industrial Council, December 1934. Analyzed by the Research and Planning Division, National Recovery Administration]

Comment	Number making this comment [1]	Percent of total questionnaires received [1]
1. "Less Government interference in business"	97	12.8
2. "Allow industry to govern itself"	31	4.1
3. "Limit codes to maximum hours, minimum wages, prohibition of child labor, and few basic fair-trade practices"	100	14.2
4. "Enforce the National Recovery Act"	94	12.4
5. "Complex and conflicting codes"	6	.8
6. "Inadequate code authority representation for the South"	1	.1
7. "Modify antitrust laws"	9	1.2
8. "Enforce antitrust laws"	5	.7

[1] The number making a particular comment may vary slightly according to the varying interpretation given to the comments by the individual analyzing it. The percent represents the percent of all those sending in questionnaires who made this comment.

IV. ATTITUDE OF MANUFACTURERS ON SPECIFIC CODE PROVISIONS

A. Statistical summary of attitude on specific code provisions.—To ascertain the attitude of the manufacturers toward specific code provisions, the questionnaire of the council asked the following question: "Check those 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 practices."

The form in which the question was asked made it impossible to tabulate those in favor as against those definitely opposed to a particular code provision. Since the respondent was requested to check only those provisions of which he was in favor and was left no method of expressng disapproval or indifference other than by omitting a check, it was necessary to tabulate the responses as follows: If checked, equivalent to "in favor", "no" written equivalent to "not in favor"; if unchecked, equivalent to "opinion not expressed" i. e., indifferent or opposed. Table III on the following page shows the results of such a tabulation.

TABLE III.—*Attitude of Southern manufacturers on specific code provisions*

[Source: Questionnaire sent out by the Southern States Industrial Council December 1934. Analyzed by the Research and Planning Division, National Recovery Administration]

Specific code provisions	Total firms		Firms favoring continuation of National Recovery Act		Firms not favoring continuation of National Recovery Act	
	Number	Percent	Number	Percent	Number	Percent
Total firms replying on each code provision	760	100.0	422	100.0	338	100.0
1. Attitude toward maximum hours:						
In favor of maximum hours	513	67.5	384	91.0	129	38.2
Not in favor of maximum hours	49	6.4	14	3.3	35	10.5
No opinion expressed on maximum hours	198	26.1	24	5.7	174	51.5
2. Attitude toward minimum wages:						
In favor of minimum wages	537	70.6	392	92.9	145	42.9
Not in favor of minimum wages	47	6.2	10	2.4	37	10.9
No opinion expressed on minimum wages	176	23.2	20	4.7	136	46.2
3. Attitude toward Southern wage differential on sectional basis:						
In favor of Southern wage differential	542	71.3	373	88.4	169	50.0
Not in favor of Southern wage differential	39	5.1	20	4.7	19	5.6
No opinion expressed on Southern wage differential	179	23.6	29	6.9	150	44.4
4. Attitude toward wage differential on size of community basis:						
In favor of "city" wage differential	286	37.6	197	46.7	89	26.3
Not in favor of "city" wage differential	98	12.9	60	14.2	38	11.8
No opinion expressed on "city" wage differential	376	49.5	165	39.1	211	62.4
5. Attitude toward collective bargaining:						
In favor of collective bargaining	203	26.7	177	41.9	26	7.7
Not in favor of collective bargaining	191	25.1	97	23.0	94	27.8
No opinion expressed on collective bargaining	366	48.2	148	35.1	218	64.5
6. Attitude toward price fixing:						
In favor of price fixing	181	23.8	158	37.4	23	6.8
Not in favor of price fixing	234	30.8	137	32.5	97	28.7
No opinion expressed on price fixing	345	45.4	127	30.1	218	64.5
7. Attitude toward production control:						
In favor of production control	180	23.7	144	34.1	36	10.7
Not in favor of production control	220	28.9	129	30.6	91	26.9
No opinion expressed on production control	360	47.4	149	35.3	211	62.4
8. Attitude toward distribution control:						
In favor of distribution control	105	13.8	86	20.4	19	5.6
Not in favor of distribution control	232	30.5	141	33.4	91	26.9
No opinion expressed on distribution control	423	55.7	195	46.2	228	67.5
9. Attitude toward fair-trade practices:						
In favor of fair-trade practices	462	60.8	347	82.2	115	34.0
Not in favor of fair-trade practices	68	8.9	22	5.2	46	13.6
No opinion expressed on fair-trade practices	230	30.3	53	12.6	177	52.4

B. Comments of the manufacturers on specific code provisions.—An analysis and tabulation of the comments relating to specific code provisions which were offered by the manufacturers is shown in table IV below.

TABLE IV.—*Tabulation of comments on specific code provisions*

[Source: Questionnaires sent out by the Southern States Industrial Council, December 1934. Analyzed by the Research and Planning Division, National Recovery Administration]

Comment	Number making this comment [1]	Percent of total questionnaires received [1]
1. "Inflexibility of maximum hours provisions"	17	2.2
2. "Inflexibility of minimum wage provisions"	6	.8
3. "Subnormal wage for low class labor"	3	.4
4. "Eliminate section 7 (a)"	56	7.4
5. "Clarify section 7 (a)"	108	14.2
6. "Make unions liable"	19	2.5
7. "Prevent coercion of employees by majority or by outside organizers"	51	6.7

[1] The number making a particular comment may vary slightly according to the varying interpretation given to the comments by the individual analyzing it, the percent represents the percent of all those sending in questionnaires who made this comment.

TABLE V.—*Distribution and number of replies by industries*

	Number
1. Cotton textile	93
2. Lumber manufacturing	78
3. Hosiery	37
4. Construction	25
5. Coal mining (bituminous)	24
6. Wheat flour milling	20
7. Furniture manufacturing	19
8. Chemical	17
9. Brick and tile	17
10. Graphic Arts	16
11. Machinery and equipment (various)	15
12. Structural steel	15
13. Stoves and ranges	13
14. Cotton garment manufacturing	12
15. Service trade (laundries, hotels, etc.)	10
16. Quarry products (granite, marble, slats)	10
17. Paper box manufacturing	9
18. Mattress and bedding	9
19. Banks, electric companies, and other utilities	9
20. Retail distribution	9
21. Paper and pulp	8
22. Foundry and machine shop products	7
23. Wool textile	6
24. Men's clothing; underwear and allied garments	6
25. Coffee	6
26. Peanuts	6
27. Candy	5
28. Hat manufacturing	5
29. Perfumes and cosmetics	5
30. Limestone	5
31. Iron and steel	5
32. Cast-iron pipe	5
33. Electrical manufacturing	4
34. Fertilizers	4
35. Leather goods (miscellaneous)	4
36. Boot and shoe	4
37. Clay products	4
38. Biscuit and cracker	4
39. Cotton warehousing	4
40. Cottonseed oil refining	5
41. Meat packing	4
42. Baking	3

TABLE V.—*Distribution and number of replies by industries*—Con.

	Number
43. Auto body	3
44. Sugar refining	3
45. Concrete pipe	3
46. Hardware manufacturing	3
47. Silk textile	3
48. Pencil manufacturing	2
49. Cordage	2
50. Unclassified manufacturing	175
Total	760

Source: Questionnaire sent out by the Southern States Industrial Council, December 1934. Analyzed by the Research and Planning Division, National Recovery Administration.

TABLE VI.—*Distribution of replies by States and extent of coverage*

[Source: Questionnaires sent out by the Southern States Industrial Council, December 1934. Analyzed by the Research and Planning Division, National Recovery Administration.]

State	Number of establishments replying to questionnaire	Total number of establishments [1] according to census	Percent of total establishments covered by replies
Arkansas	32	1,017	3.1
Alabama	54	1,639	3.3
Florida	20	1,677	1.2
Georgia	95	2,852	3.3
Kentucky	83	1,621	5.1
Louisiana	51	1,611	3.2
Mississippi	18	917	2.0
North Carolina	83	2,557	3.2
Oklahoma	21	1,322	1.6
South Carolina	32	1,044	3.1
Tennessee	98	1,948	5.0
Texas	75	4,323	1.7
Virginia	83	2,275	3.6
West Virginia	17	1,126	1.5
Other	6		
Totals	[2] 768	25,934	3.0

[1] 1931 Census of Manufacturers.
[2] The slight discrepancy in the total figure is due to the fact that 8 questionnaires were discarded as unusable.

TABLE VIII.—*Proportion of replies from small and large firms compared to census data*

Size of firm	Questionnaire replies received		Census data [1]	
	Number	Percent of total replies	Number	Percent of total replies
Over 50 employees	296	38.9	4,503	14.3
Less than 51 employees	464	61.1	26,922	85.7
Total	760	100.0	31,426	100.0

[1] Census of Manufacturers, 1929.

Source: Questionnaires sent out by the Southern States Industrial Council, December 1934. Analyzed by the Research and Planning Division, National Recovery Administration.

The CHAIRMAN. I have a letter from Mr. Leon Marshall, of the N. R. A., calling attention to certain statements and testimony previously made during the hearings. Without objection it will be put into the record.

(The same above referred to will be found at the conclusion of the day's session.)

The CHAIRMAN. I have also a memorandum from Senator Nye which he desires to go into the record. Without objection it will be inserted.

(The memorandum is as follows:)

UNITED STATES SENATE,
April 18, 1935.

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

DEAR SENATOR HARRISON: I enclose, herewith, memorandum on the case of Mr. Platt B. Walker of the Lumberman's Service Association, Minneapolis, Minn., regarding complaints against National Recovery Administration.

I think this should have the consideration of the committee and hope it can be inserted into the record. The complete file is also being enclosed for the information of your committee.

Sincerely yours,

GERALD P. NYE.

Mr. Platt B. Walker, Minneapolis, Minn., as executive manager of the Lumberman's Service Association, an association of the independent lumber dealers of Minnesota, complains against the monopolistic practices of the code authority which is dominated by the Northwestern Lumberman's Association or the "big-yard line" executives.

Mr. Walker claims that the Northwestern Lumberman's Association, made up of the "big-yard line" executives, has used the code to further ts own ends, has blacklisted independent dealers who failed to be dictated to by it, and has forced many independents out of business.

In November 1933, when the code was written and local administration of it was being planned, Mr. Walker was appointed field agent by the Northwestern Lumber and Building Material Code Authority with the assurance that his services were to be utilized in assisting in the amicable adjustment of complaints and grievances that might arise between retail distributors. For 35 years Mr. Walker was editor and manager of the Mississippi Valley Lumberman, a lumber trade journal, and he was well qualified to perform such duties. His first assignment in the capacity of field agent was to contact some 30 concerns whose names were selected from a long list kept in the files of the Northwestern Lumberman's Association. From these records it appeared that they were either not legitimate dealers or were addicted to unethical practices. Underneath the names of the following concerns appeared this notation: "Stock and equipment not sufficient to qualify for membership."

Mr. Walker found that all of these dealers but three had stock amply sufficient to be listed as fully qualified dealers, and that in many cases their lines were more complete than the average line-yard company. Not long after Mr. Walker turned in his favorable report on these companies, he was told that the sum provided for his remuneration was withdrawn, and his services would be no longer required.

Mr. Walker then formed the Lumberman's Service Association, composed of independent dealers, to try and get fair play under the code.

The following is a synopsis of the methods employed by the code authority to further their own ends and drive their competitors out of business:

A minimum price was set up by the code authority for the sale of lumber and other builders' supplies by dealers to builders. This price was arrived at by estimating the cost or production to the large wholesalers, with a large overhead.

There were dealer's minimum prices set up, below which he could not sell. He was restricted to a certain territory, outside of which he could not sell. Thus, if a dealer was running a business in a small locality, he was forced to sell at a higher rate, if he sold less than a carload lot to any one purchaser. The big line yards, however, were chain dealers, always buying carload lots, not restricted to any territory, and selling as they chose. If an independent dealer sold at a price lower than that prescribed by the code authority he was blacklisted; or, if he sold to a builder that was blacklisted on another score, he was blacklisted as well.

Thus, the independent dealers were kept from representation on the code authority by the blacklist of the Northwestern Lumbermen's Association,

forced by the code authority to sell their material at a high price, and keep within a restricted territory, while their large competitors, the same Northwestern Lumbermen's Association, the executives of which formed the code authority, wiped out their businesses.

Mr. Walker appealed to the code authority in Washington, to the National Recovery Administration, and to the local compliance board, with no avail. He was financially unable to come to Washington to appear before the National Recovery Review Board, but sent in documentary evidence to prove his contention.

(The complete file on this case is filed with the committee.)

The CHAIRMAN. I have a letter from Mr. Blackwell Smith, Acting General Counsel N. R. A., transmitting a table demonstrating in detail the industrial representation involved in making the Bituminous Coal Code.

(The letter referred to is as follows:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 13, 1935.

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR SENATOR HARRISON: There is transmitted herewith for the information of your committee a table demonstrating in detail the industrial representation involved in making the Bituminous Coal Code.

This material is supplementary to the lists of code committees and code authorities already provided your committee in response to a request made by Senator William H. King, and is added for the purpose of demonstrating how in a great many cases a small committee of an industry became the official negotiators of a code after a much larger number of industry representatives had taken part in preliminary steps of code making.

While the names of all such original representatives occur in records of proceedings on the codes, only the limited code committee is shown on the lists previously supplied you.

Sincerely yours,

BLACKWELL SMITH,
Acting General Counsel.

(The table referred to is as follows:)

Table showing representation of industry in making Bituminous Coal Code

Codes originally presented	Representatives	Codes presented at hearing	Representatives	Basic Code Committee	Divisions set up under basic codes
1 Northern Coal Control Association	Walter A. Jones J. D. A. Morrow.°	North-South Control Association Code (Pennsylvania, Ohio, Maryland, northern and southern West Virginia, eastern Kentucky, Tennessee).	Charles O'Neill †*	Wm. Emery, Jr.†	Div. I.
			J. D. Francis *		Div. I.
			J. D. A. Morrow °	Charles O'Neill †	Div. I.
			H. R. Hawthorne °°		Div. I.
1 Smokeless & Appalachian Coal Association (northern and southern Appalachian States).	E. C. Mahan ° H. R. Hawthorne ° A. L. Lyon		E. C. Mahan °°		Div. I.
			D. C. Kennedy †	D. C. Kennedy †	Div I..
			Wm. Emery, Jr.†*		Div. I.
			R. E. Taggart †*	R. E. Taggart †	Div. I.
(2) Coal Trade Association of Indiana (Indiana).	Jonas Waffle	Coal Trade Association of Indiana	Tusca Morris Charles G. Hall*, Harvey Cartwright, Wm. R. Bootz.		Div. II.
(3) Southern Ohio Coals, Inc. (Ohio)	E. H. Davis, F. H. Game	Southern Ohio Coals, Inc.	George K. Smith		Div. II.
(4) Southwestern Coals (Kansas, Missouri, and Oklahoma).	W. C. Shank	Southwestern Coals Code (Kansas, Missouri, and Oklahoma).	W. C. Shank*, A. M. Hannah.		Div. IV.
(5) Alabama Mining Institute (Alabama)	James L. Davidson, D. A. Thomas.°	Alabama Code (Alabama)	Forney Johnston,†* D. A. Thomas.°	Forney Johnston †*	Div. III.
(6) Association of Producers of Hand-Mined Bituminous Coal (5 counties in Tennessee, 2 counties in Georgia).	H. J. Weeks	do	H. J. Weeks		
	J. D. Flanagan	Association of Producers of Hand-Mined Bituminous Coal (Tennessee-Georgia).			
	J. J. Cohn	do			
	W. L. Pearson	do			
(7) Western Kentucky Coal Association (western Kentucky).	C. F. Richardson,° C. E. Reed.	Western Kentucky Coal Operators' Code.	C. F. Richardson,° A. W. Duncan.		Div. I.
(8) Progressive Miners of America (Illinois).	C. E. Pearcy,° Wm. Keck	Illinois Processive Coal Minors Association Code.	C. E. Pearcy°		Div. II.
(9) Coal Producers Association of Illinois (Illinois).	R. W. Miller	Coal Producers Association of Illinois	R. W. Miller		Div. II.
	W. C. Gill	Illinois Progressive Coal Miners' Association Code.	C. G. Stiehl W. C. Kane		
(10) Off-Railroad Coal Mine Operators (Illinois).	John Sharp J. H. Arnold	Agreed to go with general code			Div. II.

See footnotes at end of table.

Table showing representation of industry in making Bituminous Coal Code—Continued

Codes originally presented	Representatives	Codes presented at hearing	Representatives	Basic Code Committee	Divisions set up under basic codes
(11) Vermilion County Small Coal Operators Association (Illinois).	Alex Anderson	Agreed to go with general code			Div. II.
(12) Iowa Coal Operators Association (Iowa).	Sam Ballantyne	Iowa Coal Operators Association Code	George Heaps, Jr.*		Div. II.
(13) Operators Association of Appanoose and Wayne Counties, Iowa.	Jacob Ritter	....do	Jacob Ritter		
(14) Coal Producers Association of Washington.	James Bagley, D. S. Hanley				Div. V.
(15) Littleton Colorado Coal Operators Association.	John Long, Jr., George E. C. Johnson, David Rosner.				Div. V.
(16) Rocky Mountain-Pacific Code	John R. Doolin*	Rocky Mountain-Pacific Code (Utah, southern and northern Wyoming, Montana, northern and southern Colorado.	F. V. H. Collins,† John R. Doolin.*	F. V. H. Collins †	Div. V.
Northern Colorado Coal Producers Association.	P. M. Peltier, C. C. Brooks.	Northern Colorado Coal Producers Association.			
Colorado & New Mexico Coal Operators Association.	F. O. Sandstrom	Colorado & New Mexico Coal Operators Association.			
Utah Coal Producers Association	James B. Smith, John R. Doolin.*	Utah Coal Producers Association			
Southern Wyoming Coal Operators Association.	L. W. Mitchell	Southern Wyoming Coal Operators Association.			
Northern Wyoming Coal Operators Association.	James E. Lee	Northern Wyoming Coal Operators Association.			
Montana Coal Operators Association	No representative	Montana Coal Operators Association			
Central New Mexico Coal Operators Association.	G. A. Kaseman	Colorado & New Mexico Coal Operators Association.			
Washington Coal Operators Association.	No representative				Div. V.
(17) El Paso County Mining Association (Colorado).	W. D. Wade, George A. Krause.				Div. V.
(18) Preston County Coal Operators Association (West Virginia).	A. W. Hawley*	Preston County Coal Operators Association (West Virginia).	A. W. Hawley,* John F. Adkin.		Div. I.
(19) Michigan Coal Operators Association (Michigan).	Warren E. Pippin		Warren E. Pippin (miscellaneous representative at hearing, did not present a code).		Div. I.
(20) Coal control of Georges Creek and upper Potomac (Maryland).	Wm. J. Wolf (subscribed to code no. 1 above).	Georges Creek and Upper Potomac Coal Code (Maryland).	A. B. Crichton, A. T. Smith.		Div. I.

(21) North Dakota Independent Lignite Operators Association (North Dakota).	Edwin Rupp, L. C. Stearns.				Div. V.
(22) Independent Truck Mines Association of Southern Colorado.	Sam T. Taylor, James McCune, A. V. Madonna.				Div. V.
(23) Central Coals Associates (Ohio)	Ben Grey		F. E. Taplin		Div. II.
(24) General code (Illinois, Pennsylvania, West Virginia, Ohio, Indiana, Michigan, Iowa, Kentucky, Arkansas, Oklahoma, Colorado, Montana, Wyoming).	G. B. Harrington,† Hubert Howard, D. W. Buchanan,† G. K. Smith, F. E. Taplin, H. W. Showalter, Wm. Taylor.	General code	G. B. Harrington (Illinois), Hubert, Howard D. W. Buchanan (Illinois), H. W. Showalter.	G. B. Harrington,† D. W. Buchanan.†	Div. II.

* Relation between original code and "hearing" code (with or without representation).
† Shows representation on Basic Code Committee, which has 5 divisions (with or without representation).
* Shows which division of Basic Code the association ultimately connected with (with or without representation).

General JOHNSON. Senator, I have just received a telegram in connection with my testimony. May I put it in the record?

The CHAIRMAN. Yes.

General JOHNSON. This telegram is as follows:

The National Association of Retail Druggists, composed of 21,000 independents, advises you that its name was used by American Retail Federation in press release yesterday without any authority whatever and that said association will have nothing whatever to do with this illegitimate offspring of predatory interests in distribution names of other national associations were also used without authority in a deceitful and dishonest manner.

JOHN W. DARGAVEL,
Secretary.
ROWLAND JONES, JR.,
Washington Representative.

Senator CLARK. I would like to have inserted in the record the Howard report. I understand the Vincent report has heretofore been inserted in the record and I would like to insert also the Howard report which was directly at variance with the Vincent report.

The CHAIRMAN. They may go in.

(The N. R. A. file on the investigation of the Coat and Suit Code Authority is as follows:)

APRIL 18, 1935.

MEMORANDUM FOR MR. JOHNSTON, CLERK FINANCE COMMITTEE

In response to the letter of Chairman Harrison of March 27, 1935, requesting the National Recovery Administration file on the investigation of the Coat and Suit Code Authority, the following material was submitted in response thereto by the National Recovery Administration, W. A. Harriman, Administrative Officer of the National Recovery Administration.

1. Anonymous complaint dated July 20, 1934.
2. Mr. Addison Smith's preliminary investigation, July 26—August 15, 1934.
3. Mr. John C. Howard's report dated October 25, 1934.
4. Report of Mr. Alexander Thomson, Administration member, to Deputy Administrator Dean G. Edwards, September 12, 1934.
5. Report made to Mr. Addison Smith, October 15, 1934.
6. Memorandum report of Mr. Alexander Thomson, Administration member, to Deputy Administrator Dean G. Edwards, dated October 22, 1934.
7. Report of Mr. Alexander Thomson, Administration member, to Deputy Administrator M. D. Vincent, December 1, 1934.
8. Letter of Deputy Administrator M. D. Vincent to Mr. Alexander Thomson, December 5, 1934.

In general this material consists of the so-called "Howard report" and related papers. The Howard investigation was conducted following the filing of complaint as set out in an anonymous communication to Gen. Hugh S. Johnson under date of June 29, 1934, with respect to the administration of the Cloak and Suit Code by the Code Authority.

This material has come to the committee's files and is handed you herewith for such action as the committee desires to take, upon what I understand to be the request of Senator Nye that the papers be included in the record.

Attention is called to the last paragraph in the letter of W. A. Harriman, under date of March 29, in which it is stated that if the committee gives consideration to these matters that it "will not obtain an accurate insight in the situation unless you call on Mr. Vincent to present his entire experience in the administration of this code."

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., March 29, 1935.

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

MY DEAR MR. HARRISON: In response to your letter of March 27, 1935, requesting our file on investigations of Coat and Suit Code Authority, I am enclosing herewith the file which contains:

1. Anonymous complaint dated July 20, 1934.
2. Mr. Addison Smith's preliminary investigation, July 26–August 15, 1934.
3. Mr. John C. Howard's report, dated October 25, 1934.
4. Report of Mr. Alexander Thomson, Administration member, to Deputy Administrator Dean G. Edwards, September 12, 1934.
5. Report made to Mr. Addison Smith, October 15, 1934.
6. Memorandum report of Mr. Alexander Thomson, Administration member, to Deputy Administrator Dean G. Edwards, dated October 22, 1934.
7. Report of Mr. Alexander Thomson, Administration member, to Deputy Administrator M. D. Vincent, December 1, 1934.
8. Letter of Deputy Administrator M. D. Vincent to Mr. Alexander Thomson, December 5, 1934.

The above-listed file items are copies, excepting the reports made by Mr. Alexander Thomson, administration member, of the Coat and Suit Code Authority. The deputy administrator in charge states that the originals of the copies above mentioned are not in his office. It is perahps not important but I assume they may be in the New York City office.

I am advised that the foregoing file covers all file matter on the subject of your request.

You understand that the administration of this code and the activities of the code authority come under the supervision of the deputy administrator. I have discussed this matter with the deputy, who in this case is Mr. M. D. Vincent. I feel that if these matters are given consideration by your committee you will not obtain an accurate insight into the situation unless you call on Mr. Vincent to present his entire experience in the administration of this code. You will doubtless recall Mr. Vincent as the deputy who testified on the Men's Clothing Code.

Sincerely,

W. A. HARRIMAN,
Administrative Officer.

NATIONAL RECOVERY ADMINISTRATION

Reported from 45 Broadway.
Date, July 20, 1934.
Covering period July 20, 1934.
Special agent John C. Howard.

Complaint against: Code authority, cloak and suit industry.

Complaint by: Anonymous source. Letter of June 29, 1934 to Gen. Hugh S. Johnson.

Subject and brief: Alleged racketeering.

Report: Interview with Emanuel M. Cohen, of Sisselman & Cohen, Inc., 1385 Broadway, New York City.

JULY 20, 1934.

Mr. ROBERT K. STRAUS. In an annonymous letter of June 29, 1934, addressed to Gen. Hugh S. Johnson, Washington, D. C., and signed "An Honest Cloak Man", there is the allegation that Fierman & Kolmer Co., Inc., 500 Seventh Avenue, New York City, are selling garments at from $2 to $5 less per garment than legitimate coat manufacturers are able to sell them for. It is not clear as to how this is done.

The letter reports, "This concern for this very purpose took a man named Benny Levine, who is known as an underworld character, a side-kick of the famous gangster, Lepke, who has figured here recently in various investigations in various rackets with various unions. These two men are known as the type whose bidding must be done or else one who dares to cross them just wakes up in the river or takes the customary ride from which there is no return." There is much more of this same general nature which it is not necessary to set out in full.

Further down the letter states; "Such deplorable conditions have not been brought alone to my attention but to many others in this line, and they have told me so. It is common gossip in the trade. Well, what is the use to compare with them? They are exceptions. You know they are in right, they have Benny Levine."

The other concerns are Sisselman & Cohen, Cummings & Schernoff, and Lew Schneider.

I interviewed Emanuel Cohen of Sisselman & Cohen and talked generally with him about business and the cloak and suit industry. He had a lot of grievances

which didn't pertain to this report but gave me a petition of the Garment Manufacturers Association Inc., for amendment to the basic power in the coat and suit industry, which he asked me to read over. He said he had plenty of complaints he would like to make later.

With regard to Benny Levine, he said he knew him well. He said Benny Levine had a third interest in the profits with Fierman & Kolmer Co., Inc., that Benny used to work for him, that he had a way of getting along with labor that no other man had, that the men liked him and would work for him. He offered to bring Benny Levine to the office so that I could interview him at any time that suited my convenience.

I asked Mr. Cohen to give me the names of some manufacturers who would give me the other side of the picture. He said to see Morris W. Haft. That Haft had lost a $100,000 order of the Rothschild Co., of Illinois and that he was sore against Fierman & Kolmer Co. and Benny Levine. That everybody in the industry knew about it.

This investigation is being continued.

Respectfully submitted.

JOHN C. HOWARD, *Special Agent.*

JUNE 29, 1934.

Gen. HUGH S. JOHNSON,
Washington, D. C.

GENTLEMEN: The question involved here is not one of just individual importance, but of paramount importance to the entire life of the entire cloak and suit industry. The very life and intention of the National Recovery Act is attacked and brought to naught, it is laughed at and ridiculed by a selected few who through some sort of connections are able to do as they choose, thereby inflicting heavy burdens on the rest of the industry to such a frantic point that the other legitimate concerns in the industry must seek relief whether honorable or otherwise, in order to be able to survive. This condition existed during the entire past spring season, and now at the threshold of the coming fall season, I am authoritively advised that even greater advantages will be practiced than before. The President's radio address of last night directly attacks these chiselers, so why should it go on unchallanged?

I herewith respectfully submit the manner, as far as I am able to know, in which these unjust practices are accomplished.

There is, first of all, one of the foremost concerns in this industry, Fierman-Kolmer Co., Inc., at 500 Seventh Avenue, New York City, who at this very moment are able to sell garments at from $2 to $5 less per garment, which in itself immediately puts the legitimate cloak man in an unfair light and this difference is only brought about by unfair manipulation, but cannot be done if the code is to be observed. This concern, for this very purpose, took a man named Bennie Levine, who is known as an underworld character, a side kick of the gangster Lepke, who has figured here recently in various investigations of various rackets with various unions. These two men are known in this market as the types whose bidding must be done or else the one who dares cross them just wakes up in the river or takes the customary ride from which there is no return. Bennie Levine is of no other value to this concern except for his connections to accomplish the purpose of undoing anything the National Recovery Act stands for, in fact he also helps out several other concerns with underhand tactics, for which he is remunerated. Now this concern operates a factory on its own premises, one in Bridgeport, and also have many contractors, everything controlled under their own terms and conditions regardless of anything, or anyone. For the production of all of these they are able to secure legitimate labels, in spite of the fact that they are not entitled to the use of same. The employees in their contractor shops are union men, but without a union, and they are compelled to submit to prices given them; they have no choice in the matter at all and no representation of their own choosing. In a few instances the workingmen that were displeased with the price were told to go to the union and file their complaints, and when they did this they were advised that the union is sorry they cannot do anything for them and that if they did not like it they should try and get a job somewhere else. Of course they knew they could not get a job somewhere else, because they would see to that, so what else could this family man do but go back to this same job, and with bent head make the best of the situation. These people are paid at a rate that is 50 percent less than is being paid for the same garment at any other cloak house. There is no recourse, because Bennie Levine with his pal Lepke are known as the union themselves; what they say there

goes and no one disputes their having the last word. It is common knowledge around the trade that what Bennie Levine can do no one else can do.

The clerks, both in the office and all other departments of this concern whether they be male or female begin their day at about 9 a. m. and work until midnight, of course in the season only, and just as the help in the factories, they will not utter a protest, because they know that if they do Bennie Levine will stop them from getting a job anywhere else in this line. Of course, they are well advised to say that they are the second shift, but there is no such thing at all, the fact remains that they get $1 for supper money, in other words 6 or 7 hours night work for $1.

Now gentlemen, you can readily see that this concern, being visisted by practically every buyer visiting this market, sees how cheap garments can be sold, that when they visit other showrooms to make their comparisons, the rest of us look so utterly ridiculous that no sale can be made, in fact time and time again these very same buyers ask "Well how is it that Fierman-Kolmer can do it?" and many of them will refuse to visit any other showroom with this remark "What is the use of going up to your place, to see your samples, you know as well as I do that they have Bennie Levine up there and you know with him there I can always get the same as you want to show me for very much less money?" Such a deplorable condition has not alone been brought to my individual attention but to many others in this line and they have told me so. It is common gossip in the trade, well what is the use to compare to them, they are an exception, you know they are in right, they have Bennie Levine.

The other concerns are Sisselman & Cohen, Cumings & Chernoff, Lou Schneider.

The question now remains, are we to be governed by gangsters who help to rip apart the National Recovery Administration with its code or do we have to go out of business.

I trust you will give the above the attention its importance deserves, and you have my assurance that a check-up will find that my accusations are correct.

I must ask you to be kind enough to excuse my omitting my identity as I do not wish to fall into the clutches of these gangsters, as I am a respectful business man of long standing, who has devoted many years in this industry, and have been prompted to write this, because in all my exprience I have never witnessed such brazeness against law and order.

With many many thanks for giving this your attention, I am,

Sincerely yours,

AN HONEST CLOAK MAN.

Reported from New York City.
Covering period July 28–August 15.
Region: New York, New Jersey, and Connecticut.
Special agent: Addison Smith.

Preliminary investigation made in this matter prior to interruption by trip to St. Louis tends to show that this code authority is entirely dominated by the union and Mr. Nathan Wolfe. That labels are being withheld from many jobbers and contractors without definitely establishing violations of the code. That labels are used in place of stink bombs to force men into associations and to unionize them. That unless a contractor belongs to an association, he is unable to secure designations. That when violations of the hour and wages provision are found, an arbitrary amount is set by the code authority—as restitution—and this arbitrary amount must be paid by the respondent whether it be fair or not before he can again do business. That these arbitrary amounts can be changed and reduced by joining the association. That when restitution is made by firms, there is no evidence of the workers ever securing back pay but there is considerable evidence that they do not. That gorilla methods are used in examining books and employees of firms by code authority investigators. That small firms are actually put out of business at the will of certain members of the code authority.

The following report is an annotation of data collected by this agent through interviews with jobbers, manufacturers, and contractors of the coat and suit industry. It also incorporates several affidavits obtained from workers in several contractor shops, etc.

1. The collective agreements between the American Cloak and Suit Manufacturers Association, Inc., the Merchants Ladies' Garment Association, Inc.,

the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc., and International Ladies' Garment Workers' Union, are monopolistic.

All of the above agreements were drawn subsequent to the adoption of the National Coat and Suit Code. The code authority in enforcing the code recognizes the said agreements.

2. Members of the code authority are selected by the organizations cited in paragraph 1 above. Nonmembers of the above associations have no representation excepting the western area. Representation on the code authority should be had by the nonmembers.

3. The code authority is not impartial; improper methods of investigation of members in this industry and enforcement of the code are used against those who are not members of the above associations, and whose employees do not belong to the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc. The collective agreements provide that workers must join the international union. Workers cannot join any union of their own choosing as provided for in the Code by the National Industrial Recovery Act. The code authority recognizes those agreements and workers are compelled to join the international union.

4. Contractors in this industry are prevented from being designated with jobbers unless said contractors' workers are members of the international union and contractors are members of the American Cloak and Suit Manufacturers Association, Inc. This is absolute discrimination. As a result of nondesignation, the code authority refuses to issue labels for garments made in nonunion and nonmember plants, even though these plants comply with the labor and hour provisions of the code.

5. Contractors who are members of the American Association and employees members of the international union are favored in many respects by the code authority, in that, if such plants or members have violated the code, the code authority will make concessions and relieve them of actual penalty that they should pay for such violation.

It was learned that I. Eskin & Son, of Camden, N. J., violated the code by underpaying salaries which the code authority had knowledge of but never collected 1 cent to pay back wages to employees.

Hod-Rose Coat Co., of Orange, N. J., has underpaid over $90,000 to workers and the code authority allowed him to settle for $400.

The above cases were settled due to the fact that these two contractors worked for jobbers who are very influential with the associations and can get any favor from the code authority they desire. If a contractor would be a nonmember of the association, and workers not unionized with the international union arbitrary penalties would be fixed by the code authority.

See case of Paramount Tailoring Co., of Passaic, N. J.

See case of D. Pescatore & Son, Hoboken, N. J.

6. Contractors are not permitted to increase their plants without permission of the code authority and under the collective agreements. The spirit of the National Recovery Administration is to engage workers who are unemployed o relieve unemployment. These agreements are contrary to such spirit, and instead of relieving unemployment tends to create a greater amount of unemployment.

7. For the eastern area the code authority makes no provision for apprentices. Replacement of help cannot be had, due to the fact that the contractors would have to pay a minimum wage to apprentices which will run the cost of garments so high that it would be impossible for him to secure work to operate his plant.

8. Curtailment and production of work is sponsored by the above associations. This fact is indicated in a statement made by Samuel Klein, executive director of the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc. This statement was published in the New York American on July 3, 1934, page 25. The collective agreements between the said associations point out to that fact exclusively.

9. Secure the minutes of the hearings before the fact-finding commissions held June 27 and 28, 1934, at the Hotel New Yorker. In these minutes you will discover the statements made by Harry Uviller, manager of the American Cloak & Suit Manufacturers Association, Inc.; Samuel Klein, executive director of the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc.; Harry Dubow, secretary of the Merchants Ladies' Garment Workers' Union, and Isidor Negler, manager of the joint board of the International Union, which brazenly indicate the plans of the above associations are nothing but monopolistic, curtailment of operation, and to prevent any relief for unemployment. Many jobbers, contractors, and other members of this industry engaging workers who were con-

fronted with charges for violating the code have paid penalities and back salaries. In many cases such salaries have not been paid to workers. An investigation shall be made as to what disposition was made of funds received by the code authority.

10. The price of labels sold by the code authority is 2 cents each. For 6 months the code authority had received from the sales of such labels approximately $267,000. Investigation shall be made why the code authority operation machinery shall cost that much. This code authority is exacting the highest price for labels of any other code authority that is authorized to issue labels indicating that merchandise is made under the National Recovery Administration.

11. Business agents of the International Union have recognized the fact that it is a necessity for apprenticeship and the hiring of new help to replace the old help who either leave through unemployment, death, or otherwise. Letters have been signed by business agents permitting such employers to pay wages below the minimum fixed by the code. The following have received exceptions to payment below the code: Morris Barnett, Hoboken, N. J.; Camden Cloak Co., Camden, N. J.; Perfect Coat & Suit Co., Camden, N. J.; Jack Goldfein, Newark, N. J.

In some of the above cases the code authority had penalized these contractors but never said anything of penalizing the union for having been parties to such violation.

12. Contractors who had been working for certain jobbers for the past few years and before the national code was adopted have been unable to secure designation with their jobber for whom they were working, nor receive labels from the code authority, by reason of the fact that the workers are not members of the International Union and such contractors being nonmembers of the American Association. H. & J. Block, a jobber in New York City had engaged approximately eleven contractors in New Jersey. After the code authority had exacted from H. & J. Block the sum of $9,500 as penalty and back salaries, Block was forced to give work only to such contractors who would have their workers unionized with the International Union and such contractors who will become members of the American Association. In order for these contractors to exist and operate, several of them reluctantly joined the American Association and forced the workers to join the International Union. If such workers did not join the International Union, the contractors were ordered to discharge them. At the head of the national code authority is a director whose name is George W. Alger who is a practicing attorney of New York with offices at 50 Broadway, and is still engaging in private practices. He is also head of the Mooreland commissions of the State of New York, investigating trust and title companies. He is also impartial chairman for the four associations set up in the collective agreements. Mr. Alger never in his experience has ever been engaged in the coat and suit industry to know the technical details thereof. A director is supposed to be an impartial person. His rulings have absolutely been partial in many cases and he is directed to do things by F. Nathan Wolf, the secretary of the code authority. As impartial chairman for the above associations, he is supposed to settle controversies arising between the associations as the impartial chairman. If any one in this industry, who is not a member of the four associations mentioned in the collective agreements, appears before this impartial chairman, there is a great doubt if he would render any decision in favor of such nonmember because he is paid by the four associations as such impartial chairman an annual salary of $7,500.

13. F. Nathan Wolf, the secretary of the National Coat and Suit Code, who seems to be the guiding factor of the code authority and was formerly an auditor for the International Union, his interest therefore, would naturally be placed toward the union and the set-up toward the collective agreements between the associations.

14. Alexander Printz, of the Printz-Beiderman Co. in Cleveland who is considered one of the authorities in the coat and suit industry has asserted himself by criticizing the functions of the Coat and Suit Code Authority. (See statement of the article appearing in the Women's Wear Daily on March 6, 1934, which is self-explanatory.)

15. A thorough investigation shall be made of the trucking situation. Truckmen are engaged to cart work from New York by jobbers in New York to contractors in their plants. There is an agreement entered into between the associations and the Truckmen's Association whereby truckmen are not allowed to cart work from the jobber to such contractors, unless the contractors are members of the American Association and workers are unionized with the International Union.

16. Many jobbers and manufacturers who are members of the Industrial Council of Cloak Suit and Skirt Manufacturers, Inc., and the Merchants' Ladies Garment Workers' Union, do not agree with the principles of the associations. Such members are afraid to voice their disapproval of any agreements or tactics used by the associations, by reason of the fact that the code authority and the union will place their business in jeopardy and as a result be forced out of business, either by withholding labels or by penalizing such member raising an objection, by imposing a heavy penalty. If these jobbers were interviewed personally, they would, no doubt, give their objections to any Government agent of the tactics used by the associations. The same applied to contractors of the American Association. The power and the fear of these associations with the union over the jobbers and contractors compel them to keep quiet making this industry be in the control of a few individuals.

The following is an interview with a member of the industry who is quite well informed on the *modus operandi* of this code authority:

"The cloak and suit industry, prior to the adoption of the code under the National Recovery Administration, in the city of New York, operated on a 60-percent basis nonunion, and the other 40 percent was union, where manufacturers who worked on coats and suits from $10.75 down wholesale, were involved. The manufacturers of merchandise from $10.75 up, were 90 percent unionized and 10 percent nonunion.

"The reason for the great number of nonunion operators in the lower-end merchandise, was due to the fact that inexpensive coats and suits could be made away from the city of New York, in little cities up-State or in Connecticut, in New Jersey, in Blatimore, in Pennsylvania, and in adjoining States. The union could not unionize any plants in those cities, without resistance on the part of local authorities, who wanted all the additional industries they could get in their cities.

"The nonunion manufacturers of this low-prices merchandise did not belong to any association, and worked independently. There was in existence at that time two coat and suit associations, of which manufacturers were members; one was the industrial council, that was supposed to have for its members, only those merchants who cut and made and manufacturered all of their products on the premises. This association was headed by Mr. Klein. The other association, known as the 'Merchants Garments Association', had for its membership, supposedly all manufacturers who gave out to be made through contractors and subcontractors, all their products.

"At the time the representatives of these associations, and the union associations met in Washington, and while this code was being worked on, they made statements to the press, in the industry, such as the Women's Wear, that all merchants not belonging to any association, would have to be licensed directly by the Government, and as a result, a new association was hurriedly formed, known as the 'Affiliated', and its representative was sent to Washington as part of the making of the code. This representative was not recognized, because the other two associations and the union did not want to recognize them, and as a result, the members of this association, and the entire association was sold to the industrial council, at a certain figure per member, by the people who had started that hurried association. The members in bulk, through this sale and certain applications eventually given them to sign, unknowingly had obligated themselves to a union contract which expires in 1935, and which was renewed in 1933 at the time that this code was being made. All subsequent manufacturers, who joined into the industrial or merchants garments, and who had not as yet been a member of either of the three associations, likewise signed applications agreeing to live up to the bylaws, and although the bylaws and rules were not explained to them.

"The unfortunate part about the entire coat situation, is the fact that the union contract expired in June 1933, at the same time that the President of the United States declared that all industries would have to go under a code of their own. And because of the same, and to avoid delay in getting started for the fall season, representatives of the two associations and their executives, although all manufacturers who made better merchandise adopted the code as dictated by the union and its officials, which was very harmful to the inexpensive manufacturer; for example, the out-of-town factories, who made nonunion merchandise, employed lots of young girls and old people, and they worked 45, 50 hours per week and possibly more, at a wage, possibly of $8 or $10. These same people, under the present code, had to make minimum, $22 a week; as a result, these poor old, helpless and unfortunates, having no ways of getting money, were

replaced by competent help, and the young girls who helped support families, likewise had to be replaced. Of course, it was the President's intent to do away with these long hours and poor-wage system, but the sole object was a 35-hour week and a $14 minimum. Had the cloak and suit industry had that in the first place, we wouldn't have had the trouble we have today. As it is, the code was written according to union requests and is little below their standard.

"On the code authority, we have Mr. Dubinsky, who is the head of the International, a subordinate of the American Federation of Labor, in this city for the needle industry. We have Mr. Uviller, the head of the American Association, which has as its members all the union contractors, most of whom were non-unionized originally, but who were unionized through forceful methods. Mr. Uviller and Mr. Dubinsky always worked hand in hand, because it was to Dubinsky's interest to have more union members, and it was to Uviller's interest, so that he could get more contractors to pay the dues to his association, to have the union work with him. It is said that Mr. Uviller made everywheres from $25,000 to $50,000 out of the association. All kinds of destructive methods were used to force people into membership, as are used today where union is concerned, throughout the country.

"Besides these two men, there is a Mr. Wolf, who is secretary of the code authority, who has complete charge of the office, since he is the only one of the code authority that is actually engaged in administering the code on the premises, who was previously the accountant for Mr. Dubinsky and the union. He was employed, and his people were employed in the following method: When a manufacturer was found guilty of having manufactured merchandise in out-of-town factories, or local factories that were nonunion, and he being a member of the association, and having an agreement with the union, had committed a wrong by doing so, his books were then ordered examined. Mr. Alger, the impartial chairmand and Mr. Wolf and his men were the ones who did the examining, so that if a manufacturer made 40,000 coats or suits in nonunion shops out of the 100,000 had had made a season, the difference that he saved in labor on those 40,000 coats and suits, he was assessed for, and that money was to be paid to the unions and the associations. In other words, Mr. Wolf and his association were strictly for the union.

Mr. Alger, the impartial chairman, who was Moreland commissioner, under the Moreland Act, for the State of New York, automatically assumes that whatever Mr. Wolf tells him, and having great confidence in Mr. Wolf, is correct, and while the evidence is presented in a great many code cases, where the firm which is involved shows that they are entitled to some consideration, Mr. Alger is governed by whatever Mr. Wolf says.

"Besides these three men mentioned on the code authority, there is Mr. Alger, the chairman, and having at all times been the impartial chairman before the code, and favored labor situation and the unions, likewise favors the unions and its associates today. There are two other members on the code. One is Mr. Coplef, now no longer the head of the Merchants Garments Association, but entirely away from the industry, and the other one, Mr. Klein, the head of the Industrial Council. Both of these men have their hands full in handling the balance of the code executives. In other words, the entire code is being run, and was written by the union.

"It wasn't the intent of the Government to unionize anybody that didn't want to be unionized, nor to have union officials force contractors or manufacturers into the union, by using the code or its power, in this particular industry, as in the other needle industries. A label was used as a method of assuring a minimum wage and maximum hours only. Unfortunately the label has not only been used for that, but has been used to unionize manufacturers and contractors. A great many people who worked code hours and paid minimum wages under the code, were requested by various members of the code authority, who worked under Mr. Wolf, to join a union and unionize so it would be much easier to get the labels.

"It is quite evident that if the Washington authorities will issue a statement that they will see to it that all these people who work under the code and who are being forced or were forced to join the union or were molested because they are not in the union will make statements to that effect, hundreds of such statements will appear upon the scene. The average merchant and contractor has the one fear that if he makes an affidavit or says something, he won't get the labels and he can't work. Assure the manufacturer and contractor that he will get labels, provided he works under the code, and see how quick the cry of help will come. As it is, Mr. Wolf sits, just as a dictator would, with the sole power in his hands to do as he sees fit.

"Now, a great many fines were collected assumably for back pay, by the code authority and individuals to whom the money was to have been sent, could not have received the money, as a great many of the contractors didn't have the addresses of the employees, and they merely submitted names and hours. What has become of all that money?

"Why should the salaries be paid that they are paying up at the code authority, which are almost three times what they got when they worked for the union? Why should they be permitted? Labels weren't sold as an internal-revenue tax, they were sold for the maintenance of the code and the keeping of the code regulations. For example, if the code authority has budgeted itself on $300,000 a year and they sold labels and took fines for $600,000, the other $300,000 should go back to the manufacturer or to the United States Government to help maintain the general code.

"Besides collecting for the labels from every manufacturer, they are assessing manufacturers $100 or more for investigation, where they think there is an irregularity. The extra assessment for the maintaining of the codes, as specified in that recent ruling by President Roosevelt, I think it was several months ago, was to the effect, that these assessments would have to be made where the code was not self-sustaining, where there were no specific things sold, like labels. But where there are labels sold bringing in so great an income, why all these extra charges, what is happening to all this money?

"The amount of assessment is for back pay, arrived at in the following manner: The contractor or the manufacturer issue weekly reports with the names of their employees, plus the number of hours they worked that week. A great many of the contractors don't know what bookkeeping is all about, and in filling out those sheets, do it in the best way that they can, so that, if for example, a finisher was supposed to make $22 a week minimum on a 35 hour week, he fills in the boxes daily 7 hours a day for the 5 days, and at the end puts down $18 pay, it would mean that this person was underpaid, and there is a back pay of $4. A great many of them fill in any old thing and send it back, and they are taxed for back pay, if the person didn't work the 35 hours. When the manufacturer or contractor tries to show that they didn't work the 35 hours, they say, your sheets were evidence that they did, and that is sufficient evidence. A lot of the contractors never had the addresses of employees. They just come and go, they are not stationary, they shift. The entire cloak and suit industry is 5 months a year. In a great many cases the money never went to the individual people.

"In a great many cases, where the manufacturer refused to pay the assessment Mr. Wolf arranged that an arbitrary figure be made, and said, well make a settlement for that amount. Why should that be done? If the manufacturer or contractor owes back pay and he owes it definitely, then he should pay all or nothing. The manufacturer pays the part settlement, as suggested, because he has got to do it, to get the labels, if not, he goes to Washington and spends the week there with a big delegation, and possibly comes back with nothing, because it happens that what the code authority and the union says, seems to prevail.

"If an individual census were taken by the Federal authorities, as to what is wrong with this code, and as to what is being done, you will find that half the industry is unsatisfied with the method of procedure of the code authority.

"The code of 35 hours and $14 minimum, if it were so, would have been better for the industry than the code of 35 hours and minimum wage of $22. The thought of the code, as originally planned, as in other industries, is marvelous. Unfortunately, this code has been misused for the benefits of the union.

"Prior to the code, all sorts of methods were used to unionize people in our industry, and now the label is the method, and that was never the intent of the National Recovery Administration. It would be only the fair thing to do to make the man in charge of the code office, where the labels are issued, an impartial one, placed there by the Government, and the salary to be paid to him by the code authority, and monthly statements issued to the trade, as to receipts and disbursements, so that any one in the trade has a right to complain when these things are too high. As it appears, this entire label thing is a racket, pure and simple.

"Manufacturers at the present time may be held up anywhere from a week to 4 weeks for any excuse the code authority wants to find, and they find plenty when they want to find it, right or wrong. Coats and suits cannot be shipped without labels, because the Retail Code has embodied in it that ready wear has to have a label when they buy it. The result is that the manufacturer who is working under the regulations and rules of the code, but who may be nonunion, cannot ship his merchandise until he gets the labels, and they make it so difficult that he either becomes unionized, or has somebody somewheres get him the labels."

INTERVIEW WITH A FORMER INSPECTOR OF THE COAT AND SUIT CODE AUTHORITY

All investigators employed by the National Coat and Suit Code Authority are informed that the board governing the Coat and Suit Code Authority, consists of two members each of the following associations: Industrial Council; Merchants Association; the American Association; the Coat, Suit, and Skirt Union; and that Mr. George W. Alger is director and Mr. Nathan Wolfe is secretary.

On the reports of the investigators, they must indicate whether or not the concern in question is affiliated with one of the above associations. (Mr. Klingsberger, the accountant in charge of the investigators, tells the men that during the course of investigating nonaffiliated concerns, to inform the owners in some subterfuge manner that it would be to the concerns' advantage to become affiliated, such as receiving immediate attention from the code authority on label requests and of their association on any violation made.)

Copies of these reports are then turned over to the respective association.

When violations are indicated on reports of affiliated members, such as giving work to nondesignated contractors, this information is immediately turned over to the association and charges are brought against this firm by the respective associations and not by the code authority.

When reports of violations are turned in for nonaffiliated members, such as giving work to nondesignated contractors, they immediately stop issuing National Recovery Administration labels to this concern.

To better understand the above, it is best to analyze the working agreement between the associations. When a manufacturer or a jobber is a member of the Industrial or Merchants Association, this member is required to give work to American Association contractors only. Should work be given to any other contractor this concern is immediately fined by the association and the code authority immediately stops issuing National Recovery Administration labels to this concern, despite the fact that this contractor may have lived up 100 percent to the regulations as to hours and earnings of the Coat and Suit Authority.

The thought behind this, as expressed in conversation with the code authority officials, was to keep newcomers out of the industry and to center all work in New York City. When nonmembers of the American Association were designated by nonaffiliated members, the code authority delayed the issuing of labels to this contractor, thus making it impossible for the contractor to manufacture the garments with labels, and thus discouraging the jobber from giving him any more work. This contractor was told in many cases that it would be to his advantage to join the American Association and would be given jobbers where he could obtain steady work.

This resulted in the closing down of many nonaffiliated contracting shops because they did not have the required amount of cash which as from $660 to $1,160, and could not get any work from the jobber because of his inability to get National Recovery Administration labels, regardless of the fact that he lived up 100 percent to the National Recovery Administration regulations.

It is beyond a question of doubt that the National Coat and Suit Code Authority works exclusively for the benefit of the above associations and not for the industry as a whole.

The specific cases of favoritism and aboslute disregard of the national coat and suit law and the body officials of the Coat and Suit Code Authority follows:

1. An investigation of the books and records was made of the firm of Lehr & Kress, of Elizabethport, N. J., and it was found that they worked their employees anywhere from 40 to 60 hours a week and the average pay was $12 to $14 per week, where the pay should have been $28.35 per week for a 35-hour week.

This firm of Lehr & Kress was working for a canceled jobber and successfully concealed their jobber and his records. Mr. Kress of this firm was brought into the office of the Coat and Suit Code Authority and was told by Mr. Sol Kingsberger, chief accountant and direct assistant to Mr. Nathan Wolfe, secretary of the Coat and Suit Code Authority, that if he would disclose the jobber for whom he was working that the officials of the code authority would overlook the fact that he was paying way below code minimum and violating hours of employees. Mr. Kress then disclosed the jobber, the Perfect Kiddy Coat Co. This information was then turned over to the Merchants Ladies Garment Association, and the Perfect Kiddy Coat Co., as a member of the association was fined $700 for giving work to an undesignated contractor.

The firm of Lehr & Kress were permitted to join the American Association and was not required to make any back payments for underpaid salaries, nor

were they fined for violating hours. This you will note was done for the advantage of the association and not for the benefit of the employees who actually suffered in this deal.

2. The firm of H. & J. Block, an independent house and nonaffiliated, distributed their work to about 30 contractors in New Jersey, New York, and Connecticut. These contractors in New Jersey, New York, and Connecticut were found to have been violating hours and earnings and wages received and the employees of these contractors were at least 50 percent below code minimum. This firm of H. & J. Block is permitted to sell their coats without NRA labels for their fall and spring season, a total amount of garments at approximately $500,000. They were finally brought up on charges and Mr. Wolfe, secretary of the Coat and Suit Code Authority, compromised with this concern on a promise that they would join the United Infants Wear Association, and the contractor would join the American Association for the sum of $9,000 and $500 cost of investigation.

The writer has investigated these contractors and practically all of the shops and is willing to testify and prove beyond a doubt that back pay due from H. & J. Block would exceed $50,000. You will note in this case that the firm of H. & J. Block only paid for the cost of the garments shipped without labels and not any back pay which was to go to employees.

3. On May 3 Mr. Alger, code director of the coat and suit code authority, made a statement in Washington at the rehearing of the coat and suit code law that all records are confidential. It is a known fact that every record of investigation made by the accountants is immediately turned over to the various association and union. Mr. Alger further stated that all they are interested in is whether or not the concern lives up to the National Recovery Administration code provisions and they do not care whether a concern is union or nonunion.

The question arises, then, Why are the investigators of the Coat and Suit Code Authority specifically sent out to jobbers to see whether or not they sent their work to a designated contractor instead of investigating hours and earnings and violations?

Attached to this report are copies of affidavits showing the methods used by inspectors for the code authority. Also affidavits from workers who have endeavored to collect back wages due them from funds collected by the code authority from former employers. Also exhibit marked "X-1" with letters attached are self-explanatory.

EXHIBIT X-1

APRIL 10, 1934.

To whom it may concern:

I, the undersigned, Morris Barnett, do hereby declare to make the following statements:

I operate a plant of 14 machines at 251 First Street, Hoboken, N. J.

I have engaged two operators named Anna Sciametta and another female operator named Kalamaridi.

The International Ladies' Garment Workers' Union Local 148, located at 746 Bergenline Avenue, Union City, N. J., through their business agent, Mr. Charles Cirrincione, had come to my plant and fixed the amount of salaries these two employees were to receive from me while working in my plant as such operators. Said business agent, knowing that said employees were unskilled told me that I shall pay $22.50 for 35 hours' work per week. Said Charles Cirrincione also informed me that he is sending me letters to the effect that the said two operators are to receive the sum of $22.50 per week, which I received by mail, and copies of such letters are attached hereto. Prior to fixing the prices of such employees, said Charles Cirrincione also told me that if the code authority investigators shall examine my records and find an underpayment of wages as fixed in the Coat and Suit Code, that he, as a business agent of the International Ladies' Garment Workers' Union, will see to it that the National Code Authority will not file any complaints against me for such underpayment, and that the International Ladies' Garment Workers' Union will protect me in every respect against such violations.

He also assured me that he could arrange with the National Code Authority not to have any charges preferred against me for underpayment. Relying upon these statements and assurance of Mr. Cirrincione, I engaged these two employees.

I received a letter from the National Code Authority claiming that I owe back pay to these employees. I appeared before them and they demanded that I

pay the back pay. I informed them that I received such letters from the union, but they have disregarded them entirely.

I am not a member of the American Cloak & Suit Manufacturers' Association. One of the primary purposes of the National Code Authority is to have everyone in this industry join the American Association. I not being a member of such association, but having union employees, this union has set this trap to catch me, of which I am an innocent victim.

I am not a very well educated man and believing and trusting in other people that they are honest like I am myself, and relying upon statements of a business agent of a union, and a member of the code authority and receiving the assurance from such business agent that no complaint would ever be filed against me, I feel it improper on the part of the code authority to make such demands for back pay when the prices I received for making garments in my plant were prices based upon such salaries as the union had fixed in my plant.

I, therefore, respectfully submit that my complaint be heard so as to receive the proper adjudication in this matter.

Respectfully,

BARNETT CLOAK CO.,
By MORRIS BARNETT.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 148,

Union City, N. J., March 21, 1934.

BARNETT CLOAK CO.,
Hoboken, N. J.

GENTLEMEN: Anna Sciametta, an operator in your shop, because of inefficiency which is due to natural reasons, is hereby permitted to work for $22.50 per week.

Yours truly,

CHARLES CIRRINCIONE,
Business Agent.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, LOCAL 148,

Union City, N. J., March 21, 1934.

BARNETT CLOAK CO.,
Hoboken, N. J.

GENTLEMEN: Kalamaridi, an operator in your shop, because of inefficiency which is due to natural reasons, is hereby permitted to work for $22.50 per week.

Yours truly,

CHARLES CIRRINCIONE,
Business Agent.

STATE OF NEW YORK,
County of Orange, ss.

Anna Kaplan, being duly sworn, says:

I reside at 122 Front Street, in the city of Port Jervis, Orange County, N. Y.

My age is 29 years, and for the past 14 months, I have been employed as a machine operator at the Shifrin & Barcan factory, located at 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties, I was interviewed by a man, who I afterward learned was connected with the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked, "What are you making." I said, "$28.35", and he replied, "Don't hand me that gag." He asked how much per lining I got, and I said I was not working on piecework. He said, "What are you trying to do, put your boss out of business. The boss told me you were working at piecework, and you tell me you are working at timework." He said, "Don't tell me any different from what your boss says. You were working until now, this week, at piecework and now you are on timework." I answered, "Yes", because I was afraid to say different. He asked me how many linings I could make a day, and I said I didn't know. The boss keeps track of all the work I do. He said, "Do you trust him that much", and I said, "Sure." He asked how much I was getting for making linings, 6 cents, and I answered, "Yes", as I did not know what else to say. He asked me how much I made last week and I said $18. That amount just happened to come to my mind. I then went hom[illegible] and he called me back,

and he asked the same questions over again, and I told him that I was lying to him because he forced and coerced me in making me say these things. He then asked why I was lying to him.

Deponent further says that my work is that of timework and not piecework and my compensation being 81 cents per hour for 35 hours per week for a total of $28.35.

ANNA KAPLAN.

Sworn to before me this 8th day of August 1934.

W. H. STOKES,
Notary Public, Orange County, N. Y.

STATE OF NEW YORK,
County of Orange, ss:

Sadie Viscerta, being duly sworn, says:

I reside at no. 8 First Street in the city of Port Jervis, Orange County, N. Y.

My age is 30 years, and for the past 3 weeks my occupation has been that of a machine operator.

I am employed at the Shiffin & Barkin Coat Factory, 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory (Shiffin & Barkin), I was interviewed by a man who was affiliated with the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked my name, and how long I had worked, to which I replied, "Only 3 weeks." He inquired how much I got the first week, and I replied, "Four days, receiving twenty-one-dollars-and-some-odd cents." He then remarked that I ought to get more. I then told him that I next received for 3 days' work $17.01. He then asked, "Are you working on timework?" and I answered, "Yes." He further asked whether I was working on piecework now, and I said, "No; but some years ago I worked on a piecework basis in another factory."

My wage is on the basis of 81 cents per hour.

SADIE VISCERTA.

Sworn to before me this 8th day of August 1934.

W. H. STOKES,
Notary Public, Orange County, N. Y.

STATE OF NEW YORK,
County of Orange, ss:

Lopriare Vincenza, being duly sworn, says:

I reside on no. 29 Thompson Street, in the City of Port Jervis, Orange County, N. Y.

My age is 19 years and for the past 9 months I have been employed as a machine operator at the Shiffin & Barkin factory located at 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory, I was interviewed by a man who was employed by the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked me whether I was working on piece or time work, and I replied, "Time work". He then remarked, "Do you want to make the boss a liar?" I then became so excited that I did not answer the question. He then said that the boss told him that she was working on a piecework basis. He then asked me, "How much do you get", and I replied, "$28.35 per week, being paid on a basis of 81 cents per hour."

He kept on speaking of piecework endeavoring to make me say that I was working on piecework.

I have been in this country only 4 years. I had gone home and he sent for me and got me to sign a statement which purported to say that I was working on a piecework basis. I am of Italian birth, and I do not understand English handwriting and that together with being excited, I was induced to sign such statement.

LOPRIARE VINCENZA.

Sworn to before me this 8th day of August 1931.

W. H. STOKES,
Notary Public, Orange County, N. Y.

STATE OF NEW YORK,
County of Orange, ss.

Pauline Scieri, being duly sworn says:

I reside at no. 67 Frankin Street in the city of Port Jervis, Orange County, N. Y.

My age is 42 years and for the past 14 months I have been employed as a machine operator at the Shiffin & Barkin factory located at 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory, I was interviewed by a man who I afterward learned was employed by the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked whether I worked time or piece work. I answered him timework. He then asked me how much I worked for and I told him $28.35 per work. He endeavored to get me to say that I worked at piecework, but I said, "No; timework basis." He forced me to say I worked at piecework and I was so excited that I answered, "Yes." He asked me how much I received doing piecework, and I said, "$29 per week." Later in the day he came over to my house and wanted to know from me how much everybody got in the factory. I did not tell him the truth when I told him I was doing piecework that, as I before stated, was working for $28.35 for a 35-hour week.

PAULINE SCIERI.

Sworn to before me this 8th day of August 1934.

W. H. STOKE,
Notary Public, Orange County, N. Y.

STATE OF NEW YORK,
County of Orange, ss:

Lillian Barbarino, being duly sworn, says:

I reside at no. 4 Brown Street in the city of Port Jervis, Orange County, N. Y.

My age is 36 years, and for the past 5 weeks I have been employed as a machine operator at the Shiffin & Barkin factory located at 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory, I was interviewed by a man who was employed by the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked me whether I was working timework or piecework. I said "Timework." He then said that everybody told him that they were working at piecework and you say that you are working at timework. I again said to him that I was working at timework. He repeated the same question again, evidently for the purpose of inducing me to say I was working at piecework. I became so worked up and nervous and in order to get rid of him said I worked piecework. He then asked how much I was getting and I replied I was going to receive $28.35 for timework on my next pay on a basis of $0.81 per hour for a 35-hour week.

LILLIAN BARBARINO.

Sworn to before me this 8th day of August 1934.

W. H. STOKES, *Notary Public.*

ORANGE COUNTY, N. Y.

STATE OF NEW YORK,
County of Orange, ss:

Laura Shirley, being duly sworn, says:

I reside on the Glove Road, R. F. D. 1, Montague, N. J.

My age 38 years and for the past 8 months I have been employed as a machine operator at the Shiffin & Barkin factory located at 20 Church Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory I was interviewed by a man who I afterwards learned was connected with the National Recovery Administration.

The gist of the conversation with this man was as follows:

He asked me whether I was working at timework or piecework, and I said timework. He then said that it was funny that I was working at timework when everybody else was working at piecework. He seemed persistent to get me to say piecework, and so in order to get rid of him I said piecework. He asked

whether I had any record of my work and I replied I don't keep any. He further asked how much I was paid per week, and I said $28.35 on a basis of $0.81 per hour for a 35-hour week.

Sworn to before me this 8th day of August 1934.

W. H. STOKES, *Notary Public.*

ORANGE COUNTY, N. Y.

STATE OF NEW YORK,
County of New York, city of New York, ss:

Joseph Walko, being duly sworn, deposes and says:

That he resides at 782A Birdline Avenue, West New York, N. J.

Your deponent alleges that he is 43 years of age, an American citizen, and has been working in the cloak and suit industry since he was 11 years of age.

That your deponent was so employed by H. & J. Block Co. at Hammonton, N. J., about the first week in January 1934 until 1 week after Easter, at which time he, with all the other employees, were let out.

Your deponent further alleges that one Mr. Frank Dunn, the manager of said H. & J. Block Co., stated that the code authority was going to examine the books and therefore wanted to clear the place out.

That during the time of said employment deponent worked for the sum of $50 per week. At the time he was let out, there were 147 hours overtime at the rate of $1.43 per hour, or the sum of $210.21 coming to him.

Deponent further alleges that he was instructed that the National Recovery Administration sent a telegram stating that they were always permitted to work overtime, and that is why he was obliged to work. This branch in which deponent worked was known as the Interstate Coat Co., 30 Front Street, Hammonton, N. J.

Your deponent further alleges that about 5 weeks after this shop was closed he went to see H. & J. Block Co., and they told him that they had paid all the money due the employees to the code authority, and that he should go there to get this back pay.

Your deponent further alleges that about 5 or 6 weeks after seeing Mr. Block, he went to the code authority and saw Mr. Nathan Wolf. Mr. Wolf stated that in a few weeks he would straighten the matter out. Two weeks later, deponent again saw Mr. Wolf, who again put him off. Then deponent went to see him as late as a week ago, or about July 24, and was just told by Mr. Wolf that he would let deponent know when he could get his pay.

Deponent further alleges and says that in an interview with Mr. Karp, union delegate at union headquarters, New Jersey, Mr. Karp stated to deponent that the latter would be a better man than he is if he could collect the money from the code authority.

JOSEPH WALKO.

Sworn to before me this 1st day of August 1934.

JOSEPH J. LERNER, *Notary Public.*

New York County clerk's no. 297 registration no. 51440; Kings County clerk's no. 68 registration no. 5302. Commission expires March 30, 1935.

Joe Walko, pressers overtime

January:	*Hours*	February:	*Hours*
19	8	1	2½
20	7½	2	1
22	1	5	1
23	1	6	2
24	1½	7	1½
25	1	8	1
26	1	9	1
29	2½	10	6
30	1	12	2
31	2	13	1
		14	2
Total	26½	15	1
		16	1

Joe Walko, pressers overtime—Continued

February—Continued.	*Hours*
17	8
19	1½
20	2
21	1
22	1
23	2
24	7
26	1
27	2
28	2
Total	50½
March:	
1	2
2	2
3	7
5	0
6	1½
7	2
8	2

March—Continued.	*Hours*
9	1
10	8
12	2
13	2
14	1
15	2
16	2
17	8
19	1
20	0
21	2
22	4
26	2
27	2
28	3
29	4
30	2
31	5½
Total	78

Hours for month of January	26½
Hours for month of February	50½
Hours for month of March	78
Total hours for 3 months	155
Hours allowed	8
Total number of hours for Mr. Walko	147

147 hours at $1.43 an hour is $210.21.

STATE OF NEW YORK,
County of Orange, ss:

Fannie E. Bishop, being duly sworn, says:

I reside at No. 5 Hornbeck Avenue, in the city of Port Jervis, Orange County, N. Y.

My age is 55 years and for the past 6 years I have been employed as a finisher at the Hinden Coat Co., 136–142 Pike Street, Port Jervis, N. Y.

On July 27, 1934, while performing my duties at the coat factory, I was interviewed by the two men, who I afterward learned were connected with the N. R. A.

The gist of the conversation with this man is as follows:

A man unknown to me came over to the table where I was working without saying who he was. He asked my name and whether I had punched a card. I told him that I punched a card every day I worked. He asked me how much I received per hour and I replied 57 cents per hour. He then left me and went to the machines at the upper end of the room and came back in about 15 minutes. He then stated that you said 50 cents per hour didn't you? Not thinking what he said, I replied, "Yes", but after I thought what I had said to him, I corrected myself and said 57 cents per hour. He was given to understand that I was working on a basis of 57 cents per hour for a 35-hour week or $19.95 per week for a full-time week.

FANNIE E. BISHOP.

Sworn to before me this 8th day of August 1934.

W. H. STOKES,
Notary Public, Orange County, N. Y.

STATE OF NEW YORK,
County of New York, City of New York, ss:

Joseph Walko, Jr., being duly sworn, deposes and says:

That he resides at 782 A Bergenline Avenue, West New York, N. J.

Your deponent alleges that he is 17 years of age, an American citizen, and has been working in the cloak and suit industry 1½ years.

That your deponent was so employed by the H. & J. Block Co., at Hammonton, N. J., for about 8 weeks prior to their closing, about 1 week after Easter; that during this time they paid him the sum of $14 per week, or 41 cents per hour.

Deponent further alleges that he was working as a machine presser and that the amount paid to him should have been at the rate of $1.18 per hour.

Deponent further alleges that he was made to work overtime nearly every day, but was paid for same at the rate of $14 per week.

JOE WALKO, Jr.

Sworn to before me this 1st day of August 1934.

JOSEPH J. LERNER, *Notary Public.*

New York County Clerk's No. 297, Register No. 51440; Kings County Clerk's No. 68, Register No. 5302. Commission expires March 30, 1935.

STATE OF NEW YORK,
County of New York, City of New York, ss:

Jacob Tartikoff, being duly sworn, deposes and says:

That he resides at 784 Bergenline Avenue, West New York, N. J.

Your deponent alleges that he is 55 years of age, an American citizen, and has been working in the cloak and suit industry 10 years.

Deponent further alleges that he was employed by the H. & J. Block Co. at Hammonton, N. J., in a plant known as the Interstate Coat Co., 30 Front Street, Hammonton, N. J., and worked there about 6 weeks, beginning the end of January.

Deponent further alleges that for these 6 weeks he received the sum of $25 per week as an operator, and was entitled to $35 per week.

Deponent further alleges and says that to date he has received no money from either the H. & J. Block Co., or the Cloak and Suit Code Authority.

JACOB TARTIKOFF.

Sworn to before me this 1st day of August 1934.

JOSEPH J. LERNER, *Notary Public.*

New York County Clerk's No. 297, reg. no. 51440; Kings County Clerk's no. 68, register no. 5302. Commission expires March 30, 1935.

NATIONAL RECOVERY ADMINISTRATION

Reported from New York City.
Date, October 25, 1934.
Covering period August 15 to October 15, 1934.
Region, New Jersey, New York, and Connecticut.
Special agent, John C. Howard.
Approved by —— ——.

Complaint against: Code Authority Coat and Suit Industry.

Complaint by: Manufacturers, jobbers, contractors, and employers.

Subject and brief: Discrimination, coercion, oppression, violating Sherman Act.

Report: Covers above except settlement of wage violations and payments to employees.

Recommendation:

Reports.—Region file no. —, cast status, refer, continued, special agent Howard, pending July 20, 1934; district court file no. —, closed, special agent Smith, August 15, 1934.

Confidential; not for public inspection.

Copies to Robert E. Straus (2), Mrs. Anna M. Rosenberg (1), New York file (1).

In the manufacture of cloaks and suits, work is done on the premises or outside in contractors' shops. Generally speaking, there are four kinds or classes of employers.

The inside manufacturer conducts his own shop or factory and cuts and produces the garment on his own premises.

The jobber has his goods cut and made up for him in outside shops, to whom he furnishes the material. Jobbers sometimes purchase the garments from manufacturers to sell to retailers.

The submanufacturer cuts and sews garments for the jobber from the material furnished by the jobber.

The contractor sometimes spoken of as "bundle contractor" works for manufacturers on garments delivered to him in cut form, which he finishes.

In the metropolitan area, there is one employers' association made up principally of manufacturers, the Industrial Council of Coat and Suit Manufacturers; one jobbers' association, the Merchants Ladies' Garment Association and one contractors' association, the American Cloak and Suit Manufacturers' Association. These three associations submitted the code of fair competition which was approved for the industry August 4, 1933. Each of these associations elects 2 members on the code authority, and these 6 members, with 2 members elected by the International Ladies' Garment Workers' Union, make 8 members out of the 9 members authorized for this code; the other member is elected from the western area.

In the new code, which was approved August 20, 1934, these three associations have the same representation on the code authority; that is to say, 2 members from each association, or 6 in all. The representation of the International Ladies' Garment Workers' Union is increased by 1, giving the union 3 representatives. This gives a combined representation of 9 out of a total membership of 14; the other representatives are 2 from the Western Area Coat & Suit, Inc., 1 from New Jersey—the Administrator or a Deputy Administrator of the Council State Recovery Administration of New Jersey, 1 from Infants' and Children's Coat Association, and 1 from eastern area outside of the metropolitan district of New York.

There are a number of complainants in this case, manufacturers, jobbers, and contractors, employees, and some anonymous, from parties not willing to disclose their identity in fear of reprisals from the code authority and the union.

The defendants are the following-named associations: The Industrial Council of Coat and Suit Manufacturers, the Merchants' Ladies Garment Association, Inc., the American Cloak and Suit Manufacturers' Association, the International Ladies' Garment Union, and the Joint Board of Cloak, Skirt, and Reefer Makers' Union of the International Ladies' Garment Workers' Union, which is the New York City metropolitan area branch of the Industrial Ladies' Garment Workers' Union, and the code authority.

The complaint is that the above-named associations, the union, and the code authority is a monopoly in the restraint of trade in violation of the Sherman Act and of the National Industrial Recovery Act, and is using this monopolistic power (1) to discriminate against small enterprises and nonunion manufacturers, jobbers, and contractors; (2) to coerce said employers to join one of these associations by withholding labels, delay in furnishing labels, threats of strikes, and by strikes; (3) that employees are being forced to join the union to obtain work; (4) that in some cases, the code authority has compromised labor-violation cases by allowing employers to pay less than the labor violations assessed against them on condition that the manufacturer or jobber join the Industrial Council of Merchants' Association and the contractor join the American Association, and that all nonunion help be unionized.

That the code authority does not represent the industry as a whole, but the dominant associations in the industry. That members of these associations receive preferential treatment in the adjustment of labor violations because of the majority representation of these associations in the code authority, and because many complaints against association members are turned over to the associations and the union for adjustment.

The charges, if true, constitute not only a violation of the National Industrial Recovery Act but of the Sherman Antitrust Law Act as well.

The National Industrial Recovery Act (sec. 4) authorizes the President to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will be consistent with the requirements of clause 2 of subsection (a) of section 3 for a code of fair competition.

Clause 2 of subsection (a) of section 3 reads as follows: "That such code or codes are not designed to permit monopolies or to eliminate or to oppress small enterprises and will not operate to discriminate against them."

The Sherman antitrust law declared illegal every contract combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, and provides that every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding 1 year, or by both said punishments, in the discretion of the court.

This act also authorizes the several district attorneys of the United States, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations, and gives to any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be unlawful by this act, the right to sue in a circuit court of the United States and recover threefold the damage by him sustained, and the cost of suit, including a reasonable attorney's fee.

After the adoption of the code of fair competition approved August 4, 1933, five contracts were entered into between these associations and the union (exhibits A, B, C, D, and E).

October 18, 1933: Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., and American Cloak & Suit Manufacturers Association, Inc.

September 20, 1933: Merchants Ladies Garment Association, Inc., with American Cloak & Suit Manufacturers Association, Inc.

August 19, 1933: Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., International Ladies Garment Workers' Union and the Joint Board of Cloak, Skirt, and Reefers Makers Union of the International Ladies Garment Workers' Union.

August 26, 1933: Merchants Ladies Garment Association, Inc., with International Ladies Garment Workers Union, and the Joint Board of Cloak, Skirt, and Reefers Makers Union and the International Ladies Garment Workers' Union.

September 19, 1933: American Cloak & Suit Manufacturers Association, Inc., with the National Ladies Garment Workers' Union and Joint Board of the Coat, Skirt, and Reefers Makers' Union of the International Ladies Garment Workers' Union.

The code is made a part of the contracts of the Industrial Council and the Merchants' Association with the American Association.

"The code of fair competition for the coat and suit industry, as approved by the National Recovry Administration on August 4, 1933, a true copy of which is herewith annexed and marked 'Exhibit A', is hereby made a part of this agreement, with the same force and effect as though each of the provisions therein contained were here set out at length."

It would seem that it was the intention of the association which proposed the codes to make these agreements a part of the codes.

In the code approved August 4, 1933, article 12:

"Wherever in this industry, agreements between employers and employees arrived at by collective bargaining shall exist or shall come into existence hereafter, all the provisions of such agreements with reference to labor standards not prohibited by law and not inconsistent with National Industrial Recovery Act until it shall be administered as though a part of this code."

In code approved August 20, 1934, article 5, section 11:

"Wherever in this industry agreements between employers and employees arrived at by collective bargaining shall exist, all the provisions of such agreements with reference to labor standards not prohibited by law and not consistent with the National Industrial Recovery Act shall, subject to the approval of the President, be administered as though a part of this code, provided, however, that in no event shall the observance of any such provision have the effect of reducing the obligations hereunder of any member of the industry. Any and all extensions, modifications of said agreements and/or future agreements between employers and employees arrived at by collective bargaining after March 20, 1934, of 7B of the National Industrial Recovery Act shall be administered as though a part of this code."

It would seem that the purpose of making or attempting to make these agreements a part of the code, is to take away from a manufacturer or jobber the right to select his own contractors and for a contractor to select his manufacturer or jobber, and to bring about a complete unionization of the industry.

The code provides article 9:

"Accordingly, all firms engaged in the coat and suit industry who cause their garments thus to be made by contractors or submanufacturers as aforesaid shall designate the contractors actually required, shall confine and distribute their work equitably to and among them, and shall adhere to the payment of rates for such production in an amount sufficient to enable the contractor or submanufacturer to pay the employees the wages and earnings provided for in this code together with an allowance for the contractors' overhead."

The contracts provide that members of the Industrial Council or the Merchants' Association will in designating submanufacturers and contractors, confine

such designations to the members of the American Association exclusively. A member must designate the contractors or submanufacturers actually required to manufacture his garments and duplicate lists of such designations containing the names and addresses shall be delivered promptly to the American Association. The number actually required shall be determined by taking into account:

(1) The volume of such member's production for the year 1932-33; (2) the character of such member's work; (3) the capacity of contractors or submanufacturers to produce; and (4) the increase in volume of member's business.

Each member also agrees that he will confine his production to the contractors or submanufacturers designated by him and will distribute his work equitably to and among said contractors or submanufacturers with due regard to the ability of the contractor or submanufacturer and his workers to produce and perform.

A contractor or submanufacturer shall work exclusively for the member designated him unless otherwise approved by the associations and union or by the impartial chairman. All of these contracts prohibit a member of the Industrial Council, the Merchants' Association or the American Association from employing nonunion workers. The union agrees to send once a week to the Industrial Council and the Merchants' Association a list of all union shops that are operating under contract with the union has declared a strike until such strike in each case has been fully settled.

The union exercises a veto control over the admission of new members to any of these three associations. Before admitting a new member the associations shall inform the union in writing of the application for membership. If a strike or dispute shall be pending between the applicant and the union at the time, the union shall give to the association within 10 days a written statement containing full particulars of the matters in dispute, and the associations will not admit such applicant until such dispute has been adjusted.

Further, to bring about a unionization of employees and a control of the industry, the union in its contract with the American Association agrees as follows:

"The parties hereto recognize the necessity of organizing or stabilizing the entire industry in the metropolitan district as well as eliminating the sweat shop. In order to bring about such organization the union will make every effort to organize all employees and shops in the industry and the American Association will cooperate with it in such efforts. The American Association will make every effort to organize the submanufacturers and contractors and the union, realizing the greater responsibility of the organized submanufacturer and contractor, agrees not to settle or enter into any agreement with any submanufacturer or contractor unless such submanufacturer or contractor is a member of the American Association.

Contract of the American Association with the union provides that where it shall be established that there has been underpayment made by a member of the American Association to the workers, the amount of such underpayment shall be paid by said member of the American Association to the union for distribution to workers as underpaid. If such underpayment shall have been deliberate or the result of any collusive arrangement, the member of the American Association, shall in addition to the foregoing be subject to the penalties provided by and under the National Industrial Recovery Act.

In its dealings with independent employers not members of these associations, the union agrees to insert a clause in such agreements to the effect that such employers submit to the supervision of the impartial chairman herein provided for and the code authority for the coat and suit industry, and that all such independent employers shall be required by the union to contribute to the maintenance of the collective machinery in the industry and to deposit cash security for the performance of the agreement on their part. The amount of such contribution or cash security of such deposits shall be based on a schedule which shall take into account the size of employers' shops and the volume of their business.

All damages and penalties collected for violations of the agreement against nonunion production shall be paid into the fund maintained in the industry for making investigations under the terms of the agreement between the American Association and the union. All other damages and penalties shall be paid over to the union.

All of these contracts provide for the selection of an impartial chairman. The impartial chairman is authorized to settle all disputes between the union and three of the associations, and disputes between the respective associations.

All trucking is done by union truckmen and the impartial chairman is the arbitrator to settle all controversies between the association and the union trucking companies.

For a time there was some question as to whether manufacturers of infants' and children's coats and suits should come under this code. When this question was finally settled, the United Infants' Wear Association entered into contracts with the American Association and the union similar to the contracts of the Industrial Council and the Merchants' Association with the American Association and the union.

A preliminary report was made in this case by Special Agent Addison W. Smith, August 15, covering investigation July 25 to August 15. Some of the data contained in the report will be briefly referred to.

New Jersey has a code of fair competition. Prior to the passage of the law authorizing this code, New Jersey contractors had difficulty getting labels from the code authority. While it cannot be definitely stated that the code authority discriminated against New Jersey contractors as such, it does seem that business in New Jersey suffered because of the large number of nonunion contractorships there, as compared to New York.

The report of the fact-finding commission published in Women's Wear, July 27, 1934, shows a 20-percent increase of business in the United States since the National Recovery Administration. The business in New York City increased 19.45 percent while the business in New Jersey decreased 12.58 percent.

A number of witnesses at a hearing in New Jersey presided over by Harry Tepper for State recovery board at which George W. Alger, Wolf Klingsburg, alias Lieberman, council for union, Sam Klein, Harry Uvillier, and Morris Greenberg, Deputy Administrator, and Thomas W. Holland, National Emergency Director. A number of contractors testified relative to their contacts with the New York code authority. A summary of the testimony taken at this hearing follows:

Canarozzi, Amele, Hoboken, N. J.: Refused labels and designation. Reason: Workers not members of international union, and contractor not a member of American Association.

Barnet, Morris, Hoboken, N. J.: Employees are unionized with international union, but contractor not a member of American Association. Business agent of international union told him to engage unskilled employees, and also gave special permission in writing to pay employees below scale, assuring him that union having representation on the code authority will not consider such payment below scale a violation. Subsequently brought up on charges for violating code for underpayment of wage scale to such employees. Contractor felt he was trapped by the union in order to force him to join American Association.

Cappizzi, Patsy, Hoboken, N. J.: Refused designation and labels. Reason: Not a member of American Association and workers not unionized with international union.

College Cloak Manufacturing Co., New Brunswick, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association and shop not unionized.

DeLucia, A., & Son, Bergenfield, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association and workers not unionized with international union.

Efrus & Rives, Newark, N. J.: Forced to join American Association and unionize workers with international union in order to secure designation and labels. American Association now penalized this firm in the sum of $500 because New Jersey association interceded to adjust a strike in his plant through the State labor board. American Association informs him that he will not be able to secure any work unless such fine is paid.

Fanlip Coat Manufacturing Co., Inc., Passaic, N. J.: National code authority refused designation and labels. Reason: Not a member of American Association, and workers not unionized with international union.

Fashion Garment, Inc., Newark, N. J.: This concern is a wholesaler and was forced to join American Association by the union and the national code authority in order to secure labels. This firm being a manufacturer and not a contractor had no reason to join a contractors' association.

Fit-Rite Cloak Co., Newark, N. J.: Was forced to join American Association by the union and national code authority. This concern is a wholesaler and not a contractor, and had no reason to join a contractors' association.

Garfield Coat & Suit Co., Garfield, N. J.: This concern was forced to join American Association and unionize its workers with international union in order

to secure designation. The New York branch of the international union directed the wholesaler, who was furnishing this contractor with work designated through the code authority, not to furnish this contractor with any more work because he was engaging employees in New Jersey and not employees from New York. Workers refused to join the New York local. Jobbers having a great deal of trouble with union previously, who forced to comply with such order of union and would not send work to contractor. Complaints taken up before the national code authority and matter was never acted upon. This contractor was out of work for a long time and designation was refused him, and also for a great many wholesalers who wanted to furnish this contractor with work. This contractor's records were audited by national code authority on many occasions and no violations were ever found against them.

Leopardi, John, Hackensack, N. J.: Forced to join American Association and have help unionized in order to secure designation and labels.

Maidrite Coat Co., Hackensack, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association and help not unionized. Industrial Council forced a jobber who had been sending him work to suspend giving him any work. Reason: Because nonmember of American Association.

New Jersey Cloak Co., Vineland, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association and workers not unionized with international union. International union tried to put this contractor in a trap to engage 8 girls at $20 per week, a sum below code scale, in order to secure evidence against him for violation of the code.

Paramount Tailoring Co., Passaic, N. J.: National Code Authority refused designation and labels, telling him that he must join American Association and unionize his help with international union. American Association refused to make him a member saying he is blackballed on account of his activities with the New Jersey association. The contractor's records were audited several times. No violations ever found against him.

Pescatore D. & Son., Hoboken, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association, and workers not unionized with international union. This contractor lost a wholesaler with whom he had worked previously on account of being unable to secure labels.

Raritan Garment Co., South River, N. J.: National Code Authority refused designation and labels. Reason: Not a member of American Association and help not unionized with international union. This is one of the largest plants in the State. The code authority realized that there is not one wholesaler that can supply him with sufficient work. Rules of code authority are that contractor can be designated for one jobber or wholesaler only. If this contractor should be designated, he cannot secure sufficient work to work a full week by being designated with one jobber.

S. & B. Cloak Co., Garfield, N. J.: Forced to join American Association and unionize shop in order to become designated and receive labels. The National Code Authority is clearing house for all associations which make up the code authority. Any violations found by the investigators of the code authority are reported to the various associations, who go around and give contractors and wholesalers threats in order to comply with their demands.

Supreme Coat Co., Passaic, N. J.: Was forced to join American Association and have help unionized. After becoming designated with the jobber, code authority permitted such jobber to open up "inside shop", thereby wiping him out completely from receiving anyw ork. At present all the work he receives is "bootleg work" without attached national labels.

A number of witnesses gave verbal testimony to Mr. Anthony Shimko, but did not appear at this hearing. Mr. Shimko said that most of these contractors were forced to join the American Association and were afraid to testify.

The following parties gave verbal testimony to Mr. Shimko but did not appear at the hearing:

Camden Coat Co., Camden, N. J.: This contractor was refused labels and designation, because he was not a member of American Association.

Cumberland Cloak Co., Millville, N. J.: Joined American Association unwillingly and workers were unionized with International Union in order to secure designation and labels.

Fitwell Coat Co., Newark, N. J.: Was forced to join American Association by the union and National Code Authority. This concern is a wholesaler and not a contractor, and had no reason to join a contractor's association.

Ginsberg, A., Newark, N. J.: This is a wholesale concern and was forced to join the American Association otherwise labels would have been refused to him. American Association also asked $300 more of this concern than from others before he became a member.

Hammonton Coat Co., Hammonton, N. J.: National Code Authority refused designation and labels because he was not a member of the American Association.

Interdonato, S.; Lodi, N. J.: Member of American Association and employees unionized. Designated with contractor, but not receiving equal amount of work as other contractors. Complained to union but received no relief. With very little work, cannot exist much longer in business. Workers do not earn a livelihood. Desires to secure another jobber but cannot because designation will be refused.

Jersey Cloak Co., Newark, N. J.: Was forced to join the American Association in order to secure designation and labels.

Kaplowitz, A., & Sons, Park Ridge, N. J.: National Code Authority refused designation and labels. Reason: Contractor not a member of the American Association and workers not unionized.

Katko, I.; Freehold, N. J.: Forced to join American Association and unionize help in order to secure designation and labels.

Kroll, H. & B.: National Code Authority refused labels and designation. Reason: Contractor not a member of American Association and help not members of the International Union.

Main Cloak Co., Freehold, N. J.: Forced to join American Association and unionize his help in order to secure designation and labels.

Miracle Girl Coat House, Inc., Passaic, N. J.: This concern is a wholesaler and was forced by the Industrial Council, of which he is a member, to suspend giving any work to Maidrite Coat Co., of Hackensack, N. J.

Perfect Coat & Suit Co., Camden, N. J.: This contractor unionized his help after code was adopted. On account of scale provided in code he complained he cannot pay workers that the union forced him to engage the scale provided by the code. Business agent told him to engage these employees at a price that said business agent fixed below the said scale. Said business agent also informed him that their organization being members of the Ceode Authority would absolve him of any violations. After operating for some time, an American Association representative came and told him to join American Association and no violations would be preferred by Code Authority. On this refusal, Code Authority brought charges against him with Recovery Board in Washington. His blue eagle withdrawn by National Compliance Board. Criminal charges are expected to be brought against this concern. He applied for designation and labels previous to this but same were refused. This is another of the clever traps fixed by the union in order to put in jeopardy those who are not members of the American Association.

Polchak, Fred, Freshold, N. J.: Was forced to join the American Association and unionize help in order to secure designation and labels. American Association demanded of him $500 more than other contractors to become a member of their association because he operates in New Jersey.

Prosperity Coat Shop, Passaic, N. J.: For 5 months this contractor was refused designation and labels by National Code Authority. Reason: Nonmember of American Association and workers not unionized with International Union.

Santora Coat Co., Lodi, N. J.: Was forced to join American Association and had unionized his help in order to secure designation and labels.

Scheib, S. & Sons, Dumont, N. J.: National Code Authority refused designation and labels. Reason: Nonmember of American Association and workers not unionized with International Union.

The following is a brief summary of some of the statements and affidavits in the New York file of this case:

Joseph Winkler states in his affidavit that he went to the office of the American Association to apply for membership, talked with Mr. Sussman and told him he was a New Jersey contractor and Mr. Sussman said at the present time they were not accepting any more members and advised him to stay out. Mr. Sussman further stated that new members and such would be required to pay in cash $1,160 before an application would be considered. Mr. Winkler lost his designation as contractor for Budd & Morganstern because of the refusal of the American Association to accept him as a member and two other contractors were designated in his place. In these circumstances, Winkler was forced to work for a nondesignated jobber to earn a livelihood and as he could not get labels from the code authority was forced to ship the coats without labels.

A. B. Fisher in his affidavit, states that he had a jobber who was willing to give him work if he became a member of the American Association. He applied for membership in the American Association and Mr. Sussman told him that if he became a member of American Association, he would have to accept the contractor that they should designate for him, and this in spite of the fact that he had a contractor at the time who was willing to give him work. In these circumstances, Mr. Fisher was not able to obtain labels from the code authority to work for the contractor who was ready to give him work.

The affidavit of Frank Lipshitz states that he worked for one jobber, Silverman, Fuche & Axelrod, for 7 years. When the code was adopted his jobber told him to join the American Association, and if he did not join the American Association he would be compelled to stop sending him work. He said he was willing to join the American Association but did not have $160. He offered to pay this sum in installments to the American Association. This offer was refused and he was told by the American Association it would be necessary to pay $160 and have his help unionized. He put the proposition of unionizing his help up to his workers and they refused to join the International Ladies Garment Workers' Union. He then went to the Coat and Suit Code Authority in New York and stated his case. He was told he would not receive work from any one unless he joined the American Association and had all his help unionized. They told him it made no difference how long he had worked for a jobber, unless he did as the code authority ordered, he would go out of business. He went to see his jobber who tried to arrange through the union officials for him to pay his initiation fee and year's dues to the American Association in installments. When this could not be done, his jobber told him that since he had joined the Industrial Council for the Coat, Suit, and Skirt Manufacturers, Inc., if he gave him work contrary to the code authority's orders, the Industrial Council would fine him $1,000 as a penalty and that he would be unable to secure labels from the code authority. As a result of all this, his plant was closed for a whole season, putting 50 employees out of work and later he was left without funds after paying his bills and rent and was forced to sell out and dismantle his plant.

The affidavit of Anthony Succi states that the United Clothing Co., of which he was a member, had been forced to shut down their plant which was sold at public auction, and that all workers were turned out of work by reason of the fact that the United Clothing Co. was unable to secure designation with other jobbers or wholesalers after losing jobbers for whom this company had worked for years. That he was not permitted to work for these jobbers after they joined the Merchants' Association and United Clothing Co. was not permitted to join the American Association.

Lasser Coat Co., Inc., infants', children's, juniors' coats, 270 West Thirty-eighth Street, New York City registered the Quality Girl Coat Co., 763 Main Street, Passaic, N. J., with the code authority and gave his contractor an order for labels. Labels were refused because the code authority explained The Quality Girl Coat Co. was not a regularly designated coat contractor. Two months prior to this, the Lasser Coat Co. made an attempt to give work to the Parisian Garment Co. of Bridgeport, Conn. At the time, they were informed that it would be necessary, in view of the fact that the Lasser Coat Co. was a member of the Merchants' Association, to have the Parisian Garment Co. join the American Association and have their help unionized. Mr. Uviller of the American Association told the Lasser Coat Co. and the Parisian Garment Co. that it would be necessary for the Parisian Garment Co. to put up $1,160 before the application of the Parisian Garment Co. for membership in the American Association, could be accepted. Mr. Lasser pointed out that other contractors only paid $160. Mr. Uviller answered that that was the ruling of the association and he could not deviate from it. Work was started with the Quality Girl Coat Co. without having this company join the American Association because it was impossible for the Quality Girl Coat Co. to raise $1,160 to join the American Association.

Paramount Tailoring Co. 75 Jefferson Street, Passaic, N. J. Edward Kramer, one of the owners of this company was also secretary of the N. J. Garment Manufacturers Association. This company employing from 50 to 75 employees, sought to become designated as contractor for Horowitz Bros., New York City. Horowitz Bros. advised Kramer that they had been forced to join the Industrial Council and being a member of this organization, it would be impossible to designate the Paramount Tailoring Co. as their contractor because their help was not unionized and this company was not a member of the American Association.

Kramer interviewed the code authority to find out if he could secure labels and talked with Mr. F. Nathan Wolf, secretary and Mr. Lapidus. Mr. Wolf advised Mr. Kramer that in order to become designated and receive labels he should join the American Association and have his workers unionized with the International Ladies' Garment Workers' Union. Mr. Kramer went back to his plant and his workers refused to become unionized. He went to the American Association both with Mr. Sussman and was advised that he was "black-balled" from becoming a member of the American Association because of his activities with the New Jersey Garment Manufacturers' Association. Paramount Tailoring Co. therefore shipped coats without labels in order not to have to close their plant.

Rochelle Coat Corporation, 244 West Thirty-ninth Street, New York City. This company, according to affidavit of Harry Gold, designated A D Cloak Co., 45 South Washington Avenue, Bergenfield, N. J., as their contractors.

A request was made for labels and the code authority said "we cannot pass upon your contractor until he is fully investigated." Three weeks passed without any word from the code authority although in the meantime, investigators had visited the plant of the A. D. Coat Co., and had found nothing wrong and so reported to the A. D. Coat Co.

The Rochelle Coat Corporation tried to get labels through Mr. Fries, Label Review Officer. Later, Mr. Gold telephoned Special Agent Smith that he had joined the American Association and that the code authority had given him labels and not to do anything more about the case.

Goldstein & Rubin, 528 Eighth Avenue; Louis Goldstein and Max Rubin. Mr. Goldstein when interviewed August 30, 1934, said he had been in business 17 years and had joined the American Association 3 weeks ago, that they employed 6 contractors, 4 are members of the American Association, and 2 are nonunion and nonassociation contractors.

The four union contractors were ordered to stop work by the American Association. These contractors telephoned Mr. Rubin and said they had no right to work for a jobber who is not a member of one of the employers' associations. They were therefore forced to take out a membership in the American Association or these four contractors could not work for them. Mr. Goldstein said that in another 2 months, all manufacturers would either have to join an association and do business with the union or go out of business.

Shapiro & Sons, 265 West Thirty-seventh Street, New York; Harry Shapiro. This firm was forced to join the Industrial Council. Shapiro & Block Co. obtained a large order from the J. C. Penny Co. for a polo coat at $3 which would cost other manufacturers $3.25. The code authority only made H. & J. Block Co. pay back $9,000 and $500 cost of investigation, whereas labor violations would amount to $100,000.

The H. & D. Garment Co. is reported in the trade, to have underpaid employees $17,000 and made a settlement with the code authority for $4,500.

Ess & Ay Coat Co., 130 East Seventh Street, was only assessed back pay on account of their contractors of approximately $7,000.

Pickwick Coat Co., 553 Eighth Avenue, New York City; Joe Katz, when interviewed August 30, 1934, said his company employs three contractors, John Murella, Brooklyn, Patano & Russo, Brooklyn; and Lloyd Apparel, Twenty-fifth Street, New York City. The help was taken away from these shops Tuesday. The union official told the contractors that the Pickwick Co. would have to join one of the associations and that the help could not go back to work until the Pickwick Co. joined one of the associations. This information was telephoned to Mr. Katz by the contractors. Mr. Katz was interviewed again September 25 and said everything had been fixed up all right and that the contractors were working. I said, "Did you join one of the associations?" He said, "No, that was not necessary"; that he had fixed it up with the union through some men who were friendly with the union; that he would rather pay them than join one of the associations and be unionized. The union scale for piecework is made on scale to yield on an average for male operators, $1.50 per hour or $52.50 for a week of 35 hours; whereas, the minimum in the code is $1 an hour or $35 a week.

Another jobber in the industry had a similar experience to that of Mr. Katz of the Pickwick Co., but his fixing went one step further. He first had trouble getting labels from the code authority and fixed this through a friend. Later a strike was called in one of his contractors' plants and he fixed this through a friend. He said if I wanted to know more, I could go to the contractor's place of business and see who was sitting outside. On leaving, he told me he had paid $1,500 in 2 months, that it was necessary to do this or go out of business, if he wished to work independent of the associations and the union. He feared reprisals

if his name became known and asked me not to divulge his name in making my report.

In connection with these last two interviews, an interview a few days later with H. Nelson of Julius Nelson, 247 West Thirty-eighth Street, New York City, is interesting.

Julius Nelson is a member of the Merchants' Association, always has worked as a union shop, and manufactures high-priced garments. Mr. Nelson objected to the difference in the scale between union and nonunion. He took this matter up with some union officials and asked them why they could not organize all the shops as union shops and this official said "We're doing the best we can." Mr. Nelson said that the union in former years employed a number of men in organization work and that the union felt indebted to these men some of whom had even gone to jail for the union. That with the adoption of the code and the control which the code authority had over the industry through the power to withhold the issuance of labels, these former employees were no longer necessary to the union, that they were out of a job and that the union would let them make money on the side and not molest nonunion shops which paid them for protection. He said that an industry doing $300,000,000 worth of business a year, could easily afford to pay $50,000 a year to keep these men from interfering with the work of unionization. He said this idea was not original with him, that he had heard that a prominent labor leader in another industry was taking care of former employees of his industry in this way.

Attached to this report and marked "Exhibit F2", is a statement in affidavit form of Benjamin Seldin of the Seldin Coat Co. This affidavit form covers many pages and a series of transactions starting as far back as January 1, 1932, at about which time, Mr. Seldin, a Baltimore manufacturer, opened a place of business at 250 West Thirty-ninth Street, New York City. This affidavit is interesting in that it sets out Mr. Seldin's contact with the union. He went through every kind of intimidation and violation including being burned by acid thrown in his face. He came to this office first because the code authority refused to give him labels. He was employing Baltimore cutters in New York and paying Baltimore scale. The code authority very promptly and properly found he would have to pay the New York scale in New York but in view of the fact that the union demanded, according to Seldin's affidavit, that he employ Baltimore cutters and forced him to employ two inexperienced Baltimore cutters that they picked for him and set the wages that he was to pay to them, one being paid a little above the Baltimore scale and the other a little below the Baltimore scale, he was between the devil and the deep blue sea. If he didn't obey the orders of the union, they would call a strike and with his former experience in mind, he could not refuse to obey the orders of the union; and yet when he obeys union orders, the code authority assesses a labor violation against him and takes away his labels. Mr. Seldin states that he would not mind paying New York rates if he could pick his own cutters but did not feel that he should pay New York rates to inexperienced workers picked by the union.

Attached to this report and marked "exhibits G, H, and I," respectively, are extracts from minutes of the meetings of the code authority August 30, 1934. Case no. 236, Lo Rane Coat Co., copy of decision of Deputy Director Arthur H. Rubin, September 4, 1934 and affidavit of Mary Weiss of October 10. Mr. Hirschkowitz on page 2 of extracts from the testimony, says: "I want to make myself clear that this is so unusual something or meeting and not having any experience I don't want the chairman to misunderstand me that nor am I a lawyer, I understand as my common sense teaches me that a man cannot be brought up twice on the same charges. In February, as Mr. Wolf reported here, the early part of 1934, we tried here, cross-examined, and this case was disposed of right then and there, if it's so, I don't know why it was brought up again."

Dr. Rubin: "The case in February was not dismissed. The cases are continued in a very curious way. That when you have violated the code, the violations that are proved at any time can be held open pending further violation and coupled with further violations charged in a complaint. That disposes of the question that you can be charged with the same complaint twice."

After Mary Weiss made her affidavit, I went to the office of Lo Rane Coat Co., 370 West Thirty-fifth Street, New York City, and got from Miss Weiss, canceled check of the Lo Rane Coat Co., no. 4378, dated April 27, 1934, on Sterling National Bank & Trust Co., deposited to reimbursement account of Coat and Suit Code Authority in Central Hanover Bank & Trust Co. I got a list of seven employees to whom this money should have been paid which is as follows: Mrs. Bartfield, Mildred Glassman, Mr. Kashenbaum, Mrs. Dashow, Mrs. Angelo, Mrs. Greenburg, A. Sax.

The address of none of these parties was on the books of the Lo Rane Coat Corporation nor the first names of any of these parties except Mildred Glassman. Only three of these parties are now working for the Lo Rane Corporation, Mrs. Greenberg, Mr. Kashenbaum, and A. Sax. Mr. Fried of this company said Kashenbaum's name is Benny, Mrs. Greenberg's name is Gussie. He is going to get the names of the other employees for me. None of these parties has received any back pay from the code authority for these labor violations. The period covered was February 5 to week ending February 24.

After the adoption of the code, David P. Seigel, a New York attorney, instituted a suit in the Supreme Court of the District of Columbia for the Garment Manufacturers Association, Inc., against the code authority. This association was made up of manufacturers making a cheaper grade of coats selling at prices of $10.75 and less. Another suit was filed by Mr. Siegel in the United States District Court for the District of Connecticut for Philip Scapelliati and others against the code authority and others. In the files of the latter case, there are a number of cases similar to the ones set forth in this report. As these files are available and the cases are of the same nature, it would only add to the length of this report to refer in detail to them. These cases were dismissed after conference of attorneys. There are two cases, however, which deserve special attention, one, a stipulation of Marks & Rubim, the Merchants' Ladies Garment Association and the other, an extract from an affidavit of Sol Harting of Industrial Garment Manufacturing Co., Inc. These follow:

"It is hereby stipulated and agreed that Marks & Rubin shall immediately rejoin the Merchants Ladies' Garment Association.

"That the Biltright Garment Manufacturing Co., Inc., of 105 Gregory Street, Bridgeport, Conn., agrees to immediately join the American Contractors Association, and that the American Contractors Association agrees to immediately accept the Biltright Garment Manufacturing Co., Inc., as a member of said organization in good standing pending payment to it of $660, the sum of $660 being initiation and membership dues and the sum of $500 being the usual security.

"That the Biltright Garment Manufacturing Co., Inc., agrees to cause the unionization of all of its employees and the International Ladies' Garments Workers agrees to accept such employees into the union and the Biltright Garment Manufacturing Co., Inc., agrees to insure the payment by the employees of the initiation fees and dues, one-half of which said initiation fee shall be paid on March 2 and one-half on March 9, 1934.

"That Marks & Rubin agree to pay the sum of $450, $300 of which is a fine heretofore due and owing by said Marks & Rubin to the Merchants Ladies' Garment Association and the sum of $150 for current dues.

"That Marks & Rubin agree to use only the designated contractors, G. Lacosia & Co. and the Biltright Garment Manufacturing Co., Inc., as contractors, and agrees to equally divide among them and confine to them all work to be manufactured or contracted by the said Marks & Rubin during the coming season, and to make no changes in the said agreement except provided by the terms of the various collecting agreements applicable to the industry.

"That prior to the adoption of the Code of Fair Competition for the Coat and Suit Industry in August 1933, the International Co. was engaged as a contractor for Marks & Rubin, a copartnership manufacturing garments from cut merchandise. That in and about the month of July 1933, one Getzen, who stated that he was a representative of the American Cloak & Suit Manufacturers Association, Inc., and one Gross who stated that he was a representative of International Ladies' Garments Workers' Union, Inc., visited the plant of the International Co. and had a conversation with your deponent. They stated to deponent that they had desired the plant of deponent to stop operations in cooperation with other contractors until certain adjustments had been made in the industry. Your deponent stated that he could not do so at once but would inform them of his decision on the day following. Thereupon, said Getzen gave to deponent his card and wrote on the reverse side thereof the name and telephone number of Mr. Harry Uviller, the general manager of the American Cloak & Suit Manufacturers Association, Inc.

The following day the deponent telephoned Mr. Uviller and informed him that the plant of the International Co. had complied with the request of his representative and had been shut down. Mr. Uviller replied that he was very well pleased at this action and thanked deponent for his cooperation. He further stated that representatives of the association were on the road near Bridgeport and would visit deponent's plant in the course of the next few hours. Within an hour,

Messrs. Getzen and Cross again appeared at my plant, and saw that the same was fully shut down. They suggested that deponent visit Mr. Uviller in New York and make application to join the American Association. The following day I came to New York, went to the office of the American Association, inquired for Mr. Uviller, and was referred to Mr. Sussman to whom I gave the details of my business. He had me fill out an application blank for membership in the American Association and stated that I would be called upon before the membership committee within the course of the next few days.

On September 4, 1934, after a conference with Robert K. Straus, Special Assistant to the Administrator, and Dean G. Edwards, Deputy Administrator, and Alexander Thompson, newly appointed administration member for this industry, I was instructed by Mr. Straus to work in cooperation with Mr. Alexander Thompson in obtaining information from the code authority. Accordingly, several visits were made to the office of the code authority and the case discussed generally, and Mr. F. Nathan Wolf, secretary to the code authority, promised to give full access to his files and furnish any information requested. After this, we took up the H. & J. Block case. One afternoon was spent in going over the files of this case and no definite information was received. It is common talk among manufacturers in the coat and suit industry that labor violations in this case are somewhere between $50 and $100, but because of low prices paid to workers by the H. & J. Block Co., they were able to beat their competitors' prices by 25 cents a coat. This case was settled for $9,000 and $500 of investigation cost. I was shown a letter written to Mr. Wolf to the H. & J. Block Co. asking the Block Co. to furnish a list of employees to whom this money should be paid, and the reply of the Block Co. that they had written to their contractors and received word that all of their contractors paid code wages and they were, therefore, unable to give this information. It appeared after this interview that no progress was being made and I, therefore, got in touch with Mr. Thompson, administration member, and went with him to the office of the code administration authority and Mr. Thompson requested Mr. Klingsberg to furnish a list of all labor violations in which money had been collected to be paid to employees, and in those cases in which a settlement had been made for less or more than the original demand, that the reason for the settlement be given. This information was requested September 14 and promised the early part of the following week. We first talked with Mr. Klingsberg, then to Mr. Wolf, and then to Mr. Alger. Several calls were made to the Coat and Suit Code Authority for this information and finally, the data was promised definitely by September 28. October 2, Mr. Thomspon went to the office of the code authority and talked to Mr. Klingsberg in the presence of Mr. Wolf. Mr. Klingsberg said that the matter was out of their hands, that it was on Mr. Alger's desk, and that he did not know when it would be ready. Mr. Straus talked with Mr. Alger about this report October 11. It will be ready by Wednesday, October 17. I will call for it that day. Mr. Straus has requested a report in this case by October 15. Accordingly, this report is being mailed October 15 and a supplementary report will be, covering the settlement of wage violations and the payment to employees, made.

CONCLUSION AND RECOMMENDATIONS

In a fair consideration of the evidence set forth in this report, it is necessary to consider some facts which are peculiar to this industry. For many years, sweatshop conditions prevailed, and it was found necessary to restrain in some way contracts entered into by manufacturers and jobbers on the one hand, and contractors on the other hand. Production is seasonal and in times of limited production, contractors are at a disadvantage in entering into contracts with jobbers and are forced to accept jobbers' terms to get any business at all. This condition is clearly set out in the following, which is an extract from a report of one of the Governor's committees appointed to investigate conditions in the coat and suit industry:

"With this in view, we recommend that the parties adopt a system of limitation of submanufacturers with whom a jobber may do business. At definite intervals, every jobber shall, in accordance with a standard to be agreed upon between the parties, select and designate the submanufacturers needed to handle his production, leaving him the necessary freedom in securing samples and in changing submanufacturers for cause shown. We shall not give work to other manufacturers when his designated manufacturers are not busy, and shall adhere to as practicable a policy or equitable distribution of work among submanufacturers designated by him."

It is also necessary to keep in mind that laborers have a greater freedom in entering into contracts in partial restraint of trade than employers. The reason for this right is concisely stated in Chief Justice Taft's book on the Anti-Trust Act and the Supreme Court. Chief Justice Taft says, "The proper reason for the legality of the combination of laborers to raise prices is to be found in the necessity for allowing them to deal on an equality with their employers. If they did not have this power they woud be at the mercy of employers who have this capital and resources and who are not compelled to live from day to day on their daily earnings" (p. 25).

Chief Justice Taft clearly differentiates between this right and the right to enter into contracts which restrain the rights of third persons not parties to the contract. Quoting again from this work: "The secondary boycott has such possibilities in the way of injuring the whole community in bringing into contest not of their own making so many indifferent and innocent persons, that ethics and law and public policy all require the recognition of the distinction which makes lawful the combination of working men against employers in their natural controversies over wages and terms of employment, but condemn the use of combination by either party to compel third persons against their will to go into the fight."

"The suggestion is made that working men ought to be allowed to use the secondary boycott, because if they do not, then they will resort to force. This seems to be a very poor argument, it assumes that militancy and the use of criminal means to further a cause should be recognized as an effective method of changing law."

The purpose of the Sherman Antitrust Act is to bring about democracy in business by restraining combinations of capital or labor from interfering with the rights of consumers and small business. The National Industrial Recovery Act seeks to make this effective by providing a machinery for the control of business through self-government. It is the anthithesis of force and coercion and all methods of coercion must give place to fair agreements. Congress recognized this when, in enacting the National Industrial Recovery Act, it permitted agreements and codes only on condition "that such code or codes are not designed to promote monopolies or to eliminate against them." And with the added provision that 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 organizations, or assisting a labor organization of his own choosing."

The code of fair competition in this industry adequately protects the right of workers and contractors. It provides that "accordingly all firms engaged in the coat and suit industry, who cause their garments thus to be made by contractors and submanufacturers as aforesaid, shall confine and distribute their work equitable to and among them, and shall adhere to the payment of rates for such production in an amount sufficient to enable the contractor submanufacturer to pay the employee the wages and earnings provided for in this code, together with an allowance for the contractor's overhead." This provision goes further than the recommendation of the Governor's commission heretofore set forth:

Contractors must be designated.

There must be an equitable distribution of work between them.

The pay of contractor must be sufficient to guarantee the wages and earnings provided in the code and an allowance for contractor's overhead. The code authority has ample power to enforce obedience to these provisions, and if this had been done it is safe to say that there would have been a marked improvement in conditions in the industry.

But another course was followed. The code authority is enforcing not the code, but a series of interlocking contracts entered into by the manufacturers, jobbers, and contractors associations and the union with the following results:

The code authority has denied to manufacturers and jobbers the right to choose their own contractors and the right of contractors to choose their jobbers and manufacturers.

The code authority has withheld the issuance of labels to coerce manufacturers, jobbers, and contractors to enter into contracts. Manufacturers, jobbers, and contractors in some instances have been put out of business.

Manufacturers, jobbers, and contractors not members of these associations and not employing union labor have been coerced by the code authority and the union into joining these associations, and employees likewise have been coerced into joining the union.

The extent of the domination and control of the union and the code authority can best be realized from the fact that many contractors have been forced to

employ ex-union employees, and now racketeers, to protect them from the union.

In view of the above, it appears that the code authority is not fairly representative of the industry. The members of the code authority have two interests: Dealing impartially with all members of the industry; promoting the interests of these associations and looking after the welfare of their members. This makes it impossible for the code authority to give the same fair consideration to complaints instituted against nonassociation and nonunion employers as is given to association and union employers. The method of electing the code authority should, therefore, be changed and some method devised which will be truly representative of the industry, and not of the dominant associations which control the industry.

The code authority, in enforcing the contracts between the associations and the union, set out in the exhibits in this case, instead of the code of fair competition, is a combination in restraint of trade, as prohibited by the Sherman Anti-trust Act. This is another reason for the election of another code authority to take the place of the present one. The National Recovery Administration should not be in a position of countenancing the violation of the Sherman Act, which is the very cornerstone of the National Recovery Administration set-up and without which we would have a government of industry by force imposed either by capital or labor; in other words, fascism or communism, such as prevails in many of the countries of Europe.

Respectfully submitted.

JOHN C. HOWARD.

EXHIBIT "A". CODE AUTHORITY, COAT AND SUIT INDUSTRY

AGREEMENT BETWEEN INDUSTRIAL COUNCIL OF CLOAK, SUIT & SKIRT MANUFACTURERS, INC., AND AMERICAN CLOAK AND SUIT MANUFACTURERS ASSOCIATION, INC.

Agreement made between the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., domestic corporation, for and on behalf of its members, hereinafter called "Industrial Council," and American Cloak & Suit Manufacturers' Association, Inc., a domestic corporation, for and on behalf of its members, hereinafter called "American Association." Witnesseth:

Whereas the Industrial Council represents the manufacturers and wholesalers in the city of New York and the American Association represents the organized submanufacturers and contractors who are the producers and employers of labor; and

Whereas the parties hereto realize that the stabilization of this industry depends to an appreciable extent upon a proper basis of cooperation between them; and

Whereas the parties hereto desire to cooperate in an effort to eliminate chaotic conditions that have existed in the industry for many years and to establish an equitable basis of fair dealing, to minimize disputes and provide for a speedy and efficient means of settlement and determination of such disputes; and

Whereas the parties hereto are signatories to the Code of Fair Competition for the Coat and Suit Industry as approved by the National Recovery Administration: Now, therefore, in consideration of the foregoing recitals and for other good and valuable consideration, it is agreed, as follows:

First. The Industrial Council and the American Association obligate themselves on behalf of its members to observe and perform in good faith all of the provisions of this agreement.

Second. The American Association agrees that its members will assume full responsibility to the workers employed in the shops of the members of the said American Association designated and selected by the members of the Industrial Council.

Third. The Code of Fair Competition for the Coat and Suit Industry as approved by the National Recovery Administration on August 4, 1933, a true copy of which is hereto annexed marked "Exhibit A" is hereby made a part of this agreement with the same force and effect as though each of the provisions therein contained were here set out at length.

If any of the provisions of this agreement conflict with, alter, or change any of the provisions of the code, it is understood that the provisions of the code shall prevail and that this agreement shall amplify but not change or modify the provisions of the code.

Fourth. The members of the American Association are recognized in this industry to be the efficient, responsible and standard shops, capable of assisting and stabilizing the industry and eliminating the so-called "sweat-shop" evil and

substandard shops. A copy of the agreement between the union and the said American Association is annexed to this agreement and made part hereof. Accordingly the parties hereto agree that the members of the Industrial Council will in the designation of submanufacturers and contractors as herein provided, confine such designations to the members of the American Association exclusively. The obligation of the members of the Industrial Council to thus confine its designations and work to members of the American Association is conditioned upon full performance and compliance of the obligations hereunder by the members of the American Association.

The foregoing obligations is assumed by the Industrial Council further upon the understanding that the American Association is an organization of contractors and submanufacturers and it shall not be binding upon the Industrial Council if the membership of the American Association shall contain wholesalers, jobbers, or manufacturers as defined in this agreement, selling their garments on their own account substantially in the same manner as members of the Industrial Council.

Fifth. Every member of the council who employs or deals with contractors or submanufacturers shall within 2 days following the execution of this agreement designate the contractors or submanufacturers actually required by such member to manufacture his garments. Duplicate list of such designations containing the names and addresses shall be delivered promptly to the American Association. The number of contractors or submanufacturers actually required by the member making such designations shall be determined by taking into account:

(1) The value of such member's production for the year 1932-33.
(2) The character of such member's work.
(3) The capacity of the contractor or submanufacturer to produce; and
(4) The increase in volume of member's business.

Sixth. (*a*) Every member of the Industrial Council who employs or deals with contractors or submanufacturers agrees to and will confine his production to the contractors or submanufacturers thus designated by him. He will distribute his work equitably to and among the said contractors or submanufacturers with due regard to the ability of the contractorsor submanufacturers with due regard to the ability of the contractor or submanufacturer and his workers to produce and perform:

(*b*) If th member making such designation shall at any time change the character of his product and the contractors or submanufacturers designated by him or any of them shall be incapable of meeting his changed requirements, the member may substitute and/or add such other contractors or submanufacturers in place of those incapable of meeting his changed requirements. Such substitution and/or addition shall not be made until after the decision of the impartial chairman on notice and hearing within 48 hours;

(*c*) A contractor or submanufacturer shall work exclusively for the member of the Industrial Council designating him unless otherwise approved by the associations acting together or by the impartial chairman;

(*d*) A contractor or submanufacturer thus designated shall not distribute or sell directly, or indirectly any merchandise included in the term "coat and suit industry" as defined in the code of fair competition for the said industry to any other manufacturer, merchant, jobber, wholesaler, retailer, or consumer.

Seventh. The Industrial Council agrees that its members will pay to the contractor or submanufacturer rates for production of garments in an amount sufficient to enable such contractor or submanufacturer to pay to the workers the wages and earnings provided for in the code for the coat and suit industry and the agreement between the American Association and the union, copy whereof is annexed hereto and marked "Exhibit B" together with a reasonable payment to the contractor or submanufacturer to cover his overhead. The minimum amount allowed the contractor or submanufacturer for his overhead for the full season of 1933, shall be not less than 33⅓ percent of the direct labor cost in the production of garments, except where such labor cost is $2.50 or less, the percentage shall be 30 percent instead of 33⅓ percent.

When the present fall season shall have been substantially completed, but not later than December 15, the parties hereto shall meet and endeavor to reach promptly an adjustment with regard to the overhead to be paid for the coming season, this overhead to be based upon data ascertained and accumulated by the parties during the present fall season.

Eighth. There shall be established as soon as possible a labor bureau under the supervision of the impartial chairman to ascertain and pronounce as speedily as can conveniently be done full and comprehensive classifications of standard types and grades of garments as a basis for piece rates as provided in the agreement

between the Industrial Council and the union. Such rates shall be based on the time consumed in the various labor operations involved in making such garments by the worker of average skill in the inside shops and in the outside shops. When thus ascertained and pronounced, such classifications shall apply to all employers as defined in the Code of Fair Competition for the Coat and Suit Industry.

Pending the ascertainment by the said bureau of the classifications of work and piece rates of the various crafts applicable thereto, the representatives of the Industrial Council, the American Association, and representatives of the Merchants Ladies' Garment Association, Inc., and the union shall determine such classifications and rates. If there is disagreement, it shall be submitted to the impartial chairman.

Ninth. (*a*) Whenever it shall be determined that there has been an underpayment made by a member of the Industrial Council to the contractor or submanufacturer, the amount of such underpayment shall be paid by such member through the Industrial Council to the American Association for the benefit of those entitled to receive it. If such underpayment shall have been deliberate or the result of any collusive arrangement, the member of the Industrial Council and/or the contractor or submanufacturer involved therein shall, in addition to the foregoing, be subject to the penalties provided by and under the National Industrial Recovery Act.

(*b*) Should a submanufacturer, or contractor working for a member of the Industrial Council default in the payment of wages to the workers for work done on garments for such member of the Industrial Council who paid to such contractor or submanufacturers the rates provided for in accordance with the terms of this agreement, the American Association will pay such wages immediately to the workers in the shops of such submanufacturers and/or contractors.

(*c*) The Industrial Council obligates itself to see to it that none of its members will deal with any submanufacturer or contractor who has defaulted in the payment of wages to their workers unless and until such submanufacturers and contractor shall have reimbursed the American Association and shall in addition have been reinstated as a member of said association, nor will the member of the Industrial Council deal with a person, firm, or corporation, the principal or agent of which has been previously or is then connected with the firm which had defaulted in the payment of such wages.

Tenth. The parties hereto further agree that the members of their respective associations shall adhere to the following rules and regulations:

(*a*) Members of the American Association shall not be charged by members of the Industrial Council for any items other than materials furnished and such charge shall be a memorandum for bookkeeping purposes only;

(*b*) Piece goods will have the original mill ticket attached thereto and the American Association member will be charged for net yardage;

(*c*) Members of the Industrial Council will pay all moneys due members of the American Association on Saturday if convenient, but not later than the Monday following before 12 o'clock noon of each week for goods delivered during that week.

(d) No claim of any kind or nature shall be made by a member of the Industrial Council after 5 days following the delivery of garments by such member of the American Association to the member of the industrial council.

(e) All claims whenever made must be in writing and filed against the member and a duplicate thereof sent to the association.

(f) All terms shall be net; no discount and no deductions shall be allowed or permitted for insurance, sponging or other charges, except for materials supplied and furnished.

Eleventh. All complaints, disputes or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this agreement, or any acts, conduct or relations between the parties or their respective members, directly or indirectly, shall be submitted in writing by the party hereto claiming to be aggrieved, to the other party hereto, and the managers of the associations, the parties hereto, or their deputies, shall in the first instance, jointly investigate any complaints, grievances or disputes and attempt an adjustment. Decisions reached by the managers or their deputies shall be binding on the parties hereto. Should they fail to agree, the question or dispute shall be referred to the "impartial chairman" in the industry and his decision shall be final and binding upon the parties hereto.

The parties hereto shall, within 5 days after the execution of this agreement, jointly agree upon and designate an impartial chairman to act during the term of this agreement and if they should fail to agree the Governor of the State of New

York shall, on application of either party, summarily appoint such impartial chairman.

Should the impartial chairman resign, refuse to act or be incapable of acting, or should the office become vacant for any reason, the parties shall immediately and within 5 days after the occurrence of such vacancy, designate another person to act as such impartial chairman. If they fail to agree the Governor of the State of New York shall, on application of either party, summarily make such appointment.

Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decisions shall be rendered. No decision shall be used as a precedent for any subsequent case.

A decision reached is hereby agreed between the parties hereto to have the effort of an award entered under the arbitration law of the State of New York and may be entered in the Supreme Court, New York County, as a judgment in accordance with such decision.

All decisions reached by the managers of the parties hereto, or their deputies, or rendered by the impartial chairman, shall be complied with within 48 hours.

Should any member of the association fail to comply with such decision within such time, he shall automatically lose all rights and privileges under this agreement and the association and either of them shall be free to take action to enforce the rights of the association hereunder against such member.

The procedure hereinabove outlined for the adjustment of the disputes between the associations shall also apply to all disputes between the Merchants' Ladies Garment Association and the Industrial Council and the American Association and the union, and between the associations themselves, and the impartial chairman shall serve in that capacity with respect to the determination of all such disputes. All disputes shall be heard on notice to all parties interested therein

Thirteenth. All members of the associations at the time of the execution of this agreement and the persons, firms, and corporations becoming members thereof subsequent to the date of the execution of this agreement shall be and continue to remain personally and individually liable hereunder for and during the term thereof irrespective of whether said member shall cease to be a member of the said association prior to the date set for the expiration of this agreement and such liability shall be deemed to have survived the termination of such membership and shall continue for and during the full term hereof.

Fourteenth. This agreement shall commence from August 21, 1933, and shall remain operative and binding upon the parties hereto until the 1st day of June 1935.

In witness hereof the parties hereto have caused these presents to be signed by their respective officers and the seal to be affixed the 18th day of October 1933.

INDUSTRIAL COUNCIL OF CLOAK, SUIT, AND SKIRT MANUFACTURERS, INC.,
By LEO A. DEL MONTE, *President.*
AMERICAN CLOAK AND SUIT MANUFACTURERS ASSOCIATION, INC.,
By JOSEPH SCHWARTZ.

EXHIBIT B. CODE AUTHORITY COAT AND SUIT INDUSTRY

AGREEMENT OF MERCHANTS LADIES' GARMENT ASSOCIATION, INC. WITH AMERICAN CLOAK AND SUIT MANUFACTURERS' ASSOCIATION, INC.

NEW YORK, *September 20, 1933.*

Agreement made between Merchants Ladies' Garment Association, Inc., a domestic corporation, for and on behalf of its members, hereinafter called "Merchants' Association," and American Cloak & Suit Manufacturers' Association, Inc., a domestic corporation, for and on behalf of its members, hereinafter called "American Association."

WITNESSETH

Whereas, the Merchants' Association represents the organized wholesalers in the City of New York and the American Association represents the organized submanufacturers and contractors who are the producers and employers of labor; and

Whereas the parties hereto realize that the stabilization of this industry depends to an appreciable extent upon a proper basis of cooperation between them; and

Whereas, the parties hereto desire to cooperate in an effort to eliminate chaotic conditions that have existed in the industry for many years and to establish an equitable basis of fair dealing, to minimize disputes and provide for a speedy and efficient means of settlement and determination of such disputes; and

Whereas the parties hereto are signatories to the Code of Fair Competition for the Coat and Suit Industry as approved by the National Recovery Administration.

Now, therefore, in consideration of the foregoing recitals and for other good and valuable consideration, it is agreed, as follows:

First. The Merchants' Association and the American Association obligate themselves on behalf of their members to observe and perform in good faith all of the provisions of this agreement.

Second. The American Association agrees that its members will assume full responsibility to the workers employed in the shops of the members of the said American Association designated and selected by the members of the Merchants' Association.

Third. The Code of Fair Competition for the Coat and Suit Industry as approved by the National Recovery Administration on August 7, 1933, a true copy of which is hereto annexed marked "Exhibit A" is hereby made a part of this agreement with the same force and effect as though each of the provisions therein contained were here set out at length.

If any of the provisions of this agreement conflict with, alter, or change any of the provisions of the code, it is understood that the provisions of the code shall prevail and that this agreement shall amplify but not change or modify the provisions of the code.

Fourth. The members of the American Association are recognized in this industry to be the efficient, responsible, and standard shops, capable of assisting and stabilizing the industry and eliminating the so-called "sweatshop" evil and substandard shops. A copy of the agreement between the Union and the said American Association is annexed to this agreement and made part thereof. Accordingly the parties hereto agree that the members of the Merchants' Association will in the designation of submanufacturers and contractors as herein provided, confine such designations to the members of the American Association exclusively. The obligation of the members of the Merchants' Association to thus confine its designations and work to members of the American Association is conditioned upon full performance and compliance of the obligations hereunder by the members of the American Association.

The foregoing obligations are assumed by the Merchants' Association further upon the understanding that the American Association is an organization of contractors and submanufacturers and it shall not be binding upon the Merchants' Association if the membership of the American Association shall contain wholesalers, jobbers, or manufacturers, as defined in this agreement, selling their garments on their own account substantially in the same manner as members of the Merchants' Association.

Fifth. Every member of the association who employs or deals with contractors or submanufacturers shall within 2 days following the execution of this agreement designate the contractors or submanufacturers actually required by such member to manufacture his garments. Duplicate list of such designations containing the names and addresses shall be delivered promptly to the American Association. The number of contractors or submanufacturers actually required by the member making such designations shall be determined by taking into account:

(1) The volume of such member's production for the year 1932–33; (2) The character of such member's work; (3) The capacity of the contractor or submanufacturer to produce; and (4) The increase in volume of member's business.

Sixth. (*a*) Every member of the association who employs or deals with contractors of submanufacturers agrees to and will confine his production to the contractors or submanufacturers thus designated by him. He will distribute his work equitably to and among the said contractors or submanufacturers with due regard to the ability of the contractor or submanufacturer and his workers to produce and perform.

(*b*) If the member making such designation shall at any time change the character of his product and the contractors of submanufacturers designated by him or any of them shall be incapable of meeting his changed requirements, the member may substitute and/or add such other contractors or submanufacturers

in place of those incapable of meeting his changed requirements. Such substitution and/or addition shall not be made until after the decision of the impartial chairman on notice and hearing with 48 hours.

(c) A contractor or submanufacturer shall work exclusively for the member of the association designating him unless otherwise approved by the association acting together or by the impartial chairman.

(d) A contractor or submanufacturer thus designated shall not distribute or sell directly or indirectly any merchandise included in the term "Coat and Suit Industry" as defined in the code of fair competition for the said industry to any other manufacturer, merchant, jobber, wholesaler, retailer, or consumer.

Seventh. The Merchants' Association agrees that its members will pay to the contractor or submanufacturer rates for production of garments in an amount sufficient to enable such contractor or submanufacturer to pay to the workers the wages and earnings provided for in the code for the coat and suit industry and the agreement between the American Association and the union, copy whereof is annexed hereto and marked "Exhibit B", together with a reasonable payment to the contractor or submanufacturer to cover his overhead. The minimum amount allowed the contractor or submanufacturer for his overhead for the fall season of 1933 shall be not less than 33⅓ percent of the direct labor cost in the production of garments, except where such labor cost is $2.50 or less, the percentage shall be 30 percent instead of 33⅓ percent. When the present fall season shall have been substantially completed, but not later than December 15, 1933, the parties shall meet and endeavor to reach promptly an adjustment with regard to overhead to be based for ensuing season, to be based upon data ascertained and accumulated by the parties during the present fall season.

Eighth. There shall be established as soon as possible a labor bureau under the supervision of the impartial chairman to ascertain and pronounce as speedily as can conveniently be done full and comprehensive classifications of standard types and grades of garments as a basis for piece rates as provided in the agreement between the Merchants' Association and the union. Such rates shall be based on the time consumed in the various labor operations involved in making such garments by the worker of average skill in the inside shops and in the outside shops. When thus ascertained and pronounced, such classifications shall apply to all employers as defined in the Code of Fair Competition for the Coat and Suit Industry.

Pending the ascertainment by the said Labor Bureau of the classification of work and piece rates of the various crafts applicable thereto, the representatives of the Merchants' Association, the American Association, representatives of the Industrial Council of Cloak, Suit & Skirt Manufacturers, Inc., and the union, shall determine such classifications and rates, if there is disagreement, it shall be submitted to the impartial chairman.

Ninth. (a) Whenever it shall be determined that there has been an underpayment made by a member of the Merchants' Association to the contractor or submanufacturer, the amount of such underpayment shall be paid by such member through the Merchants' Association to the American Association for the benefit of those entitled to receive it. If such underpayment shall have been deliberate or the result of any collusive arrangement, the member of the Merchants' Association and/or the contractor or submanufacturer involved therein shall, in addition to the foregoing, be subject to the penalties provided by and under the National Industrial Recovery Act.

(b) Should a submanufacturer or contractor working for a member of the Merchants' Association default in the payment of wages to the workers for work done on garmetns for such member of the Merchants' Association who paid to such contractor or submanufacturer the rates provided for in accordance with the terms of this agreement, the American Association will pay such wages immediately to the workers in the shops of such submanufacturers and contractors.

(c) The Merchants' Association obligates itself to see to it that none of its members will deal with any submanufacturer or contractor who has defaulted in the payment of wages to their workers unless and until such submanufacturer and contractor shall have reimbursed the American Association and shall in addition have been reinstated as a member of said Association, nor will the member of the Merchants' Association deal with a person, firm, or corporation, the principal or agent of which had been previously or is then connected with the firm which had defaulted in the payment of such wages.

Tenth. The parties hereto further agree that the members of their association shall adhere to the following rules and regulations:

(*a*) Members of the American Association shall not be charged by members of the Merchants' Association for any items other than for materials furnished and such charge shall be a memorandum for bookkeeping purposes only.

(*b*) Piece goods will have the original mill ticket attached thereto and the American Association member will be charged for net yardage.

(*c*) Members of the Merchants' Association will pay all moneys due members of the American Association on Saturday if convenient, but not later than the Monday following before 12 o'clock noon of each week for goods delivered during that week.

(*d*) No claim of any kind or nature shall be made by a member of the Merchants' Association after 5 days following the delivery of garments by such member of the American Association to the member of the Merchants' Association.

(*e*) All claims whenever made must be in writing and filed against the member and a duplicate thereof sent to the Association.

(*f*) All terms shall be net; no discount and no deductions shall be allowed or permitted for insurance, sponging or other charges, except for materials supplied and furnished.

Eleventh. All complaints, disputes, or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this agreement, or any act, conduct or relations between the parties or their respective members, directly, or indirectly shall be submitted in writing by the party hereto claiming to be aggrieved, to the other party hereto, and the managers of the associations, the parties hereto, or their deputies, shall in the first instance, jointly investigate such complaints, grievances, or disputes and attempt an adjustment. Decisions reached by the managers or their deputies shall be binding on the parties hereto. Should they fail to agree, the question or dispute shall be referred to the impartial chairman in the industry and his decision shall be final and binding upon the parties hereto.

The parties hereto shall, within 5 days after the execution of this agrement, jointly agree upon and designate an impartial chairman to act during the term of this agreement and if they should fail to agree the Governor of the State of New York shall, on application of either party, summarily appoint such impartial chairman.

Should the impartial chairman resign, refuse to act or be incapable of acting, or should the office become vacant for any reason, the parties shall immediately, and within 5 days after the occurrence of such vacancy, designate another person to act as such impartial chairman. If they fail to agree the Governor of the State of New York shall, on application of either party, summarily make such appointment.

Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decisions shall be rendered. No decision shall be used as a precedent for any subsequent case.

A decision reached is hereby agreed between the parties hereto to have the effect of an award entered under the arbitration law of the State of New York and may be entered in the Supreme Court, New York County as a judgment in accordance with such decision.

All decisions reached by the managers of the parties hereto, or their deputies, or rendered by the impartial chairman, shall be complied with within 48 hours. Should any member of the associations fail to comply with such decision within such time, he shall automatically lose all rights and privileges under this agreement and the associations and either of them shall be free to take action to enforce the rights of the associations hereunder against such member.

The procedure hereinabove outlined for the adjustment of the disputes between the associations shall also apply to all disputes between the Merchants' Association and the Industrial Council of Cloak, Suit and Skirt Manufacturers, Inc. and the American Association and the Union, and between the associations themselves and the impartial chairman shall serve in that capacity with respect to the determination of all such disputes. All disputes shall be heard on notice to all parties interested therein.

Twelfth. All rules, regulations and methods of procedure required to effectuate this agreement and each and every clause and provision thereof not specifically provided for herein shall be agreed upon by the parties hereto in conference within 21 days after the execution of this agreement and should such parties fail to agree with respect to any of such rules, regulations, and methods of procedure, the same shall be adjusted in the same manner as hereinabove provided for the settlement of grievances and disputes between the parties.

Thirteenth. All members of the association at the time of the execution of this agreement and the persons, firms and corporations becoming members thereof subsequent to the date of the execution of this agreement shall be and continue to remain personally and individually liable hereunder for and during the term thereof irrespective of whether said member shall cease to be a member of the said association prior to the date set for the expiration of this agreement and such liability shall be deemed to have survived the termination of such membership and shall continue for and during the full term hereof.

Fourteenth: This agreement shall commence from the date hereof and shall remain operative and binding upon the parties hereto until the 1st day of June 1935.

In witness whereof, the parties hereto have caused these presents to be signed by their respective officers and the seals to be affixed the day and year first above written.

MERCHANTS LADIES' GARMENT ASSOCIATION,
By I. J. RUBIN, *President.*
AMERICAN CLOAK AND SUIT MANUFACTURERS ASSOCIATION,
By JOSEPH SCHWARTZ, *President.*

STATE OF NEW YORK,
County of New York, ss:

On this ___ day of August 1933, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____, that he is the _____ of Merchants Ladies' Garment Association, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

STATE OF NEW YORK,
County of New York, ss:

On this ___ day of August 1933, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in _____, that he is the _____ of American Cloak and Suit Manufacturers' Association, Inc., the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

EXHIBIT C. CODE AUTHORITY, COAT AND SUIT INDUSTRY

AGREEMENT OF INDUSTRIAL COUNCIL OF CLOAK, SUIT, AND SKIRT MANUFACTURERS, INC., WITH INTERNATIONAL LADIES' GARMENT WORKERS' UNION AND THE JOINT BOARD OF CLOAK, SKIRT, AND REEFER MAKERS' UNION OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

NEW YORK, *August 19, 1933.*

This agreement, made and entered into this 19th day of August 1933, by and between the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc., hereinafter designated as "the council", and the International Ladies' Garment Workers' Union and the joint board of Cloak, Skirt, and Reefer Makers' Union of the International Ladies' Garment Workers Union, all collectively designated herein as "the union";

WITNESSETH

Whereas the council is an organization whose members are engaged in the coat and suit industry, as defined in the code of fair competition for said industry as approved by the President of the United States on August 4, 1933; one of the objects of the said council being to deal collectively with the union; and

Whereas the union represents a great majority of the workers employed in the work of making up garments for the members of the council; and

Whereas the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure to the workers a living wage and eliminate

such of the manufacturing establishments as operate under unfair conditions of labor and sanitation and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the different factors in the industry so as to secure uninterrupted operation and general stabilization of the industry;

Now, therefore, the parties hereto agree as follows:

First: The council obligates itself for its members that they will live up in good faith to all the provisions of this agreement, and the union obligates itself in good faith for all of its members that it will live up to the provisions of this agreement and that the workers will perform their work conscientiously, faithfully, and efficiently under the terms of this agreement; it being agreed and understood that the said council hereby contracts in behalf of itself and of all its members, and that the union contracts in behalf of itself and in behalf of all members now employed or hereafter to be employed by the members of the council directly or indirectly.

Second. For the purpose of this agreement the following words are defined as follows:

(*a*) A "union shop" is one that employs at least 14 machine operators and a corresponding number of employees in other branches of the work and employs none but members in good standing of the union to perform all the operations in connection with the production of garments and as in contractual relation with the union and observes the union standards of such contract.

(*b*) A "manufacturer" is one who produces garments on his own premises and from his own material.

(*c*) A "submanufacturer" is one who makes up garments from uncut material delivered to him by a manufacturer, merchant, jobber, or wholesaler.

(*d*) A "contractor" is one who makes up garments from goods delivered to him in cut form.

(*e*) An "inside shop" is one that is conducted by a manufacturer as herein defined.

(*f*) "Outside system of production" shall refer to the system of having garments produced in submanufacturing or contracting shops.

(*g*) The term "metropolitan district" refers to the city of New York and all such cities and towns in the States of New York, New Jersey, Connecticut, and Pennsylvania in which garments are being manufactured by or for members of the council or other manufacturers, merchants, jobbers, or wholesalers doing business in the city of New York.

Third: The council agrees that all of its members who produce all or part of their garments on their own premises will maintain union shops, and that all of its members who have their garments produced by submanufacturers or contractors or who purchase their garments from other manufacturers, merchants, jobbers, or wholesalers will deal only with such firms as conduct union shops.

The union shall have the right to have its representative visit the shops of the members of the council once in every season for the purpose of examining the union standing of the workers, which examination shall not involve the loss of work time. All such examinations shall be had on notice to the council which shall, in each instance, designate a representative to accompany the union representative on such examinations.

When permanently engaging a new workor, each member of the council shall send the name, address, and designation of craft of such worker to the council and the council shall immediately communicate such information to the union.

No member of the council shall make or cause to be made any work for any person against whom the union has declared a strike until such strike in each case has been fully settled.

Fourth. The council on its own motion will investigate any or all of the books and records of its members to ascertain whether they are giving work to or dealing with nonunion shops. Upon complaint filed by the union, the privilege will also be accorded a representative of the union to accompany a representative of the council to examine the books and records of the member against whom a complaint has been filed, for the purpose only of determining whether such member is giving work to nonunion shops. Such examination shall be undertaken within 48 hours from the receipt of the request, and shall be conducted under such conditions and limitations as the impartial chairman, hereinafter mentioned, upon the request of an interested party, may prescribe.

Upon the request of the union, the impartial chairman or his accountants shall also examine the books of any designated council member for the purpose of investigating the condition of the shop and for the purpose of ascertaining whether the provisions of this agreement are fully complied with.

A uniform set of books and records relating to pay rolls, labor cost, and outside production shall be adopted by all members of the council and by the entire industry. The form of such records and books shall be prescribed by the impartial chairman. Such records and books shall be open to the examination of the impartial chairman or his accountants at all reasonable times.

Fifth. For the purpose of carrying the provisions of the above clause into effect the union shall immediately submit to the council a list of all union shops who are operating under contracts with it and shall at least once in every week notify the council of all changes in and additions to the list.

No members of the council shall employ or continue employing a submanufacturer or contractor whose name is not included in the latest corrected list of "union shops" furnished by the union and shall not order or purchase goods or otherwise deal or continue dealing with a manufacturer, merchant, jobber, or wholesaler whose name is not included in such list.

Whenever it shall appear that a member of the council gives work to or deals with a nonunion shop, the council shall immediately direct him to withdraw his work from such nonunion shop or to discontinue dealing with it, whether such work be in processes of operation or otherwise, until the shop enters into contractual relations with the union.

Should a member of this council be found giving work or dealing with a nonunion shop or with a nondesignated shop, the council will proceed to impose a fine for the first offense under the authority contained in its bylaws and its agreement with its members. The amount of such fine shall be determined with reference to the sum involved and shall be sufficiently high to offset the advantage gained by the member through such transactions, together with an appropriate penalty. A second offense shall mean expulsion and in this connection the council shall adopt such other measures as in the judgment are necessary and expedient to prevent members from giving work to nonunion shops. The proceeds of fines collected shall be used towards defraying the expenses incurred by the impartial chairman hereinafter provided for.

Sixth. (*a*) Every member of the council who employs or deals with a contractor or submanufacturer shall, within 2 days after the execution of this agreement, designate the contractors or submanufactures actually required by him to manufacture his garments. Such designation shall be made from those contractors or submanufacturers who were in contractual relationship with the union on May 31, 1933, whose names appear on the latest corrected list of "union shops" furnished by the union or such others who may be approved of by the union and substantially from those contractors or submanufacturers heretofore employed by such members of the council.

(*b*) The number of contractors or submanufacturers actually required by the member making such designations shall be determined by taking into account the following.

1. The volume of such member's production for the year 1932-33;
2. The character of each member's work;
3. The capacity of the contractor or submanufacturer to produce;
4. The increase in volume of the member's business.

(*c*) Lists of such designations containing names and addresses shall be delivered promptly to the union, to the American Cloak and Suit Manufacturers Association and to the impartial chairman.

(*d*) Every member of the council who employes or deals with contractors or submanufacturers shall confine his production to the contractors or submanufacturers thus designated by him. He shall distribute his work equitably to and among the said contractors or submanufacturers with due regard to the ability of the contractor or submanufacturer and the workers to produce and perform.

(*e*) No member of the council operating an inside shop shall register contractors or submanufacturers unless he can fully supply his inside shop with work.

(*f*) No member of the council shall send out cut goods to contractors unless he operates an inside shop.

(*g*) If the member making such designation shall, at any time, change the character of his product and the contractors or submanufacturers designated by him or any of them shall be incapable of meeting his changed requirements, he shall have the right to substitute and/or add such other contractors or submanufacturers in place of those incapable of meeting his changed requirements. Such substitution and/or addition shall not be made until after the decision of the impartial chairman on notice and hearing within 48 hours.

(*h*) A contractor or submanufacturer shall work exclusively for the member of the council so designating him unless otherwise approved by the council, the

American cloak and Suit Manufacturers Association and the union, or the impartial chairman. A contractor or submanufacturer thus designated shall not distribute or sell directly or indirectly any merchandise included in the term "coat and suit industry", as defined in the code of fair competition for said industry, to any other manufacturer, merchant, jobber, wholesaler, retailer, or consumer.

(i) A member of the council whose garments are made by contractors or submanufacturers shall pay to such contractors or submanufacturers at least an amount sufficient to enable the contractor or submanufacturer to pay to the workers the wages and earnings provided for in this agreement and in the code and in addition a reasonable payment to the contractor or submanufacturer to cover his overhead.

(j) Where it shall be established that there has been an underpayment made by a member of the council to the contractor or submanufacturer or the workers, the amount of such underpayment shall be paid by such member of the council to the parties so underpaid. If such underpayment shall have been deliberate or the result of any collusive arrangement, the member of the council and/or the contractor or submanufacturer involved therein, shall, in addition to the foregoing, be subject to the penalties provided by and under the National Industrial Recovery Act.

(k) Each member of the council shall be responsible to the members of the union for the payment of their wages for work done by them on garments of such council member made by submanufacturers or contractors, provided that such liability shall be limited to wages for 7 full working days in every instance. Notice of such default shall be given to such council member within 1 week after such default.

Seventh. Wages shall be paid not later than Tuesday of each week for work done in the preceding week. Such wages shall be paid in cash.

Eight. A week's work shall consist of 35 hours in the first 5 days of the week; work shall begin at 8:30 a. m. and end at 4:30 p. m., with 1 hour interval for lunch. There shall be no more than one shift of workers in any day.

Ninth. No overtime work shall be permitted unless an extension of hours is granted by the Administrator of the National Industrial Recovery Act, under the provisions of paragraph "third" of the Code of Fair Competition for the Coat and Suit Industry. If such hours of work shall be extended, the Administrator shall determine the rate of compensation to be paid to the workers for such additional hours.

Tenth. All workers enumerated below shall work by the week and shall receive not less than the following minimum wage scale:

	Per week
Coat and suit cutters	$47
Samplemakers	40
Examiners	36
Drapers	29
Begraders on skirts	32
Bushelmen who also do pinning, marking, and general work on garments	36

The wages of workers of the above crafts now receiving in excess of the minimum scale herein set forth shall not be reduced.

The workers in the crafts enumerated below shall work on a piece-rate basis. They shall receive guaranteed minimum wages not less than the following:

	Per hour
Jacket, coat, reefer and dress operators, male	$1.00
Jacket, coat, reefer, and dress operators, female	.90
Skirt operators, male	.90
Skirt operators, female	.80
Piece tailors	.90
Reefer, jacket, and coat finishdrs	.85
Jacket, coat, and reefer finishers' helpers	.63
Jacket, coat, reefer, and dress upper pressers	1.00
Jacket, coat, reefer, and dress under pressers	.90
Skirt upper pressers	.90
Skirt under pressers	.85
Skirt basters	.60
Skirt finishers	.60
Machine pressers	1.30

In fixing piece-work rates on garments, the same shall be computed on a basis to yield to the worker of average skill of the various crafts for each hour of continuous work, the following amounts:

	Per hour
Jacket, coat, reefer, and dress operators	$1. 50
Skirt operators	1. 40
Piece tailors	1. 30
Reefer, jacket, and coat finishers	1. 25
Jacket, coat, and reefer finishers' helpers	1. 00
Jacket, coat, and reefer and dress upper pressers	1. 35
Jacket, coat, and reefer and dress under pressers	1. 25
Skirt upper pressers	1. 25
Skirt under pressers	1. 25
Skirt basters	. 80
Skirt finishers	. 70
Machine pressers	1. 80

With the consent of the workers and of the union, a member of the council may substitute the week-work system in place of the piece-rate basis, in which event the following shall be the minimum scale of weekly wages:

	Per week
Jacket, coat, reefer, and dress operators	$50. 00
Skirt operators	48. 00
Piece tailors	43. 00
Reefer, jacket, and coat finishers	41. 00
Jacket, coat, and reefer finishers' helpers	33. 00
Jacket, coat, reefer, and dress-upper pressers	45. 00
Jacket, coat, reefer, and dress-under pressers	41. 00
Shirt-upper pressers	41. 00
Skirt-under pressers	41. 00
Skirt basters	27. 00
Skirt finishers	23. 50

Such substitute, if made, shall remain in force throughout the season in which it is made.

Buttonhole makers shall be paid $1.50 per hundred buttonholes, the employer to furnish machine, silk, and finishing. If silk is supplied by the buttonhole maker, the employer shall pay 10 cents additional per hundred buttonholes.

The wages of workers, and the regulation of the use of labor-saving machinery, such as pressing, basting, felling, and button-sewing machines, shall be adjusted by the council and the union through the processes provided in this agreement.

Eleventh. There shall be established, as soon as possible, a labor bureau under the supervision of the impartial chairman to ascertain and pronounce as speedily as can conveniently be done full and comprehensive classifications of standard types and grades of garments as a basis for piece prices provided for herein. Such rates shall be based on the time consumed in the various labor operations involved in making such garments by the workers of average skill in the inside shops and in the outside shops.

When thus ascertained and pronounced such classifications and rates shall apply to all employers as defined in the code of fair competition for this industry.

Pending the ascertainment by the said labor bureau of the classifications of work and piece rates of the various crafts applicable thereto, the representatives of the council, the American Cloak & Suit Manufacturers Association, Merchants Ladies' Garment Association, and the union shall determine such classifications and rates. If there is a disagreement, it shall be submitted to the impartial chairman.

Twelfth. In the adjustment of piece rates, contractors or submanufacturers, and the persons employing them and/or their representatives, the Union and the representatives of the workers of the shops shall participate. If they shall fail to agree, the dispute shall be submitted to the impartial chairman for final adjustment within 48 hours. Workers shall not be required to work on garments before the piece rates have been adjusted with respect thereto.

Thirteenth. All complaints, disputes, or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this agreement, or any act, conduct, or relations between the parties or their respective members, directly or indirectly, shall be submitted in writing by the party hereto claiming to be aggrieved, to the other party hereto, and the manager of the council and the manager of the Union, or their deputies shall, in the first instance, jointly investigate such complaints, grievances, or disputes and attempt

an adjustment. Decisions reached by the managers or their deputies shall be binding on the parties hereto. Should they fail to agree, the question or dispute shall be referred to a permanent umpire to be known as the "impartial chairman" in the industry and his decision shall be final and binding upon the parties hereto.

The parties hereto shall, within 5 days after the execution of this agreement, jointly agree upon and designate an impartial chairman to act during the term of this agreement and if they should fail to agree the Governor of the State of New York shall, on application of either party, summarily appoint such impartial chairman.

Should the impartial chairman resign, refuse to act, or be incapable of acting, or should the office become vacant for any reason, the parties shall immediately, and within 5 days after the occurrence of such vacancy, designate another person to act as such impartial chairman. If they fail to agree the Governor of the State of New York shall, on application of either party, summarily make such appointment.

Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decisions shall be rendered. No decision shall be used as a precedent for any subsequent case.

All decisions reached by the managers of the parties hereto, or their deputies, or rendered by the impartial chairman, shall be complied with within 48 hours. Should any member of the council fail to comply with such decision within such time, he shall automatically lose all rights and privileges under this agreement and the Union shall be free to take action to enforce the rights of the workers against such member.

The procedure hereinabove outlined for the adjustment of disputes between the union and the council shall also apply to all disputes between the union and the Merchants Ladies' Garment Association and the American Cloak and Suit Manufacturers Association if and when such association enter into collective agreements with the union, and between the associations among themselves, and the impartial chairman shall serve in that capacity with respect to the determination of all such disputes. All disputes shall be heard on notice to all parties interested therein.

Fourteenth. All rules, regulations, and methods of procedure required to effectuate this agreement and each and every clause and provision thereof not specifically provided for herein, shall be agreed upon by the parties hereto in conference within 21 days after the execution of this agreement and should such parties fail to agree with respect to any of such rules, regulations, and methods of procedure, the same shall be adjusted in the same manner as hereinabove provided for the settlement of grievances and disputes between the parties.

Fifteenth. The union obligates itself to enter into no contract, oral or in writing, express or implied, directly or indirectly, by reason whereof any person, firm, or corporation engaged in the coat and suit industry in the metropolitan district shall receive any benefit or aid not accorded the members of the council pursuant to the terms of this agreement.

Sixteenth. All week workers shall be paid for the following legal holidays, to wit: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and for one-half of Election Day. And such holidays shall be observed.

Workers may also refrain from working on Columbus Day, but without pay.

During the week in which a legal holiday occurs, employees working less than a full week shall be paid for the holiday pro rata for the hours worked.

Seventeenth. No contracting or subcontracting within the shop shall be permitted.

There shall be no time contracts between the members of the council and their workers, either individually or in groups.

Eighteenth. The employer may discharge his workers for causes such as incompetency, misconduct, insubordination in the performance of his work, breach of reasonable rules to be jointly established, and soldiering on the job.

In the adjustment of disputes between the parties hereto, complaints of improper discharge of workers shall have precedence over all other cases, and decisions on such complaints shall be rendered within 48 hours after the union demands a clerk for the investigation, unless the time is extended by mutual written consent. Should such decision be delayed beyond such time, a worker unjustly discharged shall be compensated for loss of time.

Nineteenth. During the term of this agreement there shall be no general lock-out, general strike, individual shop lock-out, individual shop strike, or shop

stoppage for any reason or cause whatsoever. There shall be no individual lock-out, strike or stoppage pending the determination of any complaint or grievance. Should the employees in any shop or factory cause a stoppage of work or shop strike or should there result in any shop or factory, a stoppage of work or shop strike, notice thereof shall be given by the council to the union. The latter obligates itself to return the striking workers, and those who have stopped work, to their work in the shop within 24 hours after the receipt by the union of such notice, and until the expiration of such time, it shall not be deemed that the striking workers have abandoned their employment. In the event of a substantial violation of this clause on the part of the union, the council shall have the option to terminate this agreement. The existence or nonexistence of such substantial violation shall be determined by the impartial chairman, as constituted under this contract, on all the facts and circumstances. The union agrees that if the striking workers fail to return to work within the stipulated time it will forthwith state in writing and in the appropriate press or otherwise that there is not a strike in or against such shop in which the work has been stopped and that the shop is in good standing with the union and entitled to all the rights, benefits and privileges provided for by the terms of this contract. Should any member of the council cause a lock-out in his or its shops or should there result in any shop or factory a lock-out, notice thereof shall be given by the union to the council. The council obligates itself, within 24 hours after the receipt of such notice, to terminate the lock-out and to cause its members to reemploy the workers, and until the expiration of such time, it shall not be deemed that the employer has forfeited his rights under the agreement. In the event of a substantial violation of this clause on the part of the council, the union shall have the option to terminate this agreement. The existence or nonexistence of such substantial violation shall be determined by the impartial chairman on all the facts and circumstances.

Twentieth. In times when the employer shall be unable to supply his workers with work full time, the available work in the shop shall be divided as equally as possible among all the workers who are competent to do the work.

Workers may be divided into shifts and alternated.

As to cutters: When there is insufficient work, the work shall be divided equally by the week.

As to presser: The managing presser shall be entitled to no more work than the other pressers in the factory.

Twenty-first. No member of an employing firm or foreman thereof shall do cutting. If a member or foreman of the firm is found to do the work of a cutter, such firm shall become liable to and pay to the union a sum equal to the minimum weekly wage scale of cutters, i. e., $47 for each of such violations of this agreement.

Twenty-second. Each member of the council shall have the right in good faith to reorganize his factory. A reorganization in good faith shall mean a bona fide reorganization of the employer's business, necessitated by a permanent curtailment of his business or a fundamental change in the character of his business.

Twenty-third. Before admitting a new member the council shall inform the union in writing of the application for membership. If a strike or dispute shall be pending between the applicant and the union at the time, the union shall give to the council within 10 days a written statement containing full particulars of the matters in dispute, and the council will not admit such applicant until such dispute has been adjusted. The council may undertake to adjust the dispute and/or may submit such adjustment to the impartial chairman of the industry. Such adjustment shall be made on the basis of the agreement existing between the union and the applicant and the rights of the union and the employees under such agreement shall be preserved up to the date of such adjustment. After the applicant has been admitted to membership in the council this collective agreement shall supersede his individual agreement with the union.

Firms which have made application for membership between June 1, 1933, and the date hereof shall not be admitted to the said council until the provisions of this paragraph have been complied with.

Twenty-fourth. The union agrees to insert a clause in all its agreements with independent employers to the effect that such employers shall submit to the supervision of the impartial chairman herein provided for and the Code Authority for the Coat and Suit Industry.

All such independent employers shall be required by the union to contribute to the maintenance of the collective machinery in the industry and to deposit cash security for the performance of the agreement on their part. The amount of such contribution and cash security deposits shall be based on a schedule and shall take into account the size of the employer's shop and the volume of his business.

Contracts with independent employers shall not run longer than the period of the union's agreement with the council.

Twenty-fifth. Any employee of a council member may, with the written consent of the parties hereto, be temporarily released during the dull season. In such event the employer shall not substitute the worker so released unless and before a reasonable time has been given him by the Council through the union to return to the shop of the employer.

Twenty-sixth. All members of the council at the time of the execution of this agreement and the persons, firms and corporations becoming members thereof subsequent to the date of the execution of this agreement shall be and continue to remain personally and individually liable hereunder for and during the term thereof irrespective of whether said member shall cease to be a member of the said council prior to the date set for the expiration of this agreement and such liability shall be deemed to have survived the termination of such membership and shall continue for and during the full term hereof.

No member of the council, shall enter into partnership or consolidate or merge with another person, firm or concern in the industry unless the new firm assumes all accrued obligations to the workers of the constituent concerns. Upon the formation of such a partnership or upon such consolidation or merger, such new firm shall give preference in employment to the workers of the absorbed concern over all the other workers except those then employed by the firm which continues in business.

Twenty-seventh. The members of the American Association are recognized in this industry to be the efficient and standard shops capable of assisting and stabilizing the industry and eliminating the so-called "sweat-shop" evil. Accordingly, the parties hereto agree that members of the Industrial Council will confine the manufacture of merchandise made for them in contracting or submanufacturing shops to members of the American Association exclusively. And the members of the American Association undertake to give preference to members of the Merchants Association and members of the Industrial Council of Cloak, Suit and Skirt Manufacturers, Inc.

The above obligation is assumed by the council upon the understanding that the American Association is an organization of contractors and submanufacturers as defined in this agreement. It shall not be binding upon the said council if the membership of the American Association shall contain inside manufacturers producing garments for the market on their own account substantially in the same manner as members of the council.

Twenty-eighth. The council shall be represented on the joint board of sanitary control existing in the industry and shall contribute its ratable share toward the expenses of maintaining the board, such expenses to be shared also in an equitable manner by the other organized factors in the industry and by all firms signing independent contracts with the union.

Twenty-ninth. An employment bureau is to be established under impartial direction. Placements and replacements are to be made through such bureau.

Thirtieth. In cases where employers in addition to foremen employ one or more examiners in the pinning, marking and general work on garments and/or examining or busheling, such examiners shall be members of local 82 of the union. Foremen shall not be required to be members of the union. A foremen within the meaning of the foregoing clause is an employee whose principal duties are those of supervision and superintendence, although he may also continue performing such duties as he has been performing heretofore.

Sample makers who work exclusively as such shall in all instances be employed from among the members of locals 3 and 48.

Thirty-first. No employer and no worker or group of workers shall have the right to modify or waive any provision of this agreement.

Thirty-second. The union shall not enter into any agreement with any individual, concern, or association employing cutters unless the individual, concern, or association operates a complete inside factory as herein defined.

Thirty-third. All members of the council shall do all of their trucking of merchandise exclusively by union truckmen.

Thirty-fourth. Members of the council who have operated on a week-work system of work as herein provided for, for two full preceding seasons shall have the reorganization rights provided for in paragraph "Thirty-sixth" of the agreement made between the parties hereto under date of June 1, 1929; subdivision "e" of the said "Thirty-sixth" paragraph shall be superseded by this clause.

Thirty-fifth. This agreement shall enter into force on the date of the execution thereof and shall remain operative and binding upon the parties hereto until the

1st day of June 1935. If either of the parties hereto shall desire to make any changes, modifications, or additions to this agreement at the expiration thereof, it shall notify the other party of such desire in writing at least 3 months prior to the date of the expiration of this agreement. Within 2 ——— from the receipt of such notice the parties hereto shall meet in conference for the consideration of such proposed changes or additions. If no such notice is given by either party to the other as above provided this agreement shall automatically continue and remain in force for another year. The same provisions shall apply with respect to any extended term of this agreement.

In witness whereof, the parties hereto have caused these presents to be signed by their respective officers and their seals to be affixed the day and year first above written.

In presence of—
LINDSAY ROGERS.
WILLIAM KLEIN.
FREDERICK F. EMHEY.

INDUSTRIAL COUNCIL OF CLOAK, SUIT AND SKIRT MANUFACTURERS, INC.
By LEO A. DEL MONTE, *President.*
SAMUEL KLEIN, *Executive Director.*
INTERNATIONAL LADIES' GARMENT WORKERS' UNION.
By DAVID DUBINSKY, *President.*
JOINT BOARD OF CLOAK, SKIRT & REEFER MAKERS' UNION OF THE INERNATIONAL LADIES' GARMENT WORKERS' UNION.
By ISIDORE NAGLER.

EXHIBIT "D." CODE AUTHORITY COAT AND SUIT INDUSTRY

AGREEMENT OF MERCHANTS LADIES' GARMENT ASSOCIATION, INC., WITH INTERNATIONAL LADIES' GARMENT WORKERS' UNION AND THE JOINT BOARD OF CLOAK, SKIRT, AND REEFER MAKERS' UNION OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Dated, NEW YORK, *August 26, 1933.*

This agreement made and entered into this 26th day of August 1933, by and between Merchants Ladies' Garment Association, Inc., hereinafter designated as "the association", contracting for and in behalf of itself and all its members, the International Ladies' Garment Workers' Union, all collectively designated herein as "the union", for and in behalf of the said union and for and in behalf of the members thereof now employed or hereafter to be employed by the members of the association:

WITNESSETH

Whereas the association is an organization whose members are engaged in the coat and suit industry, as defined in the code of fair competition for the said industry approved by the President of the United States on August 4, 1933; as one of the objects of the said association being to deal collectively with the union; and

Whereas the union represents a great majority of the workers employed in the work of making up garments for members of the association, directly or indirectly; and

Whereas the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure to the workers a living wage and eliminating such of the manufacturing establishments as operate under unfair conditions of labor and sanitation and to provide methods for a fair and peaceful adjustment of all disputes which may arise between the parties hereto and the different factors in the industry;

Now, therefore, the parties hereto agree as follows:

First. The association and the union, each on behalf of its representative members, obligate themselves in good faith to observe and perform all the provisions of this agreement.

Second. For the purpose of this agreement, the following words are defined as follows:

(*a*) A "union shop" is one that employs at least 14 machine operators and a corresponding number of employees in other branches of the work and employs none but members in good standing of the union to perform all the operations in connection with the production of garments and is in contractual relation with the union and observes the union standards of such contract.

(*b*) A "manufacturer" is one who produces garments on his own premises and from his own material.

(*c*) A "submanufacturer" is one who makes up garments from uncut material delivered to him by a manufacturer, merchant, jobber, or wholesaler.

(*d*) A "contractor" is one who makes up garments from goods delivered to him in cut form.

(*e*) A "merchant", "jobber", or "wholesaler" is one who does not produce garments on his own premises but who has them made by submanufacturers as herein defined.

(*f*) An "inside shop" is one that is owned, conducted, and controlled by a member of the association, in which he produces his own garments from his own material.

(*g*) "Outside system of production" shall refer to the system of having garments produced in submanufacturing or contracting shops.

(*h*) The term "metropolitan district" refers to the city of New York and all such cities and towns in the States of New York, New Jersey, and Connecticut and Pennsylvania in which garments are being manufactured by or for members of the association or other manufacturers, jobbers, or wholesalers doing business in the city of New York.

Third: The association agrees that all of its members who produce all or part of their garments on their own premises will maintain union shops, and that all of its members who have their garments produced by submanufacturers or contractors who purchase their garments from other manufacturers, merchants, jobbers, or wholesalers will deal only with such firms as conduct union shops.

The union shall have the right to have its representative visit the shops of the members of the association once in every season for the purpose of examining the union standing of the workers, which examination shall not involve the loss of work time. All such examinations shall be had on notice to the association which shall, in each instance, designate a representative to accompany the union representative on such examination.

When permanently engaging a new worker, each member of the association shall send the name, address, and designation of craft of such worker to the association and the association shall immediately communicate such information to the union.

No member of the association shall make or cause to be made any work for any person against whom the union has declared a strike until such strike in each case has been fully settled.

Fourth: The association on its own motion will investigate any or all of the books and records, of its members to ascertain whether they are giving work to or dealing with nonunion shops. Upon complaint filed by the union, the privileges will also be accorded a representative of the union to accompany a representative of the association to examine the books and records of the member against whom a complaint has been filed, for the purpose only of determining whether such member is giving work to nonunion shops.

Such examination shall be undertaken within 48 hours from the receipt of the request, and shall be conducted under such conditions and limitations as the impartial chairman, hereinafter mentioned upon the request of either party, may prescribe.

Upon the request of the union, the impartial chairman or his accountants shall also examine the books of any designated association member for the purpose of investigating the conditions of the shop and for the purpose of ascertaining whether the provisions of this agreement are fully complied with.

A uniform set of books and records relating to pay rolls, labor costs, and outside production shall be adopted by all members of the association and by the entire industry. The form of such records and books shall be prescribed by the impartial chairman. Such records and books shall be open to the examination of the impartial chairman or his accountants at all reasonable times.

Fifth. For the purpose of carrying the provisions of the above clauses into effect the union shall immediately submit to the association a list of all union shops who are operating under contracts with it and shall at least once a week notify the association of all changes in and additions to the list.

No members of the association shall employ or continue employing a submanufacturer or contractor whose name is not included in the latest corrected list of "union shops" furnished by the union and shall not order or purchase goods or otherwise deal or continue dealing with a manufacturer, merchant, jobber, or wholesaler whose name is not included in such list.

Whenever it shall appear that a member of the association gives work to or deals with a nonunion shop, the association shall immediately direct him to

withdraw his work from such nonunion shop or to discontinue dealing with it, whether such work be in processes of operation or otherwise, until the shop enters into contractual relations with the union.

Should a member of the association be found giving work to or dealing with a nonunion shop or a nondesignated shop, the association will proceed to impose a fine for the first offense under the authority contained in its bylaws and its agreement with its members. The amount of such fine shall be determined with reference to the sum involved and shall be sufficiently high to offset the advantage gained by the member through such transaction, together with an appropriate penalty. A second offense shall mean expulsion and in this connection the association shall adopt such other measures as in its judgment are necessary and expedient to prevent members from giving work to nonunion shops. The proceeds of fines collected shall be used toward defraying the expenses incurred by the impartial chairman hereinafter provided for.

Sixth. A. Every member of the association who employs or deals with a contractor or submanufacturer shall, within 2 days after the execution of this agreement, designates the contractors, or submanufacturers, actually required by him to manufacture his garments. Such designations shall be made from those contractors or submanufacturers who were in contractural relationship with the union on May 31, 1933 and whose name appears on the latest corrected list of "union shops" furnished by the Union or such others who may be approved of by the Union and substantially from those contractors or submanufacturers heretofore employed by such member of the association.

B. The member of contractors, or submanufacturers actually required by the member making such designation shall be determined by taking into account the following:

1. The volume of such member's production for the year 1932-33;
2. The character of such member's work;
3. The capacity of the contractor or submanufacturer to produce;
4. The increase in volume of the member's business.

C. Lists of such designations containing names and addresses shall be delivered promptly to the union, to the American Cloak and Suit Manufacturers Association and to the impartial chairman.

D. Every member of the association who employs or deals with contractors or submanufacturers shall confine his production to the contractors or submanufacturers thus designated by him. He shall distribute his work equitably to and among the said contractors or submanufacturers with due regard to the ability of the contractor or submanufacturer and the workers to produce and perform.

E. No member of the association operating an inside shop shall register contractors or submanufacturers unless he can fully supply his inside shop with work.

F. No member of the association shall employ cutters or send out cut goods to contractors unless he operates an inside shop.

G. If the member making such designation shall, at any time, change the character of his product and the contractors or submanufacturers designated by him or any of them shall be incapable of meeting his changed requirements, he shall have the right to substitute and/or add such other contractors or submanufacturers in place of those incapable of meeting his changed requirements. Such substitution and/or addition shall not be made until after the decision of the impartial chairman on notice and hearing within 48 hours.

H. A contractor or submanufacturer shall work exclusively for the member of the association so designating him unless otherwise approved by the association, the American Cloak and Suit Manufacturers Association and the union, of the impartial chairman. A contractor or submanufacturer thus designated shall not distribute or sell directly or indirectly any merchandise included in the term "coat and suit industry", as defined in the code of fair competition for said industry, to any other manufacturer, merchant, jobber, wholesaler, retailer, or consumer.

I. A member of the association whose garmets are made by contractors, or submanufacturers shal pay to such contractors or submanufacturers at least an amount sufficient to enable the contractor or submanufacturer to pay to the workers the wages and earnings provided for in this agreement and in the code and, in addition, a reasonable payment to the contractor or submanufacturer to cover his overhead.

J. Where it shall be established that there has been an underpayment made by a member of the association to the contractor, or submanufacturer or the workers, the amount of such underpayment shall be paid by such members of the association to the parties so underpaid. If such underpayment shall have been deliber-

ate or the result of any collusive arrangement, the member of the association and/or the contractor or submanufacturer involved therein, shall, in addition be the foregoing, be subject to the penalties provided by and under the National Industrial Recovery Act.

K. Should a submanufacturer or contractor doing work for a member of the association default in the payment of wages to the workers and should the association of which said submanufacturer or contractor is a member fail to make payment thereof on demand, the Merchants' Ladies Garment Association agrees to make prompt payment thereof to the union for the benefit of the workers, provided, however, that such liability shall be limited to wages for seven full working days in every instance.

Seventh. Wages shall be paid not later than Tuesday of each week for work done in the preceding week. Such wages shall be paid in cash.

Eighth. A week's work shall consist of 35 hours in the first 5 days of the week, work shall begin at 8:30 a. m. and end at 4:30 p. m. with 1 hour interval for lunch. There shall be no more than one shift of workers in any day.

Ninth. No overtime work shall be permitted unless an extension of hours is granted by the Administrator of the National Industrial Recovery Act, under the provisions of paragraph "Third" of the Code of Fair Competition for the Coat and Suit Industry. If such hours of work shall be so extended, the Administrator shall determine the rate of compensation to be paid to the workers for such additional hours.

Tenth. All workers enumerated below shall work by the week and shall receive not less than the following minimum wage scale:

	Per week
Coat and suit cutters	$47
Samplemakers	40
Examiners	36
Drapers	29
Begralers on skirts	32
Bushelmen who also do planning, marking, and the general work on garments	36

The workers in the crafts enumerated below shall work on a piece rate basis. They shall receive guaranteed minimum wages not less than the following:

	Per hour
Jacket, coat, reefer, and dress operators, male	$1.00
Jacket, coat, reefer, and dress operators, female	.90
Skirt operators, male	.90
Skirt operators, female	.80
Piece tailors	.90
Reefer, jackets, and coat finishers	.85
Jacket, coat, and reefers finishers' helpers	.63
Jacket, coat, reefer, and dress upper pressers	1.00
Jacket, coat, reefer, and dress under pressers	.90
Skirt upper pressers	.90
Skirt under pressers	.85
Skirt basters	.60
Skirt finishers	.60
Machine pressers	1.30

In fixing piecework rates on garments, the same shall be computed on a basis to yield to the worker of average skill of the various crafts for each hour of continuous work, the following amounts:

	Per hour
Jacket, coat, reefer, and dress operators	$1.50
Skirt operators	1.40
Piece tailors	1.30
Reefer, jacket and coat finishers	1.25
Jacket, coat, and reefer finishers' helpers	1.00
Jacket, coat, reefer, and dress upper pressers	1.35
Jacket, coat, reefer and dress under presser	1.25
Skirt upper pressers	1.25
Skirt under pressers	1.25
Skirt basters	.80
Skirt finishers	.70
Machine pressers	1.80

With the consent of the workers and of the union, a member of the Association operating an inside shop may substitute the week-work system in the place of the piece-rate basis, in which event the following shall be the minimum scale of weekly wages:

Jacket, coat, reefer, and dress operators	$50.00
Skirt operators	48.00
Piece tailors	43.00
Reefer, jacket, and coat finishers	41.00
Jacket, coat, and reefer, and dress upper pressers	45.00
Jacket, coat, and reefer dress under pressers	41.00
Jacket, coat, and reefer finishers' helpers	33.00
Skirt upper pressers	41.00
Skirt under pressers	41.00
Skirt basters	27.00
Skirt finishers	23.50

With request to the outside system of production, a member of the Association may, with the consent of the union, substitute the week-work system in place of the piece-rate basis as herein defined, provided:

(1) If inside shop and all submanufacturers and contractors designated by such member shall operate under the same system, and provided

(2) That the workers employed on such week-work basis in the shop of the member and in such designated submanufacturing and contracting shops shall be paid not less than the minimum scale of weekly wages provided for above.

Such substitution, is made, shall remain in force throughout the season in which it is made.

The wages of all week workers now receiving in excess of the minimum scale herein set forth shall not be reduced.

Buttonhole makers shall be paid $1.50 per hundred buttonholes, the employer to furnish machine, silk, and finishing. If silk is supplied by the buttonhole maker, the employer shall pay 10 cents additional per hundred buttonholes.

The wages of workers and the regulations of the use of labor-saving machinery, such as pressing, basting, felling, and button-sewing machines, shall be adjusted by the association and the union through the processes provided in this agreement.

Eleventh. There shall be established as soon as possible a labor bureau under the supervision of the impartial chairman to ascertain and pronounce as speedily as can conveniently be done full and comprehensive classifications of standard types and grades of garments as a basis of piece rates provided for herein. Such rates shall be based on the time consumed in the various labor operations involved in making such garments by the worker of average skill in the inside shops and in the outside shops.

When thus ascertained and pronounced such classifications and rates shall apply to all employers as defined in the code of fair competition for this industry.

Pending the ascertainment by the said labor bureau of the classifications of work and piece rates of the various crafts applicable thereto, the representatives of the association, the American Cloak & Suit Manufacturers Association, the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc., and the union shall determine such classifications and rates. If there is a disagreement, it shall be submitted to the impartial chairman.

Twelfth. In the adjustment of piece rates, contractors or submanufacturers and/or their representatives and the persons employing them and/or their representatives, the union and the representatives of the workers of the shop shall participate. If they shall fail to agree, the dispute shall be submitted to the impartial chairman for final adjustment within 48 hours. Workers shall not be required to work on garments before the piece rates have been adjusted with respect thereto.

Thirteenth. All complaints, disputes, or grievances arising between the parties, hereto involving questions of interpretations or application of any clause of this agreement, or any acts, conduct or relations between the parties or their respective members, directly or indirectly, shall be submitted in writing by the party hereto claiming to be aggrieved, to the other party hereto, and the manager of the association and the manager of the union, or their deputies, shall, in the first instance, jointly investigate such complaints, grievances, or disputes and attempt an adjustment.

Decisions reached by the managers or their deputies shall be binding on the parties hereto. Should they fail to agree, the question or dispute shall be referred

to a permanent umpire to be known as the "impartial chairman", in the industry and his decision shall be final and binding upon the parties hereto.

The parties hereto shall, within 5 days after the execution of this agreement, jointly agree upon and designate an impartial chairman to act during the term of this agreement and if they should fail to agree the Governor of the State of New York shall, on application of either party, summarily appoint such impartial chairman.

Should the impartial chairman resign, refuse to act, of be incapable of acting, or should the office become vacant for any reason, the parties shall immediately, and within 5 days after the occurrence of vacancy, designate another person to act as such impartial chairman. If they fail to agree the Governor of the State of New York shall, on application of either party, summarily make such appointment.

Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decisions shall be rendered. No decision shall be used as a precedent for any subsequent case.

All decisions reached by the managers of the parties hereto, or their deputies, or rendered by the impartial chairman, shall be complied with within 48 hours. Should any member of the association fail to comply with such decision within such time, he shall automatically lose all rights and privileges under this agreement and the union shall be free to take action to enforce the rights of the workers against such member.

The procedure hereinabove outlined for the adjustment of disputes between the union and the association shall also apply to all disputes between the union and the Industrial Council of Cloak and Suit and Skirt Manufacturers, Inc., and the American Cloak and Suit Manufacturers Association, if and when such associations enter into collective agreements with the union, and between the associations among themselves, and the impartial chairman shall serve in that capacity with respect to the determination of all such disputes. All disputes shall be heard on notice to all parties interested therein.

Fourteenth: The union obligated itself to enter into no contract, oral or in writing, express or implied, directly or indirectly, by reason whereof any person, firm or corporation engaged in the coat and suit industry in the metropolitan district shall receive any benefit or aid not accorded the members of the association pursuant to the terms of this agreement.

Fifteenth. All week workers shall be paid for the following legal holidays, to wit: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Christmas Day, and for one-half of election day. And such holidays shall be observed.

Workers may also refrain from working on Columbus Day, but without pay.

During the week in which a legal holiday occurs, employees working less than a full week shall be paid for the holiday pro rate for the hours worked.

Sixteenth. No contracting or subcontracting within the shop shall be permitted.

There shall be no time contracts between the members of the association and their workers, either individually or in groups.

Seventeenth. The employer may discharge his workers for such causes as: Incompetency, misconduct, insubordination in the performance of his work, breach of reasonable rules to be jointly established, and soldiering on the job.

In the adjustment of disputes between the parties hereto, complaints of improper discharge of workers shall have precedence over all other cases, and decisions on such complaints shall be rendered within 48 hours after the union demands a clerk for the investigation unless the time is extended by mutual written consent. Should such decision be delayed beyond such time, a worker unjustly discharged shall be compensated for loss of time.

Eighteenth. During the term of this agreement there shall be no general lockout, general strike, individual shop lockout, individual shop strike or shop stoppage pending the determination of any complaint or grievance. Should there be a stoppage of work or shop strike in the factory of any member of the association immediate notice thereof shall be given by the association to the union. The latter obligates itself to return the striking workers to their work within 24 hours after the receipt by the union of such notice, and until the expiration of such time it shall not be deemed that the striking workers have abandoned their employment. In the event of substantial violation of this clause on the part of the union, the association shall have the option to terminate this agreement. The existence or nonexistance of such substantial violation shall be determined by the impartial chairman on all the facts and circumstances. Should a member of

the association cause a lockout in its shop, notice thereof shall be given by the union to the association.

The association obligates itself, within 24 hours after the receipt of such notice, to terminate the lockout and to cause its members to reemploy the workers and, until the expiration of such time, it shall not be deemed that the employer has forfeited his rights under this agreement. In the event of a substantial violation of this clause on the part of the association, the union shall have the option to terminate the agreement. The existence or nonexistance of such substantial violation shall be determined by the impartial chairman on all the facts and circumstances. The consideration of stoppage by the impartial chairman shall have precedence over all other complaints and grievances.

Nineteenth. In times when the employer shall be able to supply his workers with work full time, the available work in the shop shall be divided as equally as possible among all the workers who are competent to do the work. Workers may be divided into shifts and alternated.

As to cutters: When there is insufficient work, the work shall be divided equally by the week.

As to pressers: The managing presser shall be entitled to no more work than the other pressers in the factory.

Twentieth. No member of an employing firm or foreman hereof shall do cutting. If a member or foreman of the firm is found to do the work of a cutter, such firm shall become liable to and pay to the union a sum equal to the minimum weekly wage scale of cutters, i. e. $47 for each of such violations of this agreement.

Twenty-first. Each member of the association shall have the right in good faith to reorganize his factory. A reorganization in good faith shall mean a bona fide reorganization of the employer's business, necessitated by a permanent curtailment of his business or a fundamental change in the character of his business.

Twenty-second. Before admitting a new member the association shall inform the union in writing of the application for membership. If a strike or dispute shall be pending between the appicant and the union at the time, the union shall give to the association within 10 days a written statement containing full particulars of the matters in dispute, and the association will not admit such applicant until such dispute has been adjusted. The association may undertake to adjust the dispute and or may submit such adjustment to the impartial chairman of the industry. Such adjustment shall be made on the basis of the agreement existing between the union and the applicant and the rights of the union and the employees under such agreement shall be preserved up to the date of such adjustment. After the applicant has been admitted to membership in the association this collective agreement shall supersede his individual agreement with the union.

Firms which have made application for membership between June 1, 1933, and the date thereof shall not be admitted to the said association until the provisions of this paragraph have been complied with.

Twenty-third. The union agrees to insert a clause in all its agreements with independent employers to the effect that such employers shall submit to the supervision of the impartial chairman herein provided for and the Code Authority for the Coat and Suit Industry.

All such independent employers shall be required by the union to contribute to the maintenance of the collective machinery in the industry and to deposit each security for the performance of the agreement on their part. The amount of such contribution and cash security deposits shall be based on a schedule which shall take into account the size of the employer's shop and the volume of his business.

Contracts with independent employers shall not run longer than the period of the union's agreement with the association.

Twenty-fourth. All members of the association at the time of the execution of this agreement and the persons, firms, and corporations becoming members thereof subsequent to the date of the execution of this agreement shall be and continue to remain personally and individually liable hereunder for and during the term thereof irrespective of whether said member shall cease to be a member of the said association prior to the date set for the expiration of this agreement and such liability shall be deemed to have survived the termination of such membership and shall continue for and during the full term hereof.

No member of the association shall enter into partnership or consolidate or merge with another person, firm, or concern in the industry unless the new firm assumes all accrued obligations to the workers of the constituent concerns. Upon the formation of such a partnership or upon such consolidation or merger, such new firm shall give preference in employment to the workers of the absorbed

concern over all other workers except those then employed by the firm which continues in business.

Twenty-fifth. Members of the American Cloak and Suit Manufacturers Association are recognized in the industry to be the efficient and standard shops capable of assisting and stabilizing the industry and eliminating the so-called "sweatshop" evil and substandard shops. A copy of the agreement between the union and the said American Cloak and Suit Manufacturers Association is annexed to this contract. Accordingly, the parties hereto agree that the members of the association will, in the designation of submanufacturers or contractors, as herein provided, confine such designations to members of the American Cloak and Suit Manufacturers Association exclusively and will confine the manufacture of merchandise made for them to the said association exclusively, provided the American Cloak and Suit Manufacturers Association will live up to those provisions of its agreement with the Merchants Ladies' Garment Association upon which the latter's agreement to confine its designations and work to members of the American Cloak and Suit Manufacturers Association is conditioned.

The above obligation is assumed by the Merchant's Ladies Garments Association upon the understanding that the American Cloak and Suit Manufacturers Association is an organization of contractors and submanufacturers only, as defined in this agreement. It shall not be binding upon the said Merchant's Association if the membership of the American Association shall contain wholesalers, jobbers, or manufacturers as herein defined in selling garments on their own account substantially in the same way as members of the Merchant's Association.

Twenty-sixth. The association shall be represented on the joint board of sanitary control existing in the industry and shall contribute its ratable share toward the expenses of maintaining the board, such expenses to be shared also in an equitable manner by the other organized factors in the industry and by all firms signing independent contracts with the union.

Twenty-seventh. An employment bureau is to be established under impartial direction. Placements and replacements are to be made through such bureau.

Twenty-eighth. All examiners employed by members of the association shall be members of Local 82 of the union. Any person who does pinning, marking, and general work on garments and/or examining or busheling shall be deemed an examiner for the purpose of this clause.

Twenty-ninth. Members of the association shall be permitted to employ samplemakers provided that such samplemakers work exclusively on samples and do not work on regular or stock garments. If a member of the association shall violate the conditions of this clause, the permission to employ samplemakers shall be withdrawn from such member for such period of time as the impartial chairman may determine.

Samplemakers shall in all instances be employed from among the members of Locals 3 and 48 of the union.

Thirtieth. No employer and no worker or group of workers shall have the right to modify or waive any provision of this agreement.

Thirty-first. All rules, regulations, and methods of procedure required to effectuate this agreement and each and every clause and provision thereof not specifically provided for herein shall be agreed upon by the parties hereto in conference within 21 days after the execution of this agreement and should such parties fail to agree with respect to any of such rules, regulations and methods of procedure the case shall be adjusted in the same manner as hereinabove provided for the settlement of grievance and disputes between the parties.

Thirty-second. The parties hereto having agreed to principle that the trucking of merchandise to and from submanufacturers and contractors when trucking is necessary shall be done exclusively by union truckmen, and having submitted to Dr. Lindsay Rogers as arbitrator the question of the exceptions which should be made with respect thereto the parties now agree that upon the rendition of the final decision by Dr. Rogers on this question, a clause shall be formulated in accordance with said decision and incorporated in and made part of this agreement with the same force and effect as though it were now contained herein. In the meantime the present preliminary decision of Dr. Rogers shall prevail.

Thirty-third. A member of the association who shall intentionally or deliberately violate any of the terms or provisions of this agreement, either alone or in collusion with others, shall, in addition to the penalties which may be provided for in this agreement, be subject to the penalties provided for under the National Industrial Recovery Act.

Thirty-fourth. This agreement shall enter into force on the date of the execution thereof and shall remain operative and binding upon the parties hereto until the 1st day of June 1935. If either of the parties hereto shall desire to make any changes, modifications or additions to this agreement at the expiration thereof, it shall notify the other party of such desire in writing at least 3 months prior to the date of the expiration of this agreement. Within 10 days from the receipt of such notice the parties hereto shall meet in conference for the consideration of such proposed chages or additions. If no such notice is given by either party to the other as above provided, this agreement shall automatically continue and remain in force for another year. The same provisions shall apply with respect to any extended term of this agreement.

A member of the association who shall have operated an inside shop under the week-work system as herein provided for two full preceeding seasons shall have the reorganization rights provided for in the thirty-sixth clause of the agreement made between the union and the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc., under date of June 1, 1929; subdivision "o" of said "Thirty-sixth" clause being superseded by this paragraph.

In witness whereof, the parties hereto have caused these presents to be signed by their respective officers and their seals to be affixed the day and year first above written.

MERCHANTS' LADIES GARMENT ASSOCIATION, INC.,
By I. J. RUBIN, *President.*
INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By DAVID DUBINSKY, *President.*
JOINT BOARD OF CLOAK, SKIRT AND REEFER MAKERS' UNION OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By ISIDORA NAGLER.

EXHIBIT E

AGREEMENT OF AMERICAN CLOAK AND SUIT MANUFACTURERS' ASSOCIATION, INC., WITH INTERNATIONAL LADIES' GARMENT WORKERS' UNION AND JOINT BOARD OF CLOAK, SKIRT AND REEFER MAKERS' UNION OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION

SEPTEMBER 19, 1933.

This agreement, made and entered into this 19th day of September 1933, by and between American Cloak and Suit Manufacturers' Association, Inc., hereinafter designated as "The American Association" and the International Ladies' Garment Workers' Union and the joint board of the Cloak, Skirt and Reefer Makers' Union of the International Ladies' Garment Workers' Union, all collectively designated herein as "the union."

WITNESSETH

Whereas the American Association is an organization whose members are engaged in the coat and suit industry, as defined in the code of fair competition for said industry, in the production of coats and suits for manufacturers, wholesalers and jobbers, one object of said American Association being to deal collectively with the union; and

Whereas the union represents the great majority of the workers employed in the work of making up such garments; and

Whereas the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure to the workers a living wage and eliminate such of the manufacturing establishments as operate under unfair conditions of labor and sanitation and to provide methods for a fair and peaceful adjustment of all disputes that may arise between the different producing factors in the industry so as to secure uninterrupted operation and general stabilization of the industry;

Now, therefore, the parties hereto agree as follows:

First. The American Association obligates for itself and for its members that they will live up in good faith to all the provisions of this agreement and the union obligates itself for all of its members that it will live up to the provisions of this agreement and that the workers will perform their work conscientiously, faithfully, and efficiently under the terms of this agreement, it being agreed and understood that the said American Association hereby contracts for and in behalf

of itself and of all its members, and that the union contracts for itself and in behalf of all members now employed or hereafter to be employed hereunder.

Second. For the purposes of this agreement, the following words are defined as follows:

(*a*) A "union shop" is one that employs at least 14 machine operators, or such other number as may be agreed to by the union, and a corresponding number of employees in other branches of the work and employs none but members in good standing of the union to perform all the operations in connection with the production of garments and is in contractual relations with the union and observes the union standards of such contract. A member in good standing is one who is not in arrears for more than 6 months in the payment of his dues and assessments to the union and carries a union membership card.

(*b*) A "manufacturer" is one who produces garments on his own premises and from his own material.

(*c*) A "submanufacturer" is one who makes up garments from uncut material delivered to him by a manufacturer, merchant, jobber or wholesaler.

(*d*) A "contractor" is one who makes up garments from goods delivered to him in cut form.

(*e*) A "merchant", "jobber", or "wholesaler" is one who does not produce garments on his own permises but who has them made by submanufacturers as herein defined.

(*f*) An "inside" shop is one that is conducted by a manufacturer as herein defined.

(*g*) "Outside system of production" shall refer to the system of having garments produced in submanufacturing or contracting shops.

(*h*) The term "metropolitan district" refers to the city of New York and all such cities and towns in the States of New York, New Jersey, Connecticut, and Pennsylvania in which garments are being manufactured by or for members of the American Association or other manufacturers, jobbers, or wholesalers doing business in the city of New York.

Third. The American Association agrees that each and all of its members will maintain union shops as herein defined and that no member of the American Association will engage any worker unless he presents a working card issued by the union directing him to the place of business of the member.

No member of the American Association shall make or cause to be made any work for any person, firm, or corporation not in contractual relations with the union or against whom the union has declared a strike until such person has entered into contractual relations with the union or until such strike in each case has been fully settled.

The union agrees to supply periodically to the members of the American Association lists of the firms in contractual relations with it and of the firms against whom strikes are pending.

Fourth. No member of the American Association shall send out any work to be made into garments.

If a member of the American Association is found violating the above provision, the American Association shall for a first offense impose a fine which shall be large enough to offset any advantage gained and also to defray the expenses incurred in ascertaining the violation. For a second offense, the member shall be expelled.

Fifth. A duly authorized officer or representative of the union shall have access to the place of business of each member of the American Association at all reasonable times for the purpose of investigating the condition of the shop and examining the books and records of such member to ascertain whether the provisions of this agreement are fully complied with. Such investigations and examinations shall be conducted so as not to cause interference with the work of the shop. Whenever an investigation involve an examination of the firm's books, the member may have a representative of the American Association take part in such investigation, provided the investigation is not thereby unreasonably delayed.

Sixth. A uniform set of books and records relating to pay rolls, labor cost, etc., shall be adopted by all members of the American Association and by the entire industry. The form of such records and books shall be prescribed by the impartial chairman. Such records and books shall be open to the examination of the impartial chairman or his accountants at all times.

Seventh. A week's work shall consist of 35 hours in the first 5 days of the week; work shall begin at 8:30 a. m. and end at 4:30 p. m. with 1 hour interval for lunch. There shall be no more than one shift of workers in any day.

Eighth. No overtime work shall be permitted unless an extension of hours is granted by the Administrator of the National Industrial Recovery Act, under the provisions of paragraph "Third" of the code of fair competition for the coat and

suit industry. If such hours of work shall be so extended, the Administrator shall determine the rate of compensation to be paid to the workers for such additional hours.

Ninth. All workers enumerated below shall work by the week and shall receive not less than the following minimum wage scale:

	Per week
Coat and suit cutters	$47
Samplemakers	40
Examiners	36
Drapers	29
Begraders on skirts	32
Bushelmen who also do pinning, marking and general work on garments	36

The workers in the crafts enumerated below shall work on a piecework basis. They shall receive guaranteed minimum wages not less than the following:

	Per hour
Jacket, coat, reefer, and dress operators, male	$1.00
Jacket, coat, reefer, and dress operators, female	.90
Skirt operators, male	.90
Skirt operators, female	.80
Piece tailors	.90
Reefer, jacket, and coat finishers	.85
Jacket, coat, and reefer finishers' helpers	.63
Jacket, coat, reefer, and dress upper pressers	1.00
Jacket, coat, reefers, and dress under pressers	.90
Skirt upper pressers	.90
Skirt under pressers	.85
Skirt basters	.60
Skirt finishers	.60
Machine pressers	1.30

In fixing piecework rates on garments, the same shall be computed on a basis to yield to the worker of average skill of the various crafts for each hour of continuous work, the following amounts:

	Per hour
Jacket, coat, reefer, and dress operators	$1.50
Skirt operators	1.40
Piece tailors	1.30
Reefer, jacket, and coat finishers	1.25
Jacket, coat and reefer finishers' helpers	1.00
Jacket, coat, reefer, and dress upper pressers	1.35
Jacket, coat, reefer, and dress under pressers	1.25
Skirt upper pressers	1.25
Skirt under pressers	1.25
Skirt basters	.80
Skirt finishers	.70
Machine pressers	1.80

Should a member of the American Association desire to substitute the week work system in place of the piece rate system, such substitution may be made only with the consent of the union and the American Association. If such consent is given, the following shall be the minimum scale of weekly wages:

Jacket, coat, reefer, and dress operators	$50.00
Skirt operators	48.00
Piece tailors	43.00
Reefer, jacket, and coat finishers	41.00
Jacket, coat, and reefer finishers' helpers	33.00
Jacket, coat, and reefer and dress upper pressers	45.00
Jacket, coat, and reefer and dress under pressers	41.00
Skirt upper pressers	41.00
Skirt under pressers	41.00
Skirt basters	27.00
Skirt finishers	23.50

Such substitution, if made, shall remain in force throughout the season in which it is made.

The wages of all week workers now receiving in excess of the minimum scale herein set forth shall not be reduced. Any increases of wages which may be

granted to any workers after the date hereof shall continue in force and effect during the term of this agreement.

Buttonhole makers shall be paid $1.50 per hundred buttonholes, the employer to furnish machine, silk, and finishing. If silk is supplied by the buttonhole maker, the employer shall pay 10 cents additional per hundred buttonholes.

The wages of workers and the regulation of the use of labor-saving machinery shall be adjusted by the American Association of the union through the processes provided in this agreement.

Tenth. Wages shall be paid not later than Tuesday of each week for work done in the preceding week. Such wages shall be paid in cash.

Eleventh. All week workers shall be paid for the following legal holidays, to wit: Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and for one-half of election day. And such holidays shall be observed.

Workers may also refrain from working on Columbus Day, but without pay.

During the week in which a legal holiday occurs, employees working less than a full week shall be paid for the holiday pro rata for the hours worked.

Twelfth. Each member of the American Association except those who operate exclusively as contractors shall employ at least one cutter.

No member of an employing firm or foreman thereof shall do cutting. If a member or foreman of the firm is found to do the work of a cutter, such firm shall become liable to and pay to the union a sum equal to the minimum weekly wage scale of cutters, i. e., $47 for each of such violations of this agreement.

Thirteenth. All examiners employed by members of the American Association shall be members of Local 82 of the union. Any person who does pinning, marking and general work on garments and/or examining or busheling shall be deemed an examiner for the purpose of this clause.

Samplemaker shall in all instances be employed from among the members of Locals 3 and 48.

Fourteenth. In times when the employer shall be unable to supply his workers with work full time, the available work in the shop shall be divided as equally as possible among all the workers who are competent to do the work. Workers may be divided into shifts and alternated.

As to cutters: When there is insufficient work, the work shall be divided equally by the week.

As to pressers: The managing presser shall be entitled to no more work than the other pressers in the factory.

Fifteenth. There shall be at all times in the shop of each member of the American Association a shop chairman elected by the employees at a regular shop meeting called by the union. The shop chairman shall act as the representative of the employees in the dealings with the firm.

Sixteenth. All workers engaged after the signing of this agreement shall, after a trial period of 1 week, be considered regular employees.

Seventeenth: No member of the American Association shall discharge a worker except for misbehaviour before notice in writing is served on the union of the reason for the intended discharge. The union shall investigate the notice of intended discharge within 48 hours of the receipt of the same.

Any complaint made by the union of a discharge of a worker in violation of this clause shall have precedent over all other complaints, and decisions on such complaints shall be rendered within 48 hours, unless the time is extended by mutual consent. Should such decision be delayed beyond such time, the worker unjustly discharged shall be compensated for loss of time.

Seventeenth. *(a)* Members of the American Association who have operated on a week-work system, as herein provided for, for 2 full preceding seasons shall have the reorganization rights provided for in paragraph "Thirty-second" of the agreement made between the parties hereto under date of July 16, 1929, as amended by agreement, dated August 1932; subdivision (e) of said "Thirty-second" paragraph shall be superseded by this clause.

Eighteenth. Whereas the Code of Fair Competition for the Coat and Suit Industry contains a provision for the limitation of contractors and submanufacturers; and

Whereas the agreements made by the union with the Industrial Council of Cloak, Suit, and Skirt Manufacturers and the Merchants Ladies' Garment Association contain provisions requiring members of said two associations to designate the contractors or submanufacturers actually required by them to manufacture their garments and other provisions intended to make effective said system of limitation of contractors: Now, therefore, the following provisions are made part hereof:

(a) Each member of the American Association shall work exclusively for the

manufacturer, jobber or wholesaler designating him unless otherwise approved by the association of which the said manufacturer, wholesaler, or jobber is a member, the American Cloak and Suit Manufacturers' Association and the union or the impartial chairman.

(*b*) Manufacturers, jobbers, or wholsalers who employ or deal with contractors or submanufacturers shall confine their production to contractors or submanufacturers designated by them. They shall distribute their work equitably among the contractors or submanufacturers so designated with due regard to the ability of the contractor or submanufacturer and the workers to produce and perform.

(*c*) If a manufacturer, jobber, or wholesaler shall at any time change the character of his work and the contractors or submanufacturers designated by him or any of them shall be incapable of meeting his changed requirements, he shall have the right to substitute and/or add such other contractors or submanuacturers in place of those incapable of meeting his changed requirements. Such substitution and/or addition shall not be made until after the decision of the impartial chairman on notice and hearing within 48 hours.

(*d*) A manufacturer, jobber, or wholesaler whose garments are made by contractors or submanufacturers shall pay to such contractors or submanufacturers at least an amount sufficient to enable the contractor or submanufacturer to pay to the workers the wages and earnings provided for in this agreement and in the code and, in addition, a reasonable payment to the contractor or submanufacturer to cover this overhead.

Eighteenth A. There shall be established as soon as possible a labor bureau under the supervision of the impartial chairman to ascertain and pronounce as speedily as can conveniently be done full and comprehensive classifications of standard types and grades of garments as a basis for piece rates provided for herein. Such rates shall be based on time consumed in the various labor operations involved in making such garments by the worker of average skill in the inside shops and in the outside shops.

When thus ascertained and pronounced such classifications and rates shall apply to all employers as defined in the code of fair competition for this industry.

Pending the ascertainment by the said labor bureau of the classifications of work and piece rates of the various crafts applicable thereto, the representatives of the American Association, the Merchants Ladies Garment Association, Inc., the Industrial Council of Cloak, Suit, and Skirt Manufacturers, Inc., and the union shall determine such classifications and rates. If there is a disagreement it shall be submitted to the impartial chairman.

Eighteenth B. In the adjustment of piece rates, contractors or submanufacturers and/or their representatives and the persons employing them and/or their representatives, the union and the representatives of the workers of the shops shall participate. If they shall fail to agree, the dispute shall be submitted to the impartial chairman for final adjustment within 48 hours. Workers shall not be required to work on garments before the piece rates have been adjusted with respect thereto.

Nineteenth: Where it shall be established that there has been an underpayment made by a member of the American Association to the workers, the amount of such underpayment shall be paid by said member of the American Association to the union for distribution to the workers so underpaid. If such underpayment shall have been deliberate or the result of any collusive arrangement, the member of the American Association shall, in addition, to the foregoing be subject to the penalties provided by and under the National Industrial Recovery Act.

Twentieth: Every member of the American Association shall be responsible to the workers for the payment of their wages. The American Association as such hereby assumes responsibility for the payment of wages to the workers of every member of the American Association for 7 full working days in every instance, provided that notice of such default by the member of the American Association shall be given to the said American Association on or before the next pay day after such default. Should the American Association for any reason whatever fail to pay such wages upon demand, the union will proceed to collect the same from any other association, person, firm or corporation who may have assumed liability or responsibility for the payment thereof.

Twenty-first: No contracting or subcontracting within the shop shall be permitted. There shall be no time contracts between a member of the American Association and his workers either individually or in groups.

Twenty-second: All complaints, disputes, or grievances arising between the parties hereto involving questions of interpretation or application of any clause of this agreement, or any acts, conduct or relations between the parties of their respective members, directly or indirectly, shall be submitted in writing by the party hereto claiming to be aggrieved, to the other party hereto and the manager of the American Association and the manager of the union, or their deputies, shall in the first instance jointly investigate such complaints, grievances or disputes and attempt an adjustment. Decisions reached by the managers or their deputies shall be binding on the parties hereto. Should they fail to agree, the question or dispute shall be referred to a permanent umpire to be known as the "Impartial chairman" in the industry, and his decision shall be final and binding upon the parties hereto.

The parties hereto shall, within 5 days after the execution of this agreement, jointly agree upon and designate an impartial chairman to act during the term of this agreement, and if they should fail to agree, the Governor of the State of New York shall on application of either party, summarily appoint such impartial chairman.

Should the impartial chairman resign, refuse to act, or be incapable of acting, or should the office become vacant for any reason, the parties shall immediately, and within 5 days after the occurrence of such vacancy, designate another person to act as such impartial chairman. If they fail to agree the Governor of the State of New York shall, on application of either party, summarily make such appointment.

Each case shall be considered on its merits and the collective agreement shall constitute the basis upon which decision shall be rendered. No decision shall be used as a precedent for any subsequent case.

All decisions reached by the managers of the parties hereto, or their deputies, or rendered by the impartial chairman, shall be complied with within 48 hours. Should any member of the American Association fail to comply with such decision within such time, he shall automatically lose all rights and privileges under this agreement and the union shall be free to take action to enforce the rights of the workers against such member.

The procedure hereinabove outlined for the adjustment of disputes between the union and the American Association shall also apply to all disputes between the union and the Industrial Council of Cloak, Suit and Skirt Manufacturers, Inc., and the Merchants' Ladies' Garment Association if and when such Associations enter into collective agreements with the union, and between the associations among themselves, and the impartial chairman shall serve in that capacity with respect to the determination of all such disputes. All disputes shall be heard on notice to all parties interested therein.

Twenty-third: During the term of this agreement there shall be no general lockout, general strike, individual shop lockout, individual shop strike, or shop stoppage for any reason or cause whatsoever. There shall be no individual lockout, strike, or stoppage pending the determination of any complaint or grievance. Should the employees in any shop or factory cause a stoppage of work or shop strike or should there result in any shop or factory a stoppage of work or shop strike, notice thereof shall be given by the American Association to the union. The latter obligates itself to return the striking workers and those who have stopped work to their work in the shop within 24 hours after the receipt by the Union of such notice, and, until the expiration of such time, it shall not be deemed that the striking workers have abandoned their employment. Should any member of the American Association cause a lockout in his or its shops or should there result in any shop or factory a lockout, notice thereof shall be given by the union to the American Association. The American Association obligates itself, within 24 hours after the receipt of such notice, to terminate the lockout and to cause its members to reemploy the workers, and, until the expiration of such time, it shall not be deemed that the employers has forfeited his rights under the agreement.

Twenty-fourth. An employee may, with the written consent of the parties hereto, be temporarily released during the dull season. In such event the employer shall not substitute the worker so released unless a reasonable time has been given him through the union by written notice to return to the shop of the employer.

Twenty-fifth. The American Association shall be represented on the joint board of sanitary control existing in the industry and contribute its ratable share toward the expense of maintaining the board.

Twenty-sixth. An employment bureau is to be established under impartial direction. Placements and replacements are to be made through such bureau.

Twenty-seventh. The parties hereto recognize the necessity of organizing and stabilizing the entire industry in the metropolitan district as well as eliminating the sweat shop. In order to bring about such organization, the union will make every effort to organize all employees and shops in the industry and the American Association will cooperate with it in such efforts. The American Association will make every effort to organize the submanufacturers and contractors and the union, realizing the greater responsibility of the organized submanufacturer and contractor, agrees not to settle or enter into any agreement with any submanufacturer or contractor unless such submanufacturer or contractor is a member of the American Association.

Twenty-eighth. The union agrees to insert a clause in all its agreements with independent employers to the effect that such employers shall submit to the supervision of the impartial chairman herein provided for and the Code Authority for the Coat and Suit Industry.

All such independent employers shall be required by the union to contribute to the maintenance of the collective machinery in the industry and to deposit each security for the performance of the agreement on their part. The amount of such contribution and cash security deposits shall be based on a schedule which shall take into account the size of the employer's shop and the volume of his business.

Contracts with independent employers shall not run longer than the period of the union's agreement with the American Association.

Twenty-eighth. A. The union obligates itself to enter into no contract, oral or in writing, express or implied, directly or indirectly, by reason whereof any organization, person, firm, or corporation engaged in the cloak and suit industry in the metropolitan district shall receive more favorable terms with respect to labor standards than those provided for in this agreement.

Twenty-ninth. Before admitting a new member, the American Association shall inform the union in writing of the application for membership. The union shall within 10 days notify the American Association of any objection that it may have to the admission of such applicant. Such applicant shall not be admitted unless with the consent of the union or the approval of the impartial chairman.

Thirtieth: No employer and no worker or group of workers shall have the right to modify or waive any provision of this agreement.

Thirty-first: Should a member of the American Association be found to have violated the provisions of this agreement with respect to dealing with nonunion shops, or in any other respect, he shall, upon conviction of the first offense, be adjudged to pay damages in an amount sufficient to offset the pecuniary advantages gained by him through such violation, together with an appropriate penalty. The amount of such damages shall be fixed in the manner herein provided for adjustment of disputes.

A repeated offense shall be punished by expulsion from the American Association unless the union agrees to another disposition.

All damages and penalties thus collected for violation of the provisions of this agreement against nonunion production shall be paid into the fund maintained in the industry for making investigations under the terms of this agreement. All other damages and penalties shall be paid over to the union. The American Association agrees to collect from each of its members a deposit of $150 as security for the faithful performance of this agreement on the part of each of its members.

Thirty-second. All members of the American Association at the time of the execution of this agreement and the persons, firms, and corporations becoming members thereof subsequent to the date of the execution of this agreement shall be and continue to remain personally and individually liable hereunder for and during the term thereof irrespective of whether said member shall cease to be a member of the said American Association prior to the date set for the expiration of this agreement, and such liability shall be deemed to have survived the termination of such membership and shall continue for and during the full term hereof.

No member of the American Association shall enter into partnership or consolidate or merge with another person, firm, or concern in the industry unless the new firm assumes all accrued obligations to the workers of the constituent concerns. Upon the formation of such a partnership or upon such consolidation or merger, such new firm shall give preference in employment to the workers of the absorbed concern over all other workers except those then employed by the firm which continues in business.

Thirty-third. This agreement shall enter into force on the date of the execution thereof and shall remain operative and binding upon the parties hereto until the

1st day of June 1935. If either of the parties hereto shall desire to make any changes, modifications, or additions to this agreement at the expiration thereof, it shall notify the other party of such desire in writing at least 3 months prior to the date of the expiration of this agreement. Within 10 days from the receipt of such notice the parties hereto shall meet in conference for the consideration of such proposed changes or additions. If no such notice is given by either party to the other as above provided, this agreement shall automatically continue and remain in force for another year. The same provisions shall apply with respect to any extended term of this agreement.

In witness whereof the parties hereto have caused these presents to be signed by their respective officers and their seals to be affixed the day and year first above written.

In presence of—

AMERICAN CLOAK AND SUIT MANUFACTURERS' ASSOCIATION, INC.
By JOSEPH SCHWARTZ, *President.*
INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By DAVID DUBINSKY, *President.*
JOINT BOARD OF CLOAK, SKIRT AND REEFER MAKERS' UNION OF THE INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By ISIDORE NAGLER.

NATIONAL RECOVERY ADMINISTRATION,
New York City, September 12, 1934.

DEAN G. EDWARDS,
Deputy Administrator Division V, National Recovery Administration, Department of Commerce Building, Washington, D. C.

DEAR MR. EDWARDS: Following your verbal instructions, I was in contact with the Coat and Suit Code Authorities, Wednesday, Thursday, Friday, and Saturday of last week.

I had an interview with Mr. Alger Wednesday by appointment. This lasted probably 30 minutes. For 5 minutes of this time Mr. Nathan Wolf, executive secretary of the code authority, was also present. I felt at this interview that I had been gradually, but firmly "eased" out of the office by pressure of "other and previous appointments." I made definite arrangements, however, for an interview with Mr. Wolf the following day.

I felt at this first interview that Mr. Wolf was the dominating force, and that Mr. Alger was, to a large extent, a very courteous, old gentleman who did not know what was going on. This impression of Mr. Alger, however, was not confirmed on my succeeding visits. I have had several conferences with him and I am now convinced that, to a large extent, he is conversant with everything that is going on.

I still believe, however, that he is dominated by Mr. Wolf, who is one of the most forceful and dynamic characters I have ever met; a man with a fine mind and wonderful memory who has had 20 years experience in the coat and suit industry. Before this interview I had been led to believe that I would be given a "run around" by this man and that I would get nowhere with him, but nothing could be further from the facts.

On Wednesday of last week I spent 4 hours in a private interview with Mr. Wolf, during which we "waded" through several typed pages of requests for information which I had previously prepared, and none of which was refused to me. I asked for and obtained, among other things, the following:

The names, addresses, and detailed past history of all members of the code authority, with their business affiliations, position held now, or in the past, with the union or associations.

List of officers and employees of the code authority with their duties and salaries.

List of committees and dates of formal committee meetings.

Complete copies of the minutes of all meetings since the organization of the code authority in August 1933.

Detailed information on the International Ladies Garment Workers Union, American Cloak & Suit Manufacturing Association, Industrial Council of Cloak, Suit & Skirt Manufacturers, and Merchants Ladies' Garment Association.

A full discussion of the proposed budget was had, amount of probable income, how it should be derived and how spent, and how much money had been spent to date and for what purposes. We discussed labels, bringing out the rules for

issuing them, rules for withholding them, cases of labels refused or held up, form of application.

I cite the above to show the more or less exhaustive nature of the requests made by me during that interview, and to bring out the fact that none of that information was withheld, Mr. Wolf even going so far as to turn over to me, for my temporary use, records of which he had no other copy.

I also took up with Mr. Wolf specifically the Kasse and Duke case, with which you are, I think, somewhat familiar. In general, the position that Mr. Wolf takes, and I may say it is the position held by all members of the code authority with whom I have talked, is, that in this matter, and in all similar matters relating to these violators or "chiselers", the code is the law and the code authority proposes to enforce it 100 percent. They feel they have the cooperation of the administration in this. They further feel that nothing can swerve them from this determination, neither political pull, pressure from unions or associations, unofficial pressure from Government agencies, nor threats of personal violence.

You have the ruling set forth in this case by Dr. Arthur L. H. Rubin, rendered September 4, 1934, after sitting as impartial chairman on this case. You have also a further "comment" from Dr. Rubin of the same date, explaining to some extent, his original ruling. You are also in possession of correspondence from Mr. George W. Alger, Director of the Coat and Suit Code Authority, sent to you last Firday. These documents are, to a large extent, self-explanatory. The code authority feels that Dr. Rubin's ruling is very clear and means exactly what it says. As far as Kasse and Duke are concerned, their whole case seems to come down to this: They claimed that one partner of the firm which they had designated as a contractor had released them from the designation, and that this release was binding upon the other partner, and that they were, therefore, free to designate another contractor.

The code authority feels, or at least so the Secretary states, that until this release were executed, the remaining partner would be out of business as he cannot be designated by any other manufacturer. He wants and needs the business and they say he should have it. You will note the statement in Dr. Rubin's decision "Whether that is the case or not it is sufficient that the partner remaining in business denies that he wants the release."

There are some side issues to this case which are now being followed by the parties with whom you asked me to work last week, and I think that the whole matter will be brought to a head shortly. I do not think it best to discuss these matters in a letter to you at this time, for the reason that such discussion might possibly nullify the efforts of the men now at work.

In regard to Bitterman & Hindin of Port Jervis, as I advised you by wire on Saturday last, this firm has been released 2 week's supply of labels, which is more than sufficient to carry them to the date set for the compliance hearing in Washington, if that is held. This firm acknowledged their violations and agreed to permit a survey of their factory next week, in order to determine what adjustment is to be made, and left a check with the code authority of $250 as a guarantee.

In this case, also, there are some side issues which are being followed in the same manner as in the case of Kasse and Duke. I will keep you informed on any further developments.

Very truly yours,

ALEX THOMSON, *Administration Member.*

MEMORANDUM

NEW YORK CITY, *December 10, 1934.*

From: E. R. Schaeffer.
To: Mr. G. H. Gitchell, Special Adviser.
Subject: Mr. Thomson's report on the Coat and Suit Code Authority, October 22.

Attached is a report of Mr. Thomson's, dated October 22, to Mr. Dean Edwards, pursuant to your telephone request.

E. R. SCHAEFFER,
New York Regional Office.

MEMORANDUM

OCTOBER 22, 1934.

To: Dean G. Edwards.
From: Alexander Thomson.
Subject: Report on Coat and Suit Code Authority by Special Agent John C. Howard.

At your request I have read the report by Special Agent John C. Howard, giving in detail an account of his investigations of the Coat and Suit Code Author-

ity in New York, New Jersey and Connecticut, and covering the periods from August 15 to October 15, 1934.

Pursuant to your instructions, I worked with Mr. Howard at intervals from September 4 to October 9, 1934, and as administration member of the code authority, I was able to obtain for him access to the office and records of the code authority. The extent of my cooperation is fairly outlined in Mr. Howard's report on pages 21 and 22.

You will note several pages (7 to 11, inclusive) of summaries taken from a hearing held by Harry Tepper for the State Recovery Board of New Jersey; also additional statements covering verbal testimony given to a Mr. Anthony Shimko (pp. 11 to 13, inclusive); and several summaries of affidavits from the files of the New York office (pp. 13 to 18, inclusive).

I do not, of my own knowledge, know much about the cases referred to above as they were under consideration before my appointment to this code. I may say, however, that wherever I have investigated these, or similar cases, I have been unable to find that the respondents have been able to support such statements as are set forth in this report.

If you can take the time to read the minutes of the Lo-Rane Coat Co. hearing, held before Acting State Director Anna M. Rosenberg in New York City on October 11, 1934 (which I regard as a typical case as far as my own observations go), you will, I think, have a clear idea of how most of these accusations and statements disappear when subjected to an impartial hearing at which both sides have the opportunity to present their case.

I am very willing to go on record as holding that if the statements made by the individuals mentioned in Mr. Howard's report are true, that the situation confronting the Coat and Suit Code Authority is serious and that a further investigation should be made. This would, of course, mean that the code authority should be informed of the charges against them and also that they be given adequate time to prepare an answer to such charges.

I believe that in reading Mr. Howard's report, you should note that it is essentially an indictment such as a grand jury would hand down, in that it presents but one side of the case and I feel, therefore, that Mr. Howard is not entitled to draw any such conclusions as he has made in ending his report.

ALEX THOMSON, *Administration Member.*

DECEMBER 5, 1934.

Mr. ALEXANDER THOMSON,
Administration Member, New York City.

DEAR MR. THOMSON: Thank you for your letter of December 1 containing very full report of deficiency receipts and disbursements by the Coat and Suit Code Authority and an explanation of their procedure in disbursing deficiency collections.

I am also very much gratified by your report of the splendid efforts being made by Mr. Alger, Mr. Wolfe, and their associates in code enforcement. I have at all times had entire confidence in their intention and determination to bring about an effective administration of the code, and I am confident their efforts will gradually achieve their object.

Will you take occasion to express to them my best wishes.

I am, as you request, handing your report to Major Gitchell.

Very truly yours,

M. D. VINCENT,
Deputy Administrator, Apparel Section.

NEW YORK, N. Y., *December 1, 1934.*

Mr. M. D. VINCENT,
Deputy Administrator of National Recovery Administration,
Department of Commerce Building, Washington, D. C.

DEAR MR. VINCENT: Major Gitchell on his last trip here asked me to obtain for him a statement from the Coat and Suit Code Authority showing just what disposition was made of the moneys collected by the code authority on account of wage deficiency violation of the code. For his information and yours I make the following report:

All moneys that have been and are collected on account of wage restitution are deposited in bank accounts separate and apart from the general fund of the

Coat and Suit Code Authority. A receipt, copy of which is attached, is given to all persons or firms from whom such moneys are collected.

In New York these sums are deposited in the Central Hanover Bank & Trust Co., in an account called "Coat and suit reimbursement account." Checks drawn against this account are signed by F. Nathan Wolf, secretary of the code authority, who is bonded in the sum of $25,000. This authority was conferred upon him by the code authority at a regular meeting.

Similar accounts are used in the regional offices, checks drawn against these accounts are signed by the deputy directors, who are each bonded in the sum of $2,500.

The amount collected for restitution of wages due to workers and deposited in the bank is $64,139.91. This statement is from the "Reimbursement account for restitution of wages collected for workers", as of September 27, 1934. The amount paid out to workers is $36,381.22, for which the code authority holds the individual receipts of the workers. This leaves an amount due the workers of $27,758.69.

I enclose herewith a schedule of wage deficiencies not distributed as of September 27, 1934. This schedule accounts in detail for the $27,758.69 mentioned above. You will note that of this amount $7,583.98 additional has been paid up to November 28, 1934, leaving $20,174.71 of the attached schedule not distributed. Mr. Wolf has certified to me the accuracy of this schedule.

May I at this time call your attention to my report of September 12, 1934, to Mr. Dean G. Edwards, and my memorandum of October 22, 1934, also addressed to him, which are on file in your office. These communications, together with this letter cover, I feel, the situation I was asked to investigate in this code.

I believe that the members of the Coat and Suit Code Authority, as at present constituted, are earnestly trying to do a very difficult job, and in my opinion succeeding to a very large extent. Without exception they are earnest, capable gentlemen with whom it has been a pleasure for me to associate. I have found nothing to indicate that their acts have been influenced by anything more than a determination to enforce the provisions of their code to the limit, which they felt was necessary for the good of the industry.

May I say, as I have stated verbally to Major Gitchell, that I believe it is wise that investigation into the claims of abuse of power in the past by the code authority, should cease at this time.

I feel that the future relationship of this code authority to the Administration will be to a large extent in the hands of their new Administration member, and I shall be glad to do everything in my power to help him in this undertaking, if it is so desired.

Very truly yours,

ALEX THOMSON,
Administration Member.

Schedule of wage deficiencies not distributed as of Sept. 27, 1934

Date	Name of firm	Amount on hand	Reason for nondisbursement
July 30, 1934	Aaron Bros., Bridgeport, Conn	$1,165.00	Rehearing to be set.
Apr. 28, 1934	Advance Cloak & Suit Co., New York City.	6.30	Old-age permit to be issued to worker.
Mar. 12, 1934	Alcoma Coat Co., Brooklyn, N. Y	28.76	Addresses not obtainable to date.
June, July, August, September.	American Cloak Co., Baltimore, Md	334.82	Paid Nov. 14, 1934.
Sept. 21, 1934	Amo Manufacturing Co., Bronx, N. Y	19.80	Paid Oct. 8, 1934.
Apr. 20, 1934	B. & M. Cloak Co., Vineland, N. J	250.00	Pending further investigation.
Jan. 24, 1934	B. L. T. Garment Co., Beacon, N. Y	30.40	Addresses not obtainable to date.
May 15, 1934	T. Bacchi, Brooklyn, N. Y	.28	Do.
Sept. 21, 1934	Jos. Badolato, Brooklyn, N. Y	19.38	Do.
Aug. 9, 1934	Bangel-Tepper, Inc., New York City	4.17	Do.
April and May	M. Barnett, Hoboken, N. J	75.27	Do.
May, June, September.	J. Bengelsdorf, New York City	200.00	Paid Oct. 23, 1934.
May 10, 1934	Louis Bianculli, Long Island, N. Y	20.90	Out of business, cannot get addresses.
May–August	H. & J. Block, New York City	6,000.00	Awaiting instructions from Washington.
Aug. 22, 1934	Brank & Puretz, Kansas City, Mo	150.84	Paid, Nov. 14, 1934.
Do	M. Caplan & Co., Kansas City, Mo	148.71	Do.
Aug. 31, 1934	Louis Cohen, New York City	14.60	Paid Oct. 8, 1934.
July, August, September.	Cohen Bros., Baltimore, Md	1,040.70	Paid Nov. 22, 1934.

Schedule of wage deficiencies not distributed as of Sept. 27, 1934—Continued

Date	Name of firm	Amount on hand	Reason for nondisbursement
Sept. 13, 1934	Cohen-Friedlander-Martin & Co., Toledo, Ohio.	$164.60	Paid Oct. 8, 1934.
Aug. 9, 1934	Colton Coats, Inc., New York City	.30	Address not obtainable to date.
Feb. 26, 1934	A. Conduso, New York City	10.64	Do.
Apr. 14, 1934	Cumberland Cloak, Millville, N. J.	100.00	Paid Nov. 7, 1934.
June 1, 1934	Albert Cutler, Los Angeles, Calif.	.14	Address not obtainable to date.
Aug. 7, 1934	Daily Style Girl Coat Co., New York City.	37.80	Paid Oct. 8, 1934.
Mar. 16, 1934	Du-Well Cloak Co., New York City.	.80	Address not obtainable to date.
Sept. 22, 1934	Elco Sportswear, New York City	500.00	Account further investigation; case closed; balance $653.97.
Mar. 20, 1934	Elite Girl Coat Co., Yonkers, N. Y.	50.00	Address not obtainable to date; collected Oct. 29–Nov. 15.
February 1934	Ellis Coat Co., New Britain, Conn.	5,112.86	Subject to code authority ruling.
May 21, 1934	I. Eskin, Camden, N. J.	64.64	Address not obtainable to date.
Aug. 20, 1934	Feldman & Center, South Norwalk, Conn.	10.39	Do.
Sept. 21, 1934	Finkelstein Cloak & Suit Co., New York City.	5.93	Paid Oct. 23, 1934.
Do	Harry Frank Garment Co., Newburgh, N. Y.	100.00	Deposit, deficiency not determined.
Sept. 26, 1934	Fried & Schnipper, Long Island, N.Y.	30.67	Addresses not obtainable to date.
Mar. 23, 1934	Theo. S. Funk, Inc., Newburgh, N. Y.	534.55	$489.69 paid Nov. 7, 1934; other address not obtainable to date.
Apr. 7, 1934	G. A. G. Manufacturing Co., New York City.	87.55	Paid Oct. 8, 1934.
Aug 21, 1934	Gem Girl Coat Co., Inc., New York City.	2,000.00	Deposit; total deficiency, $9,538.59 determined by Washington, Nov. 14, 1934.
April, June	J. Goldfein, Newark, N. J.	105.47	Paid Oct. 8, 1934.
Sept. 24, 1934	Goldman Coat Co., New York City.	9.86	Do.
August, September	Goldstein & Rubin, New York City.	750.00	To be applied to Shifran & Barcan deficiency paid, $50 Nov. 13, 1934.
Mar. 20, 1934	Grand Coat Co., Long Island, N. Y.	3.65	Paid Oct. 23, 1934.
July 14, 1934	Great Eastern Cloak Co., New York City.	3.70	Addresses not obtainable to date.
Apr. 10, 1934	H. & G. Coat Co., Brooklyn, N. Y.	7.00	Do.
June 12, 1934	Hamburger Manufacturing Co., San Francisco, Calif.	16.69	Paid Nov. 22, 1934.
April, May	Hod Rose Coat Co., Orange, N. J.	439.00	Paid Sept. 29, 1934.
Sept. 17, 1934	Home Tailoring Co., Cleveland, Ohio.	6.54	Paid Oct. 8, 1934.
August, September	Benjamin Israel, New York City	232.20	Do.
Aug. 22, 1934	Karosen & Sons, Kansas City, Mo.	153.87	Paid Nov. 14, 1934.
Apr. 10, 1934	Kessler Coat Co., Brooklyn, N. Y.	134.00	Addresses not obtainable to date.
Sept. 4 and 18	Kleinkote Manufacturing Co., Newburgh, N. Y.	650.00	Payment on account.
Jan. 26, 1934	Korsen & Huttner, New Rochelle, N. Y.	422.90	Pending appeal.
May 25, 1934	L. T. H. Manufacturing Co., New York City.	85.00	Paid Sept. 29, 1934.
Aug. 17, 1934	Lasser Coat Co., New York City	13.55	Paid Oct. 8, 1934.
Sept. 21, 1934	Benjamin Leidner, New York City	8.76	Do.
Do	Herman Levine, New York City	11.70	Addresses not obtainable to date.
May 29, 1934	Nicholas Lowy, New York City	100.00	Do.
Aug. 1, 1934	Loyal Cloak Co., Inc., New York City.	12.54	Paid Oct. 23, 1934
Apr. 10, 1934	D. Lustgarten & Co., Inc., New York City.	1.00	Address not obtainable to date.
Aug. 22, 1934	Lyndaw Manufacturing Co., Kansas City, Mo.	253.08	Paid Nov. 14, 1934.
Sept. 21, 1934	Marcy Coat Co., New York City	7.00	Paid Oct. 23, 1934.
August	Marrone & Errante, Brooklyn, N. Y.	247.12	Paid Oct. 8, 1934.
Mar. 8, 1934	Middletown Novelty Cloak Co., Middletown, N. Y.	344.99	Addresses not obtainable to date.
March, May	I. Mittman, Brooklyn, N. Y.	124.45	$16.74 paid October 1, other address not obtainable.
Mar. 17, 1934	Miss Dotty Coats, New York City	.20	Paid Oct. 8, 1934.
Aug. 17, 1934	Monogram Garment Co., New York City.	31.90	Do.
May, July, September.	Morristown Coat Co., Morristown, N. J.	228.99	Addresses not obtainable to date.
Apr. 9, 1934	Mosheim-Geier Co., Inc., New York City.	60.00	Paid Nov. 14, 1934.
Sept. 17, 1934	P. Nashkin, Cleveland, Ohio	2.25	Paid Oct. 8, 1934.
April, May	New York Girl Coat Co., Summit, N. J.	172.37	Addresses not obtainable to date.

Schedule of wage deficiencies not distributed as of Sept. 27, 1934—Continued

Date	Name of firm	Amount on hand	Reason for nondisbursement
Sept. 21, 1934	Olympia Sportswear, New York City	$14.93	Addresses not obtainable to date.
Apr. 17, 1934	Pab Co., New York City	.70	Do.
Dec. 16, 1933	Paone Bros., Brooklyn, N. Y.	2.00	Do.
Mar. 2, 1934	Park Cloak Co., Bronx, New York City.	31.95	Do.
May 16, 1934	A. B. Piper, New York City	1.90	Do.
June, September	Progressive Garment Co., Camden, N. J.	1,000.00	Paid Nov. 21, 1934.
Jan. 13, 1934	Prosperity Cloak Co., Mount Vernon, N. Y.	1.51	Addresses not obtainable to date.
Apr. 1, 1934	Rahway Neo Coat Co., Rahway, N. J.	.27	Do.
July 26, 1934	Regent Manufacturing Co., Beacon, N. Y.	145.55	Do.
Sept. 21, 1934	Rich & Cirl, New York City	14.30	Addresses not obtainable to date.
Aug. 20, 1934	Royal Cloak Co., Bridgeport, Conn.	4.55	Do.
Sept. 21, 1934	Sally Coat Co., New York City	26.10	Paid Nov. 14, 1934.
Do	Schiffman & Shane, New York City	37.55	Paid Oct. 23, 1934.
Aug. 7, 1934	Schlansky Baum & Co., New York City.	.22	Addresses not obtainable to date.
Sept. 26, 1934	Seidin Coat Co., New York City	831.47	Paid Oct. 17, 1934.
Sept. 21, 1934	Seligman & Katz, New York City	18.81	Paid Oct. 8, 1934.
Sept. 24, 1934	Shipman, Aranow & Abel, New York City.	24.65	Do.
Apr. 12, 1934	M. Sicherman, New York City	200.00	On account, further investigation.
Apr. 10, 1934	Harry Sirous Coat Co., New York City.	751.91	Address not obtainable to date.
Sept. 26, 1934	Sisselman & Cohen, Inc., New York City.	17.12	Do.
Aug. 22, 1934	Sokol Bros., New Britain, Conn	975.04	Paid $865.76 Oct. 1 and 8, 1934; other addresses not obtainable.
Sept. 24, 1934	Sperling & Sperling, New York City	28.40	Paid Oct. 23, 1934.
May 31, 1934	Spero Garment Co., Chicago, Ill	.30	Address not obtainable to date.
Aug. 22, 1934	Stern-Siegman-Prins Co., Kansas City, Mo.	101.58	Paid Nov. 14, 1934.
June 20, 1934	Style Headgear Co., New York City	1.58	Paid Oct. 8, 1934.
Aug. 17, 1934	Teller-Weisman-Gwods, Toledo, Ohio.	7.17	Do.
Aug. 7, 1934	Antonio Trapani, Brooklyn, N. Y.	14.00	Do.
March-April	United Cloak Co., Stamford, Conn.	447.00	Addresses not obtainable to date.
May 31, 1934	United Dress Co., Brooklyn, N. Y.	47.92	Paid Oct. 8, 1934.
May 8, 1934	Victor Coat Co., Inc., New York City.	5.29	Paid $0.42 Nov. 14, 1934; other addresses not obtainable to date.
Sept. 24, 1934	Weil & Altman, New York City	21.00	Paid Oct. 8, 1934.
Sept. 21, 1934	Weintraub & Schiller, New York City.	23.95	Do.
	Total	[1] 27,758.69	

[1] $7,583.98 of above total paid to workers up to Nov. 28, 1934.

REPORT MADE TO ADDISON SMITH, SPECIAL AGENT, NATIONAL RECOVERY ADMINISTRATION,

NEW YORK CITY,
October 15, 1934.

ELLIS COAT CO.,
New York City.

Present: Sidney Ellis, secretary of the Ellis Coat Co.; Robert M. Greenberger, counsel to Ellis Coat Co.

On or about the middle of July, we had three trucks loaded with ladies' coats, coming from New Britain, Conn., into the city of New York. These trucks were not permitted to be unloaded. We were so informed by our truckmen, and then we asked them who was the party or parties whom we were to speak to regarding the unloading of this merchandise. We spoke with several people from a truckmen's association, and we were told that all the truckmen had become organized into an association, and their help were affiliated with the International Ladies' Garment Workers Union, and due to the fact that we had no affiliation with this union, we could not unload this merchandise. It was therefore, necessary for us to become affiliated with this union.

Previous to this situation, Scapellati of New Britain, Conn., had been doing our trucking. For them to truck merchandise into New York, they would have put themselves in a position where physical harm would have been possible. Not wanting that to occur, this trucking was at that time transferred to H. G. Fisher & Co. When we spoke to Mr. Fisher, and told him that for 15 years, or ever since we have been in business, we have never had any union affiliations, we asked him if there wasn't a humanely possible way, in all fairness and justice, for us to get these three trucks loads of goods into our New York shipping room, and after these three trucks were unloaded, for us to be able to collect our thoughts and consider the matter, and find out what was to be done regarding the trucking. He said, "I cannot do anything, but I will take you to see Mr. Metz, the head of the union for the truckmen."

I saw Mr. Metz and pleaded with him for ourselves, only asking him to have those three trucks unloaded, as we did not have any previous notice, and that we had been trucking our merchandise without any friction at any time. Furthermore, if I recollect, I called Mr. Dubinsky, the president of the International Ladies Garment Workers' Union, whom I had met in Washington at several hearings, and asked him, if he couldn't possibly allow these trucks to go through at this particular time. He answered in the negative.

Mr. Metz finally said, if you join up with the union, with the truckmen's union and sign the membership form, your trucks will go in and you will have no trouble as far as trucking is concerned. There was only one thing for us to do in justice to our customers and to our business, wherein we had orders to be delivered, and in order to deliver those orders, we had to sign.

Scapellati Brothers, who were doing our trucking, who were natives of New Britain, Conn., could not come into New York with their trucks, for fear some bodily harm would be done them by this new association, which was affiliated with the International Ladies' Garment Workers' Union, as they were not members of the New York Trucking Association.

In signing the membership form of the Truckmen's Union and/or association (it is one as far as I am concerned) of New York, there must have been thousands of words which I could not understand, wasn't desirous of understanding and didn't have the time to understand, and there must be some clause in that application which tells me that I must only employ union truckmen and that the union truckmen must only truck for union contractors. The agreement provides that the Ellis Coat Co. must become affiliated with the Manufacturer's Association, having contractual relationship with the union in the International Ladies' Garment Workers' Union.

After signing the Truckmen's Association, we asked if we could then proceed to unload the trucks which we already had, and we were told at that time, by Mr. Metz, that we would first have to have the O. K. from the industrial council, In view of this, Mr. Charles Miller, assistant secretary of the Ellis Coat Co. together with Mr. Harry G. Fisher, the truckman, went to the industrial council. Mr. Safer of the industrial council gave him an application blank, Mr. Miller asked Mr. Safer, I will sign this application form but we never had anything to do with labor unions and in signing this, we do not want to have anything to do with labor unions. Is that all right? Mr. Safer said "yes." The application was signed, and Mr. Miller, above his signature, wrote two words "pending adjustment." After that we were able to do our trucking.

At or about this time, it was understood throughout the industry, that manufactured garments would have to bear National Recovery Administration labels. In order to secure these labels, one would have to be a member of one of the several organizations, which were to my knowledge at that time, the industrial council, the Merchants Ladies Garments Association, and the United Infants Wear. That in itself compelled us to join with the industrial council, because if we did not join, we could not function.

At a future date, I phoned Mr. Klein of the industrial council, from New Britain, Conn., telling him that it was impossible for me to continue with learners and unskilled help who had never operated on a sewing machine, and pay them 81 cents an hour, that it was necessary for me to get an apprentice clause or some help. I told him that I was leaving for New York immediately. He said, "Do so and I will see what I can do." I arrived in New York and together with Mr. Miller, I went to Mr. Klein's offices. Mr. Klein, through his switchboard operator, made a telephone connection with Mr. Uvillier of the American Association, myself in an adjoining room and Mr. Klein in another room. I spoke with Mr. Uvillier and told him how difficult it was for us to function, and Mr. Klein and Mr. Uvillier agreed that I could operate with 15 percent of my help at the western

semiskilled rate of 62 cents per hour. Again at a future date, accounts of the code authority, after examining the books of the Independent Cloak Co. in New Britain, Conn., found that 15 percent of our help had been working at 62 cents per hour, which according to his statement was in violation of the code. I told him that I had received this privilege from Mr. Klein and Mr. Uvillier, who were members of the code authority. Again, at a future date, Mr. Wolf advised me that I would have to put the 15 percent of my help on the 81-cent minimum, and that I should write him a letter saying that Mr. Klein and Mr. Uvillier allowed me this 15 percent, but in the future, I must abide by the 81-cent rate, and nothing would be done about it, and I would be excused for what I had done during those 5 weeks.

The little relief that had been extended to me was not gone, and having in mind a suit, wherein our code would be put on an equitable and fair basis, I did not write this letter to Mr. Wolf, for fear that it might incriminate me. This 15 percent at 62 cents per hour, instead of 81 cents amounted to a difference of $500 on a total of $25,000 pay roll for 5 weeks which we paid, and after paying this, we were able to secure labels again which we couldn't get on account of that, and they gave us 9,000 labels.

After this transpired, we went to a Federal court in the Western district of Hartford, and secured an injunction restraining the code authority from interfering with compelling us to adhere to any provisions of the Cloak and Suit Code. After we had received our injunction pendents lite, upon advice and conferences with Mr. John Keating, Mr. Byers Gitschell, Mr. Greenberg, we were told the only manner in which we could receive labels, though we had this injunction from a Federal court judge, was to withdraw our case. We therefore, withdrew. We have now at the code authority about $5,400 deposited which is the difference in the amount of moneys paid to our help while operating on the western code during the injunction, instead of operating under the eastern code. A settlement has not been made as to the disposition of this money, though Mr. Klein has said that he is of the earnest opinion that the most we should be compelled to pay our help would be 50 percent of the $5,400.

A hearing was promised in Washington in the very near future, wherein our situation as regards the wage differential would be brought out. We attended this hearing, and it was decided that a fact-finding commission should be formed and that this fact-finding commission, after surveying the industry throughout the entire United States, should show its finding immediately, and corrections would be made immediately if any, with the understanding that something would be done by August 1, 1934, at the latest. It is now October 15, and nothing has been done.

At the present time, if we are to operate through the collective agreements between the Industrial Council and the union, the wage scales, if examined carefully, would show that our minimum rate for an operator would be $1.50 per hour instead of 81 cents. We have at the present time enough merchandise on hand to manufacture fall garments for the next 2 months. We have been permitted to operate in the present manner for 14 months. This is now the height of our season. We have taken business and built our line of merchandise in accordance with present labor conditions. If we were to be subjected to any higher labor costs, without advance notice, or a reasonable length of time for us to consider change of our styling, price ranges, and operate on different materials, an untold hardship would be set upon us and we would be unable to function, and 300 to 400 people employed at the Independent Cloak Co. would be thrown out of work.

At a recent conversation had with Mr. Klein, on or about Monday October 8, we asked him if he thought that we could get the proper contractors for the Ellis Coat Co., who would have been able to manufacture our merchandise in accordance with our quality specifications and also in accordance with our figured labor costs, and that these contractors undoubtedly would be affiliated with the union. In so doing, we could be allowed to operate up until January 1, as we now do. The Independent Cloak Co. would have to close its doors due to the fact that we would not force our help to join the union, as we did not think it was under our jurisdiction to compel them to join a union, and in working through contractors, they would be without a job or sales organization. We figured that after the expiration of the collective labor agreement, we could then in June 1934, work with the Independent Cloak Co. again.

Mr. Klein said, that when we went into contractural relations with the union, that at the end of this agreement, which was June 1934, if we desired to have our merchandise manufactured in New Britain, Conn., we could not do so, because the people in the other shops would be without work, and we took upon ourselves an obligation to keep them supplied with work. He also told us that the code authority would not permit us to do that.

The Ellis Coat Co. has three stockholders: J. G. Ellis, 60 percent; Charles Miller, 20 percent of the stock; Sidney Ellis, 20 percent of the stock. The Independent Cloak Co. has four stockholders: Mr. Herbert Greenberger, 1 share; Frieda Ellis, 1 share; David Elkind around 25 percent of the stock, and Sidney Ellis has the balance. The Ellis Coat Co. is the New York jobber, and belongs to the industrial council. The Independent Cloak Co. is the contractor who is not affiliated with any organization and therefore is nonassociation and nonunion.

We include copy of a letter which we are giving to the board of governors of the industrial council tonight, on the question of our being expelled or our resignation.

"OCTOBER 15, 1934.

"INDUSTRIAL COUNCIL OF CLOAK AND SUIT MANUFACTURERS,
New York City.

"GENTLEMEN: We have been informed by Mr. Samuel Klein, executive director of your council, that either we must affiliate ourselves with a union contractor if we are to retain our membership in your council, or else withdraw from the organization.

"The first notice that this was necessary was received by us on October 8, 1934, although we have been affiliated with the Industrial Council since August 31, 1933. During the 13 months which have elapsed since our application for membership in the council, no official or individual, connected with the Industrial Council has ever given us any indication that we were required to become affiliated with a union contractor.

"In all our years of operation, we have never had any connection with any union organization. To be ordered suddenly to become affiliated with union contractors when we have no specific knowledge as to what is to be required of us and without being given any opportunity to give sufficient deliberation to such an important decision, would be unfair and unwarranted.

"This is the height of the season when everybody in the cloak industry is busy. We have already said that to have to make a quick decision would be unfair from every standpoint. We are desirous of determining just what would be expected of us if we are to have union contractural relations. Very deep study is needed in order to give every phase of this problem the consideration which it justly deserves and we submit that by the end of December, we will have determined what our position will be."

During the first code hearings in Washington, where representatives of the entire industry appeared, we did not have any notice or any say in the making of the code.

Senator BARKLEY. Was there a minority report filed on the part of anybody who was on the Darrow committee?

The CHAIRMAN. My recollection is that there was.

Senator BARKLEY. I would like to have that filed as part of the record.

The CHAIRMAN. The Darrow report was field with the clerk, and I hope that some one will obtain the minority report and file it with the clerk.

(The clerk subsequently received the following letter from Mr. Smith, acting general counsel, National Recovery Administration.)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 19, 1935.

Mr. FELTON JOHNSTON,
Clerk Senate Committee on Finance,
Senate Office Building, Washington, D. C.

MY DEAR MR. JOHNSTON: I am enclosing the following mimeographed papers:

1. Report submitted to the President of the United States by John F. Sinclair, member of the National Recovery Review Board, bearing date of April 14, 1934.

2. Statement by John F. Sinclair on May 7, 1934, as reported by the Associated Press.

3. Statement by John F. Sinclair on May 17, 1934, as quoted in the New York Times.

In accordance with the instructions of the committee, will you kindly incorporate the enclosures in the record?

Very truly yours,

BLACKWELL SMITH,
Acting General Counsel.

REPORT SUBMITTED TO THE PRESIDENT BY JOHN F. SINCLAIR, MEMBER NATIONAL RECOVERY REVIEW BOARD

NATIONAL RECOVERY REVIEW BOARD,
Washington, D. C., April 14, 1934.

DEAR MR. PRESIDENT: On March 7, 1934, when you created the National Recovery Review Board, you prescribed the duties and functions of the Board as follows:

"(1) To ascertain and report to the President whether any code or codes of fair competition approved under the authority of title I of the National Industrial Recovery Act are designed to promote monopolies or to eliminate or oppress small enterprises or operate to discriminate against them, or will permit monopolies or monopolistic practices, and if it finds in the affirmative to specify in its reports wherein such results follow from the adoption and operation of any such code or codes.

"(2) To recommend to the President such changes in any approved code or codes as in the opinion of the Board will rectify or eliminate such results."

Since that time, the Board has been engaged almost continuously in hearing complaints, general and specific, arising under certain sections of the completed codes of the various industries.

During the past 5 weeks the Board has conducted hearings upon complaints arising from the following completed codes: Bituminous coal, cleaning and dyeing, electrical, ice, lumber and timber products, motion picture, petroleum, retail solid fuel, rubber (footwear division), rubber (Monarch Rubber Co.), steel, wood-cased lead pencil.

In all, 146 witnesses have been heard, whose testimony is covered in more than 2,753 pages of records. We have conducted 12 hearings. The digest of these will be forwarded to you shortly.

Obviously, in so short a time it has not been possible for us to begin to investigate all the complaints which we have received arising from these various completed codes. Many codes which are now under severe attack by "little business" men took months to complete—some are not finished yet. Hence this report, which you requested to be in your hands by April 15, must necessarily be incomplete and largely inconclusive.

A good deal of the testimony which was presented before the National Recovery Review Board tended to show the difficulties under which the small man is working since the various codes have been put into effect. The main objection seems to have been that in trying to work out the principle of "self-government in industry," the "little man"—the small independent business man—was largely ignored, both in the writing of the codes and in filling the various committees set up to enforce the codes. Nearly every complaining witness heard raised this issue.

Considerable testimony developed to show that many big business leaders accepted appointment in the National Recovery Administration and supervised the writing of the codes. After the codes were accepted they resigned from the National Recovery Administration and accepted work as code authorities to administer and enforce them. The small independent business men in industry were left, according to such testimony, without any influence as to the control to be exercised under their own businesses by the code authorities.

General Johnson, on February 27 last, in presenting his 12-point program of the National Recovery Administration, used these words:

"The certainty of protection against monopoly control and oppression of small enterprise and especially, the inclusion in codes of adequate buying (as well as selling) provisions to guard against oppression of small business is badly needed."

In the old days the small business man was protected from monopoly by the threat of the antitrust laws. These laws are expressly exempted from the provisions of any National Recovery Administration code or agreement affected under it or any action taken in accordance with the terms of such code or agreement, with the exception that—

(1) Codes promulgated under the National Recovery Administration shall not permit monopolistic practices (sec. 3 (a)); and

(2) Nothing in the act shall be construed to impair the powers of the Federal Trade Commission under the Federal Trade Commission Act as amended (sec. 3 (b)).

"The precise significance of these qualifications is not clear," says George Terborgh, of the Brookings Institution, in a recent study on Price Control Devices in National Recovery Administration Codes, "but in any event they have not deterred the National Recovery Administration from approving codes

containing a variety of arrangements for the control of prices and production, some of which appear to be definitely contrary to the antitrust laws as heretofore interpreted by the courts."

In this able study of the first 250 completed codes, Mr. Terborgh discussed four main types of price control, which tend in some degree to modify or abridge the freedom of an individual member of an industry to control his own production and to make his own price and terms. These four main types are:

(1) The fixing of minimum prices under the codes;
(2) Prohibition against selling below individual cost of production;
(3) Open price arrangements; and
(4) Limitation of production or productive capacity.

Each of these types of control, according to the testimony of many witnesses, is under attack by the small independent man as limiting in some form his freedom of action.

Definite research development along these four lines would be extremely helpful in finding out in what way or ways such provisions work as a detriment to the independent business man.

This Board has taken up in a critical way some of the most important codes that have been approved. We have heard, largely one side of the controversy—that of the complainant. We had no power to subpena witnesses, and thus all hearings have been largely ex parte, with no power to command both sides to appear. Naturally this has been a great disadvantage in bringing out all of the testimony that the Board should have had in arriving at conclusions definite enough to report to you under section 1 of the Executive Order of March 7, last.

Price fixing, limitation of production, and other factors of monopolistic control approved by the National Recovery Administration lead us to believe that in some situations they tend to strangle the independent business man in various ways. Of course, approved codes can be amended or modified by administrative order.

The fatal weakness of our work up to this time—and this matter cannot be emphasized too strongly—centers in not having secured at the very start of our investigation a thoroughly competent professional staff of men—experts in code law and economic research—to assist the Review Board in digesting a great mass of testimony that had been presented before various National Recovery Administration and Federal Trade hearings, bearing upon the effect of the various completed codes upon the small business man. Had this work been seriously undertaken, our Board would have saved a great deal of time and effort, and it would have enabled the various members of our Board to have had an intelligent grasp of the disputed questions involved in the various codes before our open hearings began.

But the majority of the Board has not seen fit to approach this investigation from the point of view of careful research and analysis. As a result, the conclusions of the Board, based, as they are, upon only a very limited amount of direct testimony—and that very largely giving only one side of the situation—must necessarily be inconclusive, incomplete, and at times misleading and unreliable.

With regard to section 2 of the Executive Order, we have this observation to make:

A great many of the completed codes, now exceeding 390, embracing over 90 percent of the industrial pay rolls of the Nation, were hastily drawn and will have to be amended sooner or later in order to protect the little business man from exploitation and monopoly.

We have received several thousand complaints coming from distressed complainants in nearly every State in the Union from small business men who claim that they are being strangled under the various codes as administered. An analysis of these letters and complaints would indicate that a large percentage of them, possibly 80 to 90 percent, could be classified as coming from those who lack knowledge of the code and code procedure. Most of the questions raised by the vast majority of complainants do not present a fundamental question which concerns monopoly or monopolistic practice. Such complaints in our opinion could and should be handled within the National Recovery Administration itself, giving a time limit of 10 days to dispose of every complaint advanced. The balance of the complaints, the 10 to 20 percent, are distinctly fundamental and important. They present cases that strike at the very foundation of American business life, so far as the little man is concerned. These cases should be handled outside the National Recovery Administration by an independent review board. This is vitally important, since many of these smaller men fear to tell their real troubles to the code authorities upon the ground that these authorities are the most powerful competitors of the small independents within their own industry.

We had no time to examine into the problem of credit for small business, but considerable testimony was presented to show that credit for the independent business man has been very difficult to secure since the beginning of the depression. The inability to secure credit has been the major cause in many cases of extreme hardship. Ample and safe credit, easily available, for the little man is necessary to give him equality with his largest competitor.

In conclusion, therefore, Mr. President, we recommend, as the result of our 5 weeks of preliminary examination and intensive work:

(1) That within the National Recovery Administration series of review boards be set up to take care of the numerous cases which raise no fundamental issue but in which the time factor is so vital; and

(2) That a review board of appeal be established by Executive order, independent of the National Recovery Administration, to pass upon those fundamental cases which are appealed not only from the National Recovery Administration Review Board, but also arise from original complainants to the board itself. We suggest that this board be a full-time one, ably staffed, nonpolitical, with power to pass finally upon all such questions dealing with monopoly and monopolistic practice and oppression of small enterprises as arise under sections 1 and 2 of your Executive order of March 7, last, and to continue during the life of the National Recovery Administration itself.

Respectfully submitted.

JOHN F. SINCLAIR.

Hon. FRANKLIN DELANO ROOSEVELT,
The White House, Washington, D. C.

STATEMENT BY JOHN F. SINCLAIR, MEMBER OF DARROW BOARD

MAY 7, 1934.

(Reported by the Associated Press from Minneapolis)

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 of 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. The barrage of newspaper talk emanating from certain quarters in Washington seems to infer that it is because of my friendship for General Johnson that I have opposed Mr. Darrow. There is not "a word of truth in that."

STATEMENT BY JOHN F. SINCLAIR ON DARROW REVIEW BOARD MAY 17, 1934 (AS QUOTED IN THE NEW YORK TIMES)

What is distressing to me is that a Board such as this one has not taken advantage of its vast opportunity to do a magnificent job and really show how "the little independent business man can maintain himself in this era."

This fight, which has developed national interest, is not a personal one between Mr. Darrow and myself, but a difference in viewpoint on procedure; Mr. Darrow has definitely taken the position of a special pleader against the position of careful research, which I believe to be the correct approach.

Most of the complainants who appeared before our Board had given testimony when the codes were being drawn up by the various industries, but all of this testimony was completely ignored by our Board. As a result, we merely scratched the surface, taking a day or two on a code to hear a few complaining witnesses, whose testimony was already of record before the various National Recovery Administration hearings.

Nevertheless, an enormous amount of material had been collected by the National Recovery Administration before the various code hearings, which was available to us, and had we been organized in an effective way, could have been of invaluable use. But we were not interested in research. We were homespun fellows, and didn't need anybody to tell us anything, except what we wished to hear.

The majority report should be called the "Russell-Darrow report" because the four other members of the Review Board have had no more to do with selecting the personnel, laying out the plans, or writing the report, than they had to do with starting the last World War. It was all done by Clarence Darrow, working through the pen of his special pleader, Charles Edward Russell.

Senator KING. In connection with the testimony of Mr. Blaisdell, I desire to have inserted in the record the following excerpts from his statement at the public hearings on employment provisions in the codes on January 30, 1935, as follows:

EXCERPTS FROM "STATEMENT AT PUBLIC HEARINGS ON EMPLOYMENT PROVISIONS IN THE CODES, JANUARY 30, 1935, PRESENTED BY THOMAS C. BLAISDELL, JR., EXECUTIVE DIRECTOR CONSUMERS' ADVISORY BOARD

3. Despite growing employment, there still remain large numbers who are unemployed. Since the enactment of the National Industrial Recovery Act, some 3,000,000 people have been put back to work. But the amount of such reemployment as we have had has been discouragingly small in the light of the hopes and expectations of the summer of 1933. The magnitude of our task, 18 months after the launching of the National Recovery Administration, is still appalling. Between 9 and 10 million workers are still without income except insofar as savings, friends, charity, or the Government may supply it. (See table VI.) There has been a substantial increase in the number of persons on relief or subsisting on work provided by the Federal Government.

9. What really matters is the buying power of wages. Although aggregate earnings of workers in industrial and commercial concerns have risen in the last 2 years more rapidly than total living costs, they have done little more than keep abreast of retail food and department store prices (chart C). Moreover (chart B), average earnings per worker have failed to keep abreast of even the lowest living-cost line.

The figures on per capita weekly earnings may be deflated with a cost-of-living index of buying power. Such indexes as these show that the total buying power of the workers' pay envelop increased during the 2-year period by only 0.6 percent (charts D, E, and F). On the average, however, the buying power of the weekly wage was still far below the level of 1929. From June 1933 to December 1934, the buying power per worker in manufacturing industries not only failed to gain but, according to the index of the National Industrial Conference Board, actually declined by 2.5 percent.

The data on employment, hours, and earnings, which we have set out above show, we think, that although some headway has been made in the expansion of employment, the National Recovery Administration has succeeded in making only a beginning in the campaign against unemployment. Our economy is so complex and the forces at work so numerous, conflicting, and often obscure, that the gains recorded can scarcely be credited or the losses debited to the National Recovery Administration, or, indeed, to any single agency. What has happened, has happened. We now have opportunity to take stock of policy.

(The chairman subsequently received the following letter and accompanying data relating to the Howard Report on the Coat and Suit Code Authority:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 16, 1935.

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

MY DEAR SENATOR HARRISON: On March 29 I forwarded the file on investigations of the Coat and Suit Code Authority which you had requested as Chairman of the Senate Finance Committee. I then indicated that the committee should have the comments of Acting Division Administrator Vincent on the matters raised in that report. I am attaching a memorandum of Mr. Vincent to me, which I hope you will consider when you look into the matters raised in the earlier report.

Sincerely,

W. A. HARRIMAN, *Administrative Officer.*

APRIL 15, 1935.

MEMORANDUM

To: W. A. Harriman, Administrative Officer.
From: M. D. Vincent, Acting Division Administrator, Textile Division.
Subject: John C. Howard, report on Coat and Suit Code Authority.

There are perhaps but two points that call for a statement.

The first is the following finding by Mr. Howard:

"The code authority is enforcing not the code, but a series of interlocking contracts entered into by the manufacturers, jobbers' and contractors' associations, and the union with the following results:".

Obviously Mr. Howard failed to obtain an understanding of the collective agreement between the manufacturers, jobbers, contractors, and the union. The agreement adopts the provisions of the code relating to hours, wages, etc.

It is sufficient to say that the code authority is not enforcing this agreement but when it enforces code provisions which have been adopted as part of the agreement the latter is, in consequence, made effective. The code authority is, however, enforcing code provisions and not the agreement.

The other finding in the report to which attention is directed is as follows:

"The extent of the domination and control of the union and the code authority can best be realized from the fact that many contractors have been forced to employ ex-union employees, and now racketeers, to protect them from the union."

Stripped of needless implications, Mr. Howard finds that some members of the industry are employing racketeers to resist code administration. This is the actual fact and the code authority has resolutely refused to submit to such tactics.

Following payment inspections of some of these resisting members, the home of Mr. Nathan Wolf, code compliance director, was bombed. Proof that this bombing was the work of the racketeers, employed by resisting industry members, is not available but I believe the deduction can be left to the facts and circumstances.

Attached is the first page of the Brooklyn Daily Eagle of August 23, 1934, reporting Mr. Wolf's experience. Attached also is the New York Journal of the same date containing an account of the bombing of Mr. Wolf's house.

This is a highly organized and very much stabilized industry. It has made gratifying progress in code administration. There is a small resisting minority. With something like 2,800 members, however, the issuance of labels has been suspended in only 91 cases. In most instances the noncompliance consisted in underpayment of wages or violations of both wage and hour provisions of the code.

The code authority has been exceptionally successful in maintaining code standards, and is aided by a voluntary cooperation on the part of a large majority of the industry. There has occurred a very substantial spread in employment, an increase of approximately 20 percent in volume of business during 1934, and a substantial increase in total pay rolls.

I am entirely justified in saying that code authority officials of this industry are men of integrity and have courageously carried their responsibility for code enforcement in the face of a small but determined and dangerous group.

I can understand Mr. Howard's report only upon the theory that he is quite unacquainted with the organization of the industry, its nature and problems; otherwise, he would not have attempted to justify the racketeering opposition to the code authority, which he evidently found and recognized.

Attached is a photostat copy of an article in the New York Times of August 12, 1934, and an editorial which quite fully and graphically pictures the code authority administration of this industry.

Inasmuch as this report has been laid before the Senate Finance Committee I believe the facts above briefly stated, should also be placed in the committee's hands.

M. D. VINCENT,
Acting Division Administrator Textile Division.

[From the New York Times, Sunday, Aug. 12, 1934]

COAT AND SUIT INDUSTRY IS AT PEACE UNDER CODE

OPENING OF SECOND YEAR FINDS ENFORCEMENT HAS HELPED LEADERS CUT DOWN LABOR TROUBLES

By R. L. Duffus

One of the most closely organized and policed of all the National Recovery Administration codes and perhaps the one in which labor comes nearest to parity with the employing groups began its second administrative year last Monday. This is the Coat and Suit Code, of interest to New Yorkers because 85 percent of the business affected is in the New York area, and of interest to students of codes everywhere because it has brought an almost unprecedented degree of order into an unusually chaotic and individualistic industry.

Supplementing but not supplanting a collective agreement between workers and employers, which was designed to prevent destructive strikes such as have again and again crippled the industry, the code has subjected employers to a degree of control comparable only with that existing in government-regulated public-utility industries.

Most of the provisions so far accepted and enforced have had to do with the protection of the workers, and of contractors and submanufacturers whose status is half way between that of worker and employer. Code amendments already agreed upon will bring trade practices as among employers under stricter regulation. Meanwhile, by the use of labels, without which practically no women's coats and suits can be sold in the United States today, by requiring employers to submit their pay rolls and time sheets each week, and by regular examinations of the employers' books, the code authority has reduced evasions to a minimum.

GOVERNMENT BY CONSENT

Probably 90 percent of the employers, in an industry about 90 percent unionized, have accepted this rigid supervision willingly as the only way out of a ruthlessly and destructively competitive situation. The atmosphere of code administration, under the directorship of George W. Alger, is one of government by consent. Mr. Alger's dual role as code director and as impartial chairman under the previously existing collective agreement between the unions and the employers emphasizes this feature.

A few years ago the coat and suit industry—or cloak and suit industry, as it used to be called—produced nationally about half a billion dollars' worth of goods each year. Now its annual production is about $300,000,000. Since this amount is divided among about 3,000 producing units, there is no single producer comparable in importance with typical manufacturers of steel, automobiles or even textiles. The largest coat and suit manufacturer does a business which ranges between five and ten million dollars a year. The smallest may be producing on a investment of a few hundred dollars and his gross receipts may be only a few thousand dollars a year.

There are not much more than 50,000 coat and suit workers in the country, and so the average is about seventeen workers to each shop. Jews and Italians, with a sprinkling of other races, make up the labor force.

DIFFICULTIES DEVELOPED EARLY

The results under the code will be easier to understand if some of the history of the industry is recalled. Beginning on a small scale before the Civil War, the manufacture of ready-made clothing for women assumed large importance during the latter part of the nineteenth century. The smallness of the units and the intense competition between the shops made it difficult to enforce decent wages or fair working conditions, and this difficulty has continued to exist.

Very early the system took somewhat the same form it has today. There are a few "inside manufacturers" who produce goods in comparatively large shops of their own and who may sell them directly to the retailer. Next there are jobbers or wholesalers who may also do some "inside" manufacturing but who give out most of their work to submanufacturers or contractors. The submanufacturer receives from the jobber the cloth and trimmings for the garment, which he cuts, makes, and delivers. The contractor differs from the submanufacturer only in that he receives the goods already cut up.

For many years the making of coats and suits was a sweated industry, first, because the jobbers were able to force prices to a low level by encouraging competition among the submanufacturers and contractors; and, secondly, because the latter could not make a living unless they in turn drove wages down to a starvation level. This was true of all the needle trades.

MATTERS COME TO A HEAD

Labor unions, special legislation, and an occasional investigating committee were brought into play to remedy intolerable conditions. The International Cloak Makers Union of America was organized in 1892, and from time to time strikes shook the industry as they did the other needle trades. In 1900 needle-trade unions joined to form the International Ladies' Garment Workers' Union. In 1910, after a discouraging decade during which sweatshop conditions returned in their old squalor, occurred what Dr. Louis Levine calls the "Great Revolt", in which the cloakmakers played a leading part. This strike was settled by the famous "protocol", largely worked out by Louis D. Brandeis, now a justice of the United States Supreme Court.

The protocol, as Dr. Levine says, was "inspired by a profound faith in the possibility of industrial peace." It contained, as Director Alger and his associates see it now, the germ of the system of self-government now existing under the code. Applying first to the cloak makers, it was later extended to other needle trades. The protocol itself was abandoned after some years in favor of more conventional systems of collective bargaining, tempered by strikes, but its ideals continued to exist.

During the war and post-war years the needle trades, and with them the cloak makers, experienced the ups and downs common to all labor. In 1924, after a strike lasting 10 weeks, a collective agreement was made between the coat and suit unions and the employers, and Raymond V. Ingersoll, now president of the Borough of Brooklyn, became impartial chairman. In 1931 Mr. Ingersoll was succeeded by Mr. Alger.

Relations did not remain altogether tranquil. A 26-week strike shook the industry to its foundations in 1926, and there were lesser strikes in 1929, 1932, and 1933—the last ended by the intervention of the National Recovery Administration.

DRAFTING OF THE CODE

The experience of the 9 years from 1924 to 1933, however, as well as the early experiment of the protocol educated both employers and workers in the need and uses of a system of government for the coat and suit industry. The code, when it was drawn up, laid emphasis upon labor problems because these had been found to be the most disturbing. It was submitted and accepted by the employer organizations, but it stipulated that the code authority should include 2 union representatives in addition to the 8 who represented the various employing groups.

For manufacturing employees the code established a maximum work week of 35 hours, with overtime forbidden except by special permission of the director. The minimum wages established were among the highest in codified industries, ranging up to $47 a week for cutters in the Eastern area and from $29 to $40 a week for other skilled workers.

The sweatshop was completely ruled out. To make sure that conditions imposed by the code were complied with it was agreed that every garment manufacturer under it should carry a specified label and that the code authority should have charge of issuing the labels. Complaints are referred to a grievance committee, and if not adjusted are heard by the code director. If abuses cannot be checked in this fashion they are reported to Washington and prosecution may follow.

LABELS AND INSPECTION

The two points which stand out for one who visits the code authority's New York offices and studies what is going on there are the machinery for distributing labels and the system by which, under the direction of the code secretary, F. Nathan Wolf, violations are ferreted out. A similar system is in use in other clothing trade centers.

The label itself is a small strip of white satin, on which is printed National Recovery Administration insignia, the name of the code authority and a serial number indicating which manufacturer, jobber, submanufacturer or contractor handled the garment. No employer can procure more than 2 weeks' supply at one time and none can order more than once a week. If a violation occurs, the supply of labels is cut off until a satisfactory settlement has been made.

Precautions are taken to prevent misuse of labels, which are guarded almost as carefully as if they were so many gold certificates. A few attempts at counterfeiting have been discovered and stopped. To popularize the label with consumers a special staff is maintained under the direction of Miss Bessie Beatty, and attempts are being constantly made to teach purchasers to demand the National Recovery Administration insignia on every garment bought.

Inspections of shops and examinations of books go on continuously under Mr. Wolf's direction. Each week each employer turns in at the code office a payroll report on a form prepared and sold at cost by the authority, and each of these reports is carefully checked by an expert accountant familiar with the industry. The data thus obtained are supplemented by the shop visits, which are likely to be frequent and unexpected when violations are suspected, but which as a matter of routine are planned to include all shops several times a year.

Since this work was started at least 5,000 inspections of books, each about as thorough as that of a bank examiner, have been made in the New York area, and about 15,000 physical inspections of shops have been carried out. In addition the retail stores, though not officially under the code, are visited regularly to make certain that labels are being used in the garments on sale.

RELATIONSHIPS LIMITED

Not only wages and working conditions but also the relations of manufacturers and jobbers with submanufacturers or contractors, come under the code authority's jurisdiction. This is done under the rule that each manufacturer or jobber shall deal only with specified submanufacturing or contractors, and vice versa. Under this system the old cutthroat competition for orders is largely done away with.

As the work of regulation goes on a strenuous effort is being made to build up a body of scientific information on which it can be based in the future. Continual studies of piecework rates, as has been pointed out, are necessary because of style changes. To supplement these a technical bureau has been set up to investigate problems of engineering and timing in connection with the industry.

In addition to the technical bureau a statistical bureau is at work gathering data. Such facts as annual earnings, which vary widely in a seasonal industry, living costs in New York City and other communities in which the coat and suit trade is carried on, production costs and profits will be brought within the scope of this country.

To say that the code had brought permanent peace into the coat and suit industry would be risky. The protocol of 1910 was thought to have achieved this, but in the end it failed. The code, however, goes further than the protocol in that it provides a legal means of bringing the mavericks into line.

IMPLICATION OF THE CODE

The broad implication of the Coat and Suit Code lies in its influence on other codes not only in the needle trades but in general industry. It may point the way toward a far greater acceptance of labor participation in industrial government and of more stringent restrictions on "rugged individualism" than has been achieved generally under the codes.

How much the past experience of the coat and suit industry anticipated the National Recovery Administration may be gathered from a letter written by Mr. Alger, as impartial chairman, to Secretary Perkins more than a month before the National Industrial Act was passed.

"The organized industry", Mr. Alger declared, "is today looking hopefully to Washington to help with this problem of uneconomic, ruthless, and insane competition which today imperils the lives of our workers and makes decent wage scales and fair hours and conditions almost impossible. We believe that we are on the verge of a new era if the law will permit the decent to live industrially by giving them some reasonable protection against these destructive forces, consistent with fair protection to the consuming public.

"We believe that there are many industries besides our own which would be glad to become organized on a basis similar to ours, to enter into collective agreements with labor, provided the net effect of such organizations and the acceptance of such standards should not make them still more vulnerable to attack by disruptive and destructive competition by concerns that disregard all ethical standards in industry."

That Mr. Alger's arguments had influence on the original conception of the National Recovery Administration cannot be doubted. That the past year's

experience of the Coat and Suit Authority will have effect on the prospective revamping of the National Recovery Administration is also deemed a strong probability.

EDITORIAL—CLOAK MAKERS AT PEACE

The coat and suit industry—"cloak" and suit industry as it used to be called—appears to be one that is at peace under the system of codes. The reasons why that is so, set forth in an article by Mr. Duffus in the special feature section of today's Times, are of more than local significance, even though 85 percent of the business affected is in the New York area. The history of these needleworkers has been turbulent in the extreme. Some 50,000 strong, they are employed in hundreds of different lofts, a handful in each shop. The smallness of the units and the intense competition between the employers has made it difficult to establish fair wages or decent working standards, and for years sweat-shop conditions prevailed. Strikes were frequent. Out of the disorder men and women like Louis D. Brandeis, Frances Perkins, Raymond V. Ingersoll and George W. Alger long sought to bring some sort of order and stability. In 1910 a protocol was signed which contained the germ of the present system of code control.

In the dual role of code director and impartial chairman under the former collective agreement, Mr. Alger now presides over an industry in which it can at least be said that frequent earthquakes have for the present given way to occasional tremors. The code fitted this particular trade like one of its own cloaks. The great need was for limitation of hours, maintenance of wages, improvement in working conditions. These could be brought about only by collective action, with cooperation between employers and employees and some means of enforcing standards. All that has now been achieved. Pay rolls are checked weekly, and the little white satin label of the trade, with its "blue eagle" and serial number, carries such authority that without it practically no women's coats and suits can be sold today anywhere in the country. "To say that the code has brought permanent peace into the industry would be risky," writes Mr. Duffus. But it does seem to have laid the foundations for something more enduring than a temporary truce.

[From the New York Journal, Aug. 23, 1934]

N. R. A. PROSECUTOR'S HOME BOMBED

FIVE NARROWLY MISS DEATH IN BLAST—TWO HUNDRED FLEE HOMES AS EXPLOSION ROCKS BROOKLYN AREA

Violence marked the opening of a new war on the enforcement of National Recovery Administration codes early today when a bomb wrecked the Flatbush home of an official of the Cloak and Suit Code Authority and threw hundreds of persons into a panic.

Women clad in night attire and clutching babies in their arms fled from their homes in the wake of the blast which barely missed killing five persons in the two-family house owned by F. Nathan Wolf, unrelenting prosecutor of cloak and suit code violators.

Wolf and his wife, Minna, were in an up-State resort town, but police announced that the code authority official had been threatened repeatedly for his vigilance in ferreting out price-cutting.

Mrs. Anna Jacobs, her three grown daughters, and a house guest were sleeping on the ground floor of the home at 116 East Fourteenth Street, in the Parkville section, when the bomb exploded, evidently from a time fuse.

The guest, Samuel Fass, was hurled several feet into the air. Plaster showered both Fass and the Jacobs family.

[From the Brooklyn Eagle, Aug. 23, 1934]

BOMB WRECKS HOME OF NATIONAL RECOVERY ADMINISTRATION PROSECUTOR, SWEATSHOP NEMESIS

F. NATHAN WOLF ABSENT WHEN BLAST SHATTERS WINDOWS AND CEILINGS—FLATBUSH AREA IN PANIC—FEDERAL PROBE LIKELY

Echoes of sweatshop resentment against National Recovery Administration interferrence reverberated through quiet Flatbush at 1 o'clock this morning with a bomb explosion which sent hundreds of panic-stricken residents fleeing into the streets.

The bomb was tossed on the porch of a 2-family stucco home occupied by F. Nathan Wolf, secretary to the Cloak and Suit Authority and vigorous prosecutor of small shops which try to persecute their workers. The house is at 1162 East Fourteenth Street, near Avenue L.

Mr. and Mrs. Wolf were out of town, but five sleepers in the house barely escaped serious injury in a shower of window glass and plaster.

The blast shook the dignified residential section for blocks around. Parents, clad in night clothes, snatched up babies and children and rushed into the streets. Police headquarters was besieged with frenzied calls from the neighborhood.

Because of the National Recovery Administration angle, police announced they would lose no time in turning the case over to the Federal authorities.

"We want especially a list of sweatshops which Wolf has harassed", explained Detective Max Black of the Parkville station.

The Wolfs, who occupy the top floor of the house, have been away for the summer at their home near Peekskill, N. Y. Downstairs lives the family of Isidore Jacobs, owner of a fish business in Fallsburg, N. Y.

THROWN FROM BEDS

Jacobs was also out of town, but the apartment was occupied by 5 persons: Mrs. Jacobs; a daughter, Martha, 12; 2 daughters of Mrs. Jacobs by a previous marriage, Sylvia and Ruth Goldstein; and a guest, Samuel Fass.

The women were thrown from their beds by the blast and Fass, sleeping on a sun porch, was nearly buried by falling plaster. None was seriously injured.

"My family hasn't an enemy in the world", Mrs. Jacobs later told police. "Whoever threw the bomb must have been someone after Mr. Wolf."

The bomb was of the type known as a "scare" bomb, designed more with an eye to terrifying its victims than to causing great damage. Police believed it to have been a home-made affair consisting of a paper bag filled with gunpowder and fitted with a fuse.

Police said Wolf had been threatened before in connection with his National Recovery Administration vigilance.

PRINT SHOP BOMBED

CHICAGO, August 23 (A. P.).—Thomas J. Cullen, printer, who came into the limelight a week ago with his charges that the National Recovery Administration code groups were in a conspiracy to ruin his business, was in the news again today. A black powder bomb causing $1,500 damage exploded in his shop. Police said they knew of no motive for the outrage.

Senator KING. I desire to have inserted in the record the following excerpt from page 92.

(Excerpt from p. 92 of Hours, Wages, and Employment Under the Codes, issued by N. R. A., Research and Planning Division, January 1935.)

Probably some three and a half million laborers have been able to find employment in industries under the codes since March 1933. But here the caution is particularly needed not to impute all or two-thirds or any other precise fraction of such increase in employment to the National Recovery Administration. For truth there is no statistically precise method whereby the exact amount which the codes have contributed to employment can be separated from that increase which has undoubtedly been caused by relief and public-works expenditures, by aid given to the banks and to farmers and by all the other recovery measures which have helped to steer American business foward on the road to recovery.

Senator KING. There is a letter in the record from Mr. Richberg enclosing with it a report made by the N. R. A. to the President at the direction of the President.

From that report, entitled "A Study of the Effects of Executive Order No. 6767 Upon the Maintenance of Standards of Fair Competition to Public and Private Purchasers", I desire to have placed in the record certain excerpts which I have marked.

(The complete report of this study is on file with the committee.)

(The excerpts are as follows:)

EXCERPTS FROM A STUDY OF THE EFFECTS OF EXECUTIVE ORDER 6767 UPON THE MAINTENANCE OF STANDARDS OF FAIR COMPETITION TO PUBLIC AND PRIVATE PURCHASERS.

CHAPTER I. INTRODUCTION AND SUMMARY

On June 2? of last year, the President issued Executive Order 6767, permitting bidders on public contracts to quote prices not more than 15 percent below those allowable to private purchasers under their codes. The expedient was new, the results not fully predictable. Consequently, in paragraph 3 the order provided that "the Administrator for Industrial Recovery is directed to cause a study to be made of the effects of this order upon the maintenance of standards of fair competition in sales to public and to private customers and to report to the President thereon within 6 months of the date of this order." In pursuance to this paragraph, the Research and Planning Division was allotted the task of watching developments and reporting its findings.

Postponing to subsequent chapters a scrutinizing of the details of supporting evidence, and remembering that conclusions at so early a date must necessarily be tentative, let us present our summary of findings forthwith.

In the first place, the preponderance of obtainable evidence indicates that Executive Order 6767 was only sporadically effective in increasing competitive auction bidding upon contracts to be let by public purchasing agents. Out of a total of 85 sets of contracts studied (a total including practically all the purchases of the Procurement Division of the Treasury and the Bureau of Supplies and Accounts of the Navy), 41 showed an increase in the amount of tie-bidding after the order was issued, 10 showed no change, or at any rate not one exceeding 5 percent, while only 34 showed a decline. The percentage of tie-bids increased notably in such industries as the iron and steel, paper and pulp products, and the building materials industries. It remained about the same in such industries as the automotive, paint and varnish, chemical, and glass container industries, and decreased substantially in such industries as the asbestos, scientific apparatus, and cement industries.

In the second place, practically no evidence was found that the order secured to the public exchequers even a fraction of a percent of the potential savings which, it was hoped, a 15 percent discount upon governmental purchases would achieve. Permission to grant a discount as allowed in the order was used with frequency by firms in less than half a dozen codes, and used only infrequently by firms in less than a dozen more. Almost universally bidders upon public contracts tailed to offer a discount.

In the third place, there is no objective evidence to indicate that the order promoted even a semblance of the price-cutting predicted by industries objecting to the order. Although by the very terms of the order industry was encouraged to apply for a reduction in tolerance so as to permit, say, a discount of only 5 percent instead of 15 percent, only 23 industries actually did so, and of these only 2 were willing to support their protests with conclusive facts concerning price cuts, costs, profit margins, mark-ups, etc. A study of the prices of articles upon which bids were submitted to public purchasers reveals no decline of substantial importance directly attributable to the order, not even for individual items.

Finally, the order has not served to loosen at all the grip of strongly organized industries upon the prices and upon the consumers of their products. So far as the evidence obtainable for this study is concerned, monopolistic competition, that is, competition between only a few firms or sometimes only two, has continued and has even been stabilized in many respects by the codes. It seems to have become more monopolistic and less competitive in such fields as the electrical machinery, and iron and steel industries. The evidence that is here to be had shows overwhelmingly that these monopolistic or quasi-monopolistic groups have cartelized under the codes to such an extent as to bring about increased rigidity and gradual petrification in the price structure. Objections against the fairness of the order, fears of disrupting pricing mechanisms and consequently, so it is alleged, of lowering levels of wages, and dire predictions were to some extent groundless; no price cutting occurred as a result of the order. In fact many of the bidders on public contracts as well as many of the purchasing officers themselves were wholly ignorant or largely unfamiliar with the order. In short a realistic and factual analysis, cutting to the heart of the problem, can scarcely have other outcome than to pose emphatically the question, how can the codes and the National Recovery Administration be welded into a device which, by promoting fair competitive practices, price flexibility, and industrial stability thereby brings about increased industrial production and increased real social income?

Consequently, the codes set up controls over channels of distribution, over methods of quoting prices, over terms of discount, etc. But while the codes quite generally contained numerous specific and liberal provisions designed to prevent so-called "destructive" price cutting such as the provisions forbidding sales below cost or those establishing the practice of filing prices with or without a waiting period, they contained no such abundance of specific and incisive provisions promoting price flexibility at the top, in the area of "imperfect competition" or "monopolistic competition." (See e. g., Joan Robinson, The Economics of Imperfect Competition. New York and London, 1933, and Dewin Chamberlain, Monopolistic Competition, Cambridge, Mass., 1933.)

Only a few months elapsed therefore before the price provisions in the codes came under widespread attack. As a result, a price hearing was held on January 9–10, 1934, followed by a public hearing on February 27 to March 2, 1934, and in all of these hearings charges of price uniformity and excessive price advance were freely made. Though the large body of consumers were wholly inadequately represented, individual complaints increased in volume and intensity.

But the outstanding complaints made at the hearings came from another quarter. The purchasing departments of city, State, and Federal Governments as well as those of many universities and other quasi-public institutions reported serious difficulties in making awards because of the substantial increase in the number of tie-bids. This not only seemed to indicate an increase in price rigidity, but occasioned no small amount of critical comment.

Some of these industries showed a high degree of price uniformity prior to the code anyway, so that the code only reinforced a tendency already present, as in the surgical dressings, cement, mica, and compressed-air industries. On the issuance of the order not only were the precode conditions restored but sometimes even greater bid differentiation was brought about. For example, the tie-bids and tie-low-bid percentages for surgical dressings were 83 and 14, respectively, in the precode period and 85 and 15 in the post-order period compared to 100 percent and 62 percent under the code. On the other hand, bid uniformity of cement, compressed air, and chain manufacturing was definitely lowered compared to precode conditions. However, quoted cement prices have stabilized at approximately the 1929 level.

The bituminous coal code provides that prices were to be fixed by regional market agencies with the approval of the Administrator. Precode tie-bid conditions have been substantially restored. Tie-bids were 42 percent, 98 percent, and 43 percent for the three periods respectively. Tie-low-bids were 2 percent, 48 percent, and 7 percent. Yet quoted prices were higher than in the first half of 1934.

Those industries had zero percentages for uniform bids prior to the code, attained a large percentage of tie-bids for a short period under the code and have relapsed subsequent to the order. Such industries are cork, steel wool, shovel, dragline and crane, laundry and dry cleaning, machinery and valve fittings.

Prices to public purchasers.—We turn now to a wholly different matter, namely, Were prices to public purchasers advanced? Upon this question the evidence so far collected is extremely fragmentary but illuminating. In charts I to V are shown prices on identical items bought by two public purchasing offices, and the percent of identify of prices at the bid openings at which these prices plotted represent the figure of the successful bidder. Particularly interesting is the contrast afforded by the case of brass union purchases for the city of Philadelphia (chart V). The sharp break in price at the December 1934, bid opening was accompanied by the complete absence of identical bids on this product. In general the charts show the line and the height of the bars rising and falling together, pointing to a measure of association at least between tie bids and higher prices. Both may have been joint results of a common cause.

Something of this nature is indicated in table A which in its three segments show the trend toward uniformity of prices by the shifting of the tally marks downward and to the left around the line which indicates perfect uniformity; that is, one in which no matter how many bidders were present they would all make the same bid. Nothing brings out more clearly the fact that Executive Order 6767 failed to make the slightest impression upon the seemingly irresistible trend toward uniformity of prices and bids in the iron and steel industry.

In conclusion, the painstaking attention of the reader is earnestly solicited for the 12 tables and the booklet of charts which are attached as appendixes to this chapter. The tables present for each of the codes the experience of public purchasing agents in the Federal, State, and local Governments. Note that in general the code periods show a distinct rise not only in the percent of tie bids

but also in the percent of tie bids that were low bids. Note that this seems to hold equally well for codes that do not provide for open-price filing as for those that do. The conclusion is striking, suggesting that the knowledge that the anti-trust laws were suspended was acted upon by business generally, whether under codes or not under codes. Note also the extraordinary increase in the price of building materials, a matter of peculiar importance to the Public Works Administration and the Federal Housing Administration. From all the foregoing, the conclusion seems hard to escape that the order had but slight effect. * * *

By way of summary, so far as the manufacturers and distributors are concerned, the evidence indicates strongly that Executive Order 6767 has in no case brought a threat of destructive price cutting, nor has it led to the suspension of open-price provisions in the codes, nor has it resulted in sales below cost. It has in short been ignored or disregarded. The tide of business stabilization or rationalization given an impetus by lifting the threat of the antitrust laws has in overpowering fashion gone on its way counteracting, without itself being even appreciably retarded by the small amount of competition provided for in Executive Order 6767.

(Excerpts from the report of the Brookings Institution on the National Recovery Administration are as follows:)

THE BROOKINGS INSTITUTION,
Washington, D. C., April 15, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: At your request I am sending you and the members of the Finance Committee page proof of the general study of the National Recovery Administration, which the Brookings Institution has been carrying on under my direction. It is unnecessary, I am sure, to indicate that this, like all of our studies, is a detached and objective investigation made without reference to any private or political interest. During the course of the study, which has been in process since the inauguration of the National Recovery Administration, four of the authors have had the opportunity to be parts of the Recovery Administration and to learn of its operations at first hand.

As this is page proof, minor errors may not have been corrected and cross-references have not been put in. At the end of each major part of this book you will find a chapter of conclusions.

Respectfully,

LEVERETT S. LYON,
Executive Vice President.

THE BROOKINGS INSTITUTION,
Washington, D. C., April 17, 1935.

MY DEAR SENATOR HARRISON: Herewith is a mimeographed copy of a final chapter to be attached to the page proof on the National Recovery Administration, which I sent to you yesterday.

Respectfully,

LEVERETT S. LYON,
Executive Vice President.

(Subsequently the following letter was received from Mr. Lyon, of the Brookings Institution:)

THE BROOKINGS INSTITUTION,
Washington, D. C., April 19, 1935.

MY DEAR MR. JOHNSTON: The following statement of responsibility as among the several authors of our study on the National Recovery Administration will appear in the published volume and should be noted in connection with the page proof which I sent you a day or two ago.

"The general relationship of responsibility as among the authors should also be specially noted. The volume has been planned as a unified study to cover various major aspects of the Recovery Administration. This has affected the work of each author in that each section has been planned and handled in a way to avoid unnecessary overlapping and duplication of others. Moreover, as the various authors have been associated as a group and as the subject matter of the book has been of more or less continuous discussion, it would be impossible to allocate in accurate detail credit for every idea or item of evidence which appears

Each author is, however, directly responsible only for the particular part of the work for which credit is assigned to him below. There has been no effort to strive for unanimity on points of detail, and since each author was alone in possession of all the data out of which his specific judgments arose, the primary interpretation is necessarily his.

"Mr. Lyon and Mr. Homan are responsible for the writing of part I. Mr. Dearing is responsible for chapters IV and V, Mr. Homan for chapters VI to IX, and Mr. Dearing and Mr. Homan jointly for chapter X. Mr. Lorwin is responsible for part IV, Mr. Lyon for part V, and Mr. Terborgh for part VI. The factual content of the analysis of wages and hour provisions of codes appearing in part III is the work of Mr. Marshall, who before his appointment to the National Industrial Recovery Board was a member of the staff working on the study. Mr. Marshall, however, is not responsible for the expressions of judgment and appraisal which accompany the factual text."

LEVERETT S. LYON,
Executive Vice President.

THE NATIONAL RECOVERY ADMINISTRATION: AN ANALYSIS AND APPRAISAL

By Leverett S. Lyon, Paul T. Homan, George Terborgh, Lewis L. Lorwin, Charles L. Dearing, Leon C. Marshall, all of The Brookings Institution, Washington, D. C.

* * * * * * *

PART II. ADMINISTRATIVE ORGANIZATION AND PROCEDURE

* * * * * * *

CHAPTER V. THE CODE-MAKING PROCESS

* * * * * * *

Of these various incentives, the second was no doubt the strongest and most accountable for the large number of code applications. The early flood was based on hope alone. Soon, however, favorable harbingers began to arrive. The first code provided for indirect control of production through limitation of machine hours, and the second prohibited selling below cost. On August 15 the electrical manufacturing code was approved. It contained a fully developed open-price reporting provision. And finally on August 19, the approval of the Iron and Steel Code and the Lumber and Timber Products Codes sent business hopes soaring. The former contained elaborate price-reporting, merchandising, and minimum price protection provisions. The latter contained a forthright system of price fixing, and provisions for the control of production, including allocation. The promise of constructive relief from the antitrust laws was proving no mirage.

* * * * * * *

SUMMARY

Viewed in its entirety the code-making process as it was actually conducted presents a series of striking contrasts with the formalized statement of the conflict of forces out of which "truth and composition" were expected to emerge.

The early formal picture was one of a small number of highly competent and impartial officials, conducting a series of orderly conferences and hearings, during which a group seeking to cooperate in the drive for reemployment presented basic proposals for the consideration of the National Recovery Administration. In order to guarantee unbiased treatment of the proposals and to protect the interests of other affected parties, proposals of the applicant group were to be exposed to the test of public hearing and to the partisan attack of the accredited representatives of three equally well implemented groups. Since the constituency of each of these groups covered the entire range of industrial, labor, and consumer interests, the applicant's proposals were in effect to be subjected to the ultimate test of conformity with the public interest. By such alchemy the deputy was to forge a document which would operate equitably upon all interests concerned. That it constituted an equitable arrangement for the groups immediately subject to its provisions would be attested by the fact that a group "truly representative" of the trade or industrial operations concerned had assented to its provisions. That it was a document which would not be detrimental to the public welfare would be adequately attested by the approval of the President, or his agent, the Recovery Administrator, acting as guardians of the public interest.

The real picture was one of numerous officials, ranging the entire scale in individual competence and motives, struggling under pressure of time to secure, by whatever method available, some common ground for agreement among a number of contending groups. In this confused struggle the deputy sometimes lost his identity as an impartial referee and appeared as an active participant in the controversy, lending support first to one group and then to another according to his own conception of desirable economic and social controls, or his notions of how to facilitate progress on the code. The nice alinement between advisory groups and their stated functions suffered strange distortions. By reason of circumstances their advisory functions were forced into bargaining patterns. As a result, the theoretical parity of their advisory opinion was destroyed, for one of the groups was strongly organized to operate as a pressure group, the second mildy so, and the third not at all. In order to function at all, the latter, the consumers' group, was compelled to adopt a method which was alien to the entire N. R. A. scheme.

Commonly, the code scene disclosed two active and distinguishable contenders in the drafting of labor provisions The code committee and the labor group. The bulk of the former was somewhat enhanced by the shadowy embodiment of the industrial advisory group, though this board at times was an influence in restraining rather than promoting the attitude of code committees.

In the making of trade-practice provisions the lines of conflict were less clearly drawn. Frequently the controversies within the code committee itself were the hardest to resolve. But there were continuing seeds of conflict in those price-control and other restrictive provisions which the consumers' advisory group opposed in principle. While the "consumers' interest" was a somewhat formless shadow, the deputy administrator was subject to some inhibitions imposed by the vague N. R. A. policy against granting direct powers of administrative direction in matters of price and production control. Other inhibitions arose from questions of legality.

A good deal of the time spent upon the negotiations of such provisions therefore was taken up with bargaining upon the details of formulas, rather than with the more direct form of bargaining which was possible on wages and hours.

Throughout the whole process the deputy's actions were notably dictated by the desire to bring the negotiations to an early end. For many codes, especially smaller ones, the negotiations could be much foreshortened by the application of formulas established by precedent. But for many others, extended and at times bitterly controversial negotiations were required.

As code making extended to include hundreds of separate groups, it became impossible for the Administrator to exercise his separable function as "protector of the public interest." He was forced to depend more and more upon the judgment of his agents and subagents that specific code provisions would not operate contrary to the public welfare. The structure of each code had become so intricate and the codes had become so numerous, that only these agents and the participant groups had any comprehension of the potential effects of given codes upon the public welfare. But each agent was operating largely independently of the others, and without any specific standards by which to gage the public interest.

* * * * * * *

CHAPTER IX. THE N. R. A. AND CODE ADMINISTRATION

* * * * * * *

* * * Whatever the services of prompt justice in discouraging crime, the customary theory of justice does not permit legal officers to overlook the offenses of known willful violators of law. This is exactly what has been done under N. R. A. compliance machinery. The outcome is a system of "selective justice"[1] under which a few violators are selected to be made examples of, with no pretense of prosecuting other cases of similar nature. But even this system has not been sufficiently manned to establish "the fear of God."

A related weakness has been the hesitation to litigate certain kinds of cases. This is especially true of cases under the local trade and service codes, many of which represent a very low degree of compliance. In approving such codes the National Recovery Administration failed to keep code jurisdiction within reasonably well established concepts of interstate commerce (or at least within a reason-

[1] This happy phrase is used with the consent of the lawyer who invented it, and who claims no proprietary rights.

able estimate of juristic flexibility). The fact that the bulk of operations covered by many codes can only by the most strained interpretation be claimed either to be in or affecting interstate commerce has led to a marked timidity on the part of National Recovery Administration enforcement officials in pressing court cases dealing with these operations. This timidity is even more marked in the case of the Department of Justice attorneys who are legally responsible for the conducting of court cases. Chronic violators have operated with impunity to the disadvantage of complying competitors. Prestige both of National Recovery Administration and of code authorities has of course suffered in consequence.

* * * * * * *

CONCLUSION

The situation which now faces the National Recovery Administration as an enforcement and supervisory body may be concisely stated. The range and volume of its duties go far beyond what was anticipated. It cannot with even moderate adequacy discharge its responsibilities for compliance. Nor can it discharge its responsibility for supervising the administration of codes by their own administrative agencies. Its present administrative machinery is already jammed by the mass of detailed problems which converge upon the higher officials from the rim of the administrative wheel. Yet to discharge its duties, additions to the machinery of startling magnitude would be required. A decision to retain the National Recovery Administration with approximately its present coverage and range of duties entails one of two alternatives; either the flagrantly ineffective administration of a body of law, or the creation of an army of Federal inspectors and officials under a decentralized system of executive organization. These are unpleasant alternatives, and imply the judgment that on strictly administrative grounds, divorced from the policy considerations to be considered at length in later portions of this book, the National Recovery Administrotion ought not to continue to be what it now is.

The dark picture of the prospects of code administration is believed not to misinterpret the state of the facts. It does not perhaps give sufficient credit for sincere and able efforts at code administration, wherefrom more encouragement might have been lent to those who think the principle of collective action to be the proper foundation of a new national economic policy. Nevertheless the existing situation represents an outcome of code operation other than was ever intended by anyone. Quite regardless, therefore, of anyone's interest in code operations or his bias on matters of economic organization, the administrative difficulties are necessarily high on the current agenda of discussion concerning the future of the National Recovery Administration. Their character is not in the least changed by anyone's interest in the outcome.

In the following chapter attention is given to the question whether the National Recovery Administration has inherent in it the ability to reform its own administrative weaknesses. Clearly one's judgments concerning such weaknesses must be softened if it can be shown that they are merely the defects of haste which over a period of time can be eliminated. The next chapter should be read as a body of summary conclusions applicable to the whole preceding group of chapters which make up part II of this book. In writing this body of conclusions, it has been impossible to escape overstepping the boundary of strictly administrative considerations, since the latter are so organically related to the body of code rules which make up the subject matter of administrative action.

* * * * * * *

CHAPTER X. SUMMARY AND CONCLUSION

* * * * * * *

1. It is much to be desired in connection with congressional delegation of power that the specific objectives of the law be stated in unambiguous terms, and that the standards of judgment and measurement to be used by the administrative agency in pursuing the objectives be stated in as definite terms as possible. Undoubtedly, difficulties are involved in the definition of objectives and the establishment of standards which will serve as real administrative governors and guides. On the other hand, if a reasonably restricted definition of legislative intent cannot be written into a law, it is doubtful whether the public interest will be secured by chancing the varying interpretations which are likely to be placed upon it under executive direction.

2. In the degree that, under the regulatory scheme undertaken, the standards of measurement are largely subjective and considerable discretion must be placed with the designated agency, it becomes important that the legislature, if it is not completely to abdicate its function, establish an administrative organization capable of maintaining continuity of policy and method. (This logically follows since the basic rights of individuals subject to the provisions of a law are determined in large measure by the specific rulings of the designated agency rather than by the original action of the legislature. The activities of this agency therefore become, in effect, legislative rather than administrative.) With respect to both the points mentioned, Congress failed in the proper performance of its legislative duty when passing the National Industrial Recovery Act.

3. The superior authority for such an organization as the National Recovery Administration needs to be a board rather than an individual, and impartial rather than representative. Members need to be appointed for a stated period and to be removable only for cause. Its primary responsibility should be that of promulgating and supervising the execution of administrative (as distinguished from general) policy. Given functions of the sort stated, it would appear to be axiomatic that they cannot be performed properly by a representative board engaged in continuous bargaining and playing for group advantage. Whatever its character, such a board can only be expected to function in a reasonably effective manner when, in terms of objectives and standards, it is properly instructed concerning the character of its functions, something that has never been done for the responsible officers of the National Recovery Administration.

4. Since Congress has chosen to create, or to delegate the power to create a multiplicity of agencies which, by virtue of indeterminate definition of powers and duties can be operated at cross purposes, there is no alternative to the establishment of an executive coordinating agency. Granting this necessity, the functions of such an agency need to be defined and limited. It should, for example, have no power, such as the Industrial Emergency Committee now has, to promulgate policy affecting any single agency, nor the power to veto the administrative policies and acts of any given commission or board except upon definite showing that they are at cross purposes with acts and policies of other agencies regarded as having prior importance in the circumstances.

The fundamental purpose of coordination is the elimination of inconsistencies and the promotion of united action toward definite objectives. Given proper legislative determination of general policies, the necessities are reduced to coordinating the lower orders of administrative discretion. In the absence of such determination with respect to the National Recovery Administration either by Congress or by the President, the task of coordinating the work of the National Recovery Administration with that of other governmental agencies is quite hopeless. The primary necessity is therefore not coordination, but clarification of purpose.

It is not to be supposed that a mere meeting of the formal administrative criteria just mentioned guarantees appropriate action in the public interest. Objectives, however clearly stated, may be unwise. Forms of organization and procedure, however technically sound, may miscarry through defects in the human element. But to ignore the dictates of experience in such matters is merely to compound the probabilities of unwise action.

Should Congress continue the powers delegated under the National Industrial Recovery Act without essential clarification of objectives and standards or prescription of organization and procedure, it is problematical whether any improvement in the quality of administrative action may be expected to occur. Certainly experience has demonstrated to the National Recovery Administration that the delegation of general policy-making functions to the executive arm in no way diminishes the necessity for performing them. But this is merely posterior enlightenment coming from past errors. Whether this new wisdom can be used effectively is another matter.

The difficulty is that the National Recovery Administration is almost wholly occupied with the attempt to administer the province of action which it has created. The primary present requirement on the side of policy is, however, to determine whether it should continue, and if so, to what end and in what form. The inertia of forward motion on the track of administrative action is antipathetic to the appropriate action on matters of policy determination. The National Recovery Administration in its present form is distinctly unfitted for the performance of this function.

Whatever body falls heir to the present empire of the National Recovery Administration will find itself in continuous difficulties for all the various reasons that have been displayed in the preceding chapters. If it were not assumed that

the National Recovery Administration was to be reformed, it would be rather foolish to discuss matters of administrative organization. Assuming the intention to reform, importance attaches to such matters. No more delicate task could be assigned to any group of men than the processes of disentanglement, partial dismantling, salvaging, adjustment, and constructive effort through which it might be attempted to put the National Recovery Administration. Should the present delegated legislative and judicial functions continue to be commingled in the persons of administrative officers who have not time even for the proper discharge of their executive duties, the continuance of the principle of muddle is predictable for the future as evidence of it is observable in the past. As the National Recovery Administration "acted" itself into an indiscriminate reconstruction of the control of American industry without ever making any rational and deliberate choice to do so, it may equally "act" itself into a further series of unpremeditated consequences.

As a case study in administrative law the National Recovery Act appears destined to become a classic. As a phenomenon, it offers strong confirmation of the traditional prejudice against extensive delegation of legislative power to the executive arm of the Government. The necessity for some degree of such delegation being, however, admitted, the peculiar warning is against following a principle of "action" unlimited by rational ("academic") analysis of processes, clear definition of objectives, careful selection of procedures, and in general the appeal to experience.

Were it necessary to judge the National Recovery Act purely on the basis of its merits as an administrative system, it would be marked for the most radical metamorphosis of form. The future of the National Recovery Act is not, however, to be blocked out entirely on the basis of an administrative study. The future of the body of substantive law which it has erected is at issue in any such discussion. Form, content, and processes become intertwined, and final judgments must represent a distillation of conviction from the whole complex.

* * * * * * *

CHAPTER XXII. RANGE AND CHARACTER OF REGULATIONS

* * * * * * *

TRADE PRACTICE REGULATIONS IN NATIONAL RECOVERY ADMINISTRATION CODES WITH APPROXIMATE PERCENTAGE OF CODES CONTAINING EACH

I. Requirements

	Percent
Practices tending to effect minimum price	79
Uniform methods of cost finding	72
Open prices	59
Specified discount and credit terms	43
Specified standards for industry products or services	38
Specified transportation terms	27
Standard forms or terms of contracts	22
Specified forms or terms of, or conditions surrounding the making of, bids and quotations	18
Classification of customers	17
Specified forms of arbitration	13
Limitation of machine and plant hours	12
Specified terms for Government purchases	9
Control of capacity	8
Charge for supplying of specified nonindustry products or services	4
Specified classifications or descriptions of industry products	3
Filing of sealed bids	2
Specified production quotas	2
Charge for estimating	1
Control of inventory	1
Specified hours of business	1
Specified invoice forms	1

* * * * * * *

CHAPTER XXIII. TRANSFER OF POWER OVER PRICES

TRANSFER OF POWER OVER PRICES

The transfer of power over the determination of prices which the National Recovery Administration has effected takes a number of clearly distinguishable

forms. For purposes of convenient discussion these forms may be considered under the following headings: (1) Minimum price determination; (2) cost protection; (3) loss leaders; (4) destructive price cutting and emergency price fixing; and (5) waiting periods in open-price systems. The various types of code provisions by which such transfer of power has been brought about and the numerical frequency of each are set forth in the table on pages 580–583.

MINIMUM PRICE DETERMINATION

The most extreme form of transfer of power over the determination of prices which has been brought about by the National Recovery Act is found in those cases in which it has authorized something approximating a complete license to fix minimum prices.[1]

Such grants of power are made where an industrial group, through the code authority, is given the power to determine prices at which individual members of the group shall sell, without there being established any criteria of guidance or with criteria so vague that they are ineffective.

Examples of such grants of power are found in provisions which authorize the code authority to initiate price control, limited only by the requirement that minimum prices shall equal "the lowest reasonable cost of production", or be "fair and reasonable", or equal the cost of the "lowest cost representative firm." Under these various headings there are reported some 38 codes. (See the table on p. 580.) Twelve of these thirty-eight are reported as representing "power given to code authority with or without approval of the National Recovery Administration to establish at any time minimum prices, no cost basis being provided." Such transfers of power may be illustrated by the provision from the Bituminous Coal Code.

"The selling of coal under a fair market price (necessary to carry out the purposes of the National Industrial Recovery Act, to pay the minimum rates herein established, and to furnish employment for labor) is hereby declared to be an unfair competitive practice and in violation of this code * * *.

"The fair market prices of coal of any grade and character * * * shall be—

* * * the minimum prices * * * which may be established * * * by a marketing agency or by marketing agencies * * * (or)

* * * where no such marketing agency exists * * * by the respective code authorities * * *.

* * * * * * *

"The term 'marketing agency' or 'agency' * * * shall include any trade association of coal producers complying with the requirements of a marketing agency and exercising the functions thereof." [2]

There are a number of codes which grant a similar degree of price-fixing power to code authorities by permitting them to reject prices filed in an open-price system on the grounds that such prices would promote "unfair competition", without any criteria being set forth in the code as to what constitutes "unfair competition".[3]

(Tabulations on "Analysis of provisions relative to minimum prices and costs methods" appears in General Johnson's testimony.)

It appears that such grants of power go far toward granting, if they do not actually grant, legal sanction to the representatives of an industry to utilize their own judgment as to what is the most desirable price. Without the forces of competition being operative and without legal criteria by which they must be guided, groups with such grants of power are in a position to establish monopoly prices.

Such grants of power over prices, to industrial groups, are without precedent in American life. Some of those who, within the National Recovery Administration and without, have argued for such grants to industrial groups have made much of the point that control over prices, prior to the National Recovery Act, was held by certain groups. While it is presumably true that such examples exist, the industries with such power held it without authority and only in opposition to law. It has been the theory of American economic organization, expressed in the antitrust laws and in the long series of court decisions interpreting

[1] It would seem hardly necessary to explain that, for all practical purposes, the power to fix a minimum price is in effect the power to fix price. Yet inasmuch as there has been, even within the National Recovery Administration itself, some confusion on the point, the fact should be stated. Obviously even monopoly groups do not object if members offer products at higher than the fixed minimum.

[2] Art. VI, secs. 1 and 2.

[3] These may be illustrated by the original Iron and Steel Code and by the Paper and Pulp Code. In the amended Iron and Steel Code provision was omitted.

them, that where industrial groups have secured such power the public interest requires that it be destroyed or completely supervised by some Government body. It is unprecedented to grant such powers to industrial groups with the sanction of law and the support of Government agencies of enforcement.

A second type of transfer of power over price determination to industrial groups places certain limitations upon the exercise of these powers. Transfers of this sort may be illustrated by those codes which provide that no individual may sell below the average industry cost as determined by the code authority. As is shown in the table on page 580, there are some five codes granting industries power to determine minimum prices with these limitations. Article III, section 3 (b) of the Lime Code offers an illustration of such a grant.

"Each district control committee shall determine within its own district * * * the weighted average cost of each industry product manufactured in such district. * * *

"After such average cost of each industry product is so determined for any district, no manufacturer in the industry shall sell any such industry product for delivery in such district at less than such average cost, plus basing rail freight * * *."

Even in this type of provision there is no small degree of discretion permitted the code authority. The method of determining cost and the method of arriving at the weighted average not being clearly defined in the code, the door was opened wide for administrative judgment.

COST PROTECTION

A less extreme, but far more frequent, transfer of power over prices is that achieved by prohibiting sales below individual cost, commonly known as "cost protection." There are reported 352 codes containing such provisions. (See p. 580.) Important among the industries having such cost protection are canning; carpet and rug manufacturing; men's clothing; hosiery; cement; glass container; furniture manufacturing; salt producing; paint, varnish, and lacquer manufacturing; rubber manufacturing; plumbing fixtures; electrical manufacturing; farm equipment; structural steel and iron fabricating; and trucking.

To understand how no-sales-below-individual-cost provisions transfer power to determine prices, it is necessary to see that the decision as to what is an individual's cost has been transferred to a group. This is typically done by requiring that each individual include in his costs such elements as are specified in a uniform system of cost finding. All codes which forbid sales below individual cost provide that there shall be drawn up by the code authority a system of cost finding which shall become effective, usually upon approval by the administrator. Of the more than 350 codes providing for their establishment, accounting systems had by January 9, 1935, been approved for only 39.[4] At a public hearing held on this date the director of the Research and Planning Division of the National Recovery Administration stated that accounting systems had been submitted for some 230 other industries, but had not received administrative approval. The reason for this withholding of approval is clearly related to a significant dilemma which developed as a result of a division between declared policy and earlier practice in the spring and summer of 1934. This dilemma is discussed in chapter XXIX.

There are a number of instances in which the no-selling-below-individual-cost provisions are implemented within the code provisions themselves. There are 87 codes having provisions in which at least some of the required cost elements are specifically stated. (See the table on p. 580.) In addition, there are some 23 codes which incorporate existing cost systems into codes by reference. These are typically systems of long standing in use by trade associations.

While technically provisions for no sales below individual cost which do not themselves define cost are inoperative until an implementing cost-accounting system has been approved, there is evidence that code authorities exercise no little influence over price in the period during which cost systems are being designed. To the extent that code authorities desire to exercise such unauthor-

[4] Prices and Price Provisions in Codes, National Recovery Administration, Jan. 9, 1935, reported these 39 industries to be: Retail lumber, lumber products, building materials and building specialties trade; fertilizer; macaroni; hardwood distillation; fishing tackle; coffee; boiler manufacturing; malleable iron; cement; canvas goods; hosiery; limestone; washing and ironing machine; gas appliances and apparatus; tile contracting division of construction; ready-made furniture slip covers; fire-extinguishing appliance manufacturing; motor fire apparatus manufacturing; punch-board manufacturing; California sardine processes; silverware manufacturing; smoking-pipe manufacturing; furniture manufacturing; cigar container; gray iron foundry; drop forging; merchandise warehousing; novelty curtain, draperies, bedspreads, and novelty pillows; paper distributing; rubber manufacturing; plumbing fixtures, automatic sprinkler; wood heel; trucking; throwing, screw machine products; luggage and fancy leather goods; earthenware; builders' supplies.

ized powers, they are aided by the fact that members of industries are by no means always clear as to the meaning of the cost provisions or of the extent of the code authority's power, and are unwilling to meet the expense and discomforts of making a test. Furthermore, such unauthorized powers sometimes are exercised to influence prices even after the accounting systems are approved. It is, of course, without doubt impossible even for Government authorities to measure or assess with accuracy the exact extent of the improper exercise of such power but it occurs frequently and in some cases the methods employed are strongly coercive.

In a certain industry having a no-sale-below-individual-cost provision in its code, the small size of the units concerned, the untrained character of the owning and managing personnel, and additional reasons, made it impossible effectively to use a cost system. The code authority drew up a schedule of costs in terms of dollars which was circulated to the industry with the statement that any member of the industry who sold below this schedule would be challenged as having sold below his individual costs. While under the conditions such action may have been necessary if the provision was to be administered, it is obvious that when so administered a no-selling-below-individual-cost provision becomes in effect direct price fixing.

Such unauthorized use of power has been strongly supported by the general ideology surrounding the recovery program. It is a matter of common discussion among those familiar with the processes of making and enforcing codes that industry members believe that the Administration desired "to get prices up." With this general belief as a background, every suggestion by the code authority to the effect that the code required prices to be held at a certain point, or to be increased, could be made an appeal to "patriotism." Belief that the Administration wanted prices "stabilized" was even at times made a basis for threats.

In some instances it was not necessary for the code authority to go beyond its authorized powers in making effective a no-sales-below-individual-cost provision prior to the approval of the system of cost finding. The structural clay-products code, for example, provides that:

"During the period between the effective date of this code and the application of the cost provisions provided * * * each regional committee * * * may * * * after a survey of the estimated cost, both direct and indirect, of the reasonably efficient plants * * * recommend * * * an allowable cost. * * * Upon approval by the code authority * * * no member of the industry shall sell * * * any * * * product below its allowable cost. * * *"[5]

It is highly probable that in every instance in which the National Recovery Administration guaranteed cost protection to industries it was expected that such protection would bring about a price higher than the competitive price. It is needless to say, therefore, that it is in effect price fixing.

Unless the cost systems, the use of which was required of individuals, included elements of cost that were not being earned, there would be no demand on the part of industries for such provisions. The precise extent to which no-sales-below-individual-cost provisions bring prices above competitive prices depends in part upon the elements included in costs. In part it depends upon the extent of use of unauthorized powers by the code authority.

An analysis of the first 16 accounting systems approved indicates that in each cost system elements of "cost" specified include not only all direct labor and material costs, but a large proportion of indirect manufacturing expenses and administrative and selling expenses. Such an analysis shows that the following types of elements have been included in approved cost systems.[6]

Raw material (actual shrinkage).
Direct labor.
Fuel and power.
Depreciation on utilized buildings and equipment.
Maintenance and repairs (ordinary only).
Indirect labor.
Office and administration salaries.
Light and heat.

[5] Art. VI (e): This amounts to an identification of "no selling below individual cost" with some form of uniform minimum prices, in the thinking of the code-makers. There are reported 49 codes having "preliminary" rules established with or without approval of National Recovery Administration to apply prior to the approval of methods. See table on p. 582-83.

[6] The entire list did not occur in any single industry but is rather a composite of elements gathered from 16 approved systems.

Rent (only up to depreciation and similar property expense on actually used buildings).
Insurance, all kinds.
Office and factory supplies and incidentals.
Telephone and telegraph.
Taxes.
Legal and accounting expense.
Selling and delivery expense: Sales, salaries, and commissions; advertising and promotion; bad debts; freight and cartage.
Truck drivers' salaries.
Gas, oil, depreciation, repair, obsolescence, insurance, garage expense.
Collection expense.
Warehouse expense.
Royalties.
Director's fees.
Amortization of leasehold (not to include interest).
Patents.
Postage.
Professional services.
Stationery and printing.
Stock registration.
Dues, donations, welfare.
Experimental work.
Meetings, entertainment, welfare work, fire drills, etc. (early codes).
Rent (whether building owned or rented, an amount equal to taxes on land and building depreciation on fair value of building, insurance and maintenance costs. No greater amount may be included, but any additional cost should not be overlooked in determining sales prices).
Donations.
Entertainment of customers.
Uniform shrinkage charges.
Rent paid.
Stumpage.
Depreciation at not less than that allowable for income tax purposes.
Miscellaneous expense.
Sales convention expense.
Development expense (research and engineering), drafting, patents, royalties, patterns, tools, dies, testing (all but unusual):
Employees' welfare.
Accident compensation.
Travel and entertainment.
Donations up to the amount deductible for income tax.
Depreciation base of original cost as maximum.
Depreciation rate no greater than allowed for income-tax purposes.
Dues, memberships, subscriptions.
Miscellaneous selling expense.
Depreciation base—on plant and equipment purchased recently at abnormally low prices—fair replacement value.
Plant equipment fully written down must nevertheless have depreciation charged in.
An all-inclusive cost provision.

MINIMUM PRICE DETERMINATION COMPARED WITH COST PROTECTION

It is desirable next to compare and contrast the reallocation of power over price determination which is effected by provisions requiring that there shall be no sales below individual cost with those which grant to code authorities power to determine a uniform minimum price. Any member of an industry governed by a code which contains the former type of provision may sell as low as his own costs, computed according to the accounting formula for the industry. Since the costs of one member, even thus computed, may vary considerably from those of another, it is obvious that if no one may sell below his own costs, all members of an industry excepting the one with the lowest cost might find themselves unable so to price their goods as to find any market.[7] In a number of codes containing no-sales-below-individual-cost provisions, attempt has been made to meet this problem by permitting an individual to sell below his own costs to meet the price

[7] Whether or not this is true depends upon (a) the demand evidenced for the commodity (b) the productive capacity of the lower-cost producers, and (c) the costs of the higher-cost producers.

of a lower cost competitor. As the phrase went in National Recovery Administration discussions, the higher cost producers are permitted "to sell down to meet competition." This may be illustrated by the provision from the furniture manufacturing code (art. VII, sec. 1), which provides that no furniture manufacturer shall sell at a price—

"That will result in the customer paying for such products less than their cost to the furniture manufacturer, except:

"(a) To meet existing competition of lower-cost producers on products of the same or equivalent design, character, quality, or specifications."

Quite aside from the obvious difficulty, if not total impracticability, of determining equivalence of design, character, quality, and specification of goods sold in everyday market transactions, permission "to sell down to meet competition" does not solve the problem. The products of many industries are not standardized and fungible.

In these industries products of practically identical physical characteristics often have varying degrees of buyer acceptance. Accepted products, accepted perhaps because of brands and advertising, and less accepted products, even though physically identical, are sold side by side but at different prices. It is the existence of the price differentials that makes it possible for the producers of less well-accepted products to remain in competition with the producers of the widely accepted products. But if the producer of the accepted product chooses to sell down to the price of the unaccepted product when the producer of the unaccepted product is selling at the "price floor" established by the no-selling-below-individual-cost provisions, the latter is doomed even if he is permitted to meet competition. He has, truly enough, a price floor below which he may not go, and the producer of the accepted products by lowering his prices can crush him upon this price floor.

This analysis has application to an intensely practical problem in the making of codes. This is the problem of price differentials. Any form of price-fixing, be it minimum price determination or cost protection, opens the probability of destroying the competitive position of individuals marketing a less well-accepted product. It is frequently answered to this point that less well-accepted products are "gyp", substandard, or otherwise improper to offer on the market. Such a statement, of course, only raises a new issue. If this means merely that there is a difference in quality, there are no social grounds on which such products should be eliminated from the market. The National Recovery Administration could properly work in the direction of enabling buyers to distinguish between the relative physical qualities of products offered them, but there is no practical fact better known to business men than that products with no significant physical differences sell at different prices. If it is true that the product is unsanitary or otherwise injurious, it is proper to eliminate it; but there is no point in attempting it by such indirect or cumbersome means as no-sales-below-cost provisions, which may eliminate competition which is socially desirable.

A second question of the most intensely practical character is involved in price fixing either by minimum price determination or cost protection. In National Recovery Administration discussions of price fixing the point has frequently been urged that the public interest cannot be harmed if individuals are forbidden only from selling below their own costs and if members of an industry are permitted to sell down to meet competition. It is pointed out that by such regulations the individual is not prohibited from selling below the point at which he would desire to sell if he knew what he was doing, unless he was doing so to secure a monopoly position.

It is a well-known business fact, however, that there are conditions in which businessmen find it profitable for a time to sell below their costs—even their direct costs—even though they have no hope of thereby attaining a monopoly position. During periods of depression, for example, nothing is more common than businessmen selling below costs "to stay in the business picture." Far from hoping to attain a monopoly, they hope merely to stay alive. To do this they must retain their market connections with a view to a better day. When a business man thus finances himself through a period of loss he is doing in effect the same thing as he does during a period in which he is promoting and initiating a new enterprise. During such periods he is more or less continuously engaged in selling below cost. Accountants customarily capitalize such losses in the form of organization expenses.

Sales below cost, moreover, are a commonplace whenever a new product is introduced or a new market territory is entered. It is clear that in all of these cases there is no lack of understanding on the part of the business man of what he is doing. Indeed, it is a part of his deliberate sales strategy. It is equally clear

that monopoly is no necessary sequence to such actions. They are the ordinary tools used to secure a "share of the business."

A further serious fault in cost-protection provisions, even when they allow selling down to meet competition, is to be observed. Such provisions may result in the creation of unprecedented power for certain industrial groups or for certain individuals within industrial groups. If these lower-cost members do not choose to sell below the costs of higher-cost members of the industry, those with higher costs are powerless to initiate price reductions. This situation is completely stultifying to action by higher-cost members of the industry who may be considering a reduction of price with a view to increasing production and its consequent possibilities of increasing total profits through a reduction of overhead cost per unit. It follows that this power in the hands of the lower-cost producers may constitute a degree of monopoly position.

A cost-protection provision gives a code authority power similar to the power to fix minimum prices. This is because, by determining the elements of cost to be utilized in connection with such a provision, it is in effect establishing a minimum price. In either case it is in a position to prevent the individual business man from charging such prices as he wishes.

The difference between the two grants of power is entirely a matter of degree. A code authority specifying elements of cost in connection with a no-selling-below-individual-cost provision finds its authorized power over price determination limited by the costs of the lowest cost producer.[8]

On the other hand, the code authority fixing a minimum price is sometimes in a position to specify a higher price. This is the case, for example, if the cost base is set by some such phrase as "weighted average cost", "modal cost", "fair and reasonable cost", "lowest reasonable cost", or "prices that do not promote unfair competition." Such tests make it possible to fix a higher minimum price than do no-sales-below-individual-cost provisions. The cost basis implied by any of these phrases is, therefore, a greater subtraction from the power of individuals and a greater addition to the powers of industrial groups over price determination than is a provision for no sales below individual cost.

Yet this difference should not be exaggerated. In some instances the elements of cost specified in cost protection provisions are of such character that they fail to allow for actual variations in individual costs. This occurs in two general ways: First, through the specification of a cost formula in the form of prime cost, or some other base that varies relatively little between producers within an industry, plus a uniform percentage mark-up. Illustrations of this are furnished by the code for the crushed stone, sand and gravel, and slag industry, and the code for waterproofing, dampproofing, caulking compounds, and concrete floor treatments manufacturing industry.[9]

The second way in which no-sales-below-individual-cost provisions may be so framed as not to give full allowance to individual variations in cost is through the inclusion in costs of a uniform mark-up in terms of dollars, again on a base that varies little between the various units of an industry. This is illustrated by the

[8] It has already been pointed out that code authorities sometimes secure unauthorized powers.

[9] Art. VII, sec. 2 (d) of the Crushed Stone, Sand and Gravel and Slag Code requires that no producer sell below prime plant cost plus 10 percent. Prime plant cost is defined as including all items of cost exclusive of return on capital invested, interest on borrowed capital, depreciation, depletion, administration, selling costs, and reserves.

Art. VII (2) of the waterproofing, dampproofing, caulking compounds, and concrete floor treatments manufacturing code permits on sale below "allowable cost" defined as materials costs, cost of containers, and cost of processing plus a reasonable percentage of these 3 as determined by the code authority.

In such cases the items in which individual variations in cost can occur, if the specified formula is employed, are those elements of cost in which typically there is the least variation between individual firms. The result is that "no selling below individual cost" when so defined reduces the opportunity to express individual differences in cost. Under these circumstances a great degree of power over price determination is transferred to the code authority. Furthermore, the specification of some items of cost as uniformly a percentage of other cost elements indicates that "actual" cost is not to be the basis for the determination of prices. It thereby removes another important limitation of the code authority's power implied in the no-selling-below-individual-cost provision. To be more specific, code authorities under this interpretation of "individual cost" are not limited in their powers over price determination either by "individual variations" or by "actual costs."

There are a number of instances in which the code provisions themselves do not reveal the full extent to which this sort of development is taking place. This occurs where the cost systems which the codes authorize, but which are not themselves outlined in detail in the codes, contain cost specifications similar to those indicated above.

structural clay-products industry.[10] The effective grant of power given to code authorities when they are enabled to specify a uniform mark-up in defining "cost" in connection with no-sales-below-individual-cost provisions makes it possible for them to go further in the direction of restricting individual price determination than the limits set by the costs of the lowest cost producers. In effect this amounts to minimum price determination.

From an administrative point of view the code authority is given a larger degree of power over prices through minimum price protection provisions than through cost protection provisions. This is true because minimum price determination requires the administrative determination of a price; whereas cost protection requires the administrative determination of only a cost formula. However, where a no-sales-below-individual-cost provision permits the inclusion of a uniform mark-up in dollars, this difference largely disappears. Whenever a code authority is granted powers of administrative price determination, its influence is much more certain and effective than when it merely specifies a formula.

The paint, varnish, and lacquer manufacturing industry offers an interesting illustration of how industries which have cost protection provisions in their codes sometimes develop these provisions into minimum price determination. The original code for the industry required that market replacement value be used for raw materials cost. This eliminated actual cost difference between the units of the industry on this item—differences that may have arisen, for example, from alert purchasing or efficient production. Processing costs were, however, left in the form of a statement of elements to be included.

These provisions were apparently not satisfactory because some 4 months later amendment 8 in amendment 1 to the code provided:

"The Paint Industry Recovery Board shall classify the products of the industry and establish and furnish to all manufacturers figures representing all direct factory costs, such as power and labor, depreciation determined in accordance with the provisions of the Federal income tax laws, plus a proper proportion of all indirect factory expenses (excepting interest on investment) in accordance with the share each class of products should bear. Such figures shall be the lowest reasonable cost of manufacturers, large and small, throughout the industry and (subject to change by the Board) shall be used as the minimum processing cost by of members of the industry, subject to the approval of the Administrator."

By this provision the code authority is enabled to determine dollar values for processing costs which must be used by all members of the industry irrespective of their actual costs. Also, it appears that the code authority has gone so far as to make arbitrary stipulations even of general and administrative expenses: Orton W. Boyd, Chief of the Research and Planning Unit of the National Recovery Administration which has charge of approving cost-finding systems, writes.

"For instance, in the paint, varnish, and lacquer industry there has been established a schedule of minimum prices which are intended for permanent use. Sales of any product of this industry cannot be made for less than the sum of replacement value of the raw materials, and certain specified allowances for losses in handling, for the labor and overhead in processing and packaging and for general and administrative expenses. The provisions for the loss factors was expressed in terms of percentages of the raw material costs, ranging from 1 to 6 percent. The allowances for processing vary from 6 percent. The allowances for processing vary from 6 cents a gallon for the cheapest grades of paints to 39 cents per gallon for the most expensive types of enamel. The minimum packaging charge ranges from 1.5 cents a gallon for paint in barrels or drums to 60 cents per gallon for the one-sixteenth quart sizes. The provision for general and administrative expenses is, at present, 10 percent of the sum of all other costs." [11]

LOSS LEADERS

The cost protection which the National Recovery Administration has granted in the field of distribution is usually referred to as related to so-called "loss leaders." While the term "loss leader" is used with great looseness, it is applied

[10] Art. VI (b) provides: "It shall be unfair competition * * * for any member * * * of the industry to sell * * * any product * * * of the industry at less than the allowable cost of that product * * * such allowable cost to be the individual direct factory cost of such member plus the weighted average indirect allowable cost * * * as determined (by the code authority) * * *."

The "weighted average indirect allowable cost" is in terms of dollars and uniform for the industry. Thus there is even less opportunity for individual cost variations than in the first type discussed above. The only possibility of variation lies in the differences in individual direct costs, which vary less between units of an industry than the other items of cost.

[11] "NRA and Destructive Price Cutting," Certified Public Accountant, February 1935, vol. XV, p. 70.

in general to the sale of products by distributors at low prices by implication, though not necessarily in fact, at prices so low that not all elements of cost are covered. Such low pricing has been objected to by competitors who do not find such devices useful. It has been the subject of particular complaint by independent stores against chains. It is also complained of by manufacturers who allege that such pricing breaks down the "normal" price structure.[12]

Provisions in distributors' codes aimed at the use of these pricing policies have typically been of one or another of four general types. They have required that the distributor shall charge as a minimum (1) invoice cost plus transportation,[13] (2) net purchase price plus allowance for wages,[14] (3) net purchase price plus a mark-up including other costs of doing business as well as wages,[15] or (4) list price, typically a wholesaler's or manufacturer's list price.[16]

It will be seen upon consideration that the last of these forms, no sale below list price, amounts in effect to mandatory resale price maintenance. This is significant in view of the fact that there is brought about in such codes, by authority of law, a practice which the courts have heretofore held invalid when made by contract or concerted action.

These regulations in the Distribution Codes appear to effect a transfer of power over price determination of two different sorts. As among distributors they subtract from the freedom of action of those who are in a position to sell on a more flexible price basis than that permitted by the codes. It strengthens the position of those who are not able to sell and places them in a relatively advantageous position with reference to the former group. It is commonly believed that these provisions would work against pricing policies which have been common among chain, and mail-order houses and in many instances would advantage the other types of distributors, more particularly the traditional wholesaler-independent-retailer channel of distribution.

The other reallocation of power brought about by these provisions of distribution codes is among manufacturers. Manufacturers who are desirous of maintaining through the distributive channels a set of more or less standard prices have now a new instrument in accomplishing their purposes. On the other hand, manufacturers who prefer more flexible pricing are placed at a disadvantage.

Whatever the purposes for which loss leaders were used, there is no basis of analyzed knowledge which makes it at all certain just what regulation of loss leaders will in reality accomplish. Moreover, thinking on the matter is muddled. In considering its use for the purpose of protecting small units, specialized types of outlets such as tobacco retailers are often confusedly identified with small-scale business. Such advantages as may accrue to the consumer through loss leaders have seldom been presented as perhaps offsetting the alleged disadvantage to him. The loss-leader problem is one of those far too frequently discussed with easy assumptions and with a utilization of question-begging words playing the role of facts and analyses. In view of the fact that the loss leader is now being widely discussed as appropriate for congressional action, the full implications of such action should be very carefully considered. It seems reasonably sure that if certain purposes, such as the protection of small business, is the objective of loss-leader provisions, it would be wiser to undertake such protection by direct legislation rather than by the fixing of prices, the varied effects of which cannot be determined in advance. In any event much greater knowledge of the economic effects of loss leaders than now exists is necessary before sound public policy on this question may be determined.

Loss leaders are somewhat similar, both as to the nature of the regulation and the economic effects involved, to fixed differentials used in connection with customer classifications. Fixed differentials are discussed in chapter XXV and may be read at this point.

CONTRADICTORY NATIONAL RECOVERY ADMINISTRATION THEORIES?

Codes providing for minimum price fixing and cost protection characteristically contain certain exceptions which appear to contradict the provisions themselves. One type of exception is made to permit the disposal of damaged goods, distressed merchandise, job lots, discontinued lines, perishable merchandise, seconds, and the like. Another type relaxes the regulations to permit the introduction of a

[12] The loss-leader question is too involved to be adequately treated here.
[13] As illustrated by the wholesale dry-goods division of the Wholesaling or Distributing Code.
[14] As illustrated by the Paper Distributing Code.
[15] The Retail Farm Equipment Code, for example, requires the inclusion of "overhead."
[16] As illustrated by the Machine Tool and Equipment Distributing Code.

new product, or to meet the competition of certain specified and definitely competitive products.

It is important to observe that these exceptions recognize certain weaknesses in the sort of rigidifying of price making which the minimum price and cost protection regulations are designed to accomplish. Exceptions which permit the sale of obsolete, discontinued, or distressed merchandise go far toward acknowledging the fact that poor judgments may be made in utilizing productive resources and that these mistakes can best be rectified by changes in price which will readjust the situation to market demand. An exception which permits the relaxation of minimum price and cost protection regulations to permit the introduction of a new product goes far toward recognizing the fact that it is desirable for individuals to be left free to initiate changes even though these changes may be disruptive to the calculations and commitments others have made and may cause merchandise of the latter to become "obsolete", "discontinued", or "distressed."

Permitting individuals to introduce new products even though this may result in forcing the producers of competing products to sell at a loss, and allowing the latter to sell at a loss to meet the new conditions, are an essential part of the philosophy of a business system. It is through actions of this sort that individual initiative and ingenuity are counted upon to bring about economic progress.

The theory behind these exceptions, which results in allocating power over the determination of price and production policies to individuals, is in direct contradiction to that theory which results in such allocations of power as are embodied in minimum-price and cost-protection provisions. Comments similar to these may be made with respect to exceptions permitting selling down to meet competition, discussed above.

DESTRUCTIVE PRICE CUTTING AND EMERGENCY PRICE FIXING

So-called "destructive price cutting" and so-called "emergency price fixing" have been closely related in the actions of National Recovery Administration. Emergency price fixing has generally been used as a means of relieving the pains of "destructive price cutting."

DESTRUCTIVE PRICE CUTTING

Something over 100 codes are reported to have in one or another form a mandate against destructive price cutting. (See the table on p. 580.) The first question raised by such provisions is as to the meaning of destructive price cutting. Widely used as though it were self-explanatory, the phrase seems better adapted to begging the issue than to explanation. Since more than 40 codes follow a certain definition of destructive price cutting, that definition may be cited.

"Willfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the industry or of any other industry or the customers of either may at any time complain to the code authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. The code authority shall within 5 days afford an opportunity to the member filing the price to answer such complaint and shall within 14 days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the Research and Planning Division of National Recovery Administration which shall render a report and recommendation thereon to the Administrator."[17]

The first difficulty with such a definition is the determination of how small an enterprise is before it is small in the meaning of the term. What is the meaning of "imperiled?" It is hardly to be supposed that every existing unit must be protected, but if not, which ones should be denied protection? Hardly less difficult is the determination of "tendencies toward monopoly" or the "impairment of code wages," and no less difficult is the interpretation of "working conditions."

It is because powers of price policy determination so difficult of definition are allocated to code authorities, and because the procedure and criteria for dealing with complaints is left so uncertain, that it is impossible to state the exact nature or extent of the allocation of power achieved by such provisions. This indefiniteness of power granted makes more significant the grant of power. Under such an indefinite delegation it is impossible for those subject to regulation to be aware of the rules to which they are subject and there is opened opportunity for abuse of

[17] This definition is in N. R. A. Office Memorandum 228, though not on the basis of the policy recommendations on which the major part of this memorandum was founded. For a discussion of the origin of this memorandum see chap. XXIX.

power by those in whose hands administration is placed. An investigation on such a charge, even though groundless, may subject a company to great expense and, through the unfavorable publicity involved, to serious loss of goodwill. There is widespread complaint that code authorities use threats of charging destructive price cutting in an attempt to force industry members to raise prices. It is reported that members of an industry, when faced with such an accusation, have not infrequently raised prices rather than be harassed by the procedure involved. There are, moreover, reports of competitors using threats of charging destructive price cutting to bring about a price increase, and instances in which they have undertaken to use them even to effect changes in distribution channels. In fairness to the National Recovery Administration, it should be said that the term "destructive price cutting," undefined, appeared in the recovery act. This did not, however, justify the inclusion of the term, still undefined, in codes. The dangers in such a vaguely stated "criminal statute" are extreme.

EMERGENCY PRICE FIXING

There is no more interesting method by which the National Recovery Administration has removed power over price determination from the forces of individual enterprise and competition than through the procedure called "declaration of emergency" or "emergency price fixing." Emergency price-fixing provisions in codes may be illustrated by the following, which was approved on February 3, 1934, as standard for this purpose:

"'When the code authority determines that an emergency exists in this industry and that the cause thereof is destructive price cutting such as to render ineffective or seriously endanger the maintenance of the provisions of this code, the code authority may cause to be determined the lowest reasonable cost of the products of this industry, such determination to be subject to such notice and hearing as the Administrator may require. The Administrator may approve, disapprove, or modify the determination. Thereafter, during the period of the emergency, it shall be an unfair trade practice for any member of the industry to sell or offer to sell any products of the industry for which the lowest reasonable cost has been determined at such prices or upon such terms or conditions of sale that the buyer will pay less therefor than the lowest reasonable cost of such products.

"'When it appears that conditions have changed, the code authority, upon its own initiative or upon the request of any interested party, shall cause the determination to be reviewed.'

"This provision should be recommended to industries as desirable in new codes, and of course, may be used as a substitution in any approved code if the industry desires.

"Under this provision no exception to meet lower cost competition within the industry is necessary.

"Other exceptions, as to distress stocks, for export purposes, and to compete with lower cost imports, may remain as at present."[18]

Characteristically, declarations of emergency have grown from complaints within the industry that prices of certain competitive units were at a "destructive level." Such complaints, made to the deputy in charge of the industry's code or to the other National Recovery Administration officials, have resulted in one or several hearings or conferences. Following these hearings or conferences the request for a declaration has either been rejected or an emergency declared and a minimum price fixed.

Administrative orders reveal declarations of emergency and fixing of minimum prices in connection with the following commodities:

Agricultural insecticide and fungicide, cast-iron soil pipe, ice (3 in effect Jan. 1, 1935; at one time 8 in effect), lumber and timber products, retail solid fuel (approximately 150 emergencies declared and lowest reasonable costs fixed; still in effect), retail tobacco, retail rubber tire and battery (battery later voluntarily withdrawn), waste paper, wholesale tobacco.

[18] National Recovery Administration office memorandum, Feb. 8, 1934. This clause or others which provide for emergency price fixing appear in 188 codes. (See table on p. 580.) It is interesting that this supplemental possibility of price fixing through emergency declarations was added to many codes which already contained provisions for cost protection. See, for example, the Drop Forging Code.

A number of cases of applications for the declaration of emergencies and the fixation of minimum prices were reported on December 14, 1934, as either pending, voluntarily withdrawn, or denied.[19]

In connection with these declarations of emergency several facts should be noted. In each case of a declared emergency a minimum price has been fixed.[20] These minimum prices are presumed to be useful in remedying the conditions of the emergency. The test of an emergency has most commonly been that destructive price cutting existed. The section just preceding has indicated the vagueness of this concept. The administrative authorities responsible for declaring emergencies find it necessary not only to try to determine what this vague concept means in the particular industry concerned, but in addition to determine what will be the right price to bring about the conditions which it is desired to effect. Unless one believes that there are ways in which there could be made accurate forecasts as to the effect of certain minimum prices on code wages, working conditions, and the protection of small enterprises, to say nothing of such larger interests as national production, national income, and national real wages, the possibilities of misuse of the power granted in these cases must be admitted to be great.

The difficulties of meeting emergencies by price fixing may be illustrated by the case of the retail rubber-tire and battery code. A formal emergency was declared, and "lowest reasonable costs" determined, to become effective on May 14, 1934.[21] The avowed purpose was to preserve the independent dealers and small manufacturers against the company-owned stores, filling stations, and mass distributors. Several months' experience indicated, however, that these prices did not effectively accomplish the desired results, and in fact placed the independent retailers at a still further disadvantage by driving all prices to the established "floor" and eliminating the differential essential to their existence. Accordingly, experiments were made with a new series of "floor" prices, this time accompanied by a set of fixed differentials between the prices of different types of distributors.[22]

It is significant in this connection to note the lack of understanding of the effects the so-called "lowest reasonable costs" would have on the declared emergency. The only type of action considered by National Recovery Administration in meeting these "emergency" situations was the fixation of minimum prices. The low prices resulting from so-called "destructive price cutting" on the basis of which emergencies are declared in most instances reflect rather than constitute the so-called "emergency condition." That is, these destructive prices often grow out of such conditions as changing demands or changing techniques. Under these circumstances the low prices regarded as destructive represent merely an effort to make the best of mistakes already made in gaging market conditions at the time capital investment was originally made, or in foreseeing changes in demand or production conditions.

It thus appears that so-called "destructive price cutting" may not be destructive in any social sense. As conditions of demand and production change, business men find it advantageous to reduce prices as a way of expanding sales and increasing profits. Such price reduction expands production and employment. This expansion is socially advantageous and directly in line with the purposes of the Recovery Act.

Further, the fixing of prices cannot remedy the underlying facts of shifting demands and changing conditions of production. To fix prices is to treat a symptom rather than a cause. In fact, to apply price fixing often has the opposite of the desired effect. It may further reduce demand.

[19] Those pending include cigars, 2 for 5 cents; rayon yarn dyeing, retail solid fuel (several districts); rosin barrels.

Those voluntarily withdrawn include acetate cloth dyeing, baking (Los Angeles), battery retailing, ice (Dallas, Fort Worth), knitted outerwear, mayonnaise.

Those denied include Atlantic mackerel fishing, barbering (several districts), bottled soft drinks, cleaning and dyeing (several districts), earthenware (southern district), glazed yarn, hosiery dyeing, hotels, ice (Macon), ice-cream cones, laundry (several districts), macaroni, motor-vehicle storage and parking (several districts), photo finishing (New York), retail monument, retail solid fuel (several districts), shoe rebuilding (several districts), shoe shanks, shower doors, umbrellas, washing and ironing machines, wholesale confectionery.

[20] As will be noticed by reference to the office memorandum quoted on p. 605, the minimum price fixed is referred to as the lowest reasonable cost. This designation does not alter the fact that it is minimum price fixing. Further, inasmuch as the term "lowest reasonable cost", like the term "destructive price cutting", is vague, it adds to the degree of discretionary power granted the administrative agency fixing the minimum price.

[21] National Recovery Administration release no. 4830, May 4, 1934.

[22] National Recovery Administration release no. 7444, Aug. 26, 1934.

To attempt to remedy conditions of maladjustment by fixing prices raises an even more fundamental question. If mistakes in making investments are, wherever possible, remedied by creating a moratorium on competition to protect the position of private capital, there is a much reduced incentive to use care in the making of capital commitments. The social value of private property and the competitive determination of prices and production are reduced as the incentive to compete is destroyed and responsibility for errors of judgment shifted to the shoulders of society.[32]

Furthermore, the National Recovery Administration procedure in declaring emergencies is open to the gravest question. In dealing with such an important issue, a full record of sworn testimony, coming not only from those desirous of securing the fixation of a price, but from all other interested parties, should have been maintained and made available for public observation. Such a record should have been, it seems reasonable to say, accompanied by an analysis of the evidence and a statement of the circumstances which justified the decision. While the National Recovery Administration did undertake a certain degree of inquiry in the cases in which emergency price fixing was asked for, it is conservative to say that the time required for an investigation which would have analyzed the fundamental causes of difficulty and for making certain that the fixing of particular prices could in any real sense remedy the underlying maladjustment, and at the same time further the larger purposes of the Recovery Act, was not utilized. Nor is there available for public consideration a record of testimony or any "opinions" analyzing the testimony and explaining the reasoning behind the decisions rendered.

WAITING PERIODS AND OPEN PRICES

A further means by which the National Recovery Administration took power to make decisions over price control away from individuals and granted it to groups was by the setting up of open-price systems with waiting periods. Open-price systems have been utilized in various forms in many industries over a long period. In their simplest form they are arrangements by means of which members of an industry secure, usually through some central agency, knowledge of the range of prices.

The National Recovery Administration permitted the establishment of 422 open-price plans and 29 bid-filing systems. Of these, 297 provided for the lapse of a period of time between the filing of announcement of prices to members of the industry and the time when these prices could become effective for sales. It is this period between the announcement of prices and the time when they become effective which is known as the waiting period.

There are two ways in which the establishment of a waiting period in an open-price plan may transfer power over price determination from individuals to groups. One is through the limitation it imposes on the freedom of individuals to alter their prices as they change their estimates of market conditions, or as production conditions vary. Whatever changes may occur during the waiting period, which varies in National Recovery Administration codes from 1 to 30 days, the individual businessman having filed his price cannot readjust it to meet that situation.

A second way is through the assistance which it gives to any group undertaking to exercise coercion over the prices of individual members. With the prices of competitors before them, those desiring to coerce are in a position to determine whether agreements which may have been made are being observed and to determine where, if no agreements exist, efforts toward influencing prices may be most "usefully" directed.

The extent to which open prices have been utilized to aid in furthering coercion, in "turning on the heat", is a matter of much discussion. No other action of the National Recovery Administration with reference to prices has received anywhere nearly as much unfavorable publicity and objection as has the waiting period in open prices. While it is safe to say that waiting periods and open prices have not given groups a degree of control comparable to that conferred by certain of the methods discussed above, they have been seized upon and made a major form of attack on National Recovery Administration price policy.

A full consideration of the waiting period and of the open price in general as an instrument in the hands of the National Recovery Administration requires much more elaborate treatment than can be given here. Chapter XXVI contains a further discussion of certain elements of an open-price system.

[32] As was pointed out in chap. I, one influence behind the Recovery Act was the belief that a minimum price program might change business psychology from pessimism to optimism. This belief in the administration of the act became merged with theories of wage increases and other ideas of recovery. The National Recovery Act as a recovery measure is discussed in pt. VI.

ADMINISTRATIVE DIFFICULTIES

In nearly all of the price-control devices in codes—whether minimum price determination, cost protection, loss leaders, or emergency price fixing—some form of cost is used as the basis for prices. Wherever cost determination is necessary a series of difficult, indeed practically insurmountable, administrative difficulties arise. The National Recovery Administration in attempting to enforce its price-control provisions has been continually in the toils of these difficulties. It has, through its experiences, gradually become aware of the seriousness, if not the impracticability, of the tasks which it has undertaken. Only a brief outline of the problems involved in cost determination and of the entanglements of the National Recovery Administration in these problems is appropriate here. Such a brief outline, will, however, suffice to make clear the general character of the difficulties in which the National Recovery Administration has involved itself with its price provisions.

The basic difficulty which the National Recovery Administration encounters is in the effort to devise a cost-accounting system which is applicable to all the units of an industry. Variations among the units of an industry as to size, variety of products produced, techniques of production utilized, channels of distribution utilized, age of the firm and degree of integration, all combine to make the extremely difficult problems of cost-accounting approach the impossible when an attempt is made to apply any single system to an industry as a whole.

A first difficulty comes from the variations in size of the units of an industry. The small concern often cannot afford or finds relatively useless the highly complicated system of accounts which is indispensable for cost determination for a large company. A second difficulty comes from the fact that within a given industry there is a great variation in the number and diversity of products produced by any individual unit. There are also wide differences in the techniques employed in the production of any single one of these products. For each different product manufactured and each different technique utilized, it is ordinarily necessary to have a differently constituted cost formula. To construct a cost-finding system that will have some applicability to all variations in size, products, and techniques, it becomes necessary to use very loose and vague definitions of cost items.

The problem of the accurate definition of cost cannot be exaggerated. The term used to designate any given element of cost is generally open to a wide variety of interpretations, even where identical methods of production and distribution are employed and a similar range of products is produced. If a system of cost finding is applied to an industry in which there exist differences in production or marketing methods, and variations in the range of products manufactured by individual units, the variety of different meanings which may be given to any single accounting term is multiplied.

Many elements of cost do not vary with the volume of production. Other elements cannot be accurately determined in advance of production. Prices ordinarily must be quoted before manufacture is undertaken. If costs are to be utilized in price determination, arbitrary approximations of the volume of production and of some elements of cost must be made. The difficulty of discovering a basis for making such estimates applicable to all units of an industry has resulted in the establishment of formulas that often have no bearing on the situations of many members. At best a formula is arbitrary, and is always open to the weakness that volume of sales is a function of the very price which the cost base is supposed to establish. Wherever per unit costs vary with the volume of production, and such is the case in any plant that owns buildings or machinery, this insurmountable problem will arise.

Somewhat similar difficulties of cost determination develop wherever products are manufactured under conditions of joint or common cost. The allocation of costs to any individual product is, under such circumstances, almost entirely arbitrary. This set of problems will arise in almost every producing or distributing unit that manufactures or sells more than one product. General rules regarding the allocation of joint or common costs are, because of their necessarily arbitrary character, always difficult to justify. They become almost impossible of application where the combination of products produced or the techniques employed vary between the units of an industry. Such is almost always the case.

The establishment of a cost basis for new firms or new products raises further problems. There is no way of making any reasonable estimates either of the volume of sales or the extent of some of the elements of cost.

The valuation of plant and equipment and the determination of rates of depreciation are difficult enough under even the simplest conditions. Where firms

continue to utilize plant and equipment which they carry in their accounts as fully depreciated, or where some establishments have plant and equipment purchased at bankrupt sales or large amounts of idle or obsolete machinery, an additional series of controversial issues is raised.

Somewhat similar, though much less difficult, is the problem of evaluating raw-material costs. Systems of cost finding approved by the National Recovery Administration specify methods of valuing raw material ranging from "market value" to "a combined average of actual costs of materials on hand and existing commitments or contracts." Some concerns own their own material supplies or manufacture them. Among those who buy their materials and supplies in markets there exists a wide variety of conditions of purchase. A definition of cost of raw materials applicable to all the units of an industry is difficult to frame.

In some industries charges for depletion need to be calculated. This involves estimating reserves, valuing them, and appraising the value of the remaining land.

To all these difficulties should be added the fact that a single manufacturing unit, because it is subject to more than one code, may have to operate under a number of different, perhaps conflicting, cost systems.

Because of the fact that many units cannot usefully employ elaborate accounting systems, and because precision of definition and applicability to all situations cannot be attained no matter how carefully a system of cost finding is planned, there has been some tendency to draft cost systems so as to use "actual" costs only for a few of the more easily defined elements and to make arbitrary stipulations of others. This tendency has been stimulated by the additional reasons that many code authorities desire a more certain and a more effective control over prices than cost protection can provide. There has been a strong impulsion for code authorities to go so far, even without authority, as to substitute minimum price determination for the formulation of systems of cost finding.

The exercise of such unauthorized powers has no doubt developed, at least in part, from the administrative problems created by the unenforceability of cost-protection provisions. Even if cost could be readily and unambiguously defined, and even if a cost-finding system applicable to all members of an industry could be developed, no code authority could undertake to keep under inspection, for comparison with filed prices, the cost calculations of all the members of an industry.

The greatest stumbling blocks to the enforcement of cost-protection provisions have proved to be (1) the location of firms presumably violating cost provisions; and (2) the determination of whether sales made were actually below cost. The inadequacy of cost records, together with all the difficulties cited above, has made the establishment of proof of sales below cost nearly impossible.

In speaking of this problem, S. Clay Williams, then chairman of the National Industrial Recovery Board, has said:

"* * * They" (price-maintaining provisions) "are not self-policing to anything like the extent that wage and hour provisions are. Moreover, in many cases it is almost impossible to get a starting point or basis on which to test for compliance or noncompliance. Actual cost is such a difficulty determinable thing that it can hardly be established accurately for all of the varying conditions that prevail. And if it could be established accurately the extensiveness of the operation involved would make it all but impracticable." [24]

At the hearings on price provisions of codes covered by the Recovery Board on January 9, 1935, Sol A. Rosenblatt, director of enforcement, summarized the administrative difficulties in these words:

"* * * Violations of minimum prices are among the most difficult types of violations to deal with from an administrative viewpoint. * * * Even when done openly the ordinary delays which constitutional requirements entail while enforcement proceedings are prepared and carried on subject complying members of the industry to irreparable damages.

"The existence of a minimum price schedule itself offers an inducement to the willful price cutter. * * *

* * * * * * *

"Penalties provided by law are insufficient to offset advantages thus obtained. * * *

"* * * There is no general conviction on the part of the buying public that price cutting is undesirable. * * *"

Again:

[24] N. R. A. Release no. 9216, Dec. 13, 1934. A typographical error in the release has been corrected in accordance with information from Mr. Williams' office.

"Violations of code provisions prohibiting sales below cost are not as spectacular as the undercutting of minimum prices. * * * However, the handling of such cases involves administrative problems of far greater complexity.

"An important difficulty arises in connection with the securing of" (adequate data). * * *

"After adequate data has been secured, it is still extremely difficult to establish the fact of a sale below cost. * * *

"Because of these factors it has been impossible for the Compliance Division to act on a large majority of sale-below-cost cases filed with it. * * *

* * * * * * *

"In view of these facts, the impracticability of many of these provisions become apparent. * * * The result is that in many codes prohibitions of sales below cost are mere 'window-dressing'."

When price control extends as far as the direct fixing of minimum prices, problems in addition to those indicated above are raised. It becomes necessary to make such calculations as "weighted average cost" or the cost of the "lowest cost representative firm." What weights should be used in calculating average? What firm is "representative"? The administrative problems raised by the use of ambiguous phrases of this sort, as in the case of cost protection, lead to arbitrary determination.

In the fixing of emergency prices the unavailability of data from which to determine the effects of prices in terms of the desired objectives has been earlier indicated.

An interesting illustration of the difficulties involved in making cost calculations, and of the abuses of administration that are likely to result where responsibility exists for taking action where knowledge or the time and facilities for accumulating knowledge for inadequate, is furnished by the fixing of emergency prices for coal in St. Louis.

In rejecting the price established by the St. Louis Divisional Code Authority for the Retail Solid Fuel Industry, the Research and Planning Division of National Recovery Administration explained its action as follows:

"(1) The cost used as a basis for determining the lowest cost for the area was not representative. Cost reports for only 29 deale s out of 1,200 known members of the industry in that area were used as a basis, in which reports no class "C" dealers were included.

"(2) The method used in projecting the costs of the 29 dealers by size groups on the assumption that those who had not reported would show average costs similar to those reported was not proper.

"(3) The simple average basis used by the foregoing projected costs unduly inflated the results in that the same weight through this process was given the dealer whose sales amounted to over 80,000 tons during the year as to ones whose sales were less than 2,000 tons. It is necessary that a very large proportion of the tonnage handled should be represented in a cost tabulation with a showing of the cost range as well as the tonnages that were handled at different levels of costs. This has not been done.

"(4) The method used on page 10 of the accountant's report, where there is a set-up of simultaneous equations for the purpose of determining a relative cost for handling commercial versus domestic sales, is not proper in that those equations are entirely fallacious and in no way do they give the answer to the relative costs of these two types of sales.

"(5) The code authority committee used the simple average cost of $2.75, determined as outlined in (3) above, and to this figure added an arbitrary amount of 0.23 cents per ton, which they state is a calculated additional cost for 1934 over 1933. No method by which this additional figure was obtained is given. The following quoted statement from the committee's report indicates that the basis which they used in determining the lowest cost was not secure even in the minds of the code authority committee:

"'Timidity, however, prevailed and the cost margins finally selected by the code authority averaged a net return, after reduction of an approved domestic cash discount and commercial quantity discount, of $2.70 a ton.'

"(6) After arriving at the average basic cost, determined in accordance with the foregoing, of $2.98 per ton, the code authority committee adjusted this cost by an average discount of 70 cents per ton for commercial consumers and 5 percent for cash for domestic consumers. On this basis it was calculated that the average domestic net margin would amount to $3.01, while the average commercial net margin would amount to $2.26, or a composite average net margin for domestic and commercial business of $2.70 per ton. The schedule of commercial discounts given in the cost committee's report is not substantiated by any data included in

the report and ranges from no discount for less than 10 tons to a discount of $1.25 per ton on purchases of over 200 tons per month." [25]

To the difficulties of calculating cost in emergency price fixing are added those of discovering the effect of the fixation of a price on the volume of sales, and the relative competitive positions of the various units within an industry. Emergency prices are usually fixed to protect certain units of an industry. But the fixation of a price will affect the various members of an industry differently. Even physically identical products have different degrees of market acceptance. Price-fixing plans, furthermore, ordinarily cover a wide variety of only broadly similar products. The attempt to meet this situation may require the establishment of a series of price differentials. This creates the almost impossible task of estimating the differential effects of a contemplated fixed price on the various members of an industry. Further complications arise when directly competing products are not included in a price-control plan. The impossibility of regulating the price of these competing products may invalidate any calculations of the probable effects of a contemplated minimum price and vitiate any efforts toward control.

The dangers involved in incorporating into codes provisions that are essentially unenforceable, and which extend vague and indeterminate powers, has been elaborated earlier (see p. 269). To these dangers must be added those which arise out of the impossibility of making other than arbitrary calculations of many elements of cost, and the almost insuperable difficulty of framing systems of cost finding applicable to all the units of an industry. The occasion and opportunity to exercise broad powers arbitrarily, are under such circumstances, greatly increased, and the probability of equitable administration correspondingly reduced.

PRICE FIXING AND THE PURPOSES OF THE ACT

The foregoing pages have made it clear that the National Recovery Administration has, through several devices and in a wide range of industries, shifted an important measure of control over prices away from individual determination and increased the degree of influence and control of industrial groups. The precise difference from competitive prices which has been brought about by this shift either in individual industries or in industries in general is impossible of determination. It seems undeniable, however, that unless it were believed that the influence of minimum prices, cost protection, loss leaders, emergency price fixing and waiting periods in codes tended to lessen competitive forces and to result in a higher than competitive price, the pressure for these provisions would not have been so great and they would not have appeared so extensively in the codes as made. The fixation of prices at a higher than competitive level is almost certain to reduce both production and employment in the industries in which such prices are fixed; and if not in those industries, in others that will suffer as a result of the larger proportion of national income being expended in the industries having fixed prices. A twofold result then follows from these reallocations of power over the determination of prices. Industries being accorded the "privilege" of price fixing conceivably profit at the expense of other industries. Total national production and employment is, in any event, likely to be decreased.

It would appear in the light of the foregoing statements that recovery was hindered rather than helped by the extensive transfers of power over prices which the administration of the law made possible. Rather than eliminating unfair competitive practices, the price-fixing actions discussed have tended to lessen competition itself. Furthermore, in those instances in which price-control devices were designed partly at least for the protection of small business, as in the case of loss-leader regulations and some emergency price fixing, there seems often to have been a confusion of small business with specialized business. There was also a lack of understanding of the different effects of price fixing on small business in distribution, as contrasted with small business in manufacturing. These differences may not be fully developed here. But it may be said that the differences in costs of units of various sizes and the effects of the use of brands, as compared with more strictly price competition, combine to make direct price fixing a greater protection of small units in trade than it does in manufacturing. Indeed, in the field of manufacturing price controls are likely to injure, rather than to protect, the small units.

The National Recovery Administration's experience with price fixing suggests that if an administrative agency is to be given such significant economic powers, it should be given those powers with a more specific statement of purposes and

[25] N. R. A. release no. 6649, July 22, 1934.

should take action only when adequate study has demonstrated that the action contemplated will with reasonable certainty achieve the declared objectives. The determination of what is fair in competition is of great difficulty in connection with prices. It is particularly difficult not to be misled into believing that prices should be so regulated as to protect every industry. It is but natural that with a Government agency to which they may appeal, every industry and every unit within an industry seeks an opportunity for salvation from those changing conditions of production and demand which tend to eliminate them or to injure them. Under these circumstances the administrative group must be constantly on its guard to distinguish between suggestions which are designed to achieve the interests of special groups and those which can be considered as promoting the general public interest.

CHAPTER XXIV. TRANSFER OF POWER OVER PRODUCTION AND PRODUCTION CAPACITY

A second major method by which the National Recovery Administration codes shift control away from individual enterprise and the area of competition is to be found in those trade-practice provisions which regulate production and production capacity.

TYPES OF CONTROL

These provisions fall into four general types:

1. Those which provide for the establishment of limitations upon the number of hours within a given period during which machines or plants may be operated.
2. Those which establish or permit the establishment of maximum production quotas for each individual producer within an industry.
3. Regulations which control the creation of production capacity in an industry. The requirements of these are usually referred to as capacity control.
4. Provisions which restrict the amount which an individual manufacturer may produce for purposes of stock. Such provisions are usually referred to as providing inventory control.

The first two of these, machine and plant-hour limitations, and production quotas, have the same general economic effects in the sense that they tend to limit the quantity of a commodity produced. Capacity control, while perhaps superficially somewhat different, has the same effect on the production of commodities but in a longer run sense, in as much as it limits the facilities that are created for the purpose of producing the commodities. It also has more immediate effects in reducing current demand for the types of plant and equipment which are being controlled.

Inventory control, however, is of a somewhat different character, in that it permits the production of an unlimited quantity of goods so long as a producer finds a market for its sale. These types of trade-practice provisions will be discussed in turn with a view to indicating the reallocations of power and the general economic effects which they entail.[1]

MACHINE- AND PLANT-HOUR LIMITATIONS

Reference to the table on page 626 will show the particular forms of provisions by which machine- and plant-hour limitations are imposed. The methods of placing limitations are several and the allocation of power varied as between individual groups and government. It will be seen that there are in all 60 cases of such limitations.[2]

In 58 of them the details of the limitation are specified in the codes. There are two cases in which the details are left to the code authority with approval of the Administrator. It is important to observe, however, that there are 13 cases in which the code authority may alter the provisions specified in the code, and two in which a majority of the members of the industry may do so. In only 9 of these 15 cases is administrative approval required, but there are 3 others of them in which the Administrator may independently alter the provisions.

[1] In considering the reallocations of power which are brought about by the trade-practice provisions here discussed, the reader should be reminded of the statements made on p. 576. Specifically, it is to be remember that this discussion must center largely on code provisions and that code provisions have been put into effect with different degrees of vigor in the different industries affected, administered with different qualities of skill and force, and subjected to different degrees of government and personal influence in different cases. No full assessment of these various factors can be made. It is necessary to realize, therefore, that statements concerning the shifts of power provided for in code provisions must be to a greater or less degree qualified because of these forces.

[2] In one case the provisions have been stayed.

Several different methods of control have been employed to place a limitation upon the length of time during a given period for which machines or plants may be used. One method is to place a limitation upon the number of hours per day or week for which a plant or machine may operate. Such limitations vary from as low as 7 to as high as 16 hours per day and from as low as 27 to as high as 144 hours per week.

Another method of effecting the regulation is to place a limit upon the number or duration of shifts per day or week which plants or machines may operate. The number of shifts allowed varies from one to two. The maximum duration of shifts per day is in all cases 8 hours. The maximum duration of shifts per week varies from 35 to 40 hours.

Of the 60 cases of machine- and plant-hour limitations 43 are to be found in the textile division. Six cases appear in the chemical division, five being in the paper industry. The manufacturing division has five cases. There are two each in basic materials and equipment, and one each in the professions division and the wholesale and retail divisions. None are found in foods, construction, public utilities, or in finance, graphic arts, and amusements.

There is a distinction in the economic effect of limitations on plants as contrasted with limitations on machines. Where the limitation is on machine-hours it may be possible so to stagger the use of machines in a plant that the plant itself may be continuously operated. This is not possible where the limitation is on plant-hours. This distinction is particularly important in industries that maintain a "line" or "process" type of production, in which (at this point are charts which will be found on file with the committee) the expense of opening and closing a plant is an important element of cost. Of the 60 cases of machine- or plant-hour limitations there are 13 in which the restriction applied to plant hours. There are 19 cases in which the table indicates that it is not clear from the codes whether the restriction refers to machine- or plant-hours.

A discussion of the economic implications of machine-and-plant-hour control may be deferred until other types of code provisions relating to control over production and production capacity are considered. (See p. 637.)

Machine- and plant-hour limitation provisions in National Recovery Administration codes [1]

[Key: X=provision appears in code. M=provision effected by code amendment. A=administrative approval, disapproval, or review required. AO=provision established or affected by administrative order. S=provision has been stayed]

Name of code	Code no.	Apply to—				Details fixed by code					By code authority	Rules may be altered—		
		Plant	Machines	(a) Certain types only	No reference to plant or machines	Hours per day	Hours per week	Shifts	Hours per shift	Days per week		By code authority	By Administrator	Conditions specified
Food Division							None							
Textile Division:														
Cordage and twine [2]	303		X				80	2	40			A		
Textile Bag [2]	27		X				80	2	40					
Textile Processing [2]	235		X M	X			80	2	40					X
Lace Manufacturing [2]	6		X				80	2	40					
Cotton Textile [2]	1		XM				80M	2	40				X	XAO
Silk Textile [2]	48		X				80	2	40					
Rayon and Silk Dyeing [2]	172	X	X				96-80	2	40	5		X		X
Underwear and Allied Products [2 3]	23													
Knitting			X				80	2	40				XM	XM
Sewing			X				40	1	40				XM	XM
Velvet [2]	188		X				80	2	40					
Ready-Made Furniture Slip Covers	283				X			1		6				
Umbrella Manufacturing	51				X	8	40	1		5			X	X
Drapery and Upholstery Trimmings	212		X					2	40					
Narrow Fabrics	312		X				80	2	40					
Hair Cloth	157		X					1	40					
Knitted Outerwear	164		X					2	40					
Fur Manufacturing	436				X	7	35			5		A		
Dress Manufacturing	64				X		35	1		5		X		X
Soft Fiber Manufacturing	393		X				80							
Upholstery and Drapery Textiles	125		X				80	2	40					
Solid Braided Cord	309		X					2	40					

See footnotes at end of table.

Machine- and plant-hour limitation provisions in National Recovery Administration codes—Continued

Name of code	Code no.	Apply to—				Details fixed by code					By code authority	Rules may be altered—		
		Plant	Machines	(a) Certain types only	No reference to plant or machines	Hours per day	Hours per week	Shifts	Hours per shift	Days per week		By code authority	By Administrator	Conditions specified
Textile Division—Continued.														
Wool Textile	3		S					2S	40S					
Nottingham Lace Curtain	78		X				80	2	40	5				
Handkerchief Manufacturing	53	M	X			8M	40	1	40			A		X
Ladies' Handbag	332				X						A			
Celluloid Button and Buckle	400	X					40	1	40					
Novelty Curtain Draperies	79		X					1	40					
Corset and Brassiere	7	X					40			5				
Coat and Suit	5				X	7		1	35	5		A		X
Cap and Cloth Hat	457				X					5				
Slit Fabric	214				X			1	8				X	
Cotton Garment	118		X	X			40	1				A		X
Pleating, Stitching	276				X	7				5				
Blouse and Skirt	194				X	7		1					X	
Men's Clothing	15		X				36	1	36			X		X
Light Sewing	226				X		80	2	40					
Throwing	54		X	X			80	2	40			A		
Schiffli Lace	256				X	8	40	1	40	5				
Hosiery	16	X[4]	X[4]			8	80	2	40	5		A		X
Robes and Allied Products	211		X					1	40				X	X
Undergarment and Negligee	408				X	7½	37½	1						
Hat Manufacturing[6]	259				X			1						
Shoulder Pad	262				X			1						
Basic Materials Division:														
Glass Container[2,6]	36	X								6				
Terra Cotta[7]	74				X						A			
Chemical Division:														
Paper and Stationery	190	X								6				
Wall Paper	19	X				16		2	8					
Rubber Manufacturing Rainwear	156	X							40			X	X	
Newsprint	119		X				144							

Waxed Paper	166	X					144							
Envelope [8]	220	X					40						X	
Equipment Division:														
Canning and Packing Machinery	75				X					6				
Sewing Machine [8]	402	X					60			6		A		
Manufacturing Division:														
Cast Iron Soil Pipe	18				X		27							X
Cigar Container	135		X					1	8					
Funeral Supplies	90				X			2						
Wet Mop	227		X					2	40					
Medium and Low Price Jewelry [8]	175		X	X			40					A		
Construction Division								None.						
Public Utilities Division								None.						
Finance, Graphic Arts, Amusement Division								None.						
Professions Division:														
Dental Laboratory	217	X					52							
Wholesale and Retail Division:									40					
Machined Waste	149		X				40	1						

[1] This is a reproduction of a section of the table entitled "Division of Research and Planning, N. R. A., Analysis of Trade Practices, Provisions relating to Plant and Machine Hours, Productive Capacity and Inventories," N. R. A., Report on the Operation of the National Industrial Recovery Act, p. 53. With the exception of necessary changes in or additions to footnotes, and the omission of the numbers of the industry divisions, the table is exactly in its original form. The data were derived from an analysis of 535 master codes and their supplements and amendments approved before Dec. 15, 1934.

[3] Code also contains provisions restricting productive capacity.

[4] Provisions subject, by amendment, to power of majority of industry to alter or amend.

[5] Exceptions may be permitted.

[6] Provisions applicable to certain divsions of industry only.

[7] Code also contains provisions for production quotas.

[8] Provisions effective only at initiation by code authority, with administrative approval.

[9] Provisions may be suspended at any time by Administrator.

PRODUCTION QUOTAS

A second method which the trade practice provisions of National Recovery Administration codes have employed for limiting production is the application of production quotas. This method consists of fixing the maximum amount of the products of the industry which each individual member of the industry may produce. An examination of the table on page 630 will show that there are altogether only 8 cases of production quotas, and that 6 of these fall within the basic materials division. There is one each in the food and chemical divisions.

The allocaton of power over the determination of production given by production quotas is largely to industrial groups. In one case, that of copper, the actual quotas are set up in the code; in a second case by a distinctly Federal Government agent, the Petroleum Administrator. In five other cases the power is given to the code authority, administrative approval being required in four instances.

In setting up production quotas, it must be understood, two decisions are necessary: (1) Determination of the quota for the industry (2) determination of the parts of this total which will be assigned to individual units. As a (at this point is another chart which will be found on file with the committee) glance at the table will show, the bases used for determining the total quotas of the industry are in each case based on the general conception of "balancing production and consumption", a vague concept to which attention will be given later in the present chapter.

Production quota provisions of National Recovery Act codes [1]

[Key: X=provision appears in code. A=administrative approval, disapproval, or review required. R=provision does not closely fit above classification and code should be consulted]

Name of code	Code no.	Provisions made mandatory by code	Provisions effective only—								Rules for preliminary period	Determined by—		
			At initiation by code authority	At specified level of production	Upon voluntary agreement	(a) With approval of code authority	(b) Members may withdraw	To certain territory	Subject to power of majority to alter	Subject to suspension by administrator		Code	Code authority	Government agency
Food Division: Atlantic Mackerel	308	---	A	---	---	---	---	---	---	X	---	---	A	---
Basic Materials Division:														
Lumber and Timber	9	X	---	---	---	---	---	---	---	---	X	---	X	---
Copper [2]	401	X	---	---	---	---	---	---	---	X R	X	X	---	---
Iron and Steel [3]	11	---	A	---	---	---	---	---	---	---	---	---	---	---
Glass Container [3 4]	36	---	A	X	---	---	---	---	X	X	---	---	A	---
Cement [3 5]	128	---	A R	---	---	---	---	---	X	---	---	---	A	---
Petroleum [3 5]	10	X	---	---	---	---	---	R	X	---	---	---	A	---
Chemical Division: Corrugated and Solid Fiber Shipping Container [3]	245	---	---	---	X	X R	X	---	---	X	---	---	---	X

[1] This is a reproduction of a table entitled: "Division of Research and Planning. N. R. A., Analysis of Trade Practices, provisions relating to Production Quotas," N. R. A., Report on the Operation of the National Industrial Recovery Act, p. 52. With the exception of necessary changes in or additions to footnotes, and the omission of the numbers of the industry divisions this table is exactly in its original form. The data were derived from an analysis of 535 master codes and their supplements and amendments approved before Dec. 15, 1934.

[2] Plan is for sales quotas rather than for production quotas.

[3] Code also contains provisions restricting productive capacity.

[4] Code also contains provisions for plant-hour limitation.

[5] Code also contains provisions for inventory control.

Production quota provisions of National Recovery Act codes—Continued

Name of code	Method of determining																									Methods may be altered		Reporting of quota			Exceeded quotas	
	Total quotas		Individual quotas																													
			Bases																												Disposal	
			Past																													
	Balance of production and consumption	Estimate of consumption	(1) Production	(2) Shipments	(3) Number employees	(4) Taxes	(5) Performance	Productive capacity	Investment	"Sharing the business"	"Equitable"	Efficiency	Other	Obsolete plants excluded	Allotments cumulative	Periodic revision	(1) Period specified	(2) Changes of bases	Individual variations permitted	Right of appeal and review	Power of code authority to decrease restricted	(1) By code authority	(2) By Administrator	(1) To code authority	(2) To Administrator	Production for subsidiary plants excepted	Reduction in quota	(a) Without blue eagle	(b) Marked in violation
Food Division: Atlantic mackerel		X											X			X															
Basic Materials Div.																																
Lumber and Timber	X	X	X	X	X	X			X			X				X	R	X	X	X	X	A									
Copper [3]		X						X			X				X						X		X		X		X				
Iron and Steel [3]																																
Glass Container [3 4]	X	X					X	X		X	X					X	X			X												
Cement [3 4]								X			X			X		X				X					X							
Petroleum [3 4]		X																														
Chemical Division: Corrugated and Solid Fiber Shipping Container [3]											X					X																

[2] Plan is for sales quotas rather than for production quotas.
[3] Code also contains provisions restricting productive capacity.
[4] Code also contains provisions for plant-hour limitation.
[5] Code also contains provisions for inventory control.

The bases on which individual quotas are determined are several. It will be observed that the most common single criterion used requires that the quota shall be "equitable." Other criteria are based primarily on the quantity of existing productive capacity, or the past use that has been made of such productive capacity. When criteria relating to present capacity or past performance are used in determining individual quotas, it would appear that there is little opportunity of varying that part of the total industry production which goes to individual units. To the extent that this is true there is a tendency to make rigid the relative competitive position of the members of the industry, and in some instances to rigidify the total production of the industry. There are, however, code provisions permitting periodic revision of quotas.

In the Iron and Steel Code no limitation is placed upon the code authority in its establishment of either individual or total industry quotas, except that the purposes of the act must be fulfilled. When code authorities are allowed to regulate the production of an industry with only vague and indefinite guides, the administrative discretion permitted conveys large grants of power to industrial groups. The economic effects of these provisions will be discussed below.

RESTRICTIONS ON PRODUCTION CAPACITY

Restrictions on production capacity are regulations which prohibit or put limitations upon the quantity of [at this point is another chart which will be found on file with the committee] plant or of other producing equipment which may be produced. The capacity restricting provisions of codes are of five general types. They are: (1) Limitations on construction, sometimes applied to limit new membership; (2) limitations on the changing of existing facilities from one type of production to another; (3) limitations on the removal of existing facilities from one locality to another; (4) limitations on the opening of plants not operating within a specified time prior to code approval; (5) limitations on the opening of new routes or the extending of existing ones.[1]

In 35 cases the provisions on productive capacity are reported as mandatory and included in the code. There are 7 cases in which the provision requires some initiating action on the part of the code authority, administrative approval being required in 5 of them. Two of the former group are also reported as becoming effective only upon voluntary agreement of members, with approval of the code authority.

[1] Reference to the table on pp. 633–635 will indicate the number of times each is reported to be in codes.

Restrictions on productive capacity in N. R. A. codes [1]

[Key: X=provision appears in code. M=provision effected by code amendment. A=administrative approval, disapproval or review required. AO=provision established or affected by administrative order. R=provision does not closely fit above classification and code should be consulted]

Name of code	Code no.	Provisions made mandatory in code	Provisions effective only					Acts restricted						Manner in which restricted					Exceptions							Registration of existing equipment
			At initiation of code authority	To certain divisions	For specified period	May be suspended— (a) By code authority	May be suspended— (b) By administrator	All construction	By present membership only	Change to another type	Change to another locality	Opening of closed plants	Opening of routes	Direct prohibition	Authorization— (a) By code authority	Authorization— (b) By administrator	Authorization— With (1) code authority recommendation	Notice to code authority	(a) Investigation may be made	Replacements: To maintain number of units	Replacements: To keep same capacity	Replacements: To improve efficiency	Replacements: To lower costs	Replacements: To modernize	Replacements: If capacity not increased	Transfer of equipment	Other exceptions	
Food Division												None															
Textile Division:																											
Cordage and Twine [2]	303	X					X	X						A						X					X		
Textile Bag [2]	27		A						X					A					X								X.
Textile processing [2]	235	M																									M.
Lace Manufacturing [2]	6	M						M						MA						M							M.
Cotton Textile [2]	1		A					XM							XM	XM			XM								XM.
Silk Textile [2]	48	M							M						M	M				M					M	M	M.
Rayon and Silk Dyeing [2]	172	X		X					X						X	X				M							X.
Underwear and Allied Products [2 3]	23																										
Knitting		XM																									
Sewing		XM																									
Velvet [2]	188	X																									
Basic Materials Division:																											
Cement [4 5]	128	X							X		X							X	X			X					
Petroleum [4 5]	10	X						X [6]							X [6]												
Glass Container [2 4]	36	X						X										X	X	X							X.
Excelsior	146	X			X		XAO	X							X						X						X.
American Glassware	215	X		X				X							X	X					X		X	X	X	X	X.
Crushed Stone, Sand [7]	109		A		X		X	X						A													
Structural Clay	123	X						X [8]				X		X								X	X				
Clay and Shale Roofing Tile	389	X						X		X								X	X		X	X					X.
Clay Drain Tile	364	X						X		X								X	X		X	X					X.
Soft Lime Rock	419	X							X		X							X	XR								

Feldspar	206	X		X				X									X	X		X			X					X
China Clay	520		A			X	X		X						X													X	
Floor and Wall Clay Tile	92	X							X									X	X		X			X	X			X	
Refractories	161	X							X						A						X				X				
Alloys	515		A	X		X	X	X							X													X	
Iron and Steel [4]	11	X					X	X							X														
Lime [5]	31	M																M	M										M
Chemical Division:																													
Carbon Black [6]	269	X						X							X														
Pyrotechnics	148	X		X				X								X													
Corrugated and Solid Fiber Shipping Containers [6 12]	245	X							X									X										X	
Candle Manufacturing	---				XR			X			R				A						X				X				
Equipment Division										none																			
Manufacturing Division: Tool and Implement	84	X						X										X [11]										X	
Construction Division										none																			
Public Utilities Division:																													
Household Goods Storage	399	X										X						X										X	
Transit	28	X										X		R	X													X	
Motor Bus	66	X										X		R	X													X	
Air Transport	111	X										X		R	X														
Trucking	278	X						X																				X	
Refrigerated Warehous) [13]	499	X			X									X							X				X				
Finance, Graphic Arts, Amusement Division:																													
Graphic Arts	287								X																				
Book Manufacturing			X						X									X	X										
Trade Lithographing, Plate Making			X															X										X	
Professions Division										None																			
Wholesale and Retail Division									X																				
Ready Mixed Concrete [10]	311	X			X	X	X								A							X	X		X				
Ice Manufacturing	43	X									X			X															

[1] This is a reproduction of a section of the table entitled: "Division of Research and Planning, National Recovery Administration. Analysis of Trade Practices, Provisions relating to Plant and Machine Hours, Productive Capacity, and Inventories". National Recovery Administration, Report on the Operation of the National Industrial Recovery Act, p. 53. With the exception of necessary changes in or additions to footnotes, and omission of the numbers of the industry divisions, this table is exactly in its original form. The data were derived from an analysis of 535 master codes and their supplements and amendments approved before Dec. 15, 1934.

[2] Code also contains provisions for machine- or plant-hour limitations.

[3] Provisions subject, by amendment, to power of majority of industry to alter or amend.

[4] Code also contains provision for production quotas

[5] Code also contains provisions for inventory control.

[6] Prohibition of shipping oil in interstate commerce from new fields, without approval of Department of Interior.

[7] Effective only at specified level of production and to certain divisions of the industry, for which see Code.

[8] Restriction only on construction by new members.

[9] Provisions applicable to the Dolomite division of the industry only. Under instructions from the National Recovery Administration office which constructed this table this industry has been added to the compilation since the table was made up.

[10] Effective only at voluntary agreement of members, with approval of code authority. Members may withdraw from agreement.

[11] Notice to Administrator must also be given.

[12] Some corrections have been made in the tabulation of this industry, under the direction of the National Recovery Administration office which constructed the table.

Restrictions on productive capacity are in some cases subject to exceptions. These exceptions are on several different bases. For example, replacements are permitted (1) to maintain a "similar number of units" or to "bring operation of existing machinery into balance"; (2) to maintain the same capacity; (3) to improve efficiency or quality; (4) to lower costs; (5) to effect modernization. Certain exceptions permit transfer of equipment from a manufacturer to a subsidiary.

The greatest number of cases of control is found in the Basic Materials Division. There are a number of cases in the Textile Division and a considerable sprinkling in the Chemical Division and Public Utilities Division. There are two each in the Wholesale and Retail Division and in the Finance, Graphic Arts, and Amusements Divisions; there is one in the Manufacturing Division. (Discussion of the economic implications of production-capacity control is deferred to p. 646.)

INVENTORY CONTROL

The trade-practice provisions of four codes call for control of inventories. In general terms these regulations put a maximum limit upon the amount of inventory, or stock for sale, which an individual member of an industry may have on hand. (See table on p. 638.)

Inventory control provisions in N. R. A. codes [1]

[Key: A=administrative approval, disapproval, or review required. X=provision appears in code.]

Name of code	Number of code	Mandatory in code	Effective at initiation of code authority	Basis of limitation				Special reporting	Exceptions
				Present inventory	Prior sales	Stock in storage	Power in code authority		
Food division	.....	.....	.....	.....	None	None	.....	.....	.....
Textile division:									
Carpet and rug [2]	202	X	.....	.....	X	.....	.....	X	.....
Basic materials division:									
Cement [2]	128	.....	A	.....	.....	.....	A	X	.....
Petroleum [2]	10	X	.....	.....	.....	.....	X	.....	.....
Chemical division:									
Carbon black [3]	269	X	.....	X	.....	X	.....	.....	X
Equipment division	.....	.....	.....	.....	None	None	.....	.....	.....
Manufacturing division	.....	.....	.....	.....	None	None	.....	.....	.....
Construction division	.....	.....	.....	.....	None	None	.....	.....	.....
Public-utilities division	.....	.....	.....	.....	None	None	.....	.....	.....
Finance, graphic arts, amusement division	.....	.....	.....	.....	None	None	.....	.....	.....
Professions division	.....	.....	.....	.....	None	None	.....	.....	.....
Wholesale and retail division	.....	.....	.....	.....	None	None	.....	.....	.....

[1] This is a reproduction of a section of the table entitled: "Division of Research and Planning, N. R. A., Analysis of Trade Practices, Provisions Relating to Plant and Machine Hours, Productive Capacity and Inventories", N. R. A. Report on the Operation of the National Industrial Recovery Act, p. 53. With the exception of necessary changes in and additions to footnotes, and the omission of the numbers of the industry divisions, the table is exactly in its original form. The data were derived from an analysis of 535 master codes and their supplements and amendments approved before Dec. 15, 1934.

[2] Code also contains provision for production quotas.

[3] Code also contains provisions restricting productive capacity.

Inventory control does not place restrictions upon the amount which may be produced so long as the amount produced can be sold. It will be seen that in this respect such provisions are sharply different from all other types of control described above. The primary idea of value behind such regulation is this: If business men may not accumulate beyond certain limits for inventory, attention is fixed on balancing production with market demands. There is thus a tendency to avoid a large accumulation of stocks merely for purposes of speculation. The economic effects of these provisions will be discussed below.

ECONOMIC EFFECTS OF PROVISION FOR LIMITING PRODUCTION AND PRODUCTION CAPACITY

The types of provision just summarized are not simply different routes to the same objective. Their economic significance therefore has to be considered under separate headings.

CONTROL OF PRODUCTION

The various devices for control of production—limitation of machine hours, limitation of plant hours, and (at this point is another chart which will be found on file with the committee) production quotas—are very commonly described as means of "balancing production and consumption."

It would seem almost unnecessary to point out that such a concept furnishes no criterion for control of production. Yet the phrase has been so generally used in recent years, as though it denoted a profound economic discovery, that a comment is needed. The amount of production which can be balanced with consumption is primarily a question of the price at which the product is sold.

While there are limits of course—prices so high that none can be sold, and conceivably amounts of production which could not be entirely moved at any price[4]—between these extreme limits, which are seldom if every reached, there is possibility with every product for balancing with consumption vastly different quantities of production by varying the price. Balancing production and consumption is a phrase which has no meaning in a business economy except in conjunction with the connecting term of price. The argument for control of production therefore has to be reduced to more explicit terms.

Proponents of machine- and plant-hour limitation have typically asserted that four beneficent results may be achieved. First, it is contended that while under such limitations certain plants may get less business, others will get more. The total volume of business will thus be spread. Second, it is pointed out that such control may result in a regularization of production. Third, it is pointed out that if limitations on plant-hours are made to restrict night production they can be used to do away with the so-called "grave-yard shift." Fourth, it is contended that machine- and plant-hour limitations result in a stimulus to the buying of new equipment, and thus act as a stimulus to the capital goods industry. Each of these points needs brief consideration.

1. *The spreading of the available business.*—There are at least three circumstances under which the imposition of machine- and plant-hour limitations would have no effect on the spreading of available business among the units of the industry. First, there would be no effect if the maximum hours which plants were permitted to run was greater than the actual number which any plant in the industry was being operated at the time the limitation was placed. Second, there would be no effect if at the time the imposition was placed there were available in any plant, which would otherwise be affected, idle machines of the same types as those affected and of sufficient capacity so that there could be shifted to them the production taken away from the machines formerly operated. The "spreading" that would take place would be between machines within a given unit of the industry rather than between units. Third, there would be no effect in cases where production had been so seasonal that the total volume could be spread over a longer period of time. In this case the "spreading" would again be within an individual unit rather than between units.

It is altogether probable, however, that those designing machine- and plant-hour limitations will so arrange them that there will be an effect of spreading work as among the several plants of the industry. If there is such a redistribution, there are strong reasons to suppose that the shift will be away from lower cost plants and to higher cost plants. This is based on the reasonable presumption that if competition in an industry has been fairly sharp, production at any given time will be in the hands of those plants which can produce most economically, and that they will be utilizing their most efficient machines. To the degree that this is true, machine-hour limitations will necessarily result in the use of less efficient machines or less efficient management, or both. Such less efficient production means higher cost production and the probability of higher prices. Higher prices resulting from these facts being a tendency toward less buying of the product; consequently less production and consequently less employment.

[4] While it is, of course, true that fruit is allowed to spoil in the orchards and other crops are at times not worth shipping, cases in which commodities fully produced, in the economic sense, cannot be sold at some price, are extremely rare to say the least.

The question may be asked why, if there is to be a transference of business from some enterprises to others, the ones slated to lose business will voluntarily consent to be thus "victimized." The only answer seems to be that in spite of the transference they expect to be better off, or no worse off, than before. This implies their belief that the effect of production control will be to support a higher level of prices from which they can offset their loss of volume. Insofar as there are firms for which the rise in prices does not promise full offset to the loss of volume, the presumption is that their adherence to the system will not be voluntary but imposed.

There then remains the question of what the presumed benefit is of redistributing production among the plants. When stated in relation to specific industries the reasons are always those of salvaging special groups. For example, it is claimed for the Cotton Textile Code that it is preventing the complete economic collapse of whole communities whose mills could not be run in open competition. This may well be so, but if this is the reason for the Cotton Textile Code, the argument should be put explicitly on those grounds. There should be an understanding that the Nation is paying the relief bill and that this spreading of work does not relate to recovery from depression or any of the stated objectives of the Recovery Act. Purely as a relief measure, production control is open to the fatal objections that it diminishes total national production, thus hindering recovery from depression; it distributes benefits without discrimination as to need and assesses its cost without reference to ability to pay.

2. *Regularization of production.*—The spreading of work more evenly throughout the year is an end much to be desired. It cannot, however, be done without offsetting damage. In the first place, it may entail the loss of livelihood to those persons who would otherwise receive employment at peak periods. In the second place, the reduced flexibility of operations, the necessity of carrying larger stocks, and possible additional labor costs may result in diminished production. This would entail a form of sacrifice upon the Nation at large. Regularity of employment for workers is so desirable, however, that some sacrifice of production might be thought a reasonable price. It should be realized, however, that regularization of employment does not necessarily follow from regularization of production. In cases, for example, in which workers achieve regularity of employment by shifting from one type of work to another, regularization of production in any single type of work might actually reduce the regularity of employment.

It is possible that under some circumstances hour limitations might be used to accomplish some regularization. If this is no reason to suppose that, in practice, any of the systems now in force are actually for the primary purpose of pursuing this objective. Where the result is obtained largely as a corollary consequence to some other objective, it is likely to be only with the disadvantageous result of diminished production. Moreover, the attempt to secure regularization by limiting machine- and plant-hours prevents an individual from running his plant at more than the legal maximum even if he could run it for more than that maximum with complete regularity.

3. *The "grave-yard" shift.*—It is contended that machine- and plant-hour limitations may result in doing away with that period of night work known as the "grave-yard" shift. It is true that those upon whom restrictions are placed might apply the regulations in such a way that this is in whole or in part accomplished. Such a method of approaching the problem of the grave-yard shift is, however, inept and clumsy. Further, such regulations might fail entirely to effect the desired end. If it is believed desirable to do away with the grave-yard shift this should be done by regulations directly forbidding employment or operation for the specific hours in question, recognizing that while this might cause a limitation on production the ends accomplished were believed to be more valuable than the social losses through diminution of output.

4. *Effects on capital goods industries.*—It is contended that machine-hour limitations are desirable, in that they bring about a stimulation of capital goods industries through creating a demand for new machines. This contention is based on the assumption that businesses which cannot supply the demands made upon them with their existing facilities under the limitations imposed will add to their equipment. It is possible, if the prices of the products being produced in the industries on which machine-hour limitations are imposed should rise high enough as a result of these limitations, that there would be some tendency to increase the demand for machines. If such a stimulation does occur, plant and equipment already in existence and capable of utilization are duplicated. At best, the result of such an effort would be to approach but never to reach a

condition of productive efficiency equal to that existing before the machine-hour limitations were imposed. More machinery would be in existence and yet the total annual volume of final consumers' goods produced would not be greater than that produced before the limitations on production were imposed. Labor utilized to create these machines would thus have been employed without making any addition to the total national production.

There is scarcely more productivity in such operations than there would be in tearing down an existing office building and reconstructing it as a means of finding employment for workers. So long as the limitations on operations remain in effect total national wealth is not even as great at the end of the activity as it was before the limitations were imposed. Natural resources have been consumed in duplicating plants which are forced to be idle through production control regulations. The reasoning behind the idea that such operations are advantageous is commonly known as the "make-work fallacy." The reduced average production of labor which is involved in this employment of more workers with no greater output would in all probability result in a lower average real wage.[5]

It should be added that the increased number of machines which result from such conditions as those being discussed constitute an aggravation of any element in the situation which may be regarded as overcapacity. Thus the very condition which limitations on machine hours are presumed to remedy is made worse, and any relaxation of the methods of Government control made increasingly difficult.

In addition to the foregoing arguments, it has often been contended at the National Recovery Administration that production-control provisions are necessary to support the required increased wage rates imposed. That is, it is said that if wages are to be increased by regulations it becomes necessary to control production in order to raise prices so that the higher wage rates may be paid.

If it is to be asssumed that a minimum wage regulation cannot itself be effective, it is not likely that production control will make such regulation any more effective. The higher prices that will result from production control will not make producers any more likely to pay other than the lowest competitive price at which they can secure labor. In addition, it must be recognized that a restriction on production reduces rather than increases the competitive demand for labor which might have been relied upon to increase wage rates. If it is desired to effect minimum wage rates, emphasis should be placed directly upon the enforcement of these regulations. If minimum wages are imposed, business men will find it necessary to adjust production to the reduced profitableness of employing labor, without the aid of any additional artificial restrictions on production.

What has been said above regarding machine- and plant-hour limitations is applicable in large part to production quotas. This follows inasmuch as the primary effect of production quotas is to limit the total output of an industry. These differences may be noted. Under the quota system there is no opportunity for an expansion of the total industry production excepting by a revision of the quota. Furthermore, the proportions of this total industry product which will go to each unit of the industry will not necessarily be the same under each system. If plant- and machine-hour limitations are imposed, the proportions of the production going to individual units of the industry is still left in large part to competitive forces. Under the quota system arbitrary methods for fixing individual quotas are provided, and there may be a tendency to rigidify the relative competitive positions of the members of the industry.

In addition to the arguments above reviewed an important reason entertained by groups desiring production control is to improve the financial prospects of the members of the industry through the device of "contrived scarcity."

The real question of public policy raised by such provisions therefore is whether the financial aid to a particular industry is worth the price of a contrived restriction of production, with its correlative diminution of the ability of the industry to give employment. It is entirely feasible to engage in such aid at the expense of the rest of the community, but the more widely such action is taken the more deeply it cats into the productivity of the economic system. The National Recovery Administration has never made clear on what grounds it believes the public interest to be served by making an industry produce less than it would otherwise produce, and employ fewer than it would otherwise employ.

[5] There is intended in this no argument against creating work where extensive unemployment exists. Criticism is directed only at such work-creation activities which, like production control, do not add to the total national income.

CONTROL OF PRODUCTION CAPACITY

It is clear that control of production capacity is a means of deciding, by other than the judgment of business men and investors, the amount of equipment which shall be constructed in the industry or industries regulated. In economic terms it is a control over the flow of capital.

The interest of particular groups in control of capacity is that of building a wall around their competitive territory, warding off the impact of new competition, or additional competition from their own more enterprising members. By admitting capacity control provisions into codes, the National Recovery Administration in effect certified it to be in the public interest that the present amount and ownership of productive equipment in certain industries be frozen in its existing pattern, subject to such exceptions as the code authority or the National Recovery Administration might permit.

Capacity control raises issues of most serious character. (1) By restricting the flow of capital into given industries it raises the serious question of how one was to determine that the alternative uses to which such capital would be put were socially better uses than those to which it would be put under conditions of free investment. (2) It raises the further important question of how to decide what industries shall be accorded the sort of protection to private capital that inheres in capacity control. (3) Serious from an immediate point of view is the challenge of capacity control on the ground that it interferes still further with an already too inactive capital market, and thus constitutes a distinct hindrance to economic recovery.

There is no evidence that the National Recovery Administration ever arrived at any basis for determining the alternative uses to which capital would flow if it were restricted from entering given channels, nor is there any reason to believe that such restrictions could do otherwise than throw a guard of protection around certain special interests and delay the processes of recover.

Now one perhaps would claim for the market a universal wisdom in properly directing the flow of investment funds. Until very much more than has been done is done to study this problem, regulation of production capacity is, however, as likely to negate social purposes as to serve them. Unless it can be and is determined that regulation of capital flows by industrial groups or the Government will direct the process of capital formation to more useful purposes than private investment, and until adequate measures of control are devised to see to it that industrial groups do not use such regulations to secure or strengthen monopoly positions, the unwisdom of capacity control is obvious. In any event, it is unwise to lodge such a power with the majority membership of an industrial group, and a depression is a poor time in which to commence such regulation.

INVENTORY CONTROL

In sharp contrast with the type of production control discussed above, both as to purpose and technique, is inventory control. This form of control, by limiting merely stocks on hand, places no limitation upon the power of an individual enterprise to produce goods so long as it can find a current market. Industry groups have sponsored inventory control as a way of preventing the accumulation of large unsold stocks which, overhanging the market, at times occasion sharp price declines.

Limiting inventory may prove socially useful through encouraging business men to make a more careful analysis of market demand before undertaking production and through reducing the opportunity of producing for speculation. Whether or not inventory control will bring this about depends very much upon the form of the regulation employed, and its specific application in particular cases.

It is important that individual business men be not restrained by an artificially determined maximum inventory, if such a maximum is likely to interfere with the effectiveness of their operations, particularly in those circumstances where there are seasonal variations in demand, and in which regularization of production and employment may require a large volume of production for inventory. It is not at all clear that the bases for inventory control set up in codes, namely, "prior sales" and "stock in storage", bear any relationship to the desirable objectives above suggested.

It is important to observe the similarity and dissimilarity between the theory underlying inventory control, and that underlying the establishment of production quotas. In drawing up quotas the beginning lies necessarily in making some

assumption as to what consumption is going to be. A "balance" is then achieved by producing this assumed amount. In inventory control the business enterpriser, so long as his production can be moved into the market without an accumulation of inventory beyond the maximum fixed, is left free to make his own calculations of market demands at variance prices and to produce any amount which he can sell, and vary his price in any way.

Properly administered, it appears that inventory control has important potentialities for improving the effectiveness of the competitive process. It could, on the other hand, be so administered as to become a restrictive device creating contrived market shortages.

In reading that part of chapter XXVI which deals with the facilitation of effective competition, it will be seen that some forms of inventory control could be classified with the devices there discussed.

In considering any of the devices described in this chapter emphasis should be placed on the fact that code authorities exercise large powers in administering these regulations, powers that are often made even larger by the indeterminate character of the relevant code provisions.

We have at present no knowledge that justifies us in using Government regulation to check the amount of capital, labor, or natural resources that should flow into one industry rather than into others. Sufficient study might reveal instances in which such regulation would be socially useful, but control should not be undertaken until such studies are made. If found socially desirable the serious administrative problems of such control should be faced before control is undertaken. If undertaken administration should be in the hands of the Government, rather than under the control of parties of special interest.

* * * * * * *

CHAPTER XXX

CONCLUSIONS

The trade-practice problem is primarily a problem in organization of economic life and of the problems of equity that arise therefrom. In dealing with it, the National Recovery Administration attacked a problem which has been the subject of legal decision and statute law for many centuries and has occupied a large part of the Federal Trade Commission's attention since its creation.

The National Recovery Administration attacked this problem under the most serious handicaps. It carried an obligation for the performance of a series of other and for the most part unrelated duties, which it was required, by its own theories of what was of relative importance, to achieve immediately. Under the combination of duties imposed by the law, the necessity of creating voluntary codes on the basis of industry proposals, the nature of the problem itself, the lack of adequate information for dealing with it, and the philosophy of recovery which animated the Administration, sound economic action on trade practices was an impossibility. In terms of the objectives of the law it must be concluded that the trade practice regulations of the National Recovery Administration have achieved very little that may be regarded as socially useful.

So far as making competition more fair is concerned, the results were negative rather than positive. Its efforts to facilitate competition are its most creditable additions to the economic structure. It has made it possible for industries, through code authorities, to aid industry members in knowing their costs; it has made it possible for industries so to draw plans for open prices that they tend to eliminate the evils of secrecy and discrimination and to be of benefit to the public. Some contribution has also been made in the field of informative labeling, grading, and standardization. Unfortunately, all the major contributions in the direction of further facilitation of competition came late in the code-making process and stand at present rather as matters of declared policy than as approved code provisions.

The National Recovery Administration in its regulation of trade practices modified but little the plane of competition already established by common and statute law and Federal Trade Commission pronouncements. The codes restated the well-recognized tenets of the law and brought them vividly to the attention of the industries concerned, but made a minimum of specific contribution.

Unfortunately, it is on the negative side that National Recovery Administration work with trade-practice regulation is most impressive. There is much in the record which, instead of making competition fair, has tended to lessen competition.

The National Recovery Administration has made extensive reallocations of power as between individual initiative and industrial groups. It has extended to important industries, and in a grave degree, power over determination of prices, determination of production, and productive capacity, and determination of the nature, forms, and area of specialization. The number, as well as the importance, of industries for which such changes have been made in codes is sufficient to justify the statement that in written terms at least the general cast and character of American business has been materially modified in the direction of vastly increasing the power of industrial groups.

So far as inducing recovery is concerned—interpreting recovery to mean increased production, increased consumption, increased employment, and increased real wages—it must also be concluded that the trade practice provisions of codes have been a hindrance rather than a stimulus. While it is conceivable that in its inauguration the abridgement of the antitrust laws may have lent some degree of hope, even of confidence, to business men, so large a part of the provisions put into effect were restrictive rather than promotive in character that, so far as such comparisons are possible, it may be concluded that they more than offset what gains may have been contributed by temporary confidence. An ultimate evaluation of this aspect of trade-practice regulation cannot be given without relationship to the general effects of the National Recovery Administration upon recovery. Such an analysis is presented in part VI.

That phase of the law which declared that codes should not "eliminate or oppress small enterprises and will not operate to discriminate against them" was at least in certain instances interpreted as a sanction for attempting to aid small enterprises. Certain direct actions were taken to this end; chiefly, prohibitions against loss leaders in distribution codes and certain of the various minimum prices fixed under so-called "declarations of emergency." Analysis gives no indication that these devices would accomplish these purposes; nor has the experience of the National Recovery Administration furnished any satisfactory evidence that they were accomplished. In addition, there is more than a probability that in those cases in which increased control over prices, production, and specialization has been given to industrial groups, this control tends to be more largely under the influence of the larger units than of the smaller. To the extent that this is so, it may be assumed that it will be exercised with some preference for the larger rather than the smaller units.

Deficiencies of trade practice regulation under the National Recovery Administration, as already stated, grew in large part from the clutch of circumstance in which it found itself. Codes of fair competition were, under the law, to be voluntary codes. This meant that industries might offer their proposals and must assent to regulations which they imposed upon themselves. Second, under the theory of recovery with which the National Recovery Administration was imbued (combined to some extent with ideas of reform) it was believed to be of first and immediate importance to increase wages, reduce hours, and otherwise modify conditions of employment. These were not provisions in which industrial groups had a primary and leading interest. Although in many cases individuals and groups were not opposed to such changes and were even favorable to them on general humane grounds or because they may have believed that they would be conducive to recovery, they were for the most part provisions which they were willing to grant "voluntarily" only in exchange for an increased control over prices, production,and other matters which they regarded as desirable. Under these circumstances it was impossible to consider trade practice provisions on their merits. Moreoevr, in evaluating the trade-practice proposals presented, the National Recovery Administration had no adequate factual data or analyzed experience. Nor was it able to foresee the effects of specific trade-practice regulation in relation to the stated purposes of the act.

Under the impulsion of the influences at work the trade-practice provisions written into codes came from a bargaining procedure until late in the code-making process. It was only late that there began a development of policy on trade practices with a view to the general public interest and without reference to the exigencies of particular code-making situations. This change made it possible not only to avoid in large part the granting of trade regulations as concessions but to consider proposed regulations in terms of the purposes of the act and their broader economic implications.

In viewing the contrast of trade-practice provisions which have been written into codes with policies which have been announced, the National Recovery Administration finds itself in a dilemma. If codes are to remain voluntary, the National Recovery Administration confronts a serious problem. This problem

is how to incorporate into codes already made the policies which it has more recently developed.

The opportunity for industries to bring their conflicts, irritations, and difficulties before an interested Government agency is to be encouraged. Such an agency to perform in the public interest must, however, be so established as to be completely free from any sense of compulsion to approve or disapprove any proposal made to it excepting on the basis of criteria which it believes reflect a social interest broader than that which can be embodied in the interests of any individual or industry. Such an agency should be free to consider the extension of Government control in an industry to any degree. It should be as free to consider the lessening to any degree of Government regulation and influence in an industry. It should be within the province of such an agency to discover, if it can, means of modifying the plane of competition or of facilitating the competitive activities within the industry. It should exercise its own inventiveness and ingenuity in these matters as well as give consideration to the suggestions which are brought to it. In any of these fields approval or disapproval should be rendered only after the most careful weighing of the economic effects of contemplated regulation in terms of criteria of public interest.

Whatever the extent of the powers granted to a body established to deal with the trade-practice problem, such a body should be impartial in the sense of being charged with the duty of determining and preserving the general public interest as distinct from the interests of special groups. Any commission or commissions established to deal with trade-practice problems should have a membership chosen primarily on the basis of special qualifications for this difficult task. The notion of having a policy-making body made up of representatives of conflicting pressure groups, the theory that has dominated the National Recovery Administration, is a procedure clearly inapplicable to the construction of sound public policy. As the problems with which it deals are no less important than those with which the Supreme Court is concerned, appointments to a trade-practice commission should be made with the same care and deliberation. Competency to make economic rather than legal judgments should, however, be the test. Tenure at the minimum should be for a period of years, and at the maximum upon the basis of the Supreme Court.

Such a commission should not be burdened with administrative duties. It should be responsible for establishing policy in trade-practice regulation in harmony with the general lines of policy laid down in the law which created it. In the development of such policy it should give a sympathetic hearing to every industrial complaint and suggestion. It should have a research staff competent to analyze the economic and social factors, knowledge of which would be essential to sound decisions in the public interest.

Once a policy has been determined, this commission should hear complaints of parties at interest and pass upon the application and meaning of its policies in specific industry situations. It should be ready to modify its policies as study and observation of their economic and social effects bring further understanding.

PART VI. THE NATIONAL RECOVERY ACT AS A RECOVERY MEASURE

Chapter XXXI. The Criteria of Recovery

In the diverse hopes and interests which it embodied, the National Industrial Recovery Act came near to being "all things to all men." It gave to labor the promise of shorter hours, higher wages, and the right of collective bargaining. To industry it offered at last a relaxation of the antitrust laws, and the right, subject to administrative review, to restrain through price stabilization schemes and trade practices regulations what was rather vaguely described as "cutthroat" or "destructive" competition. To social reformers and humanitarians it seemed a way of obtaining at one stroke national legislation on maximum hours, minimum wages, child labor, and other subjects theretofore beyond the reach of the Federal Government. To those interested in economic planning it seemed to promise in some measure both the organization and the control of further advance along that line.

It is obvious that although the immediate concern of the National Recovery Administration was an attack on the business depression, the program which by the terms of the Recovery Act it was empowered to execute went much further than this. It embraced both recovery and reform. Indeed it might even be said that it sought recovery through reform. The raising of wages and the

shortening of hours were measures advocated for decades by organized labor in season and out, in prosperity and depression alike. These were from the labor standpoint essentially permanent and continuing reform proposals, not special measures addressed to depression conditions. The relaxation of the antitrust laws in favor of industrial self-government was similarly a long-standing reform proposal of organized industry antedating and independent of the depression.

That these two politically powerful interests, whose proposals made up the heart of the National Recovery Administration program, should have considered their pet reform measures to be conducive to economic recovery is no occasion for surprise. This is simply because these measures were regraded by their proponents as beneficial at all times and under all conditions. The possibility that such reforms might retard the emergence of the country from depression was accordingly excluded.

We are concerned in the present study with the effect of the National Recovery Administration on recovery, not with its accomplishments in the field of reform. The latter will be considered for the most part only in their recovery aspects. It should be observed that in the long run the enduring effects of the codes on the organization of industry, trade practices, labor standards, labor relations, and the like, may prove of far more importance than their more immediate effects on the revival of business. It goes without saying that no final balance can be struck between the gains and losses resulting from the activities of the National Recovery Administration without taking these factors into account. At the outset we wish to make it perfectly clear that we have no intention of trying to strike such a balance here.

Our test of whether the National Recovery Administration has furthered recovery is whether the Nation has enjoyed under it a larger production of goods and services than it would have enjoyed without it. If the raising of certain classes of wages and the control of competition through "industrial self-government" have increased the output of goods and services, they were recovery measures; if not, they may still conceivably be justified on grounds of reform. Thus, for example, a given change in the distribution of the product of industry among different recipients might be deemed by some more important than a moderate loss in the size of the aggregate output. By our definition, however, the output remains the criterion of recovery.

It is one thing to define what is meant by recovery and quite another to find some basis for a judgment as to how it has been affected by the National Recovery Administration program. It is often assumed, even by those who accept the definition, that the National Recovery Administration can be justified or damned, as the case may be, by citing the record of productive activity under its regime. This in itself proves very little. It is open to the supporters of the Recovery Administration to say of a poor production record that, except for the codes, conditions would have been still worse; and to the opponents to say of a good record that, but for the codes, it would have been still better. The same record, indeed, can be held to justify both points of view.

No amount of perusal of production statistics can tell us definitely whether, say at the end of the first year of the National Recovery Administration, output was higher or lower than it would have been otherwise; much less can it tell us by what percentage it was higher or lower. Production records at the most support only certain loose general inferences, and then often very doubtfully. It may be inferred, for example, that the National Recovery Administration has hindered recovery because in the fall of 1934 industrial production was below the level of May 1933 (see the chart on p. —); because it has not since the inauguration of the codes (up to the end of 1934) reached the precode level of June and July 1933; because certain foreign countries have had a greater recovery without a National Recovery Administration than we have with it; because in a like period of time we made larger gains in the recovery from the preceding major depression (1921) than from this one; and so on. It is true that our recovery under the National Recovery Administration has been quite disappointing, and it may be hard to believe that we would have made less progress without it; nevertheless the situation is so complex, with so many unprecedented elements, that considerations of the kind just cited are in themselves of comparatively little weight.

Index of industrial production

The National Recovery Administration is but one of a galaxy of recovery agencies operating simultaneously and with intermingled effects. Economic developments since its inauguration have reflected not only the activity of these

agencies but the effects of monetary, fiscal, and other policies composing the program of the Roosevelt administration. They have reflected also wide-spread changes in business and industry due primarily to other factors than Government activity. Since the influence of the National Recovery Administration on the volume of production cannot be directly segregated statistically, it can be judged, if at all, only by an indirect process of reasoning and inference based on such effects of the program as it is possible to measure or appraise separately.

The National Recovery Administration had little or no power to expand production by direct means. It could not compel a single producer to turn out one additional unit of product. If an expansion of output resulted from its activities it was, we believe, largely an indirect consequence of the changes in wage rates and prices that the code program occasioned. The general magnitude of these changes it is possible within certain limits to estimate. By so doing we obtain a basis for many of the inferences and conclusions as to their effects on recovery which are set forth in the following pages.

If the effect of the National Recovery Administration on production must be arrived at largely by such a process of roundabout reasoning it is quite evident that it cannot be the subject of precise measurement. It may be possible to reach a conclusion as to whether the net effect has been on the whole favorable or unfavorable, and whether it has been substantial or of little importance, but in any event the result must be stated in adjectives rather than in arithmetic.

Because of the importance of theoretical analysis in any attempt to appraise the effects of the National Recovery Administration on recovery, it may be worth while to begin the entire discussion by a critical examination of the theories held by the official sponsors of the code program. Why did they believe that it would promote recovery? Was this, under the circumstances, a reasonable expectation? To this inquiry we turn in the following chapter.

CHAPTER XXXII. THE N. R. A. PURCHASING POWER THEORY

It would be a serious error to regard the National Recovery Administration as a studied attempt to give institutional embodiment to an economic theory. It was primarily a plan of action to meet what was conceived to be an emergency. It responded to concrete immediate objectives; to get idle workers on the pay rolls of industry, to shorten hours, to raise wages, to put a "bottom" under prices, to outlaw "unfair competition", to abolish child labor. Theory was secondary to action, not action to theory.

It is in part for this reason that we have no formal official version of the economic doctrines underlying the National Recovery Administration. There is instead an accumulation of public statements emanating from different Government officials and varying widely in emphasis and completeness. To distill from these declarations anything approaching a clear-cut, well-reasoned, and consistent body of doctrine is patently impossible. For the most part they originated as propaganda dashed off in the campaign to "sell" the National Recovery Administration to the public, and they reflect the confusion and incoherence characteristic of such material.

It need hardly be said that there is seldom in these statements any clear separation of the reform and the recovery aspects of the National Recovery Administration program. In many cases it seems to have been simply assumed that recovery was a natural byproduct of reform. The program itself, as we have pointed out in the preceding chapter, was essentially an embodiment of the long-standing reform proposals of organized labor and organized industry; higher wages, shorter hours, and collective bargaining on the one hand; and the right of business, subject to certain governmental checks, to regulate prices, production, and trade practices on the other.

For what reasons were these measures thought to be conducive to recovery? Without in any way pretending to do justice to all of the ideas expressed by all of the official exponents of the National Recovery Administration theory, we venture to summarize the main points of agreement as follows: (1) Raising of wage rates and thus aggregate wage payments would expand the purchasing power for goods and services, the increased demand for which would enlarge the volume of production and start the upward spiral of recovery; (2) raising wages would check the downward drift of wages and prices that had accompanied the depression, abate "destructive" price competition based on wage cutting, and stimulate the revival of spending upon which recovery depended; (3) relaxing the antitrust laws in favor of collective action would enable industry to eliminate cutthroat and destructive competition and prevent overproduction. The resulting stabilization of prices was thought favorable to recovery.

Of these three lines of support for the National Recovery Administration as a recovery measure, the most frequently stressed and the one to which we shall give the most attention is the so-called "purchasing-power" theory. To this the remainder of the present chapter is devoted. The other two arguments will be touched on in the development of the analysis in the following chapters.

THE STATEMENT OF THE THEORY

The main outlines of the purchasing power theory are fairly simple. Employers were to raise wages and thus expand their pay rolls. The return flow of these enlarged payments in the form of demand for the products of industry would increase the physical volume of goods and services sold. This would mean greater production, still greater pay rolls, a further expansion of demand, and so on up the ascending spiral of recovery.

It was held, by the President at least, that there was one important condition to the achievement of this sequence: employers must not raise their selling prices as far as they raised wage rates. If they did so, the return flow of their enlarged pay roll disbursements would be absorbed in the payment of higher prices rather than in the movement of more goods. The same physical volume as before would be taken off the market, with no real gain to recovery. This angle is clearly set forth in the President's statement outlining the policies of the National Recovery Act at the time of the passage of the Recovery Act.

"I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If now we inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot hope for the full effect of this plan unless, in the first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible. If we can thus start a strong sound upward spiral of business activity, our industries will have little doubt of black-ink operations in the last quarter of this year."[1]

General Johnson's statements on this point swing back and forth between the view that employers must raise wages before prices are increased and the essentially different views that they must merely not raise prices ahead of wages. A statement of the latter view follows:

"In the first place, don't forget that nobody expects employers to pay the increased cost of reemployment. That is not possible. The consumer—as always—pays the bill. It is no argument to say, "Oh, this will cost this great company $1,000,000 a year," or "this small employer $200 a month." Of course it will do nothing of the sort. It is inevitable that the employer will raise his prices and will himself pay nothing at all. The only restraint that is asked of him is that he not raise his prices any more than his costs are raised. Except in a limited class of cases there is simply nothing to the claim that any employer pays this bill."[2]

Without undertaking the hopless task of reconciling all of General Johnson's statements with each other, or with those of the President, we shall take it for granted that the most authoritative statement of the National Recovery Administration purchasing power theory called for a lag of price increases behind wage increases. This lag was expected to result in an expansion of productive activity and in lowered unit costs of production, which would obviate the need for raising prices later to the full extent that would have been required had the wage increases been offset at the original level of production. At the best, the theory was exceedingly vague as to the uration of the lag and the extent to which employers were expected to dig out their pockets to finance the wage increases before recouping through higher prices.

---

[1] Additional light on the President's views may be found in the terms of the President's Agreement which required a pledge from the signer "not to increase the price of any merchandise sold after the date thereof over the price on July 1, 1933, by more than is made necessary by actual increases in production, replacement, or invoice costs of merchandise, or by taxes or other costs resulting from action taken pursuant to the Agricultural Adjustment Act, since July 1, 1933, and, in setting such price increases, to give full weight to probable increases in sales volume, and to refrain from taking profiteering advantage of the consuming public" (italics ours). The italicised portion of the pledge appears to indicate the view that the full increase in costs should not be immediately passed on in higher prices.

[2] National Recovery Administration release no. 281, Aug. 10, 1933. Not only were General Johnson's admonitions to employers to raise wages first and prices afterward interspersed with requests simply that they raise prices no faster than wages, but exhortations to keep prices down were alternated with prophecies that they were surely going up, and even with statements that higher prices were one of the goals of the National Recovery Administration program. It should not be surprising that such confusing counsels often led employers to stretch a point to their own interest.

THE THEORY IN PRACTICE

Before we proceed to the discussion of this theory we should record the fact that in practice it did not work out as planned. We shall see in the following chapter that the anticipated lag of price advances behind wage increases did not in general occur; indeed, that on the average prices rose ahead of wage rates.

In view of the circumstances attending the inauguration of the National Recovery Administration, program, this result is not surprising. The codes and the President's Agreement did not become generally effective until August 1933. Meanwhile the entire program, with its practical assurance of higher costs and prices, had become public early in May, had been formally placed before Congress by the middle of the month, and passed by the middle of June. Since industry was virtually given notice of impending increases in labor costs 2 or 3 months before they became effective a wave of speculative anticipation of these cost increases and of the price advances they were certain to bring swept prices up even before the codes were ready for operation.

Before this rising tide of prices the National Recovery Administration stood as important as King Canute before the ocean. Speculative price advances were repeatedly decried, but without noticeable effect. The great majority of employers looked on the National Recovery Administration as a means of eliminating losses, not of increasing them, and there was a rush to get out of the red by the most popular route—price raising. In the justifiable belief that the National Recovery Administration had practically reduced the antitrust laws to a state of suspended animation, they raised and stabilized their prices, in many cases by agreement. In other cases prices were boosted without agreement.[3] By the time wages were raised by the codes it was a question of catching up with prices, not of leading them up.[4]

It is the first and most obvious criticism of the National Recovery Administration program for increasing real purchasing power that while depending for its effect on a certain relaton between wage increase and price increases it offered no remblance of control over one of the facts in this dual relationship. In the wisdom of retrospect, at least, it is apparent that there was even at the outset little reason to expect that the result would conform to the preconceived design. If the program represented planning, it was planning without any adequate means of execution.

We shall discuss in later chapters the economic effects of the National Recovery Administration as it actually worked out. For the remainder of the present chapter, we shall consider the merits of the National Recovery Administration purchasing power theory itself. The question is admittedly somewhat academic in view of the failure of the National Recovery Administration to secure the practical application of the theory, but it is of sufficient importance to warrant a brief consideration.

RAISING WAGES WITHOUT PRICE ADVANCES—A HYPOTHETICAL CASE

Since the most authoritative version of the National Recovery Administration purchasing power theory appears to consider wage increases beneficial only insofar as they are not accompanied by compensatory price advances, it may be interesting to speculate on what would have happened if the National Recovery Administration had raised wages and had at the same time forbidden price increases entirely. While we have no reason to believe that the theory contemplated anything quite so drastic—we have already observed that it is impossible to ascertain exactly what it did contemplate. The consideration of this hypothetical case should cast some light on the fundamental issues involved. The case represents the theory carried to its logical limits.

If employers are to absorb higher-wage costs the first and most obvious question is where, except by offsetting price increases, they are to get the money for the extra pay roll? On this point the official National Recovery Administration literature is rather noncommital. The reader is frequently left to infer that the wherewithal to pay the higher wages will be obtained from the increased spending of the benefited wage earners. Obviously, this puts the cart before the horse. Before these workers can spend more they must receive more. By the same token, before the employers can receive more from the return flow of their wage disburse-

[3] It should not be inferred that prices advanced ahead of wage rates in each and every case. Many employers were unable to raise their prices and others delayed doing so. Increases were so widespread, however, as to produce a sharp rise in the general level of prices.

[4] See ch. XXXIII. As early as July 20, 1933, General Johnson issued a warning that "the rapid rise of retail prices ahead of consuming power may precipitate another crisis." N. R. A. release no. 72(a), July 20, 1933.

ments, they must find the money to expand those disbursements. This brings us back where we started.

Before we consider possible methods, other than price advances, by which employers may finance enlarged pay rolls, it should be made clear that the enlargement of total wage pay tolls is by no means a necessary result of a raising of wage rates. Confronted by higher labor costs and pegged selling prices, employers may avoid unprofitable operations by shutting down their plants and paying no wages whatever. They may discontinue a part of their operations and so reduce their labor force that their pay-roll disbursements are no larger, or are even less, than before. They may speed up their labor, by "stretch-out" and other methods, so that their wage costs on a given volume of operations are not increased. For these and other reasons, compelling employers to absorb higher wage rates is a very different thing from compelling them to increase their aggregate pay rolls.

It seems exceedingly probable that the imposition of higher wage rates under the conditions assumed in this hypothetical case would result in a relative increase (if any) in pay rolls much smaller than the average wage-rate increase. Because the higher price of labor would make it unprofitable to conduct many operations theretofore extant, the amount of labor taken off the market would contract. Pay rolls might conceivably fail to expand at all. Let us assume, however, for the sake of the argument, that the decline in the amount of labor purchased by employers does not entirely offset the effect of higher wage rates for the labor that continues to find a market, and that the total wage disbursements of employers are actually expanded. Does this mean that there is an enlargement of the purchasing power of the community as a whole? Let us turn to a consideration of this question.

There are three principal expedients, other than price advances, by which employers can finance whatever pay-roll increases are occasioned by wage increases: (1) They can curtail their nonwage disbursements in order to divert additional funds to wage payments, (2) they can use up their available cash reserves, (3) they can borrow from banks (with the consent of the bankers).

Consider first a shifting of employer disbursements to wage earners at the expense of alternative payments. It is often easy for a time to allow accounts payable to accumulate, to let inventory run off, to cut down on repairs, replacements, and additions to plant, to delay retirements, to curtail dividends and other proprietary withdrawals, and to reduce salaries. Some of these expedients involve a reduction in the employers' direct demand for commodities while others indirectly reduce demand by cutting down the flow of funds distributed to other spenders. In either case the curtailment may offset the benefits derived from the additional spending of wage earners.

If the brown-eyed inhabitants of the United States were to donate 10 percent of their incomes to the blue-eyed inhabitants, few people would argue that this transfer would increase either the power of the entire population to spend for goods and services or its actual expenditures. One group would presumably spend less and the other more, by a like amount. If the employers of the country add 10 percent to the weekly pay rolls of wage earners and curtail by a like amount their payments to others, the result may be similar.

It is sometimes argued that a redistribution of employer disbursements in favor of labor, even with no increase in their aggregate amount, shifts income from slow spenders to rapid spenders, hence that the redistribution itself generates a larger demand for goods and services within a given period of time. Insofar as employers enlarge their pay rolls by a curtailment of their own expenditures for materials, supplies, repairs, replacements, and the like, there seems little reason to believe that the funds thus diverted will reach the markets for goods and services sooner than if the diversion had not occurred. Insofar, however, as their disbursements to labor are expended by a curtailment of payments to the recipients of property income—interest, rent, royalties and dividends—the case is somewhat different.

It is probably true that money paid out for these purposes returns on the average more slowly to the markets for goods and services than if paid to wage earners. If this is so, it is due to the fact that a considerable portion is "saved"—a porportion much larger than in the case of wages. Before these savings find embodiment in physical goods they have ordinarily to go through the relatively tortuous channels of the capital market, a process that usually requires more time than the expenditure of the unsaved portion of the funds received by wage earners.

The display is particularly marked during periods of low business confidence and inactive capital markets. It cannot be inferred simply from this difference in rate of expenditure, however, that a shifting of employer disbursements from capital payments to labor payments will, in the absence of an increase in the aggregate for both purposes, augment the total spending of the community. In the first place, the possibility of such a shift is severly limited. Secondly, we must reckon with its effect on the rate of expenditure of funds which continue to accrue to the owners of property after the shift has been accomplished. Let us consider these points in order.

The possibility of diverting to labor through wage increases the disbursements employers are making for interest, rents, and royalties is within any moderate period of time comparatively slight. These payments are governed by contract and are not quickly reducible. If we may judge conditions at the time the National Recovery Administration was launched by the showing of nonfinancial corporations in 1932, employers' disbursements for interest, rent, and royalties aggregated much larger than their disbursements for dividends.[5] The major part of the property income paid out by employers was apparently of a kind not subject to quick curtailment. The flexible part, namely dividends, was very small in relation to the total of payments to labor. We have estimated that if the National Recovery Administration had been able to divert to labor (1) all of the corporate dividends and (2) all of the property earnings withdrawn by the owners of unincorporated enterprises, the total labor income of the country would have been increased only 5 to 10 percent. Of course, the possibility of such a complete diversion was nil.

Even if employers had stopped entirely all dividend paymenst and other withdrawals of equity income and had added to their pay rolls the amounts thus obtained, it is far from certain that the somewhat more rapid expenditure of the diverted funds at the hands of labor would have compensated for a slowing up in the expenditure of property income accruing to the recipients of interest, rent, and royalties, not to mention funds saved from labor income. The slowing up in the rate at which the savings of the community find embodiment in goods and services would be a probable result of the extinguishment of dividend payments.

Without pursuing the matter further at this point, we may record the conclusion that at the time the National Recovery Administration was launched little stimulus, if any, could have been given to business merely by diverting to labor a part of the employer disbursements which, except for wage increases, would have gone to other recipients. It was essential that the plan should actually enlarge the aggregate outgoing payments of employers instead of merely redistributing them. Only in this way could it be expected to enlarge materially the return flow of such payments in the form of demand for the products of industry.

Still continuing our hypothetical case, let us ask whether, if the National Recovery Administration had raised wages without permitting price advances, employers generally would have been induced to expand their aggregate disbursements. This brings us to a consideration of the two principal expedients by which they might have tried to do so, namely, bank borrowing and the using up of cash balances.[6] Was there at the time the National Recovery Administration was proposed any strong probability that, in the absence of price increases, wage increases would lead to any general resort to these devices on a scale sufficient to be of importance to recovery?

Insofar as increased labor costs are not financed by price advances, employers obviously suffer at the outset either a dimunition of their profits or an aggravation of their losses. Their net earnings go down as the income of labor goes up. The question is whether, if the National Recovery Administration had prohibited price advances employers would have generally borrowed from banks and used up their cash to meet the additional losses forced upon them.

It must be remembered that when the National Recovery Administration was proposed the employers of the country were collectively running in the red to the

[5] According to Statistics of Income, 1932, U. S. Bureau of Internal Revenue, interest payments by nonfinancial corporations were alone nearly as large as their dividends (2.6 billion dollars as against 3.1 billions). Rent and royalty payments are not available.

[6] There are several expedients of much less importance than bank borrowing and the reduction of cash balances by which employers may attempt to finance increased total disbursements. They can, for example, force the collection of debts owing them, sell assets they would not otherwise have disposed of, borrow from others than banks, etc. (Borrowing by allowing ordinary payables to accumulate is excluded here as a reduction of disbursements.) As for forcing the collection of receivables it is a case of robbing Peter to pay Paul. Spending power gained in this way by the collector is lost by the one who is forced to pay. Extraordinary sales of assets and non bank borrowings may be of some account, but whether the transfer to workers of funds so obtained enlarges the total spending of the community for the products of current industry depends on when and for what the previous holders of the money would have spent it if the transaction had not occurred. In any event such operations are likely to be of minor consequence.

tune of several billions of dollars a year. In 1932 corporations alone had a combined net deficit, after income taxes, of nearly 6 billions.[7] Less than 20 percent of these corporations showed net income. It also must be remembered that up to the time the National Recovery Administration was proposed the unprecedented business losses accompanying the depression had not led employers as a whole either to increase their bank borrowings or to impair their relative cash position. On the contrary, these borrowings were drastically reduced, while aggregate cash holdings were strengthened in relation to the volume of business.[8] The depression experience points strongly to the conclusion that the pressure of losses will not as a rule indicate either businessmen to borrow or bankers to lend, and that there is the greatest resistance against the reduction of cash balances in order to meet deficits.

While we do not wish to stress this evidence too heavily, we see little reason to believe that the reaction of employers to losses imposed by National Recovery Administration wage increases (accompanied by a prohibition against price advances) would have been essentially different from their reaction to the losses already encountered during the depression. We seriously doubt if they would have financed these additional losses to any considerable extent by bank borrowings or the impairment of cash positions. It appears more probable that they would have obtained the funds for whatever additional pay roll (if any) resulted from the wage increases largely by a curtailment of non-wage expenditures, that is to say-by a redistribution rather than an enlargement of their outgoing payments. Such a reaction, as we have already observed, would have reduced "purchasing power" in one place while increasing it in another. The shift might have been desirable from some points of view, but it would not have been likely to promote recovery as we have defined the term.

The National Recovery Administration was right in holding that if we were to get out of the depression somebody had to begin spending more money. More goods had to be taken off the market. It was right also insofar as it held that this revival of spending, if it was to occur otherwise than by an enlargement of Government expenditures, could best be initiated through an expansion of the disbursements of business organizations. The country's greatest reserve of unused private purchasing power was the dormant funds of business enterprises and investors and the potential bank credit which awaited their decision and ability to borrow.[9] If the National Recovery Administration had raised wages without permitting price advances, we think it unlikely the added losses thus imposed on business would have forced into use any considerable part of this latent specing power.

We have previously pointed out that the National Recovery Administration had no power to reach the reserve purchasing power in the hands of investors whose income was derived from interest, rent, and other sources not materially affected by the wage-raising program. Even if the compulsory absorption of higher labor costs could have pried loose a certain amount of idle money held by employers it is a fair question whether the increase in losses might not have seriously aggravated the hoarding of investment funds held in these other quarters. Timid money cannot be dragooned into expenditure. Since the National Recovery Administration had no adequate power to appropriate such funds, or to prevent their steady accumulation through the process of saving, the logical course

[7] Statistics of income, 1932. While the computation of net incomes and deficits for income tax purposes gives a somewhat more gloomy picture than would be derived by ordinary accounting methods, the differences are not sufficient to change the picture essentially.

[8] No figures are available showing separately the bank loans of employers for business purposes. Loans of all banks in the United States declined from near 42 billion dollars in 1929 to a little over 22 billions in the spring of 1933. (A minor part of this decline is due to the withdrawal of the loans of suspended banks from the figures as reported). Business loans make up a preponderant part of the total and have undergone drastic liquidation. This is further indicated by the trend of "all other" loans as reported by the Federal Reserve member banks. While by no means identical with loans for ordinary business purposes, this classification is perhaps the best indicator of their movement. These loans declined 55 percent during the depression.

In spite of unprecedented deficits the cash balances of nonfinancial corporations declined only 20 percent from 1929 to the end of 1932. Since the dollar volume of business transacted with these balances was 50 percent lower, the ratio of cash to transactions actually increased by 60 percent. More noteworthy still, this ratio was virtually the same in 1932 for corporations showing net deficits as for corporations with net incomes. (These computations are based on the Statistics of Income for 1929 and 1932. The ratio of cash to the dollar volume of business is not necessarily by itself an adequate measure of the strength of the cash position, but it suffices nevertheless to show in a very rough way what has occurred. The volume of business is measured by gross receipts.)

[9] We have already cited the fact that the cash holdings of corporations were extraordinarily large in relation to the current volume of business. The overflow into expenditure of the redundant portion of these balances, not to mention the proceeds of new bank loans, would have provided a powerful stimulus to business. There is good reason to believe, though here satisfactory statistics are lacking, that there were large accumulations of idle cash in the hands of individual business enterprises and investors. This was probably not true in general of wage earners and others in the low-income groups.

would have been to promote their voluntary utilization. To this end the doctrine of salvation by increased losses seems inappropriate.[10]

Insofar as the National Recovery Administration purchasing power theory called for a general increase in income of employees at the expense of the earnings of employers, it was, we believe, ill suited to the conditions prevailing when it was advanced. A curtailment of profits to the advantage of labor might be under some circumstances conducive to the enlargement and stabilization of production, but this was certainly not the case in the spring of 1933. With most of industry operating in the red, any feasible expansion of pay rolls at the expense of profits was slight indeed. Moreover, this attempt to squeeze blood from the turnip of business earnings would have aggravated the stagnation of business and investor expenditures, thus still further delaying the release of the large reservoir of purchasing power impounded for such expenditures.

One more point and we shall leave our hypothetical question. It is sometimes argued that the expansion of productive operations made possible by the increased spending of the workers benefited by wage increases would enable employers generally to regain their profit position, without price increases, through a lowering of unit overhead costs. There can be no doubt that if raising wages while prohibiting price advances were a means of expanding the aggregate volume of production there would be, on the average at least, a reduction in unit overhead costs. In many cases there would also be a gain in output per man-hour with accompanying reductions in direct costs per unit. The important question, however, is whether under the conditions confronted by the National Recovery Administration the raising of wages without price increases would have so expanded aggregate production as to bring these potentialities into realization. For the reasons advanced above, we are constrained to doubt it.[11]

WAGE RAISING FOLLOWED BY PRICE RAISING

The foregoing hypothetical case was propounded in order to examine the probable consequences of raising wages at the expense of profits. We have expressed the view that under the conditions existing at the time the National Recovery Administration was launched this policy would not have promoted recovery. As we have already pointed out, however, the National Recovery Administration did not contemplate anything so drastic as a prohibition of price advances. It left prices free to rise but hoped merely that they would not rise as fast and as far as wage rates. It expected that employers would voluntarily "absorb" higher wage costs, at least at the outset, and thus effect that enlargement of pay rolls at the expense of profits which was conceived to be the essential condition of the success of the scheme. This raises the pertinent question whether the conclusions reached from our hypothetical case are inapplicable to a voluntary absorption of increased labor costs by employers when prices are left free of governmental restraint.

If the National Recovery Administration had raised wages more promptly, say in June 1933 instead of in August and September, it might have secured some lag of price increases behind wage increases, if for no other reason than that price readjustments require a certain amount of time. If the raising of wages under such circumstances had resulted in a stimulus to business it would not have been, in our opinion, because the lag in prices resulted in an absorption of increased labor costs by employers, but because the imminence of higher prices occasioned

[10] The theory has sometimes been advanced that since producers and distributors always have on hand an inventory of goods processed or bought in the past, they can sell these goods on the basis of original cost, regardless of the fact that replacement costs have been raised by the codes, and still make as much profit on them as they would have made if replacement costs had remained the same as the originals; hence it is concluded that for as long as the low-cost inventory is being sold employers can pay higher wages or other costs without curtailment of profit.

Despite some of the accounting conventions that enter into the calculation of profits, this view seems to us erroneous. If inventory is being sold at less than the cost of replacing it, the proceeds of the sale, when embodied in new inventory, represent fewer goods than before. The owner is actually poorer in real wealth, even though he may show a gain in dollars. By selling at original cost in a period of rising costs and prices, industry would have constantly to drain away its cash, and in the end would have to borrow, merely to preserve a constant inventory in physical terms. That dollar profits may be shown under these conditions does not alter the fact that in terms of goods industry would be incurring losses.

[11] It is not inconceivable that if employers borrowed enough from banks, let us say, and continued to disburse the proceeds with sufficient persistence while foregoing price advances, they might realize a sizeable expansion in their aggregate volume of operations. Eventually, they might by this alone achieve a restoration of the profit and loss position obtaining before the higher wage rates were effective. The amount of expansion in volume necessary to reach this result without price increases would depend on the extent of the initial increase in wage costs and the rate at which average unit costs decline with an expansion of operations. The theoretical possibility of this result is one thing; the practical probability of it another.

by the increased labor costs offered a speculative inducement to build up inventories before the upward price readjustments were completed. This speculative buying would have brought about a temporary boom production even though the squeezing of profit margins resulting from the lag of price increases behind wage increases were in itself of no benefit. Such a boom, even though accompanied by some absorption of higher wages by employers, would not have depended on this factor and indeed would have been stronger without it.[12] We believe that the conclusions on profit squeezing which we reached from our hypothetical case are generally valid, when applied to the conditions facing the National Recovery Administration, even in the absence of such an absolute prohibition against price increases as is postulated in that case.

The National Recovery Administration theory attached an exaggerated importance to the matter of the timing of wage and price increases during the transition from lower to higher levels. The transition period was bound to be brief, a few weeks or months at the most. The really important question is not whether wage rates were raised a little sooner than prices, or vice versa, but whether the readjustments in the economic structure which survived the transition were conducive to a continuing recovery.

The National Recovery Administration envisaged the raising of wages as an immediate "pump-priming" operation, or as an initial shove needed to get the industrial engine off dead center. It expected, by a sudden increase in the purchasing power of employees to launch a "strong upward spiral" of business. It was forgotten that much higher levels of employee purchasing power had formerly not prevented a strong downward spiral. Upward spirals of business activity are not a necessary result of any and every initial push. The result may equally well be a temporary flurry, followed by a leveling off or a recession to previous conditions. The development of an upward spiral requires not only an initial push but a continuing one.

We do not believe that moderate differences in the timing of wage and price increases on the upswing would have made any substantial difference in the character of the readjustments when completed, or in their lasting effects. We have already stated that in practice the National Recovery Administration occasioned an advance in price levels at least concurrent with, and probably preceding, the raising of wage-rate levels by the codes. The analysis of these developments, and of their probable economic effects, occupies the succeeding chapters. The conclusions therein derived from a consideration of actual developments under the National Recovery Administration may be taken as our judgment as to what the effect of the codes would have been had they raised wage rates to the same degree but in advance of the upswing of prices, of course assuming the movement of prices to have been subjected to no more Government restraint than it actually encountered.

CHAPTER XXXIII. WAGE RATES AND PRICES UNDER THE NATIONAL RECOVERY ADMINISTRATION

If we are right in believing that the most important effects of the National Recovery Administration from a recovery standpoint were the changes in costs and prices which it occasioned, some measurement of these changes constitutes a preliminary step in the appraisal of its results. As a background for this undertaking, let us first consider briefly the situation at the time the National Recovery Administration was launched.

CHANGES IN WAGE RATES AND LIVING COSTS DURING THE DEPRESSION

One of the reasons frequently advanced to justify the broad-gaged campaign of wage raising which the National Recovery Administration conducted was the acute shrinkage in labor income during the depression. From this it was inferred that the general level of wage rates had been excessively reduced and that restorative measures were called for.

That the total payments of wages and salaries declined sharply during the depression is not in itself evidence that hourly wage rates were inordinately

[12] Had wages risen ahead of prices, the speculative expansion of production during the transition to higher cost and price levels would have been somewhat smaller than it proved to be with prices generally advancing ahead of wages. When prices are rising before prospective wage increases are in effect, industry tries (1) to get as much finished goods as possible produced before wages are raised, and (2) to acquire large inventories of raw materials and supplies before prices rise further. Had the National Recovery Administration raised wages promptly and left prices to be readjusted thereafter, there would still have been the second incentive, which might well have provided a considerable temporary stimulus to business, though of less force than that afforded by the two incentives in combination.

reduced. The falling off in total payments reflected not only a scaling down of wage rates but a shrinkage in the number of workers employed and a curtailment of working time for those still on the pay rolls. The wage-rate reductions were therefore far less drastic than the decline in total labor income, and of course cannot be measured by it.

Before we attempt to gage the extent of these reductions in wage rates it is appropriate to ask by what test we may determine whether they were excessive. The question raises many far-reaching issues of economic theory, the discussion of which is beyond the scope of this study. Without venturing any general solution of the problem, we shall advance the purely negative proposition that wage-rate reductions during the depression were not excessive when paralleled by equivalent reductions in the cost of living; in other words, when real wages per hour did not decline.

Since the cost of living during the first half of 1933 averaged 27.7 percent lower than for the year 1929, any reduction in wage rates less drastic than this left real earnings per hour higher than before the depression.[1] Is there evidence that wage rates declined generally by more than this amount?

Unfortunately, the available statistics on the average hourly earnings of labor do not for the most part run back of 1912. For this reason we must rely largely on inferences drawn from changes in average weekly earnings, for which we have more comprehensive date. The accompanying table shows for a number of different industries and classes of workers the average weekly earnings in 1929 and in the first 6 months of 1933, just before the National Recovery Act, together with the average hours worked per week in the latter period and the change in average real rearnings per week since 1929.

Despite the general reductions during the depression in the average number of hours worked per week, the average weekly real income in many lines actually rose.

Changes in nominal and real weekly earnings between 1929 and the first half of 1933 [1]

Industry and class of labor	Average nominal weekly earnings		Percentage change in average weekly earnings		Average hours per week, 1933
	1929	1933	Nominal	Real [2]	
Manufacturing (wage earners only)	$25.80	$15.79	−37.6	−13.7	39.0
Mining (wage earners only):					
Anthracite coal	31.26	24.26	−22.4	+7.3	29.3
Bituminous coal	25.05	12.32	−50.8	−32.0	27.4
Metalliferous	30.19	18.46	−38.9	−15.4	39.2
Quarrying and nonmetallic	23.67	12.62	−46.7	−26.2	36.8
Crude petroleum	36.37	26.52	−27.1	+0.9	44.6
Trade:					
Retail [3]	22.67	16.22	−28.5	−1.1	47.0
Wholesale	36.06	27.13	−24.8	+4.0	46.9
Public utilities:					
Telephones and telegraphs	25.37	23.88	−5.9	+30.2	37.2
Electric light and power	30.02	24.62	−18.0	+13.4	43.5
Electric railways	33.02	27.80	−15.8	+16.4	45.7
Steam railroads:					
Wage earners	32.01	25.54	−20.2	+10.4	42.1
Salaried workers	43.92	36.97	−15.8	+16.4	(4)
Service:					
Laundry	18.87	13.75	−27.1	+0.8	42.1
Cleaning and dyeing	24.69	15.93	−35.5	−10.8	45.4
Hotel	16.97	12.10	−28.7	−1.4	51.2

[1] All 1933 figures are for the period January-June only. For sources, and methods of computation, see appendix.

[2] Nominal weekly earnings in 1933 were divided by 0.723 (the ratio of the 1933 cost of living to the 1929 cost) and the result was compared with nominal earnings in 1929.

[3] A part of the decline in average weekly earnings is due to a shift during the depression from full-time to part-time employees. The latter actually increased in number while the former showed a substantial decline. If the average real earnings per week are figured separately for the two classes of employees a gain over 1929 is shown in both cases.

[4] No data.

[1] Monthly cost of living index of the National Industrial Conference Board. This decline does not differ substantially from that of the index of the U. S. Bureau of Labor Statistics. The latter, which is computed semiannually, shows the average of December 1932 and June 1933 to be 24 percent lower than the year 1929. The corresponding figure for the National Industrial Conference Board index is 26 percent. (That the average for the first 6 months of 1933 is 27.7 percent under 1929 instead of 26 percent, is due to a sagging of the index between the terminal months of the 1933 period.)

The decline in nominal earnings was less than the reduction in the cost of living. It may be taken for granted that where average real earnings per week either rose or showed little change the average real earnings per hour were considerably higher in 1933 than in 1929.[2] Even where real earnings per week showed a substantial decline, however, it does not follow that real hourly earnings went down.

A glance at the last two columns of the table indicates that where the weekly real income was materially below 1929 the average hours were low. Thus in the case of manufacturing wage earners (for whom we have 1929 data on working hours) the decline of 13.7 percent in average real income per week was due wholly to a decline in average hours from about 50 to 39. The average real earnings per hour actually rose about 10 percent.[3]

We may say with considerable assurance that average real earnings per hour were higher in the first half of 1933 than in 1929 in all the lines of industry shown in the table, with the exception of bituminous coal, quarrying, metalliferous mining, and cleaning and dyeing.[4] It is even doubtful whether it is necessary to except the last two of these. In some fields the increase was very substantial.

Certainly it is safe to say that the reduction during the depression in the general levels of hourly wage rates was not excessive when compared with the decline in living costs. With real wages per hour averaging higher than in 1929, it is obvious that the decline in the aggregate real income of labor was generally attributable to unemployment, either partial or complete, not to low wage rates.[5]

An increase in average real earnings per hour appears to have been enjoyed by unskilled and skilled labor alike. Although the data on this point are limited largely to wage earners in manufacturing, and can support at the most only tentative inferences as to other fields, they indicate that the average real hourly earnings of unskilled workers in the first half of 1933 were above 1929 by about the same percentage as those of semiskilled and skilled workers.[6]

It is unquestionably true that in certain industries, localities, and establishments wage rates had been reduced much more drastically than living costs. We need not debate here the question whether it was desirable to intervene in some of these situations with minimum wage standards. From a recovery standpoint, such a restricted program would have made little difference one way or the other.[7] It would also have had little resemblance to the program that the

[1] We have no actual figures for most of these employments to show average hours worked per week in 1929, but data for various earlier years indicate quite clearly that the average week was shortened during the depression in all or nearly all of the employments covered in the table.

[2] This 10 percent increase is calculated on an assumed average week of 50 hours in 1929. The manufacturing establishments reporting to the National Industrial Conference Board showed an average of 48.4 hours, but since workers in these plants have averaged consistently a shorter week than those in the much larger number of plants reporting to the Bureau of Labor Statistics (figures for the latter do not go back of 1932), it seems reasonable to suppose that the Bureau's average, if it had been computed in 1929, would have been at least 50 hours.

According to data compiled by the National Industrial Conference Board, the average hourly real earnings of wage earners in 25 manufacturing industries were 7 percent higher in the first half of 1933 than in 1929. (Computed from Wages in the United States, 1914-30, table 13, and Supplement to Conference Board Service Letter, May 1934, table 1.) Another computation, based on a special Conference Board study, shows that the average hourly real earnings of wage earners in over a thousand manufacturing establishments were 9 percent higher in January 1933 than in January 1930. Calculated from wage data reported in the Conference Board Service Letter, February 1933, page 11.

[4] Calculations based on studies of average hourly earnings in bituminous coal mining in 1929 and 1933 (precode) indicate a decline of 14 percent in average real earnings per hour in this field. These studies, by the Bureau of Labor Statistics, are reported in the Monthly Labor Review for September 1933, p. 636. The calculation of average real earnings is our own.

[5] This conclusion based on data for only a part of the country's employees, is in line with the figures published by the Department of Commerce, showing that the average annual earnings of all employed workers were slightly higher in 1932 than in 1929. Since many types of workers had their hours shortened this points to average real earnings per hour considerably higher than in 1929. See National Income 1929-32, U. S. Department of Commerce, table 5.

[6] Data compiled by the National Industrial Conference Board indicate that between 1929 and the first half of 1933 the average hourly real earnings of manufacturing wage earners increased as follows: Unskilled male workers, 7 percent; skilled and semiskilled male, 8 percent; female, 4 percent. (Computed from Wages in the United States, 1914-30, table 13, and Supplement to Conference Board Service Letter, May 1934, table 2.) Another calculation based on Conference Board data for skilled and semiskilled workers and Bureau of Labor Statistics data for common labor (entrance rates) shows that in the 8 manufacturing industries covered by both series the hourly real earnings of common labor rose about 9 percent between 1929 and the first half of 1933, as compared with a rise of 5 percent in the case of skilled labor. (Computed from data published by the Bureau of Labor Statistics in the Monthly Labor Review, December 1934, p. 1455; and from the 1933 Census of Manufactures. The 8 industries were weighted in accordance with 1933 employment.)

Further light on changes in the wage rates of unskilled labor during the depression may be derived from the fact that from 1929 to the first half of 1933 the average hourly real earnings of common labor on Federal aid highway projects rose 15 percent. (Computed from wage rate compiled by the Bureau of Public Roads.)

[7] It is impossible to say with any exactness what proportion of the country's employees would have been affected by the code minimum wage rates had there been no accompanying reduction of hours and no attempt to raise wages above the minimum. It is clear, however, that the proportion would have been small. The weighted average hourly minimum wage rate (the codes being weighted by the number of employed covered) was probably under 35 cents (see chap. XII, pp. 324, 325). Data on rates actually being paid unskilled labor before the National Recovery Administration are comparatively limited. A study by the Bureau of Labor Statistics as of July 1, 1933, showed an average hourly entrance wage rate of 35 cents for male common labor (Monthly Labor Review, December 1934, p. 1454).

National Recovery Administration put into operation. In part because of its adherence to the idea that higher wages were beneficial as a means of enlarging purchasing power, and in part because the spreading of employment through limitations on hours involved raising hourly wage rates to prevent reductions in the weekly earnings of those whose hours were cut, the National Recovery Administration boosted these rates generally.[8]

The basic difficulty in the spring of 1933 was not that hourly wage rates were generally too low, but that there were not enough hours being worked. It did not seem to occur to the National Recovery Administration that in some cases wage rates might be too high instead of too low, or that a high price for labor might restrict the amount used. On the contrary, it seems to have been assumed that employers would buy more labor at a high price than at a low one. This idea we shall have occasion to examine later on.

THE PROBLEM OF MEASUREMENT

The measurement of the special effects of the National Recovery Administration on wage rates and prices can be accomplished only by the use of some assumption, express or implied, as to what would have happened in its absence. It must be admitted that in a situation so complex and in many ways so unprecedented as that into which the codes were launched, assumptions of this character are perilous at the best. It is fortunate from the standpoint of statistical analysis that the changes in wage rates and prices attributable to the National Recovery Administration appear to have been for the most part concentrated within a relatively brief period of 1933. This makes it possible to compare pre-code and post-code wage and price levels only a few months apart, and to make the assumption, subject to certain qualifications, that during this short interval changes in these levels due to other influences than the National Recovery Administration may be ignored.

This method of segregating the effects of the National Recovery Administration from those of other elements in the situation becomes less and less trustworthy as the time span covered by precode and post-code comparison is lengthened. Comparisons involving the last few months of 1933 and the pre-National Recovery Administration months in the first half of the year are for many purposes fairly satisfactory. Those involving conditions in 1934 and precode conditions in 1933 are very much so. With a time span of a full year, the assumption that but for the National Recovery Administration there would have been no material change in wage and price levels becomes exceedingly shaky. For this reason we shall for the most part confine our analysis to developments occurring within the calendar year 1933 (though the calculations will be carried to the middle of 1934).

In thus limiting the time span for pre-code and post-code comparisons we shall unavoidably omit from consideration some of the delayed affects of the codes. It is well known that in many cases wage readjustments arising out of the codes (or the President's agreement) continued to be made for sometime after these became effective, and that price advances were sometimes delayed for a considerable period. Because such trailing readjustments continuing over into 1934 are not satisfactorily separable statistically from changes due to other factors their importance cannot be measured, but they are believed to be comparatively small in relation to the adjustments accomplished during the transitional period of 1933.

Even within the limited time span just defined the difficulties in the way of measuring changes in the general levels of wage rates and prices are formidable indeed. The only usuable indicator of changes in wage rates covering currently any large number of workers consists of data on average hourly earnings. Not only is the indicator somewhat inexact at best, but it is not available for all of the industries subject to the National Recovery Administration.[9] For the rest we

For the same month the National Industrial Conference Board reported average hourly earnings of 37.5 cents for unskilled male wage earners in manufacturing and 30.3 cents for female workers. Without pressing these fragments of evidence too far, we may venture the tentative conclusion that at the time the National Recovery Administration was inaugurated the average wage rate of unskilled labor throughout the country was approximately the same as the (weighted) average of minimum rates incorporated into the codes. This would suggest, as a rough guess, that something like one-half of the unskilled workers in National Recovery Administration industries were getting less than the applicable code minima. Had the codes affected only these subminimum workers the increase in the total labor cost of production would have been slight, the bulk of that cost consisting of payments to skilled and semiskilled labor.

[8] Although in the main low hourly rates were raised more than high ones, increases were not confined to the lower brackets. For a further discussion of this subject, see chap. XXXVII.

[9] For several reasons, changes in average hourly earnings as currently computed may fail to measure accurately the (weighted) average change in wage rates in the industries they represent. (1) When employment is increasing there is some tendency for the added workers to be taken on in disproportionate numbers

must rely on estimates. As for the cost of living—the price series that from the standpoint of National Recovery Administration theory should be compared with changes in wage rates—the only general indexes available purport to cover only budgets of the families of urban wage earners. Not only are these indexes of the doubtful usefulness as reflections of the cost of living of other classes of employees, but it is questionable whether in the transition period of 1933 they reflected adequately changes in that of the wage earners themselves.[10] For this reason we have had to construct our own index, based in part on estimates, though we believe it to be superior for our purpose, it is a rough approximation at the best.

In view of these obstacles to the measurement of changes in wage rates and price levels due to the National Recovery Administration it is obvious that a large component of judgment and opinion inheres unavoidably in any result obtainable. Absolute proof is impossible. It follows, of course, that any conclusions reached can be formulated only in the most general terms.

WAGE RATES AND LIVING COSTS

The effects of the National Recovery Administration viewed particularistically were exceedingly diverse. They fell differently on different establishments, industries, labor groups, geographical regions. It is not our purpose at present to explore these variations as such, but rather if possible to form some opinion as to the net effect on the economy as a whole.

That the National Recovery Administration raised hourly wage rates for some classes of employees by more than it raised living costs there can be no doubt. That for other classes it raised the cost of living without any increase in hourly compensation there can also be no doubt. Leaving aside for the present the question of whether the benefited group should have been favored at the expense of the other group, let us ask whether for all employed workers considered collectively the gains exceeded the losses. Did the National Recovery Administration in other words raise hourly wage rates on the average as fast and as far as it raised living costs?

The reason for putting the question in this way is obvious. The National Recovery Administration was supposed to promote recovery by increasing the total real purchasing power of employees. From this standpoint it is not sufficient to know that for certain groups and classes of workers it raised wage rates more than it increased the cost of living. If other groups were adversely affected, the increase of peak purchasing power in one quarter may have been neutralized by losses elsewhere with no net gain for the buying power of labor as a whole. To get at the total result it is necessary to include in the calculation even workers in employments exempted from codes. The National Recovery Administration altered their cost of living if it did not alter their wage rates. From a recovery standpoint, their real purchasing power is just as important, in proportion to its size, as that of any other type of labor.

It may be reasonable to assume that changes in wage rates in the middle of 1933 (as evidenced by changes in average hourly earnings) can be attributed almost wholly to the codes and the President's Agreement. It is not safe, however, to make this same assumption as to changes in the cost of living. During the period of the inauguration of the National Recovery Administration an important part of the rise in living costs was owing to the rapid advance in the prices of farm products attributable to the Agricultural Adjustment Administration program and to other factors for which the National Recovery Administration was not responsible. It is necessary, therefore, to make some adjustment for these elements in the situation. The cost of living index shown in the chart below has been computed in such a way as to exclude that component of retail prices consisting of payments to farmers (plus processing taxes) and payments for imported commodities.

---

in the less skilled jobs and to be paid less than older employees even on the same jobs and to be paid less than older employees even on the same jobs. For this reason the average hourly earnings of new and old employees combined may change without commensurate changes in the average earnings (or wage rates) of the old employees alone. (2) The average hourly earnings of a varied group of employees may change merely because of a shift in the relative importance of different types of labor in the composite. (3) Where compensation is on a piece-work basis, as it frequently is in manufacturing and mining, average hourly earnings may change because of differences in the continuity or intensity of work, apart from changes in the rates of pay. (4) The actual data on average hourly earingns are based returns from only a part of each industry, these returns coming chiefly from the larger enterprises in the field. They may be in some degree unrepresentative of the nonreporting units.

[10] See appendix C, p. 906.

For the movement of the adjusted index in the summer of 1933, the National Recovery Administration is believed to be chiefly responsible.[11] It is compared in the chart with an index of average hourly earnings for all employees in the country.

While the character of these indexes is not such as to warrant any fine-spun conclusions, they do show satisfactorily the extraordinary upsurge of living costs and hourly earnings within a period of 3 months, affording the clearest statistical evidence available of the influence of the codes.

The chart indicates no such lag of price increase behind wage increase as was called for by the National Recovery Administration theory. The codes apparently raised living costs on the whole concurrently with, or even in advance of, the hourly earnings of labor.

(Chart on "estimated average hourly earnings and adjusted cost of living of all employees in the United States," is on file with the committee.)

It appears also that the relative advance of the two indexes was roughly the same. In the post-code months of 1933 both stood 9 or 10 percent above their pre-code lows.[12] We may phrase our conclusions from the chart as follows: (1) The National Recovery Administration raised substantially both the average hourly earnings and the cost of living of the Nation's employed workers as a whole. (2) If on the average wage rates per hour were raised more than living costs, the difference was small. For the most part gains in money earnings from this cause were offset by the effect of the National Recovery Administration on the prices of the goods and services bought with these earnings. Average real earnings per hour were but slightly affected.[13]

WAGE RATES AND WHOLESALE COMMODITY PRICES

While we are not warranted by the available data in stating any more precisely than this the effect of the National Recovery Administration on the real purchasing power of the average hourly wage of all employees in the country, some further light on the relation between price increases and wage increases may be derived from a consideration of a limited group of wage rates and prices for which we have better information than we have for wages and the cost of living in general. In the accompanying chart is shown an index of the average hourly

[11] The two adjustments cited probably cover the great bulk of the effect on living costs of the depreciation of the dollar in foreign exchange which followed the gold regulations of April 1933. This depreciation of course affected the prices of some export commodities other than farm products, but the change in the cost of living due to this factor was apparently negligible.

Insofar as the increase in the cost of living in the summer of 1933 cannot be attributed to the rise in farm-product prices (including processing taxes), and to the influence of the depreciated to (1) the National Recovery Administration program, (2) a natural firming up of prices with the expansion of productive operations, and (3) general "inflation psychology." The second of these factors could reasonably account for only a very minor part of the extraordinary rise which occurred. As for "inflation psychology", a considerable part of it was due to the expediting increase in costs and prices under the codes, and as such may be considered one of the effects of the National Recovery Administration program.

It seems very doubtful if such inflation psychology as was based on our monetary experimentation can be credited with much of the rise in the adjusted cost of living index during the summer of 1933. In the first place the timing of this rise was such as to suggest the dominant influence of the National Recovery Administration program. The monetary experimentation began in April 1933, but neither the adjusted cost-of-living index nor an index of wholesale commodity prices similarly adjusted began to rise significantly until June. The advance was practically completed by September. Thereafter neither the gold-buying program of the Treasury, initiated Oct. 25, the silver buying program, initiated Dec. 21, nor the reduction in the gold content of the dollar on Jan. 31, 1934, had any visible effect, on either the wholesale or the retail adjusted indexes. Secondly, while a vague inflation psychology based on monetary experimentation doubtless affected speculative security and commodity markets, it seems on general grounds unlikely that it would produce a fraction of the wide-spread change in the prices of finished goods that actually occurred. On the other hand, the certain imminence of higher production costs under the codes, and of price advances occasioned by those higher costs, was calculated to raise the prices of finished goods, and did so.

[12] The advance of average hourly earnings in 1934 was due at least in part to non-National Recovery Administration influences. As we have already pointed out (p. 783) there is no satisfactory way of measuring the delayed effects of the codes, on either wages or prices, but these were probably of minor importance compared with adjustments accomplished during the transition period of 1933.

[13] Both average hourly earnings and the cost of living had been going down steadily before the influence of the National Recovery Administration program began to be felt. Even if the indexes were completely satisfactory it could not be assumed with strict accuracy that the absolute rise from the pre-code lows measured the influence of the National Recovery Administration upon each, since either or both of them might by the absence of the codes have continued to decline for some months longer. Indeed, it seems probable that they would have done so, though which would have declined the more no one can say with much assurance. In precode and post-code comparison covering a brief time span, this factor is of relatively minor importance.

In the recovery from the previous major depression (1921) the cost of living continued to go down for nearly a year after the pick-up in production began and average hourly earnings in manufacturing (the principal series available) also declined for some months. (See Wages in the United States, 1914-30, National Industrial Conference Board, p. 24; also Williford I. King, Employment and Earnings in Prosperity and Depression, p. 113.)

The decline in average hourly earnings in April-June 1933 reflected in part the hiring of new workers at lower average rates than the old ones were paid. It was a period of expanding employment.

earnings in mining, manufacturing, transportation, and wholesale trade, compared with an index of wholesale commodity prices so computed as to exclude that component of wholesale prices consisting of payments to farmers (plus processing taxes) and payments for imported goods.

This chart shows clearly both a lag of wage rates behind wholesale price advances in the summer of 1933 and a general correspondence in the relative increases attained by the two series, once the codes (or the President's agreement) had taken effect on wages. Wholesale prices adjusted for changes in farm and import prices apparently advanced fully as much as the hourly earnings of the labor engaged in producing, transporting, and wholesaling the goods. This parallelism of wage rates and commodity prices up to the wholesale stage of distribution tends to corroborate the general conclusions reached in the preceding section from a consideration of hourly earnings in all employments and the retail prices of all goods and services consumed.

(Chart on average hourly earnings in selected industries compared with adjusted wholesale prices of commodities is on file with the committee.)

The rapid upsurge in this wholesale commodity price index in the summer of 1933 may be attributed very largely, we believe, to the influence of the National Recovery Administration. Never before, so far as the records show, has there been such a sudden and drastic movement coincident with the early stages of recovery. The usual thing, apparently, is for the wholesale price level to continue downward, or at least to remain relatively stable, for several months after the pickup in production.[14]

THE DISTRIBUTION OF WAGE AND PRICE INCREASES

Since we are concerned here with the broad effects of the National Recovery Administration on recovery rather than with its specific bearing on particular industries or labor groups, we shall not undertake an analysis of wage rate and price movements in detail. It is well known that the effects of the codes on different areas of the wage and price structure have been exceedingly diverse. By way of showing this in a broad view, in the chart on page 792 we have compared indexes of average hourly earnings for several leading industrial divisions, and in the next chart (p. 793) indexes for various groups of retail prices.

It is apparent that hourly wage-rate advances under the National Recovery Administration have been concentrated largely in certain fields, chiefly mining and manufacturing, trade, and some service industries. It is not often realized that industries, having, at the time the National Recovery Administration was launched, over a third of all the employees in the country, were wholly exempt from its jurisdiction.[15]

(Chart on average hourly earnings, by industrial divisions, is on file with the committee.)

Moreover, a considerable number of industries nominally subject to codes (or the President's agreement) already had wage and hour schedules so favorable that very few of their employees were affected by code provisions. With over a third of the country's employees in exempted industries, and with a sizable proportion of the workers in National Recovery Administration industries unaffected by code provisions, it is probably safe to say that less than half of the employees in all industries combined had their hourly wages raised as a result of the National Recovery Administration.

In view of the conclusion reached in the discussion of the table on page 778 it is probably safe to say also that a majority of the workers whose hourly rates were raised were already making more real income per hour than they made before the depression. This was apparently true even for manufacturing and trade for which the National Recovery Administration raised wage rates on the average 25 percent and 15–20 percent respectively.

(Chart on retail price movements is on file with the committee.)

These indicators of retail price movements offer interesting evidence of the diversity of this field. Not all of the changes shown are due to the National

[14] Colonel Ayers' survey of 13 major depressions in the past 100 years shows an average lag of 6 months. (Cleveland Trust Co. Bulletin, Sept. 15, 1932.) In 1885, 1893, 1896, 1915, and 1921 the wholesale commodity price index did not pick up materially until about 9 months or more after the upswing in production and trade had definitely begun. It is ture of course that few depressions have seen so drastic a decline in prices and wage rates as this one. In 1921, however, the closest parallel, the wholesale price level, notwithstanding a severe collapse on the downswing, did not rise significantly until 9 months after the turn in production, while the cost of living continued to decline for a year after the turn.

For the grounds on which the upswing of the adjusted index in the summer of 1933 may be largely credited to the National Recovery Administration, see note 11, p. 786.

[15] Agriculture, steam railroads, Government, domestic service, professional service, nonprofit institutions, and others.

Recovery Administration, since these indexes include the effect of changes in farm products and import prices, but adjustments for these factors would still leave very wide differences in relative movements.

INTERNAL READJUSTMENT OF THE PRICE STRUCTURE

The effects of the National Recovery Administration on prices were in no sense the result of planned readjustments. On the contrary, they were largely an incidental byproduct of other phases of National Recovery Administration policy. The raising of wage rates went on for the most part without thought of the effect on prices, or on the interrelations of prices. It is natural that the results were in some cases favorable to the correction of price maladjustments, and in other cases adverse.

A detailed study of the price maladjustments obtaining in the spring of 1933 and the effect of the codes on their correction would be far beyond the scope of the present investigation, even if adequate tests of maladjustment were available. At the most we can consider only broad groups of prices, using as a crude indicator of correctional tendencies a realignment toward predepression relationships.[16]

There can be no doubt that the price movements occurring in 1933 helped to correct some of the most glaring disparities that had accumulated during the depression. Several groups of prices that had declined disproportionately made greater than average gains on the upswing. Thus, for example, farm product prices rose faster than those of industrial products. Raw materials gained on finished goods.[17]

Such correctional tendencies are a natural accompaniment of business recovery, however, and their appearance in this case does not in itself indicate that the National Recovery Administration has been the principal generating factor. Indeed, while absolute proof of the proposition is impossible, we think it likely that the National Recovery Administration has on the whole hindered the restoration of predepression relationships.

One example of this may be found in the effect of the codes in retarding the realinement of the prices of farm products with those of commodities bought by farmers. The price-raising activities of the National Recovery Administration have run flatly counter to the efforts of the Agriculture Adjustment Administration to restore "price parity" for agriculture. Prices of commodities bought by farmers have risen abruptly, largely because of the influence of the code program (see the chart of p. 793). The attainment of "parity" for farm products has not only been pushed further into the future but will require a more drastic curtailment of agricultural production than would otherwise have been necessary. The National Recovery Administration this case has not only delayed price readjustment; it has contributed to the increasing of scarcity.

Another example is the influence of the codes in delaying the restoration of a relationship between building costs and rentals which would make possible a large-scale revival of construction. With building costs already relatively too high the National Recovery Administration was instrumental in boosting them further. Indeed it raised the prices of most durable goods, despite the fact that these goods had as a class declined in price the least during the depression and despite the fact also that their production had fallen off the most.[18]

We need not multiply instances in which the effect of the National Recovery Administration on the rectification of the price structure has been adverse.[19]

As we have already observed, no rational result could be expected from any thing so essentially random and unplanned as the influence of the codes on prices. Whatever the outcome, it was in the nature of the case fortuitous. That the harmful effects should have outweighed the good is not, therefore, surprising.

---

[16] There is no reason to suppose that prices of individual commodities ever will return to a pattern of inter-relations closely resembling that obtaining in 1929, nor indeed is it desirable that they should do so. Even in the case of broad groups of prices, predepression alinements are at best a rather unsatisfactory norm for the future.

[17] See Frederick C. Mills, "Aspects of Recent Price Movements," National Bureau of Economic Research Bulletin 48. See also Bulletin 53.

[18] In February 1933 building materials and goods intended for capital equipment had a unit exchange value relative to all commodities 23 percent and 18 percent higher, respectively, than in July 1929. See National Bureau of Economic Research Bulletin 53. The effect of the National Recovery Administration on the durable goods industries is discussed at length in ch. XXXV.

[19] Mention may be made in passing of the effect of increased production costs on the ability of American industry to compete in foreign markets. The influence of the National Recovery Administration in this respect was clearly unfavorable.

Chapter XXXIV. Prices and Purchasing Power

In a previous chapter we argued that if the National Recovery Administration had succeeded in expanding pay rolls at the expense of profits of employers it might have done much more harm than good.[1] If we are warranted in our opinion that for employees as a whole the National Recovery Administration raised living costs in about the same proportion that it raised average hourly earnings it is suggested, at least, that for employers as a whole profits were not seriously reduced by the codes. While the effect of the National Recovery Administration on profits cannot be satisfactorily gaged from these facts alone (the effect of the codes on man-hour productivity must be considered) we shall anticipate the conclusions of a later discussion on this point to say that the inference just drawn from the movement of prices and hourly earnings appears to be justified.[2] If the National Recovery Administration had as one of its objectives a basic redistribution of the income of the Nation to the advantage of labor as distinguished from property income—wages and salaries as against interest, rents, and profits—its efforts along this line have had comparatively little success. If the objective be more narrowly defined as increasing the income of employees at the expense of the income of employers the same verdict must be pronounced.

We do not believe that any change attributable to the National Recovery Administration in the distribution of the total income from production between employers and employees, collectively, was of sufficient magnitude to have much effect on recovery one way or the other. The fact that the codes raised wage rates on the average a little more or less than prices was in our opinion of far less significance than the fact that they raised both by a substantial amount.

What is perhaps the most important question involved in the analysis of the effect of the National Recovery Administration on recovery may be phrased as follows: Under the conditions prevailing at the time the National Recovery Administraton was inaugurated, there was a substantial and, in terms of averages, a broadly equivalent increase in wage rates and price levels conducive to the expansion of production? This question is the subject of the following discussion.

THE PRECODE BOOM

The first point to be noted is that whatever may have been the long-run effects of the National Recovery Administration program, there can be no doubt that it evoked a temporary burst of industrial activity. In the early summer of 1933 the certainty and imminence of impending cost and price increases under the National Recovery Administration offered a well-nigh unprecedented incentive to speed up, to "beat the gun", and industry responded with an acceleration in activity that perhaps has no parallel in the history of the country. From April to July 1933, the leading index of industrial production, seasonally adjusted, rose 50 percent.[3] We need have no hesitation in crediting to the National Recovery Administration a very considerable part of this increase.

In the nature of the case a boom of this character is not likely to last long. Much of the increased output goes into stocking inventories in anticipation of forthcoming cost and price advances. There is of course a limit to the amount of inventory that can be piled up for this reason, whether by producers or by ultimate consumers. Moreover the eventual realization of the expected advances removes the incentive for further accumulation and invites a return to more normal levels. Naturally, when the holders begin to liquidate their excess stocks they are able to curtail or suspend their replacements for a while, with results the opposite of those which occurred during the period of accumulation. In the present instance, industrial production reached its peak in July 1933, and began declining even before the National Recovery Administration codes (or the President's agreement) had become generally effective. The recession which set in in August continued into November and lowered the rate of operations to a level only 10 percent higher than that of the preceding April.

If the National Recovery Administration is to be credited with this boom it must of course accept responsibility for the subsequent recession. It has been argued by supporters of the code program that severe as the recession was it did not wholly cancel the gains attributable to the National Recovery Administration, and that some of the momentum of the speculative precode period carried forward after the ensuing liquidation. While we think the contention doubtful it is not of great significance. The really important question is not whether the

[1] Ch. XXXII.
[2] Ch. XXXVIII.
[3] See the chart on p. 754.

postcode recession completely offset the gains from the boom or almost did so; it is whether the changes in costs and prices occasioned by the codes—changes which survived both the boom and the recession—were thereafter conducive to a larger volume of productive activity than industry would otherwise have attained. It is these continuing effects, after the speculative spree and its aftermath were over, that must determine the verdict as to the influence of the National Recovery Administration on recovery.

HIGHER INCOME VERSUS HIGHER PRICES

There is no necessary relation between the level of costs and prices prevailing in a community and the adequacy of its income, or purchasing power to absorb the output of industry. The income available for buying the finished products of the productive process comes from the process itself. It consists of the funds distributed by producers in payment for the productive services of capital and labor, such as wages, salaries, interest, rents, and royalties, plus the earnings of the producers themselves. In the nature of the case these costs of production, together with what producers have left over after paying them, necessarily equal the amounts received from the sale of the final product and are, ipso facto, sufficient to buy that product. This equivalence obtains regardless of whether the level of costs and prices is high or low, and irrespective or whether costs are high or low in relation to prices.

Because producers receive from their sales enough to buy the product sold it must not be inferred that the dollar demand for the output of industry must be constant. If the costs and producer earnings paid out at any stage in the cycle of production and distribution (let us say by the retail sellers of finished goods and services) were to return in the form of demand for more products at the same rate at which they were previously disbursed, the dollar volume of sales would remain steady. In practice, however, the return flow of funds paid out in the productive process is irregular. Before the money disbursed today by the sellers of finished goods reappears in their markets as demand for more goods it must complete a circuit, or rather a number of circuits, the traversing of which occupies varying intervals of time. If for some reason these circuits are increased in deviousness or intricacy, or if something occurs to slow up the velocity with which the funds in transit move through them, or if a part of these funds is extinguished en route, the volume of dollar purchasing power arriving in the finished goods market so is reduced. Contrary results of course follow from a shortening of the average circuit, an acceleration of the velocity of turnover, or an addition of new dollars en route.

To maintain a constant volume of dollar demand for finished goods and services it is for these reasons not sufficient merely that a dollar received by the sellers of such goods purchase another dollar's worth if and when it returns to the finished goods market; the timing of its return it all-important. If it requires on the average 4 months for a dollar to complete a circuit from one retail expenditure to another, the annual volume of retail trade, measured in dollars, is three times the amount of the circulating medium outstanding. If it requires 6 months, the annual volume is only twice as large. The number of dollars spent for finished goods and services during any given period of time may thus vary because of changes in the amount of the medium of exchange outstanding, or because of changes in its circuit velocity, even though there be, necessarily, a continuous equivalence between the amount received by sellers and the amount needed to buy the goods sold.

Now a decline in the dollar volume of demand for finished goods and services need occasion no shrinkage in the physical volume taken off the market, provided the prices of such goods decline on the average as fast as the dollar demand. During the depression the latter declined much more rapidly than prices, and there ensued a marked shrinkage in the physical volume of production and consumption.[4]

[4] This may be crudely indicated by the fact that from 1929 to 1932 the cost of living (of wage earners) declined about 20 percent while the "paid-out" net income of the country was reduced by 40 percent. (See National Income, 1929-32, U. S. Department of Commerce, pp. 14, 19.)
Net income paid out to individuals falls short of the total purchasing power of the Nation for finished goods and services, since it does not include undistributed business earnings or funds spent out of such earnings for the replacement and extension of the country's capital assets. Such expenditures are just as important, in proportion to their size, as those made from the income received by individuals. Both support productive activity. Since the former have declined during the depression relatively more than the latter, the decline in "paid-out" net income understates the decline in the total national purchasing power for finished products.

The expansion of production, consequently, called for a reversal of this trend in the relation between the dollar volume of income in the community and the level of prices for the goods and services bought with that income. Whether by a movement of prices and income in opposite directions or a movement in the same direction but in differing degrees, a realinement of the two was essential to recovery. A full utilization of the country's productive capacities could be achieved only by getting the national income high enough, in relation to the price level for finished goods and services, to take off the market a capacity output.

Since the money income of the Nation comes from its spending for production, the enhancement of dollar purchasing power depended upon an enlargement of such expenditures. More money had to flow into the markets for the current output of production and for productive services.[5]

The National Recovery Administration attempted to enlarge the expenditures of employers by raising the price of labor. The employers tried to increase the expenditures of their customers by raising the price of goods. This presents a fundamental question. Since price raising automatically increases the dollar volume of expenditure needed to take off the market a given volume of labor or goods, is it a likely method of raising real purchasing power?

Consider the case of a price increase on some article of merchandise. Confronting buyers with a higher price does not in itself give them any money to spend. Unless they do increase their total spending whatever gains accrue to the seller of the higher priced goods or services must be at the expense of other sellers dependent on the spending of the same buyers. The money income of all sellers combined is not increased and the real income of buyers is reduced. Despite their greater expenditure on the articles of which the price is raised, they probably buy fewer physical units than before, while their curtailed expenditures on other articles being them likewise a reduced physical volume of these. The money income of the community as a whole is unchanged but its real income is contracted in proportion to the reduction in the physical volume of goods its money buys.[6]

In order that an increase in the price of an article shall bring more money income to the sellers of this and other articles combined, it is necessary that buyers spend more before they have more to spend; in other words, before they themselves receive any increased income as a result of the price advance. This is, of course, not possible. Given adequate inducement, they may draw down their cash balances, borrow from banks, or otherwise finance expenditures in excess of their current incomes, which expenditures, of course, enlarge the incomes of the sellers of goods and services to whom they flow, enabling them in turn to spend more. It would certainly be erroneous to say that price raising can never enlarge the total money income of the community. It would be equally erroneous to assume that it automatically enlarges it by enough to off-set the absorption of income by the higher price. Indeed, the presumption is against its doing so.

Even if price and wage raising is general, as it was under the National Recovery Administration, so that it simultaneously affects many people both as buyers and

[5] A considerable volume of spending in a modern economy has only a remote connection with the furtherance of current production, and even expenditures directly concerned with the productive process are many times as large as the income available to purchase the final product.

This income is equal to the payments made for the productive services of capital and labor. Much spending incident to the productivity process is for other purposes than payment for these services; hence the total of income—as distinguished from receipts—is but a fraction of the total expenditures of the Nation. It is none the less true, however, that the way to enlarge income is to enlarge the volume of productive expenditure.

Spending can be enlarged without a price expansion of income, as for example through the use of accumulated cash, or through the conversion into cash of noncash assets via the commercial banks and the use of the proceeds. Income cannot be enlarged except as a result of increased spending somewhere in the system.

[6] It is sometimes assumed that if the increased receipts from the sale of an article on which the price has been raised are passed along as higher wages to the workers who produce it this enlargement of their purchasing power offsets the bad effects of the price increase. Let us suppose for convenience that the article in question is shoes. The added money collected from the public and transferred to shoe workers does not return to the markets as demand for goods simultaneously with its diversion from the markets for other things than shoes by those who bought the higher priced shoes. It returns later. By the time the shoe workers spend it, it could have been spent by the workers or employees in the other industries from which it was delivered. It arrives in time to make up for the loss in expenditures by workers and employers in these other industries (the loss occasioned by the reduction in sales while the diverted funds are in transit through the shoe industry) but not in time to make up for the loss in expenditures (for other things than shoes) involved in the diversion itself. This loss continues as long as the diversion goes on, and is of equal magnitude. Since the shunting of added funds through the shoe industry at the expense of other industries does not augment the dollar income of the community as a whole, the loss in real income occasioned by the higher-priced shoes is evident. It can be avoided only if the buyers of shoes, when confronted by the higher prices, augment their total expenditures for all purposes by enough to maintain undiminished their aggregate purchases measured in real, rather than in dollar, terms.

as sellers, the presumption is still against it. As a recovery measure it can be justified only as a means of getting the Nation to spend more money. For this purpose it is perhaps the worst method, since it automatically absorbs through the increased prices themselves much of all of the gain in spending that results, without corresponding benefit to the physical volume of goods and services sold. Indeed, the general probability is that such an arbitrary boosting of prices will enlarge spending by less than prices are increased, and will, accordingly, reduce the amount of labor and commodities taken off the market. Any method of enlarging the spending of the community that does not generally boost prices is, on the other hand, effective to the full extent in expanding the physical flow of production, the real object to be achieved. If the public can enlarge its spending (and thus its income) in order to pay higher prices it can do so in order to take more goods (or labor) at lower prices.

In trying to get the public to buy more goods and labor by making its dollar buy less, the National Recovery Administration espoused a theory and a line of action that involved rowing upstream. Doubt as to the wisdom of this course is not seriously qualified by the fact that during the brief speculative interlude that preceded the National Recovery Administration codes the flight from money into goods temporarily increased spending even faster than prices. The income generated by such expenditures was as evanescent as the speculative inducement itself. After the spurt in spending subsided, the higher level of prices remained in our judgment a continuing hindrance to the expansion of the physical volume of activity. Raising prices was not conducive to the expansion of income in relation to prices.

INCOME EXPANSION

The dollar income of the community is not generated by prices as such, and, as we have already said, it does not necessarily increase merely because prices are pushed up. It is generated by the spending and respending of the outstanding money supply in productive activities. A program of income expansion called for measures adequate to accomplish one or both of the following objectives: (1) The activation of idle and redundant cash balances through a revival of business confidence, and the promotion of readjustments needed for a revival of the type of expenditure for which such balances were being held; (2) monetary expansion.[7]

Activation of idle funds.—If the cost—and price-raising activities of the National Recovery Administration had been the means of activating the dormant purchasing power of business enterprises otherwise than temporarily in inventory speculation; if these activities had drawn into productive use the idle investment funds of individual savers; if they had brought about the expansion of bank credit which normally accompanies; then the circulation of the formerly idle and the new funds might have generated a volume of money income more than adequate to offset the higher prices which the codes produced. Even so, a like expansion of money income without price boosting would have been preferable. We find little evidence, however, that the National Recovery Administration accomplished any of these objectives. That it probably delayed the readjustments needed for a revival of the capital goods industries we shall see later (ch. XXXV). While its activities did little to put into use the dormant purchasing power of business organizations and investors, it interposed additional price barriers in the path of the inadequate income generated by the mobile portion of the money supply.[8]

Monetary expansion.—That the National Recovery Administration failed to contribute materially to the expansion of the outstanding monetary supply of the country is even clearer than its failure to mobilize any considerable part of the idle funds already in existence. Presumably the only way it could expand the money supply was to give businessmen an effective incentive to increase their bank borrowings. In this it was largely unsuccessful. The outstanding volume

[7] In the following discussion the term "money" is used loosely to denote the entire medium of exchange, including demand deposits in banks.

[8] The bulk of the sluggish or idle money of the country has been in corporate and other "business" balances, and in the personal accounts of large investors or speculators. We have previously described the situation in the case of corporations (p. 768). Some additional evidence may be found in the fact that demand deposits in New York, where business, investment, and speculative balances are relatively much more important than elsewhere, have during the depression and under the National Recovery Administration shown a much lower rate of turnover in comparison with the average for 1919–36 than have demand deposits in smaller cities. Apart from the pre-code boom, the New York turnover rate showed no significant recovery for many months under the National Recovery Administration. During the year following the 1933 boom it remained at 50–60 percent of its 1919–25 average. Velocity outside leading financial centers likewise showed little recovery during the year after the boom but remained about 90 percent of its 1919–25 average. (See appendix C, p. 914.) The velocity data are very imperfect for the purposes in hand and can support at best only very broad inferences.

of bank loans continued its downward drift for many months after the National Recovery Administration began operations. The money supply did in fact expand, but from causes for which the National Recovery Administration deserves no credit (chiefly reopening of closed banks, gold imports, and the financing by banks of the Federal deficit).

With the outstanding monetary medium in the spring of 1933 about 30 percent below 1929 and a considerable part of this more or less continuously inert, the indications did not favor an abrupt increase in cost and price levels.[9] Income reflation was under the circumstances difficult enough to obtain without neutralizing its benefits by higher prices. The monetary expansion that has occurred since the spring of 1933, from causes other than the National Recovery Administration, would probably have done more than it did to expand the physical volume of production, had not a part of the income which its circulation generated been absorbed by the price increases attributable to the codes.[10]

PARTICULAR VERSUS GENERAL INTERESTS

In launching a campaign involving general increases in wage rates and prices the National Recovery Administration assented to the desires of labor on the one hand and industry on the other, without adequate recognition of the fact that these interests usually get their ideas in reaction to limited individual situations, not from a consideration of the economy as a whole. One group of workers may improve its relative position by higher wage rates and one industry may benefit itself by higher prices, but this is merely because wages and prices are not similarly raised elsewhere. When the game is played universally it is self-defeating.

It is quite possible for the economy as a whole to be injured by a generalization of the acquisitive tactics that have proved advantageous to particular groups of industrialists and workers. Such groups can frequently, if not generally, increase their share of the social dividend by enhancing the scarcity of the product they have to sell, a policy reflected in higher prices or higher wage rates as the case may be. But to promote scarcity all around by a general program of wage and price boosting is to court disaster. The Nation as a whole needs abundance, not scarcity.

Instead of generalizing as a public policy the efforts of particular business and labor groups to get out of their difficulties on a price basis (higher wage rates, higher commodity prices) the administration would have been advised first to get out of the depression on a volume basis, more man-hours worked, more units of goods produced. The revival of spending and of money income that was a p recondition of the payment of higher prices could equally well have supported, and have been supported by, an expansion of volume without increases in general price and wage-rate levels.

[9] Individual demand deposits in banks, plus money in circulation, declined from 30-31 billion dollars in 1929 to roughly 22 billion in April 1933.

[10] It is a fair question whether since the beginning of 1934 the pre-National Recovery Administration boom may be regarded as liquidated by that time the turnover of the money supply of the country has been materially higher than it would have been in the absence of the price and cost-boosting program. Certainly the low rate that prevailed in 1934 (about the same as in the corresponding months of 1932) suggests the improbability of any lower level had the National Recovery Administration never been born.

On general grounds there seems little reason to believe that a higher as distinguished from a rising price level leads to a more rapid turnover of money. Velocity of turnover varies with the state of business sentiment, and with speculative activity, not with the price level as such. It is accelerated by developments which generally increase the willingness of people to spend promptly and freely and retarded by others which impair their confidence and optimism, but favorable or unfavorable circumstances may arise at any price level.

In the long run, the rate at which money turns over, the amount of "work" it does, depends not on the price level but on the habits of the community in the use of money. Unless they are affected by unusal apprehension or pessimism on the one hand or exceptional speculative optimism on the other, most spenders tend to maintain average cash balances in a loose customary ratio to the volume of transactions settled through these balances. This is in part due to the predilections of bankers, who wish average balances in checking accounts large enough in relation to the transactions cleared through them to compensate for the expense of handling them; but more important than this, it is due to the fact that since a cash balance serves as a buffer to cover disparities between the receipts and expenditures of the holder, a larger stream of receipts and expenditures requires a larger buffer. If income and outgo were perfectly synchronized no balance would be necessary on this account. Because of this an increase in the dollar volume of transactions in the community, resulting, let us say, from increases in wage rates and prices, is likely to lead a good many spenders to acquire and maintain larger average balances.

The enlargement of the average balances of some spenders, unless accompanied by an expansion in the total volume of money outstanding, involves necessarily a curtailment of the balances of others. This is likely to lead to an effort, on the part of the holders of these depleted balances, to rebuild them through a retardation of outgoing payments. Accumulation through a curtailment of expenditures occasions a loss of income by those who would otherwise have been the beneficiaries of the suspended disbursements. To maintain their accustomed balances they are likely to curtail their own spending with similar effects further down the line. Thus the effort of separate individuals to increase their balances by a curtailment of spending appears for the community as a whole in the form of a diminution of both income and expenditures made with an unchanged balance.

A lag between the revival of spending and the upturn in the price level would have comported with the typical pattern of recovery from previous depressions. As a rule no significant upturn in the general level of commodity prices has appeared until several months after the revival of spending has turned the business tide.[11] Since for many lines of production the expansion of volume, up to a certain level, brings a further lowering of unit costs, there is often no immediate occasion for higher prices.

Expanding profits can be obtained on a volume basis, without price advances. The usual lag in the advance of the price level as a whole made possible by the actual realization of these volume economies permits the revival of spending to have its maximum stimulative effect on recovery. A premature pushing up of prices and wages is a retarding force.

With the physical volume of industrial production in the early spring of 1933 scarcely more than 50 percent of 1929, what most lines of business needed above all else was more volume, not higher prices. In view of the sharp reductions in wage rates and salaries during the depression, and the marked increase in man-hour productivity, it seems entirely probable that a volume of operations even approaching predepression levels would not only have restored a satisfactory level of profits to most branches of industry without further price advances but would have enabled many of them to make still further price reductions to the benefit of the consuming public.[12] We have previously seen that the hourly real earnings of labor were on the average considerably higher than in 1929. Both employees and employers needed primarily more work.

PUTTING A BOTTOM UNDER WAGE RATES AND PRICES

It was frequently urged in behalf of the National Recovery Administration program that it was necessary to put a "bottom" under wage rates and prices in order to check the long decline that had gone on during the depression. The bottom was to be put under wage rates, of course, by the code provisions on hours and wages. It was to be put under prices indirectly through the wage provisions and directly through the price-control arrangements.

Few would be disposed to deny that there were some industries in which the wage rates, at least of certain classes of labor, had fallen so far during the depression as to justify remedial action, but it was equally true that wage rates in some fields had fallen too little. Certainly with average real earnings per hour of labor higher in most industries than in 1929 there was no need for putting a bottom under wage rates generally.[13] Much less was there any reason for a general campaign of wage raising such as the National Recovery Administration conducted.

Not only was there no need apart from exceptional cases to put a bottom under wage rates but there was, in our opinion, little justification, except in such cases, for putting a bottom under prices by means of wage-rate bottoms. Certainly if some prices were relatively too low others were by the same token too high. A general raising of wages on the National Recovery Administration model offered no assurance that these interrelations would be improved.

As for the argument that it was necessary to check the decline in prices generally because declining prices discouraged buying, the answer is, in our opinion, that the cure proposed was worse than the disease.[14] Putting a bottom under costs and prices in the face of a falling demand is one way to accelerate the contraction of volume. The failure of many prices and costs to go down during the depression was itself one of the maladjustments that aggravated and prolonged the trouble. Without denying that artificial price pegging or even price raising may sometimes be warranted in individual cases of an exceptional character, we nevertheless feel certain that putting a bottom under prices generally by such a promiscuous boosting of costs as the National Recovery Administration fostered was an unwise method of preventing further decline in the price level. That objective could have been accomplished, as we have previously indicated, by the promotion of measures calculated to strengthen demand by a revival of spending. Until demand revived sufficiently to justify higher prices, they should neither have been frozen against decline nor pushed up arbitrarily.

[11] See note 14, p. 791.

[12] Frederic C. Mills has found for a number of manufacturing industries a median gain of about 16 percent between 1929 and 1933 in the average man-hour output of wage earners. See National Bureau of Economic Research Bulletin, 53, p. 8.

[13] See ch. XXXIII, p. 780.

[14] Except for the influence of farm product prices the wholesale-price level was virtually unchanged throughout 1932. While it receded somewhat during the banking crisis of 1933, there seems little reason to believe that it was headed for a further protracted decline.

If putting a bottom under prices through wage increases was of doubtful benefit to recovery, so also, in our opinion, was the attempt to do so through the grant to industry of powers of direct price control. Most of the excessive price competition of which industry complained would have disappeared naturally with the revival of business. It was a symptom of the depression; not a cause of the disease. We have no intention of discussing here the subject of price control, which is treated elsewhere in this volume,[15] except to say that from a recovery standpoint the various schemes embodied in the codes were for the most part of negative value. By and large they tended, insofar as they worked at all, to raise and freeze the price structure at the expense of volume, to shove prices up in advance of demand.

It would be going much too far to say that none of the wage and price raising accomplished by the National Recovery Administration was justifiable on recovery grounds or that none of the "bottoms" put in wage rates and prices were warranted. Our contention goes no further than that most of these changes were undesirable. The net result fell on the wrong side of the ledger.

THE QUESTION OF DEBT BURDENS

The argument most frequently advanced by the Roosevelt administration for raising the general price level—as distinguished from readjusting particular prices or groups of prices in relation to each other—is that higher prices would lighten the burden on debtors who contracted long-term obligations before the price level declined, and who are now required to meet debt charges in dollars of higher purchasing power than those they originally received.

While much may be said as to the general desirability of lightening the burden of long-term debt, this is not necessarily an objective which should take precedence over all others. It may conflict with the achievement of more important goals. If boosting the price level in the face of an inadequate national income tends to reduce the volume of production, as we believe it has under the National Recovery Administration, it may far outweigh in its harmful potentialities any mitigation of debt burdens resulting from higher prices.

It is not even certain that price raising will reduce the aggregate debt burden of the community. While as a general rule it may be expected to do so, the price increases may be so distributed, and may be of such a character, as to increase rather than relieve the weight of debts. Debt charges are paid from income, not from prices. It is frequently overlooked that higher prices (including the price of labor) mean higher production and living costs and that debtors whose incomes are increased less than the prices of the things they buy are harmed, not benefited, by the change. We believe that on the whole the price and cost changes attributable to the National Recovery Administration were so distributed as to aggravate the total burden of long-term debt. Even a casual survey of the situation discloses several important groups for whom the codes had an adverse effect.

For convenience let us classify long-term debt as that of corporations, of individuals, and of governments. At the time the National Recovery Administration was launched the three classes amounted, in round numbers, to 50, 40, and 35 billions of dollars, respectively.[16]

Of the corporate funded debt, nearly 60 percent is owned by railroads and public utilities, both of which have had their expenses materially increased by the National Recovery Administration with no compensatory advances in rates charged. There can be little doubt that their debt-paying capacity has been curtailed by the code system. Some 20 percent of corporate long-term debt consists of the obligations of real estate and real estate finance companies, to which the benefits of the National Recovery Administration price increases are on the whole dubious indeed. The cost of repairing and operating buildings was certainly raised to some extent by the codes, while there is far less certainty that they occasioned offsetting gains in rental income that would not otherwise have occurred.

---

[15] See pt. V.

[16] The corporation figure is based primarily on Statistics of Income, United States Bureau of Internal Revenue. Government long-term debt is derived in the case of the Federal Government from official figures, and in the case of State and local governments is estimated from the Financial Statistics of States, and Financial Statistics of Cities (both published by the Department of Commerce), and other sources. The debt of individuals is our own estimate, based on a variety of sources.

Short-term is not included here, since the bulk of such obligations outstanding in the spring of 1933 had been contracted at depression price levels. The problem of restoring equitable relations between debtors and creditors did not arise with this class of debt; indeed substantial increases in price levels might have caused more inequity than it cured.

The long-term debt of individuals consists very largely of mortgages on real estate. Of this a major protion is owed by people whose incomes have not been directly benefited by the National Recovery Administration but whose living expenses have been substantially increased by the codes. Farmers, over whom the National Recovery Administration had no jurisdiction, and who owe somewhat less than a quarter of the total individual long-term debt, have lost a part of their gains from the Agricultural Adjustment Administration program (and the drouth) in the form of National Recovery Administration price increases on what they buy. Individuals indebted on urban real estate are largely in the economic stratum above the wage-earners directly benefited by the codes—salaried and professional people, skilled workers, entrepreneurs, recipients of investment income—in short, the so-called "middle" and "upper" classes. It is doubtful if the income of these groups have been increased by the National Recovery Administration enough to offset the increase in the cost of living occasioned by the codes.[17]

With this showing for corporations and individuals, it seems reasonably certain that the cost- and price-raising campaign of the National Recovery Administration has, on the whole, increased rather than diminished the burden of private funded debt. It happens that this debt is so distributed that most of it is a charge on the incomes of those who received little or no net benefit from the program. Even if the burden has not been increased, it has certainly not been lightened enough to constitute any justification for the National Recovery Administration's contribution to higher prices.

With this conclusion as to private debt we may forego speculation as to the effect of the National Recovery Administration on the revenues and expenses of government. It is clear that the debt-burden argument for a policy of general price boosting has been much overdone. Such a policy may do more harm than good, depending on how the more important classes of debtors fare in the race between prices and costs. The problems of relieving debtors is a highly specific one, requiring different measures in different cases—downward adjustment of debts in one, high selling prices in another, lower costs or even lower prices in still others.[18]

There were many ways of handling the problem that did not involve a permature and undesirable raising of the general price level, much less the sort of promiscuous boosting that the National Recovery Administration fostered.[19]

Chapter XXXIX. Conclusions

To guard against any possible misunderstanding, we repeat what we said in chapter XXXI, that since the National Recovery Administration was designed to promote both recovery and reform, no final judgment of its accomplishments can be made without weighing its effects in both fields, and that we have attempted no such appraisal here. Our problem has been the net effect of the National Recovery Administration program on recovery, a term which we have defined for the purpose as the expansion of the aggregate production of goods and services. However difficult this problem may be, it is nevertheless a comparatively limited one, and whatever judgments and opinions are reached in its exploration should not be taken as conclusions applicable to the National Recovery Administration program as a whole.

---

[17] See ch. XXXVII.

[18] See Evans Clark: The Internal Debts of the United States.

[19] The gravity of the debt problem has been much exaggerated. Horrifying totals for all kinds of debt combined have been matched with estimates of "national wealth" to prove that the country as a whole was "insolvent." This is, of course, merely nonsence. The gross total of all kinds of debt outstanding is virtually meaningless, since it includes a vast amount of pyramiding and duplication—debt secured by other debt—rather than by the tangible assets that are counted in the "national wealth" estimates. Pyramiding does not increase the burden on the earnings of these tangible assets.

A mortgage on real estate, for example, is no greater load on the debtor because it is held by a bank and is used to secure the bank's deposit obligations. The deposits so secured ,are, however, a part of the Nation's gross debt. The primary obligation is in this way counted twice.

Not only is a large fraction of the gross debt directly secured by other debt, but more of it is so secured indirectly by the fact that most debtors hold some creditor assets not specifically pledged to secure their own obligations. Debts may be ignored to the extent that they are offset by creditor assets in the hands of debtors. Thus receivables are an offset to payables. The real burden to a debtor is measured by his net debt position after creditor offsets. The sum of the net debt positions of all debtors in the United States is probably less than half of the gross total of all debts (this total being roughly 250 billions of dollars).

From the standpoint of the Nation as a whole, of course, the obligations of debtors are assets to creditors. With the exception of a relatively small volume of international debt transactions, the national debts are held "within the family." They redistribute the income of the Nation but re not, as is sometimes imagined a net drain on it.

Since we have expressed our views at length in the course of the foregoing analysis, no extended restatement is necessary. The principal findings and the main line of the argument may be briefly recapitulated as follows:

The National Recovery Administration expected to promote recovery by enlarging the real purchasing power of certain classes of labor. This was to be accomplished by raising wage rates ahead of the prices of goods and services. Because of the delay attending the inauguration of codes and the speculative anticipation of their effects, prices rose on the average ahead of wage rates. Even after the latter had been raised by the codes, the gain, when averaged out over all employees in the country, proved to be about the same as the increase in the cost of living attributable to the program.

The rise in prices prevented the increase in the total real purchasing power of labor expected to accrue from wage raising. Some groups of workers had their incomes raised more than living costs while others lost ground; some employers were able to raise their prices more than their costs, others less; but on the whole price and wage-rate levels both moved to considerably higher ground without material change in their relative positions. The codes, moreover, made little change in the distribution of the aggregate income from production between employers and employees considered collectively.

Not only did the program fail to work out as planned, but the plan itself was in our judgment a mistaken one. The conditions were not propitious for a sizeable expansion of wages at the expense of profits. If this had occurred it would probably have frozen up more purchasing power than it released. Under the circumstances little could be gained by forcing into the hands of wage earners for consumer expenditure a small part of the funds otherwise destined for some form of capital expenditure. This reservoir of purchasing power should, if possible, have been tapped by readjustments conducive to its voluntary utilization.

As it worked out, the National Recovery Administration proved to be a means of boosting both wage rates and prices. The general level of wage rates was already high, as measured in terms of average real earnings per hour, and both wage and price levels were high in relation to the income and expenditures of the country. While the transition period in the summer of 1933 brought about a temporary production boom, based in part on speculation, the higher cost and price levels remained after this stimulus was removed. The codes apparently evoked no expansion of bank credit and no lasting activation of the idle money of the country. It is very doubtful if the higher wage and price levels enlarged the dollar volume of expenditure after the boom by enough to compensate for their absorption of expenditures. They tended to diminish the physical volume of production.

The internal readjustments in the cost and price structure which the National Recovery Administration effected were for the most part planless and haphazard. They retarded the restoration of parity for agricultural prices, and the adjustment of construction costs to the demand for building. On the whole they were probably adverse to the revival of the capital-goods industries. As a means of securing favorable specific readjustments in the cost-price structure the National Recovery Administration as it actually operated was of very doubtful benefit.

In trying to raise the real purchasing power of the Nation by boosting costs and prices, the National Recovery Administration put the cart before the horse. Raising the prices either of labor or of goods is not the way to get a larger volume purchased. Instead the National Recovery Administration should have sought the maximum enlargement of spending with the minimum increase in costs and prices, thus securing with the augmented expenditure the greatest gain in the number of units of labor and goods taken off the market. Thus increase in spending could have been sought by (1) the removal of the deterrents to the free and prompt utilization of the existing money of the country, and (2) monetary expansion. The National Recovery Administration accomplished neither of these objectives.

The conclusion indicated by this résumé is that the National Recovery Administration, on the whole, retarded recovery. To what extent it was detrimental no one can say with much assurance. The situation has been too complex to warrant any definite conclusions from comparisons of recovery in this and other countries, or of this recovery and previous ones. The verdict must rest, we believe, largely on considerations of the sort outlined in the foregoing discussion. We do

not feel justified in stating our own judgment more definitely than to say that the retarding effect of the National Recovery Administration has been substantial.[1]

The outcome of this experiment casts doubt on the feasibility of improving the aggregate real income of labor by a general increase in nominal wage rates. The so-called "high-wage doctrine," held universally by organized labor and widely by industry itself, fails to distinguish between money wages and real wages. If a general advance of nominal wage rates accompanied by correspondingly higher prices for goods and services is a hindrance to the expansion of production, it cannot increase the real income of labor as a whole, however much it may improve the relative position of particular groups within the whole. While some workers gain, others lose.

It may be argued that although wage raising under the National Recovery Administration occasioned price advances averaging about as large as the wage increases, this result is not conclusive as to the effects of wage raising generally. While no one can contend that experience under the National Recovery Administration is absolutely conclusive on this point, it does appear to us to be quite in line with reasonable expectations. Since for production as a whole the earnings of labor regularly make up 80 percent of the total return to labor and capital combined, it is evident that general wage increases of a substantial character must either raise prices or curtail drastically the profit margins on which business operates.[2] While the response of prices to a higher level of labor costs might under some circumstances be less prompt than it was under the N. R. A., we see little reason to doubt that the forces of competition, operating on the higher cost level, would in time approximately restore the relative share of the product of industry going to capital. Certainly in view of developments under the N. R. A. the burden of proof is on those who hold that the distribution of the national income between labor and property can be materially altered by a general advance in wage rates.[3]

It is quite natural for wage rates to rise gradually in relation to prices (or for prices to decline in relation to wages) as the efficiency of production increases. This slow realinement has in fact characterized the movement of wage and price levels in the past. It is the method by which gains in technology have been passed on to labor. But raising wages generally and suddenly without reference to this slow advance in productivity of labor is quite a different matter. As a means of raising the total real income accruing to labor this scheme may easily do more harm than good.

The National Recovery Administration has done much to propagate the fallacy that raising wage rates is always a good thing. So far as we are aware it has made all of its wage adjustments in one direction—upward. It has gone far to spread abroad the idea that wage rates should never be reduced, and to make downward revisions difficult even under adequate justification and proper safeguards.

This freezing of the wage structure against any downward readjustments has involved also a very considerable freezing of the price structure. To price rigidities attributable to this factor have been added as well those resulting from the permission granted to business associations to stabilize prices through concerted action designed to eliminate cut-throat competition. The two factors have combined to increase resistance to price realignments which are essential to the expansion of productive output.

This tendency to freeze the cost and price structure against downward adjustments must be regarded as one of the most potentially important long-run effects of the National Recovery Administration. During periods of expanding national income and rising prices its influence will tend of course to diminish, but whenever the economy runs into periods of maladjustment and declining demand resistance to price and wage realignments may prove a serious barrier to the maintenance of the physical volume of production.

It is necessary in an economy based upon a price system that prices, whether for labor or commodities, be permitted to move in response to changing economic conditions. In practice it is impossible to achieve complete flexibility in the price

[1] We may repeat here what we stated in chapter XXXI, that no valid conclusion as to the net effect of the National Recovery Administration on recovery may be drawn merely from the fact that we have actually made some progress from the low point of the depression. (See chart on p. 754.) Even if this recovery had occurred simply in spite of the National Recovery Administration the latter would almost inevitably be credited by its partisans with having produced it. As we have previously observed, the production record in itself proves nothing as to the factors responsible for it.

[2] On the distribution of labor-capital costs in the depression, see p. —.

[3] In expressing doubt as to the possibility of altering materially the distribution of income between labor and capital by means of general increases in wage rates, we do not mean to imply that the object cannot be achieved by other means, as, for example, by certain forms of direct taxation.

structure. In many lines of business activity, owing to private agreements or regulation by the government, prices move very sluggishly or not at all. Long before the establishment of the National Recovery Administration such unresponsive prices served to impede the efficient functioning of the economic system. That some of the rigidities already imbedded in the price structure may be justified on social or political grounds few would deny. Nevertheless, anything which tends to freeze wages and prices still further against necessary adjustments makes more difficult the stabilization of business at a level of full production and full employment. It is this type of stabilization, not the stabilization of wage rates and prices, that is the real object to be achieved.

PART VII. CONCLUDING 6 OBSERVATIONS

CHAPTER XL. CONCLUDING OBSERVATIONS

In bringing to a close this review of National Recovery Administration activities no attempt will be made to restate the detailed conclusion reached in the several parts of the volume. For these the reader is referred to those parts, especially to the concluding chapters thereof. The object here is merely to add certain final observations that emerge from the study as a whole.

No one can fail to approve certain general social objectives which were avowed in the act, such as the restoration of prosperity, the improvement of industrial relations, and the improvement of trade practices. These are proper goals of Government action. Nor is there any ground for criticizing the National Recovery Administration merely because it employed somewhat novel governmental methods; indeed ingenuity in devising means to achieve ends of public policy is desirable.

The law granted to the President an unprecedented amount of power with vaguely defined objectives under a unique set of political circumstances and with reference to issues which had not been subjected to extended public discussion. The law, moreover, was directed to varied objectives, some concerned with stimulation of recovery, others with significant changes in the organization of American economic life. In administration, also, attention was divided between the primary objective of stimulating recovery and the promotion of long-run changes. Though the general social objectives, and in particular the recovery objective, had wide-spread public support, the pursuit of them affected powerful groups whose special interests were necessarily sometimes in conflict with one another and sometimes in conflict with public ends. In some degree there developed a confusion between what were public objectives and what were the objectives of groups. The administrative procedures adopted accentuated group conflicts and tended to distract attention from single-minded pursuit of public ends.

Partly as a result of the success of special groups in attaining their desired objectives, in part as a result of the vast range of diverse matters with which the National Recovery Administration has dealt, almost every person finds some specific feature or possibility in the National Recovery Administration to which he can give support. There are moreover certain accomplishments of the National Recovery Administration which commend themselves rather widely on a social basis as distinct from the support of group interest. These are of the sort which represent progress toward eliminating various undesirable conditions of industrial employment and business practice.

Apart from the content of codes, there is also real importance in crystallization of sentiment for the removal of economic and social abuses. Moreover, there has been an accumulation of information on working conditions and trade practices far more extensive than has existed heretofore. This experience adds much to the possibility of subjecting these aspects of economic life to analysis and interpretation and, if intelligently utilized, will throw much light upon the wisdom and feasibility of many types of collective control under varying circumstances.

Significant also was the contribution of the National Recovery Administration to the state of renewed hope and confidence which was ushered in with the Roosevelt administration. The psychological "lift" engendered was considerable. Whether this fact has anything more than an ephemeral importance is a point upon which opinions may differ.

Whatever achievements may be credited to National Recovery Administration, the consequences of its activities are such as to raise grave misgivings. Working at high speed under a statute that gave little guidance and without clear standards of its own, it enacted into law a huge mass of rules and regulations arrived at

by a process of bargaining among conflicting interests. Out of this process came codes, one substantive effect of which is quite generally to allocate to private groups important powers which may be used to the disadvantage of the public. The willingness of such groups to cooperate with the Government is very closely allied to the presence in codes of the provisions granting such powers.

From the administrative viewpoint both the body of code laws and the agencies set up to administer it are seriously defective. Quite commonly the provisions are incapable of being given precise meanings in law. The effective operation of codes is very commonly undermined by the fact that they include nonadministrable provisions. The administrative agencies set up under the codes are not so constituted as to provide either effective or impartial administrative action. The National Recovery Administration itself is not able to provide adequate enforcement of provisions or adequate supervision of code agencies. Nor can the higher administrative officials cope intelligently with the mass of problems which press upon them.

It is in the light of the preceding considerations that the practical question must be confronted whether there is a reasonable probability that if the Recovery Act is reenacted in substantially its present form, the National Recovery Administration can be transformed into a satisfactory instrument of economic and social policy. The complexity of the problem may be indicated by listing the basic reforms necessary to remove the more obvious defects embedded in the system of law and administration which the National Recovery Administration has created.

The necessary reforms would include: (1) The elimination of those codes under which noncompliance is very extensive and for which the compliance prospects are unpromising; (2) radically strengthening the compliance, supervisory, and code machinery; (3) the elimination of code provisions which are patently nonadministrable; (4) building up an adequate system of economic reporting and analysis; (5) the attainment of much greater simplicity, standardization, and elasticity in code provisions; (6) reconstituting the administrative organization of the National Recovery Administration in such a way as to achieve continuity of policy and method; (7) the modification of code provisions to bring them in line with clearly determined criteria of public policy.

If an attempt is made to carry out these reforms, particularly if an attempt is made promptly to modify codes in line with clearly determined public policy and to enforce such modified codes up to any reasonable standard of administrative efficiency, then the code system may be expected to go into a very wide-spread collapse. This would result from the voluntary character of codes which affects both the making of provisions and their enforcement. Wherever voluntary acquiescence in a code was predicated upon the inclusion of socially damaging elements of special privilege—and these cases are numerous—these elements solidly resist removal by the customary National Recovery Administration process of negotiation among interested parties.

Furthermore, authoritative removal of those undesirable elements of codes which industrial groups regard as important would undermine the whole scheme of code administration and voluntary compliance upon which the system rests. The power to impose or modify codes which is granted in the act is not therefore capable of extensive use for reforming the system which has been created.

In view of these conclusions the basic issue is not the reform of the National Recovery Administration within the limits of legislation substantially like the present act, but the determination of policy and lines of action with respect to the matters with which the National Recovery Administration has concerned itself. Since it is no longer possible to think of the National Recovery Administration as a recovery-inducing agency, it is necessary that the determination of policy be divorced from the emergency principle and be related to long-run objectives. As the future is faced, what has to be determined is the character of the responsibilities which the Federal Government wishes to undertake on a continuing basis within the boundaries of constitutional powers and administrative feasibility.

An immediate reconsideration of these issues is important because of the danger that inertia and political exigencies may permit the pattern of the National Recovery Administration to harden into a permanent mold of defective and ill enforced law.

The CHAIRMAN. Without objection, the committee will recess until 10 o'clock tomorrow morning, at which time we will have executive session.

(The hearings were concluded. The following matter was orded inserted in the record.)

(Letter from Mr. Leon Marshall, executive secretary, National Industrial Recovery Board, National Recovery Administration, previously referred to by the chairman, is as follows:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 17, 1935.

Hon. PAT HARRISON,
Chairman Senate Committee on Finance,
Washington, D. C.

MY DEAR SENATOR HARRISON: In view of the serious consequences which may result from the existing uncertainty concerning the pending legislation, the National Industrial Recovery Board is in accord with the Finance Committee's policy of expediting its proceedings on National Recovery Administration. We realize that time will not permit the calling of an opposing witness to answer the testimony of each complaining witness. However, since we know the committee would desire to be safeguarded against reliance on inaccurate and misleading statements appearing in the record, we are calling to your attention and commenting upon some of these statements. In view of insufficient particularity of many witnesses and lack of time for thorough research on our part, we cannot hope to treat all inaccuracies and misleading statements.

Examples follow:

ANALYSIS OF STATEMENT BY MR. IRWIN

Page 1774 shows that Mr. Irwin testified that prior to the code he could purchase mahogany for $109 and that he has recently been quoted around $147 and $150. Further, that he has been offered mahogany at $100 if he could get a quota, but that he is doubtful of being able to get a quota. In reply to the following question from Senator Connolly: "Who fixes the quota, the code?", Mr. Irwin states: "The code and the Government; they have the authority; the National Recovery Administration has the authority."

COMMENT

The statement that mahogany prices were increased between 40 and 50 percent under the code is approximately correct. However, the second statement that he could now get lumber for $100 if he could get a quota, and that he is doubtful of being able to get a quota because of the Government, particularly the National Recovery Administration, is not true. Specifically the code provides that anyone who applies shall be granted a quota. Secondly, the National Recovery Administration does not set any quotas under the present code. If Mr. Irwin had appealed to the administration and submitted evidence that he could not get a quota there would probably be more facts to go on, but we have no records of any such submission. There has been a submission by the American Trading Corporation, of Seattle, Wash., to the effect that they had been unable to get a quota under the Philippine Mahogany Division. Upon calling this to the attention of that division they immediately gave us the assurance that an application blank was sent to the complainant.

The testimony on page 1778 set forth that on January 17 Mr. Irwin received an offer to be supplied with certain types of maple at $44 and $46. He states: "There was a meeting of the hardwood lumbermen in Chicago on January 15." There is nothing to indicate whether Mr. Irwin is speaking of January 1934 or 1935. We presume, however, since no year was mentioned and since the testimony occurred in March of this year, that he was referring to January of this year. We have no record of any meeting being held in Chicago on January 15 of this year. We have a statement from the Administration representative that no meeting was held on that date by the Northern Hardwood Division. If there was an unofficial meeting and prices were fixed (which we believe unlikely) it certainly has not the approval of the Administration. The only price material issued as an official action of the code authority is a periodical report on past sales, which has been issued since the suspension of minimum prices. These prices show a fluctuation from week to week and do not give any indication of being fixed or being arrived at by common agreement although they range from 6 percent below to 6 percent above the previous code prices.

Further, since at the hearing this group was one of the objectors to fixed minimum prices under the code, we cannot conceive of them being in favor of such things since suspension. However, it may be true, and probably is, that

one or more of the suppliers of hard maple, in finding that the market would stand it, withdrew a lower quotation in order to put in a higher one, but this has nothing to do with the code or the code authority.

ANALYSIS OF STATEMENT BY MR. HAMBURGER

Mr. Hamburger (p. 2796): "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 (p. 2796): "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 (p. 2796): "Unquestionably."

COMMENT

As indicated by the above testimony and other testimony in the record, Mr. Hamburger's basic protest against the operation of the Coat and Suit Code is that Baltimore has not been given a wage differential adequate to permit it to compete with New York City. A complete answer to his allegations is that in the entire United States, the volume of business in this industry increased in 1934 as compared with 1933 or over 20 percent. During the same period the volume of business in Baltimore increased 76.97 percent. In the New York City and New York State area, which Mr. Hamburger claims dominate the industry, the volume of business increased only 19.45 percent.

Mr. Hamburger (p. 2791): (Mr. Hamburger placed in the record a telegram dated Aug. 4, 1933, which implied that he had not been given full opportunity to be heard at a public hearing held on the Coat and Suit Code.)

An examination of the record of the public hearing in question shows that after Mr. Hamburger had stated his position briefly, Deputy Howard asked, "Doesn't that take care of the matter then?" and Mr. Hamburger replied, "It takes care of the matter excepting one other thing; that will only take me one-half minute." Mr. Hamburger then finished his statement on the matter without further comments by Dr. Howard.

Mr. Hamburger (p. 2797): "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."

(Comment:)

In May 1934 an impartial commission was appointed to investigate the question of the necessity for a wage differential for the city of Baltimore. The Commission consisted of Dr. N. I. Stone and Dr. Paul F. Brissenden, two impartial economists who had in no way been connected with this industry. The Commission found as follows:

"(1) That Baltimore's position as regards availability of labor, necessity for training workers, and distance from the center of the industry, is substantially the same as the position of other eastern markets outside of New York City;

"(2) That as shown in this report, Baltimore section shops enjoy the lowest labor costs per garment in the country, the difference in cost being substantially in excess of the basic differential between the eastern and western scales;

"(3) That it follows, therefore, that Baltimore section shops have been able to adjust themselves to the wage changes brought about by the code.

"(4) That the Baltimore tailoring shops which employ two-thirds of all the workers in the market are now paying wages substantially higher than the eastern minimum scale and, therefore, would not be materially affected by a transfer of Baltimore to the eastern area.

"(5) That Baltimore failed to prove its contention that its selling costs are higher than those of New York, and that there is nothing in the figures obtained through the Commission's own investigation to sustain Baltimore's claim. (It

should be stated that not all the Baltimore concerns were willing to furnish the figures called for by the Commission. Among those which refused were two of the largest concerns in Baltimore.)

"(6) That Baltimore's indirect labor costs, which include the cost of supervision and training, are among the lowest in the country, thus disproving the assertion made by the spokesman of the Baltimore manufacturers at the Commission's hearing that Baltimore was entitled to a differential to offset its higher cost of supervision and training.

"(7) That Baltimore's shop overhead is likewise among the lowest in the country.

"(8) That in the matter of buying costs, Baltimore has failed to submit any figures that would prove that it has higher costs than any other market in the eastern area, and the Commission has no other ground for believing that Baltimore is at a disadvantage in this regard as compared with any other center subject to the eastern code rates.

"(9) The same conclusion applies to the item of freight charges on piece goods, since Baltimore's geographical position is such as to put it on substantially the same footing as other Eastern markets with respect to freight costs.

"(10) The Commission finds that Baltimore has failed to substantiate its claims of higher costs under any of the items mentioned by its spokesman."

Mr. Hamburger (p. 2812): Speaking of the Louis Marcus Corporation, a corporation with a branch factory in York, Pa., he stated:

"* * * 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 * * *."

(Comment:)

Complaint was filed against the Louis Marcus Corporation on the ground that it was not paying the wage rate required for the eastern area. When the complaint was referred to the Compliance Division, an investigation was made to ascertain whether or not the corporation had been granted a stay or exemption from the operation of the wage rate prescribed for the eastern area. It was found that the administration had issued no stay or exemption to this corporation nor represented at any time to this corporation that it was not required to operate under the eastern area wage classification. The corporation, however, claimed that it has been granted such an exemption so far as it related to wages paid prior to the date on which the corporation was actually notified that it must operate under the eastern area wage scale.

Senator King (p. 2798): "The code authority is all in the hands of the New York manufacturers?"

Mr. Hamburger (p. 2798): "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."

(Comment:)

As compared to New York, Baltimore has 1 representative on the code authority casting one-third of a vote, and New York has 6 representatives casting 6 votes. This is more than fair as shown by the fact that there are 31 members of the industry in Baltimore and 1,946 in New York, while the dollar-volume of business in New York is approximately 82 percent and in Baltimore only 2 percent.

Analysis of Statement by Mr. Hettinger

On page 2372, Mr. Hettinger replied: "I would say no" to a question by Senator King as follows: "Have you examined part 3 (Price and Price Provisions in Codes) to ascertain whether or not the data found in part 3 harmonizes with the statements contained in the report from which you were just reading?" (Report on the Operation of the National Recovery Administration.)

(Comment:)

The price pamphlet covers the detailed analysis of price provisions in 677 codes and supplements up to October 15, 1934.

The report covers these same 677, in addition to 54 codes and supplements, for which analysis, had been completed after the price pamphlet was issued. The two "harmonize."

Both the report and the pamphlet were furnished members of the Senate Finance Committee several weeks before Hettinger's testimony.

On page 2385, Mr. Hettinger states that charts nos. 8 and 9 show "that the number of complaints received periodically exceeded the number of complaints closed, and yet in spite of that, the number of complaints on hand declined."

(Comment:)

The chart, as explained by the heading, represents the record of complaints on hand, received, and closed by field offices. The category "closed" includes only those cases closed at the field offices, and does not include the number referred to other agencies for disposition which number is, however, deducted currently from the number on hand in the field offices.

On page 2378 Mr. Hettinger states: "The truth of the matter is that National Recovery Administration simply tangled up in a kind of a Frankenstein grip, was trying to patch and work through as well as it could, and that is a dishonest statement that 'until recently the major portion of the efforts of the Recovery Administration was devoted to the formulation of codes.'"

(Comment:)

Although only a few codes were adopted in the last 6 months, a great amount of the efforts of the National Recovery Administration was devoted to amendments of existing codes and attempts to codify industries which presented extremely difficult problems. These latter industries covered almost 3,000,000 gainfully occupied, as of 1929, and included, for example:

Industry:	*1929 employment*
Meat packing	122, 505
Fluid milk distributing	134, 839
Bell Telephone	372, 000
Electric light and power	284, 000
Telegraph	92, 958

Throughout the testimony of witnesses before the Senate Finance Committee, and particularly by Mr. Hettinger on page 2354, there is comment on the rise in prices, with intimation that these rises were caused by code provisions.

Chart no. 2, in the Report on Operation of the National Recovery Administration, shows graphically the course of wholesale prices for groups of industries under National Recovery Administration codes. Most codes did not become effective until 1934. Reference to the chart will show that the major portion of the price level rise took place in the second and third quarters of 1933, before many codes were formulated.

During 1934, the Bureau of Labor Statistics index of "all commodities other than farm products and foods", which presumably represent commodities under National Recovery Administration codes, actually declined from 78.3 in January 1934 to 77.7 in January 1935.

Analysis of Statement by Mr. Mason

Mr. Mason (p. 2552): "I do not believe there were more than four complaints which dealt with the question of wages * * * and the few complaints which we did have on wages were not ruled on by the Board."

(Comment:)

There is no way of checking on the contents of the three thousand-odd complaints received by the Darrow board. Of course no one appeared before that board as a champion of sweatshop conditions. The point is that Mr. Mason, counsel for the board (who conducted practically all of the questioning) made absolutely no attempt to develop whether or not the real burden of the complaint was the wage hardship. A typical example of the board avoiding the wage question appears in its hearings on the Wood Case Lead Pencil Code. The principal complainants were the representatives of the southern manufacturers who were dissatisfied with the wage differentials. But, the board's report makes no mention whatever of this feature and hangs its entire argument on other grounds.

Mr. Mason (p. 2551): "During the 4-month investigation which the board conducted of the National Recovery Administration, my department handled 3,375 complaints. We reported on 34 codes and held 57 public meetings."

(Comment:)

The record actually shows (although we cannot determine the number of complaints filed) that hearings were held on 35 codes and but 22 codes were reported upon to the President.

Mr. Mason (p. 2555): "There were, however, many deputy administrators who did not cooperate, who had the 'mother complex' about the codes they were administering. A great many of them were recruited from the industries in which they helped draft the codes, and they seemed to resent any investigation into the activities of the industries for which they had worked and to which they presumed they would return. In those instances they either refused to appear, or after they appeared they were openly rebellious and refused to testify."

(Comment:)

The record only discloses that deputies were called in eight cases in all and of the codes reported on, deputies attended in only five cases. The five codes reported on in which deputies were present are:

Portland cement, Deputy Murray.

Retail trade, J. C. Yocum, assistant deputy; T. I. Emerson, legal adviser.

Rubber manufacturing, E. G. Holt, assistant deputy.

Boot and shoe manufacturing, Harry S. Barry, deputy; L. E. Ore, assistant deputy; Hobart Newman, assistant counsel.

Bedding, C. R. Nikalson, assistant deputy.

None of these deputies, assistant deputies, or legal advisers had any previous connection with the industry in question. So instead of "many" deputies being called, we find that actually 2 deputies were called, Murray and Barry, 4 assistant deputies, and 2 assistant counsels, and then on only five codes which were reported upon. There is no evidence of recalcitrance or refusal to testify in these cases. This whole allegation is based upon Rosenblatt's experience. Rosenblatt had heard a mere rumor that some phase of the Motion Picture Code was about to be heard. He went over there in the audience as a spectator, to find out what it was all about. He was not called nor informed of the hearing by the Board. The minute that his face was seen in the audience by counsel for the Board he was called to the stand. He was totally unprepared as he had been given no notice and had not the faintest idea as to what the investigation was about. He, therefore, desired to make a statement to this effect and to request permission to have his files and records of the code with him if he were to be called upon to testify to those records. This privilege was denied him in the manner set out in the transcript of the actual questions and answers, which speaks for itself, and which is indicative of the attitude, procedure, and methods of the Darrow Board. This was the only instance in which there was any question about a deputy's testimony. The entire record shows that the Darrow Board had no interest in having deputies testify. General Johnson had placed personnel and records of the National Recovery Administration at the disposal of the Darrow Board and these were not availed of except as outlined above.

Mr. Mason (p. 2596): "While the printed set-up of the code would indicate that all of these cases were reviewed by National Recovery Administration, as a matter of fact, the practical way they worked out was that the industry in the particular community decided whether or not they should have a competitor, and the application of this particular man, who testified before us, was referred to a committee of five of the large manufacturers of ice in his community, and they voted against his receiving permission to build his plant."

(Comment:)

This statement is a half-truth with respect to the administration of article XI, prior to November 1, 1934, when the code was transferred to the Food Division at that time, the procedure with respect to these applications was completely changed. (Cf. pp. 20–26 of Report of Deputy Administrator to N. I. R. B. on Administration of Trade Practice Provisions of the Ice Code.) As the provision is now administered, National Recovery Administration officials conduct the hearings locally, make the investigations and the decisions. The industry members play a very little part in the proceedings.

Senator King (p. 2597): "The code authorities claimed that they had the right to refuse to permit him to construct a plant to manufacture and sell ice?"

Mr. Mason. "That is correct."

(Comment:)

National Recovery Administration and not the Ice Code Authority determines whether permits to erect new ice plants shall be granted.

Mr. Mason (p. 2598): "Of course, they (the industry) had a provision in their code that it would be subject to the approval or disapproval of the Administrator, but we found no case that we had where it was ever possible to get the approval of the Administrator if the group that were operating the ice plants down there voted against it."

(Comment:)

The implication of this statement is false and misleading. Here is the actual record to date (Apr. 12) with respect to applications submitted to National Recovery Administration, pursuant to article XI.

Total applications received	395
Of this number the following were:	
Withdrawn	59
Exempted (i. e., granted)	69
Denied	52
Approved	143
Pending	72

Of the 143 approvals, 37 were granted despite the recommendation of denial of the code authority.

Senator Black (p. 2623): "These 43 that have been denied; do you know whether or not the National Recovery Administration made any investigation of the price at which ice was being sold to the consumers in that particuar district, and make any effort to regulate that price and get it down to a normal basis and a fair basis to the public?

"* * * but they (National Recovery Administration) made no effort whatever to find out whether the public can get ice at a fair price and whether competition is needed in order to reduce so that they would not make an exorbitant profit."

Mr. Mason: "That is a very good statement of just the situation in the ice business and in many others too, Senator, where we have limitation of production."

(Comment:)

The answer to this question is that status of local competition, demand and "price" are always taken into account by National Recovery Administration in handling applications.

Mr. Mason (p. 2623): "No, Senator, that is impossible, because after working 2 years on the question, they admit that they cannot arrive at any fair accounting for cost and price."

(Comment:)

This statement is incorrect. Cost determinations have been made in New York City, New Orleans, and San Antonio. National Recovery Administration is constantly seeking additional information on the ratio of costs to price, but there is no difficulty in reaching an approximate determination.

Senator Clark (p. 3620): "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. O'Bear: "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."

(Comment:)

In the initial stages, some of the actions which Mr. Obear complains of may have taken place but this has been completely changed as less stress has been laid by National Recovery Administration upon "self-government" and more upon "adequate governmental sanction and supervision." However, we know of no case where action has been taken without approval of National Recovery Administration. If it was so taken, it had no legal standing.

Mr. Mason (p. 2603): "Senator KING. Was labor represented on the codes?
Mr. MASON. No, Senator, except in the textile industry, I do not know of one code that has a labor representative on it."

(Comment:)

Upon examination by the Research and Planning Division it is found that there are labor representatives sitting upon 55 code authorities.

Senator King (p. 2603): "So that the codes were administered by persons in the industry whose interest it was to fix prices, or at any rate to prevent competition and secure a monopolistic control of their respective industries."

Mr. Mason. "And on top of that, Senator, we do not even have the control that the fascists have of an independent court where these questions can be taken and adjudicated."

(Comment:)

The above is gross exaggeration in that a code authority has limited powers and can only act within the limits prescribed by the particular code. Further, an appeal lies to the Administration and to the courts.

Mr. Mason (pp. 2599–2601): "In the Bituminous Coal Code, the Darrow Board charged malfeasance and misfeasance in office upon the part of the code authorities. Here was a report from a Government body demanding the removal of a code authority. The Darrow Board demanded the removal and recommended to the President that they be immediately removed, and made specific charges first of oppression of small enterprises by price fixing without regard to grades of coal. In this case it was the high price that was used to put out the small producer of bituminous coal.

"This particular man did not have the machinery and the equipment to wash his coal. He had always employed and he kept in continuous employment, some 600 miners for many years, but he sold the coal, although he paid them the regular rate, under the market price because it was unwashed and because it had a high sulphur content, as I recollect, but he had to sell it at less than the regular price of standard coal because of that condition.

"When the code authority got hold of this situation and declared a price emergency, they set the floor price so high that the man of course would not sell his coal. When the railroads and the other industries were to buy coal, they wanted to get the very best grade they could at that price. The day the code went into effect, he shut down and has never opened since. I understand that last week he received an order for some coal which is the first business I have heard of him getting since the code went into effect."

(Comment:)

Mr. Mason's testimony before the Senate committee has so confused "the evidence" before the Darrow Board upon which the Board's recommendations to the President were based that it is difficult, even if not impossible, for the National Recovery Administration to determine who is the "particular man" about whose condition he complains. His reference to employment of 600 men, lack of facilities to wash coal and new business which was secured for the first time under the code very recently would indicate that the Lober Gas Coal Co. of Pittsburgh is the subject of this complaint. If this be true, Mr. Mason's testimony is false and misleading in respect tf the following facts:

(1) The Lober Gas Coal Co. was shut down for lack of profitable business continuously several years prior to the effective date of the Bituminous Coal Code. The Kennedy interest which controlled the Lober company, took advantage of the approval of the Bituminous Coal Code by reopening this mine and attempting again to engage in business. All of this of course is in direct contradiction of Mr. Mason's charge that the Coal Code forced Lober to close on the effective date of the code.

(2) Shortly after Mr. Lober reopened, J. W. Kennedy, vice president of the company, complained both to the Subdivisional Code Authority for Western Pennsylvania and to the administration in Washington, that his coal had been improperly classified by the subdivisional code authority. The substance of his complaint was that the coal of the Pittsburgh Coal Co., a competitor of his, was sold under the prices established by the code authority at a price of only 5 cents above the price established for Lober coal, despite the fact that Pittsburgh's coal was washed and Lober coal was unwashed.

As a result of Mr. Kennedy's complaint the extensive investigation of the facts by disinterested persons, the spread between the Pittsburgh coal and Lober coal was raised, first to 15 cents and subsequently, upon a finding that such spread

was too large, was lowered to 10 cents. Subsequently the Deputy Administrator recommended to the Western Pennsylvania Subdivisional Code Authority that classification of Lober coal be reduced so as to result in a further decrease in price therefor of 5 cents a ton, upon the basis of a record made in a hearing held before the Deputy Administrator on July 5, 1934, in respect to complaints by Mr. Kennedy. Thereafter the Deputy Administrator was advised that the Lober Gas Coal Co. had submitted a bid to the State of New York, guaranteeing an analysis of its coal which conclusively indicated that the Lober coal was of higher quality than Lober had represented to him at the hearing upon its complaint. As a matter of conclusive fact the Lober Coal Co.'s complaints have received, at all times, the strictest attention of the Deputy Administrator in charge of the coal code. He has afforded Lober every opportunity to prove its case of oppression by the action of the Western Pennsylvania Subdivisional Code Authority. The records made at these hearings have convinced the Deputy Administrator that no injustice has been done to Lober which has not been cured by expeditious action on the part of the administration.

(3) Mr. Mason states that the Lober Gas Coal Co. is a small enterprise. The fact is that Lober is one of the larger operators in the Western Pennsylvania District, the average railroad shipping mine which is considerably larger than the average mine in western Pennsylvania employs, exclusive of supervisory and clerical employees, less than 250 men; whereas Mr. Mason states that Lober employs 600 men.

(4) It is obvious, in view of the fact that the Lober mine after being shut down for several years was reopened about the time the code became effective, that Mr. Mason's testimony that Lober had always employed and kept in continuous employ 600 miners is not consistent with fact.

(5) Comments should also be made upon the misstatement of Mr. Mason that the code authority declared a price emergency. No code authority in the bituminous coal industry has any power to declare a price emergency. That emergency was declared by the President of the United States when he approved the code. In addition, every effective price of the Bituminous Coal Code is approved by a Government officer appointed directly by the President.

(P. 2602.)

"Senator KING. Did it appear from the testimony before the Darrow Committee that the code authorities in the bituminous coal industry were all or substantially all producers of coal?

"Mr. MASON. Yes; they were. Out of 8 on 1 code authority I think 7 were the large producers, through captive mines or else owned by—in the Western Pennsylvania area they were controlled by the Mellon interests, and that was the area where we asked for the removal of the code authority for malfeasance in office.

"Senator KING. Were they removed?

"Mr. MASON. They were not removed and they are still on. One man resigned from the code authority but he put one of his employees in his place, as I understand.

"Senator KING. Were there any representatives of the consumers on the code authority?

"Mr. MASON. No, Senator."

(Comment:)

(1) To the contrary of Mr. Mason's statement, there is no code authority among the 22 code authorities established under the Bituminous Coal Code in which representatives of comparatively small producers do not outnumber the representatives of the larger producers.

(2) Mr. Mason denied that there are any representatives of consumers on the code authority. It is well known that upon each code authority there is an appointee of the President placed there in order to protect the interest of the public.

(Pp. 2608–2610.)

"Mr. MASON. I might say that the Administrator in answering that—did not deny that the code authorities had used their office to attract coal business from railroads.

"As I understand, the request came to N. R. A. that the report should not be made public.

"Senator KING. Did the Darrow committee see the report?

"Mr. MASON. No; I have just received that information in a round-about channel, but I am sure if you subpena Mr. Ryder, that you will be able to find that report.

"I would like to just read one paragraph from the Darrow Board, not commenting now upon it, of the average cost of food.

"Senator KING. Reading from the report on the bituminous coal industry.

"Mr. MASON. On the bituminous coal industry report:

"'According to the bulletins of the Department of Labor taking the average cost of all foods in 1913 as 100, their cost in April 1933 was 90, and in April 1934 it was 107. Fifty-one cities showed in this year an advance in food prices from 10 to 27 percent. Rents, fuel, lights, house furnishings, and other items showed that at the end of the year, after the codes had begun to operate a marked upward tendency.'

"Senator KING. Was that not expected and was it not desired by some who were strong proponents of codes?

"Mr. MASON. Yes, Senator, but the difficulty was that while the cost of living increased under the codes, wages did not rise in accordance with it. That was the condition, and that was the contention of the Darrow report. I am just reading from the Darrow report on that. I have no opinion of my own on that particular subject."

(Comment:)

(1) On May 21, 1934, contrary to Mr. Mason's statement that the Administrator did not answer the charge of the Darrow Board that certain bituminous coal code authorities had used their offices to attract business from railroads, the White House published a report made to the President by the Administrator and General Counsel of the National Recovery Administration which contained a complete answer to this charge of the Darrow Board.

(2) On June 5, 1934, the Assistant Attorney General in charge of the antitrust division of the Department of Justice submitted to the then Administrator a report or certain reports made by an adjuster of the Bureau of Investigation of the Department of Justice, May 21 and May 26, 1934, respectively, in the matter of the activities of the Western Pennsylvania Subdivisional Code Authority. The Assistant Attorney General stated that the investigation upon which these reports were based was incomplete and had been suspended pending a presentation of the situation to the National Recovery Administration. On August 24, 1934, the then Administrator of the National Recovery Act advised the Assistant Attorney General that he could see no reason why the Department of Justice should not go ahead with the investigation.

Since that time the National Recovery Administration has not been advised of any further progress made of this investigation by the Department of Justice. At not time has the National Recovery Administration requested that a report should not be made public, although the administrative officer has requested the Department to make the results of the investigation, when completed, available to the National Recovery Administration before it is disclosed to others.

(3) Mr. Mason complains somewhat generally but with reference to the bituminous coal industry in particular that the cost of living has increased under the code, or wages have not risen in accordance with it. Even if Mr. Mason is dissatisfied with the rise in wage as compared with the rise of cost of living under the Bituminious Coal Code, he should have stated, in order that his statement present a complete picture, that the minimum wage rates in the Bituminous Coal Code represent an actual accord reached between a majority of the producers of the industry and the responsible officers of the only national labor organization operating in the bituminous coal field, which organization represents approximately 90 percent of the employees engaged in production.

In view of Mr. Mason's criticism of the attitude of officers of the Administration displayed toward the Darrow board in refusing or acquiescing reluctantly to appear before the board, it must be stated in behalf of the Deputy Administrator in charge of the Bituminous Coal Code that he was never requested by any member or officer of the Darrow board to appear before the board in any capacity to explain the charges made against the administration of the Bituminous Coal Code.

It is pertinent at this time to call attention to the comments of the General Counsel of the National Recovery Administration, Donald R. Richberg, made on the Darrow report, in part as follows:

"The criticisms by the Review Board of Price Increases under the Coal Code furnish a perfect demonstration of the illogic of the Board's recommendation that hours and wages should be regulated by Government, but that those paying the hours and wages shall be denied any opportunity to protect themselves from cutthroat competition. Under regulated hours and wages in the coal industry and "savage", "wolfish" competition, the result would be the survival only of highly

mechanized, low-cost-production mines, throwing out of employment thousands of miners, closing down every small enterprise which is struggling to survive and, in the eventual day when only a few great coal producers survived, the practical monopolization of coal production by these few powerful survivors."

Mr. Mason (p. 2616): Speaking of the boot and shoe industry, Mr. Mason stated "the tendency was toward monopolistic control."

(Comment:)

The above does not square with the facts. On the contrary this industry is suffering from forms of extreme competition, partly traceable to the ease of renting costly shoe machinery, involving migration and the opening of plants in low-price labor territory. Report of Research and Planning discloses the following:

"In March 1933 there were 186,700 employed. In March 1934 this figure reached 211,600, a gain of 24,900 over 1933 and 6,000 over the monthly average of 1929. Seasonal fluctuations have been less than usually severe and gains have been substantially held, the employment figure for January 1935 being 199,700.

"Monthly pay rolls of $2,382,000 in March 1933 rose to $3,764,000 in March 1934. In January 1935, due to seasonal fluctuation, this figure was slightly down, to $3,242,000. The average hourly wage, which in May 1932 was down to 31.9 cents, rose to 43.6 cents in August of 1933 and 51.1 cents in September 1934, declining in December 1934 to 50.7 cents.

"Meantime the volume of production which had dropped from 361,000,000 in 1929 to 313,289,000 in 1932 moved back up to 355,000,000 in 1934, but prices stayed down so the dollar volume of sales was estimated at $655,000,000 compared with $952,860,000 total for 1929."

Mr. Mason (p. 2637): "The plumbing fixture case I called to the attention of the committee yesterday, where there is a limitation of selling only grade A products * * * ."

Senator King: "Did that interpretation militate against the interests of the small producers * * *?"

(Comment:)

Actually only three firms complained under that provision which has been of no effect for almost a year and is now not part of the code. Further a great number of firms have been driven out of business because it was not possible for them to meet price-cutting competition which the National Recovery Administration Code was not restrictive enought to prevent.

Mr. Mason (p. 2557): "We have in that particular industry the counsel for the National Recovery Administration who is an administrative member of the Steel Code, Mr. Simpson, who was the first deputy in charge of drawing that code, who was a member of that industry, and who has since left the employ of the National Recovery Administration and gone back into the industry, and is also an administrative member of that code."

(Comment:)

Mr. Simpson was never a member of the iron and steel industry, but is a mining engineer with a degree of Master of Arts in geology and metallurgy, and spent many years in Nevada and other western States connected with the gold mining business. During the World War, he was technical advisor in the War Department. After the war and until he came to National Recovery Administration, Mr. Simpson has been a consulting engineer in New York City and has been so engaged since leaving National Recovery Administration. He has never been employed by any member of the iron and steel industry. He was sufficiently familiar with the general problems of the steel, coal, and oil industries to enable him to serve, first as Deputy Administrator, and then as Division Administrator in National Recovery Administration.

Mr. Mason (pp. 2557, 2558): Mr. Mason quotes from the magazine, *Steel*, of January 21, 1935:

"Around open prices as great a controversy can arise as over the present price clauses. The crux of open prices is a waiting period; if prices are filed following sales they became historical prices only, but if a waiting period is retained change from the present system is negligible.

"'In any event, National Recovery Administration is coming to see that in the case of steel, base prices are only the core of the apple. If the code authority retains control over extras, it need not worry whether base prices are historical open ones or are filed under present restrictions.

"'On many products, and some of them common ones, extras are 10 to 15 times the base. Since the Steel Code became effective August 19, 1933, three books of extras, each larger than the preceding one, have been issued.'" Mr. Mason, referring to the above:

"* * * Yet from this statement of the steel trade paper, it seems that it has raised its prices 10 to 15 times as much as the base, and I might say that was a practice which was not in force and effect prior to the adoption of the code."

(Comment:)

The magazine, Steel, states that in some cases extras are—that is, amount to—10 to 15 times the base, which is entirely different from Mr. Mason's interpretation, namely, that the steel industry has raised its prices 10 to 15 times as much as the base. It is true that the aggregate of extras on certain products may amount to as much as 10 times the amount of the base, but this is not necessarily a new practice for the reason that steel products have always been priced on base prices, plus extras. It is also true that National Recovery Administration has been giving close attention to the matter of the power of the Steel Code Authority over extras and that the majority of complaints made to National Recovery Administration against extras have been adjusted, in some cases, by suspension of the extras approved by the code authority.

The Chairman (p. 2558): "Does that affect a very small percentage of the trade?"

Mr. Mason: "It is a very painful percentage, so far as the small fabricators are concerned, because it puts the small fabricators, especially in areas not close to the base point, at a decided disadvantage, and in many cases it will put them out of business if it continues."

(Comment:)

Mr. Mason disregards the fact that there are numerous types of extras. A great many different qualities and finishes require an extra over the base for that generic type of product and it is these quality extras that are now and have been in the past several times the amount of the base price, for example, the base price on common wire may be 2.3 cents per pound, but for square wire with sharp corners and a coppered finish, an extra of 6.5 cents must be added to the base price. Therefore, these quality extras are charged for any quantity and do not affect the small fabricator any more than the large fabricator. Mr. Mason may have in mind extras for small quantities but it is not clear whether he recommends that the price on 100 tons be the same as the price on 100 pounds. Nearness to the basing point has no effect upon the relationship of extras. Under the Steel Code if the large fabricator orders a small quantity he has to pay the extra, if any, for the small quantity just the same as the small fabricator who may order a similar small quantity. Thus, the code has benefited small fabricators because prior to the code almost monopolistic buying power of certain large fabricators made it possible for them to force the steel producers to waive extras which the steel mill should have obtained, and frequently did obtain, from other and smaller buyers.

Mr. Mason (p. 2559): "In the original Steel Code, the code authority, which is the Steel Institute, had the right to set prices on all products, that is, everybody did not like it, they would send auditors in to audit the books and set the new prices which the man should charge. That was section 5 of the Steel Code.

"The Darrow report came out, I think, 2 or 3 weeks before the Steel Code was up for renewal, and it was very embarrassing to the steel group to have the report come at that time, but it did, and they had to change that, so they struck out section 5, which gives the Institute the right to fix all prices, but left in section 7, which gives the Steel Institute, and it now gives them the right, to fix prices on extras."

(Comment:)

It is true that the original Steel Code gave the code authority the power to set aside an unfair price filing and to fix a fair base price, but this power was never exercised. This power was removed by the amendment to the code on May 30, 1934, so that there is now no minimum price, or cost recovery provision, in the code.

It seems somewhat presumptious for Mr. Mason to assume that the Darrow report was entirely responsible for this change in the code, in view of the fact that on November 17, 1933, the President extended the observation period of the Steel Code to May 31, 1934, during which time the National Recovery Administration carefully studied the operation of the code with a view toward necessary

amendment at the end of the observation period on May 31, 1934. The Darrow board was not appointed until March 7, 1934, and its report was issued May 4, 1934, so that it is hardly reasonable to assume that the Darrow board report was responsible for all the changes made in the code on May 30 when it was reapproved by the President. Although the National Recovery Administration did carefully consider all the statements in the Darrow board report, many of which were based on incorrect assumptions, the changes in the code proposed by the Darrow board would have left nothing but the labor provisions, and, consequently, no means for the industry to obtain the increased labor cost of the code, which amounts to approximately $100,000,000 per year. The industry, as a whole, has shown a loss in both 1933 and 1934, with the loss for the industry greatly reduced in 1934, due to higher operations.

Mr. Mason (p. 2559): "In consequence thereof, when the extras have gone to 10 or 15 times what the base price is, you can see they will have a strangle hold on this industry, so far as fixing price is concerned."

(Comment:)

See comment above concerning pages 2557 and 2558 in respect to quality extras, only a few of which are as much as 10 or 15 times the amount of the base price. National Recovery Administration has been critical ever since the code was effective of the code authority's powers over extras and probably would not approve such powers much longer, but extras being an inherent part of net prices, the open price method of the code requires known extras and the demoralisation in the field of extras when the code commenced required strong powers to re-establish proper extra charges for quality and small quantity. The matter of the code authority's power over extras for many months has been considered by the National Recovery Administration to be of prime importance in any extension of the steel code.

Senator King (p. 2560): "Before you proceed, may I ask why was the Steel Institute given authority to manage and control the code, formulate the code, and execute the code?"

Mr. Mason: "They represent about 95 percent of the entire steel industry. In fact, this is one case where we have no complaint of small industries, because there is nobody who could complain, except the consumer. They received Code No. 11 because they would get together pretty quick on their code.

"What they did, as I see it, they took the Pittsburgh-plus ruling in the *Federal Trade cases*, and simply changed the words from must not' to 'must.'"

(Comment:)

Mr. Mason appears to admit that the small enterprises in the iron and steel industry are not complaining, which is substantially the case. The Federal Trade Commission's Pittsburgh-plus order was directed against only certain subsidiaries of the United States Steel Corporation and the industry, in general, did not follow the order. By criticizing the Steel Code for not requiring a strict adherence to the above portion of the 1924 Federal Trade Commission order on the part of the entire steel industry, it would seem to be implied that between the latter part of June and the middle of August 1933, the National Recovery Administration should have done in those 9 weeks what the Federal Trade Commission seemed unable to do in the 9 years from 1924 to 1933. Incidentally, the multiple basing point system in the code is not the same as "Pittsburgh-plus", and we know of no authority indicating its illegality prior to or after National Recovery Administration approval of the code. Mr. Mason's statement also seems to imply that the selling method used by this industry for the last 30 years or more and now under the scrutiny of the National Recovery Administration should have been entirely changed and returned to a mandatory free-on-board mill system (the constitutionality of which is open to question), with price cutting of all kinds encouraged, under Government sanction; or, in short, a procedure which would destroy many marginal units in the industry and which would promote price cutting and chiseling, to say nothing of the damage which would inevitably result to the workers in the industry and to the financially weak producers, especially the many small enterprises which the code preponderantly actually protects, as evidenced by many unsolicited statements from small enterprises.

Mr. Mason (pp. 2561 and 2562): "Isolating raw materials into one trade makes it pretty hard on the independent fabricator, because the big producer, like the United States Steel, who have the fabricator, Ambrig, and Bethlehem with its

Marsh & McClintick, are at an advantage, and under the code the small fabricators have to charge the code prices.

"For instance, if Senator Black is the subsidiary of one of the companies, they can hand him the material and make no charge whatever, and he can undersell the small independent fabricator, because he is not bound by the code.

"That is why there are so many of the small midwestern men at the spot, such as the *Ames case* now before the Supreme Court, on the question of fabricators."

(Comment:)

Mr. Mason's statements are such a confusion of errors as to make specific comment difficult. He appears to believe that a steel company could sell to its affiliated fabricating shop at prices lower than it has filed under the Steel Code. This is not the case, for the steel producer cannot sell to its affiliated fabricators at a lower price than to any other buyer. Mr. Mason apparently is confusing the effects of the absence of an effective Code of Fair Competition for the Structural Steel Fabricating Industry, which would govern the practices of structural steel fabricators, such practices not being covered by the steel producers' code, which is the code here under discussion.

It is pertinent to quote from a letter addressed to Senator Arthur Capper by Mr. H. A. Fitch, president Kansas City Structural Steel Co. Mr. Fitch is very active in the affairs of structural steel fabricators and was formerly president of the Central Fabricators' Association. Frequently he has complained that the steel code does not do what it was intended to do in the way of eliminating certain abuses in connection with fabrication in transit freight rates and sales by mills distant from the place where a steel structure is erected. In his letter he says:

"I will speak now specifically of the Steel Code and the structural steel fabricating industry. Our industry has no code because somehow the terms could not be agreed upon. That fact is immaterial for our present purpose. For many years the commercial relations between the steel producers and the structural steel fabricators have been unsatisfactory. Needless to go into the details. For one thing, there have never been uniform prices; for another thing, these same steel mills have fabricating plants that are in competition with the independent fabricators. For many years we have had the antitrust laws and the Federal Trade Commission.

"These are of no value to an individual operator or even to a secondary industry in correcting abuses that prevail as at present between the rolling-mill industry and our own industry. These agencies are too slow and too expensive.

"I am convinced that if the steel producers are allowed to continue their operations under a code of fair competition, that the fabricators and other processors will be able to force an equitable adjustment of the evils that have for a long time existed.

"In other words, as a small operator, I believe we will be much better off under the National Recovery Administration system of codes than we would be to return to the old individualistic system, wherein there was no order and no responsibility. On August 13, 1933, I delivered an address—a sermon, in fact—on the subject of 'Industrial control versus individualism'. I have in no way changed my opinion as to the efficacy and necessity of this principle of industrial control. I am enclosing herewith a copy of that sermon, which I have marked with red pencil emphasizing certain features of the subject.

"I would add just one other thought. The administration of the National Recovery Act should continue through a special organization for that purpose. That organization should, however, be much more simple and direct than it is at present. There are altogether too many advisory boards. They only add to the confusion and very much retard definite and important decisions. What the small operator wants, is some place where he can go with a complaint and obtain a definite and prompt decision. In other words, we want an umpire to whom we can explain our contention or our problem and have him make his decision.

"I apologize for so long an epistle. I only hope that the National Industrial Recovery Act will be reenacted in very much its present form and with the administrative feature much simplified."

Senator King (p. 2562): "Mr. Mason, have you read the findings of the Federal Trade Commission recently submitted in their report respecting the monopolistic conduct of the steel organization?"

Mr. Mason: "Yes, sir."

Senator King: "Do you agree in their findings?"

Mr. Mason (p. 2563): "Absolutely, Senator. It will wipe out all of the small independent fabricators if we do not do away with those practices in the steel industry now."

(Comment:)

By "fabricators", Mr. Mason presumably refers to those who purchase the products produced under the Steel Code and who fabricate these Steel Code products in various ways. Such fabricators would be structural steel shops, automobile body plants, steel barrel producers and others, none of which is covered by the Iron and Steel Code. Therefore, it is not clear as to what injury Mr. Mason believes the Steel Code does to such consumers of steel code products, especially since under the Steel Code large and small customers pay the same price for the same quality and quantity which, as previously pointed out, was not the case prior to the code.

Mr. Mason (p. 2564): "In other words, if a small fabricator wants to buy some steel, he has to tell the United States Steel Corporation who his customer is, in order to even get a price, and after the corporation gets that name it does not take much of a stretch of imagination to believe they can turn that over to Ambrig or March and McClintick, and the small fabricator will find he will have a competitor who does not have to pay the price he does, and who can get the business, so that the small competitor is out of it."

(Comment:)

The fabricator purchasing material subject to fabrication in transit freight rates, does not have to tell the steel producer who his customer is, nor does he have to reveal the location of the job until he has secured his order and is ready to purchase the material. By that time the age-old system of reporting jobs would have revealed this to the big companies without any question, if it were of any considerable size. The reason he is required to name the location of the job when he places his order is to correct the very abuses against which certain small fabricators complain and which the Steel Code endeavors to correct.

Mr. Mason (p. 2565): "* * * they also contain basing points on materials which I do not believe exist, such as ingot bloom, and such items, which I do not believe exist. While I am not entirely familiar with it, yet I do not believe there is such a thing in commerce which is sold."

(Comment:)

Mr. Mason refers to "ingot bloom." No such product is named in the Steel Code. A group of products are named "ingots, blooms, billets, and slabs." If he means ingots and blooms, these, of course, are well known in the industry.

Mr. Mason (p. 2565): "Increase in price does not help the fabricator, because the only man who can file the price is the man who has a mill in that particular location."

(Comment:)

It is not clear what Mr. Mason means by "the fabricator." The statement that the only man who can file the price is the man who has the mill in that particular location, is both incorrect and obscure. Under the Steel Code, all producers must file prices for the nearest basing point for the product in question (p. 2566). Apparently, Mr. Mason's comment concerning paragraph (b), section 5 of the code, does not refer to the Steel Code, because this does not contain any method of determining costs—in fact contains no mention of cost.

Mr. Mason (pp. 2570 and 2571): "No; practically all of the employment, I believe, came before the codes were adopted, under that splendid reemployment agreement of the President * * *."

(P. 2571): "My own opinion is, I would have to have an honest difference of opinion with you there. I believe it was the President's reemployment agreement. I do not believe the steel industry and the large integrated industries which are the only ones that have been able to take advantage of it, because they can police their own trades, and therefore I do not believe it has helped employment in their branch."

(Comment:)

These two statements of Mr. Mason, while not entirely clear, may be intended to imply that the Steel Code has not increased employment, or otherwise benefited labor. The facts are that June 1933 was the last precode month, because the industry voluntarily commenced to put into effect some of the code labor provisions during July and early August before the code was approved August 19, 1933.

Therefore, June 1933 is taken as a pre-code base and upon comparing this with February, it is found that although the total hours worked in this industry increased 6 percent, the total number of employees increased from 338,000 to

420,000, the increase being 82,000, or 24 percent, showing that under the code, in February 1935, 24 percent more men were used to do 6 percent more work than in June 1933 when there was no code. Average earnings per week in February 1935 were 25 percent higher than in June 1933, although average hours per week were 9 percent less, due to the increase in the average hourly rate for wage earners from 47.3 cents in June 1933 to 65.8 cents in Feburary 1935. It should be noted that the average hourly wage in the iron and steel industry in 1929 was 65 cents and with the cost of living in 1929 as 100, the cost of living today is said to be 20 percent less than in 1929, so that the present hourly wage is considerably above the 1929 wage in purchasing power. The President's Reemployment Agreement never affected the iron and steel industry, whose code was effective before the President's Reemployment Agreement went into effect August 31, 1933.

Mr. Mason (p. 2480): "In fact, Senator, a great many of the recommendations of the Darrow Board has been followed by the National Recovery Administration. It was after we filed our report against the Steel Code that they changed that in some respects * * *."

(Comment:)

See our comment above with reference to Mr. Mason's statements on page 2559 concerning the Darrow Report, in which we pointed out that when the code was extended in November 1933, it was provided that it automatically came up for review and possible amendment on May 31, 1934, and National Recovery Administration had been reviewing the entire operation of the code for more than 8 months when the Darrow report was issued.

Mr. Mason (p. 2581): "That is correct in most codes, Senator. There were some codes that actually fixed prices. Steel had it. We are operating now under a Steel Code which actually fixes prices. The Steel Institute decides the price to the consumer."

(Comment:)

Under the Steel Code the producer files whatever base price he may elect. Therefore, it is not correct to say that the code fixed prices. All other elements in the net price are constant at any one time. Mr. Mason, in stating that the Steel Institute decides the price to the consumer, must be referring to the matter of extras which we have discussed above, but it should be pointed out that a large percentage of the sales of this industry take no extras, such as Mr. Mason refers to. And a still larger percentage takes only extras which amount to a minor part of the sales price.

Mr. Mason, continuing (p. 2581): "That was best illustrated in the controversy between Mr. Eastman when the question came up of the loan to the railroads to buy 800,000 tons of T-rails over 60 pounds in weight. As you recollect, Mr. Eastman wrote to the four largest steel producers of the organization and told them that he would like to have assurances that there would not be collusive bidding if he loaned the money to the railroads.

According to his correspondence, the agreement was that there was not to be collusive bidding. When they bid, all of their prices were the same. It was $37.75. Mr. Eastman, who has considerable experience in this line, was of the opinion that $35 a ton would net the steel industry a fair return for their profit. And being aware of the fact that this International Steel Conference which Mr. Schwab has just returned from prevents the importation of steel from foreign countries, where the price of steel has gone down with the price of living, Mr. Eastman felt that they should come to some understanding about this price before he would loan the money to the railroads."

Later, on page 2583, Mr. Mason states that the steel companies "finally without acquiescence of Mr. Eastman, struck a figure of $36.375 * * *," and later, "on all bids, it is the same price, which of course, Senator, of itself shows that there is collusion and shows that the public is not getting a fair break."

(Comment:)

The following statement issued from the White House in connection with the rail matter, gives the most authoritative description of this subject:

"The President and the Federal Coordinator of Transportation met today with the steel rail manufacturers, who explained that the recent offer of all four companies to supply steel rails at the uniform price of $37.75 a ton was based on the following understanding by them of the Steel Code provisions:

"The United States Steel Corporation states that without consultation with the other manufacturers and in conformity with the code, it notified the Iron and

Steel Institute that it proposed to reduce its price for steel rails from $40 a ton to $37.75 a ton.

"This notice having been given to the institute, became public property, and thereupon the other three manufacturers of steel rails reduced their price to meet the price established by the Steel Corporation.

"At the conference today the steel-rail manufacturers maintained the position that the price of $37.75 per ton represented to them only the cost of production plus a fair profit. The Coordinator of Transportation stated again his belief that not more than $35 a ton would represent a fair purchase price.

"In the interest of getting people to work in the heavy industry of producing steel rails, the President proposed a price half way between, or $36.375 a ton.

"This price was accepted and the Coordinator will advise the Administrator of Public Works of this decision and of the actual tonnage needs of the various railroads."

Thus, it would seem that the $37.75 price resulted from the open-price mechanism of the code, whereby one producer filed this and the others met it, and that the final price of $36.375 was proposed by the President.

Mr. Mason's statement about foreign countries where the price of steel has gone down along with the price of living, makes it pertinent to refer to The Iron Age of October 5, 1933, page 38, where it is shown that steel rail prices were then considerably higher in foreign countries than in this country.

Mr. Mason (p. 2583): "Of course, the steel over there does not cost what it costs here, because their prices have followed down along with the other trend, while here, ours are the same. I mean, it has remained the same."

(Comment:)

It is difficult to know what Mr. Mason means by saying that steel prices here have remained the same. The Iron Age composite finished-steel price was 2.775 in the year 1933; 2.409 in the year 1926; 2.297 in the year 1929; 1.923 in March 1933, and is now 2.124. For an outstanding example of a steel product that has declined greatly in price, we take auto body sheets, which were 5.19 in 1923; 4.30 in 1926; 4.06 in 1929; 2.30 in March 1933, and 2.95 at present, this being the Pittsburgh base price, according to The Iron Age.

Mr. Mason (p. 2595). (In speaking of Otto Swanstrom of Duluth, Minn., a manufacturer who desired that Duluth be made a basing point for products which he purchased): "Mr. Swanstrom spent a good many months down here trying to get some relief from that situation, and was unable to do so. After the Darrow Report was filed, exposing the condition, and using Swanstrom as a specific case, the steel group in their new code put Duluth as a basing point for material which he wanted to buy, but raised the base price so that he had to pay exactly the same amount anyway, so he has, of course, received no benefit from that."

(Comment:)

As stated in our comment upon the Darrow Board Report, National Recovery Administration had been working on this matter since early in 1934, but to make Duluth a basing point for these products required an amendment to the code and this was done when the code was amended May 30, 1934.

The statement that Mr. Swanstrom had to pay the same amount after the establishment of Duluth as a basing point for merchant bars, is incorrect. For example, the lowest base price on this product at Chicago is $37 and if Duluth were not a basing point the lowest price delivered at Duluth would consist of this Chicago base price plus $6.60 freight, or $43.60 per ton f. o. b. Duluth; whereas, the base price at Duluth on this product is now $39, which, with the switching charge of 50 cents makes the f. o. b. Duluth price $39.50 per net ton. Thus, the saving to Mr. Swanstrom is $4.10 per net ton.

Mr. Mason (p. 2620): "The Steel Code sets prices absolutely themselves without any supervision in the Government."

(Comment:)

Under the Steel Code a producer files whatever base price he may elect and once filed it is an unfair practice to use coercion or coercive means to induce him to change that price. Therefore, it is not clear what Mr. Mason means by this statement. So far as supervision of the Government is concerned, Secton 6, article XI, of the Steel Code gives the National Recovery Administration Administrator the power to suspend any action taken by the code authority which may appear to the Administrator to constitute a modification of the code or an exemption of any one or more of the industries from the application of the code. Under this power National Recovery Administration has acted to cause the suspension of certain extras which had been proposed by the Code Authority.

Mr. Mason (p. 2640): "Steel, the number 11 code had one of their high-priced lawyers come down, and they are one of the few who have absolute price fixing."

(Comment:)

As previously pointed out, the Steel Code provides for producers to file whatever base prices they may desire to file. It is not clear, therefore, what Mr. Mason means by "price fixing" under this code unless he has in mind the power of the code authority over extras. It would not be likely that the United States Steel Corporation would have a deficit of $21,000,000 in 1934, with fair operations, if "absolute price fixing" were possible.

Mr. Mason (p. 2644) (referring to data presented by Senator Barkley showing the following aggregate figures on net earnings for 1934 of three classes of companies in the iron and steel industry; 5 large companies, deficit $29,000,000; 12 medium-sized companies, profit $13,000,000; 13 small companies, profit $2,000,000): "If that is so, those figures are true, but I do not think they reflect the proper relation between the small people, the small man in the steel industry is not a producer, but is a fabricator. And in defining the fabricator's position, we have got to take into consideration that a great deal of those profits have been at his expense."

(Comment:)

What Mr. Mason means by a "fabricator" is not clear. The iron and steel industry as defined under the code, includes all concerns that operate a plant for the production of the products defined in the code which are, generally speaking, rolled and drawn steel and iron products, and pig iron. A "fabricator" is generally understood to be a concern that purchases rolled or drawn iron or steel products from members of the Steel Code and fabricates such products into various useful articles. In this sense a fabricator is not covered by the Steel Code. Mr. Mason may have in mind what is called a "nonintegrated rolling mill", that is one that does not produce steel ingots, but purchases semifinished steel and rolls or draws this into other shapes. For example, he may purchase billets and from these roll bars, or he may purchase rods and from these draw wire.

Senator Barkley (p. 2653): "Do you know whether the Washington Tin Plate Co. is a fabricator or producer, of Washington, Pa.?"

Mr. Mason: "That is a fabricator."

(Comment:)

The Washington Tin Plate Co. produces tin plate by operating a rolling mill which rolls semifinished steel into black plate for tinning, and a tinning department which tins this black plate. It is not a fabricator in the correct sense of that word.

Mr. Mason (p. 2653): "I assume most of those are producers rather than fabricators. They may be subsidiaries of other companies. They did not mention the Ambridge Co., which is a fabricator?"

(Comment:)

Mr. Mason's reference to the "Ambridge company" may have been meant to refer to the American Bridge Co., which is a fabricator of structural steel but is not a member of the iron and steel industry as defined in that code.

For purpose of record, it is pointed out that of the 13 small companies shown in the data on earnings by Senator Barkley, the following companies do not produce steel but purchase semifinished steel and roll this into other forms: Superior Steel Corporation, Apollo Steel Co., Acme Steel Co., and the Michigan Steel Tube Products Co., and therefore are "fabricators" as Mason understands the term.

Analysis of Statement by Frederick S. Kellogg

It is believed that the substance of the testimony given by Mr. Frederick S. Kellogg and relating to the provisions of the Iron and Steel Code, is incidental to the recent action of Mr. Kellogg's client, W. Ames & Co., in challenging the constitutionality of the National Industrial Recovery Act, the Iron and Steel Code, and Executive Order No. 6646 in the Supreme Court of the District of Columbia. This belief is supported by the witness' remark on page 2669 of the subject report, as follows:

"Another matter that we wish to object to is the attempt of the Federal Government to regulate matters of production, that is, manufacture as distinguished from commerce, and included under this head is the relation of employer and employee in the productive processes."

In fairness to the National Recovery Administration, it should be made known that W. Ames & Co. has never requested any exemption from the provisions of the Iron and Steel Code, even from the trade practice provisions to which it objects so strenuously, but has merely applied for an exemption from Executive Order No. 6646, as evidenced by the following statement quoted from said company's letter of July 21, 1934, addressed to National Recovery Administration:

"In view of the fact that we are asking exception from the Executive order and not exception from the Steel Code, the conclusion stated is probably correct. The question of basing points for billets or other products does not have any direct pertinency, however, on the question of our inability to agree to the basing point and other provisions of the various codes which purport to apply to our products. W. Ames & Co. does not intend, by this application or by anything which it may do in pursuance of any exception which may be granted, to waive any of its rights."

It should also be pointed out that the National Recovery Administration advised W. Ames & Co. that it could properly execute a certificate of compliance with the Iron and Steel Code, merely by complying with all the applicable provisions and that there was no requirement in this connection to sign the letter of assent to the code.

For the reasons above stated, it does not appear that exhaustive comments on each subject of Mr. Kellogg's testimony would serve any purpose here. Practically all of the complaints against the provisions of the Steel Code in his testimony are repetitions of complaints which have received the careful consideration of the National Recovery Administration, some of which are specifically referred to in the National Recovery Administration Report on the Operation of the Basing Point System in the Iron and Steel Industry, on pages 77, 81, and 83.

There is one statement by Mr. Kellogg in this testimony which is erroneous and misleading and involves a subject of such importance as to justify comment and correction however brief the treatment permitted here. This is his statement with reference to section 2 of article V of the Steel Code which prohibits the construction of new blast furnace or open hearth or Bessemer steel capacity, subject to the suspension of this provision by the President. W. Ames & Co. have never applied to National Recovery Administration for suspension, in its case, of this provision in the Steel Code, which could be accomplished without amending the code, contrary to what Mr. Kellogg appears to imply. National Recovery Administration would be glad to consider carefully any such request from W. Ames & Co.

The United States Steel could not block such a suspension because amendment is not required. Inasmuch as United States Steel has 40 percent of the industry's steel ingot capacity, the fact that it had but 25 percent of the voting power on the basis of 1933 sales, indicates the fairness of the voting basis of the code members. It is not at all certain that this corporation will have 25 percent of the voting power when 1934 sales are determined.

Analysis Of Statement By Walter Mitchell, Jr.

Mr. Mitchell is secretary of the Furniture Code Authority. The products of the furniture industry are so nonstandardized that it falls in the group to which an open-price filing system would be of questionable benefit.

Mr. Mitchell attacks the fixing of specific prices (2851 ff.) with particular reference to lumber prices, and then proceeds to discuss mandatory price-filing systems (2857). He urges instead voluntary filing of past prices (2857). Consequently, his attack centers chiefly on two things, the waiting period and the requirement to file.

Against the waiting period, he raises two objections: (*a*) That it is a period of coercion (2857) and (*b*) that it destroys the incentive to lower prices (2860). It seems quite unnecessary to answer these charges, inasmuch as present National Recovery Administration policy opposes the use of waiting periods and such provisions have been consistently stayed in codes approved during the last 9 months.

The argument for voluntary price filing apparently rests upon the belief that mandatory price records are unfair to the small business man (2859). It is alleged that it permits the leaders to determine the differentials, although Mr. Mitchell states that he has no supporting evidence (2860). Of course, the attitude of large enterprises toward small members of the industry is a matter of general policy. It is absurd to imagine that, without price filing, they are not aware of the behavior of the small companies. Nor does it seem reasonable that a large concern will lower its price, over its large market, in order to meet the competition of some very small competitor.

This is but one of the many factors which determine prices. As a matter of fact, at the January price hearing, evidence was introduced showing that the small producer benefited from price filing, in that he was speedily informed of price changes by the leaders in the industry, and was also enabled to take advantage of their superior judgment and knowledge of general market conditions. Likewise, by forcing large enterprises to give identical treatment to all customers in any given class, it prevents the giving of special concessions to win away customers from small competitors. Finally, some consideration should be given to buyers, and the small buyer is wholeheartedly in favor of price publicity.

Mr. Mitchell, by inference, suggests that prices tend to be raised by price-filing systems (2862). However, the illustration offered relates to the lumber industry (2863) which is a case of price fixing rather than price filing, and even in his substantive argument, he finds it necessary to assume the existence of a gentleman's agreement in order to lead to the stated result (2862). Again, it should be pointed out that this does nothing but confuse the issue. Businessmen always desire higher prices, and will arrange it, if collusion exists, regardless of any price-filing system.

With his argument that open-price filing must include not only the cash price, but terms and conditions of sale (2858), there can be no disagreement. It may be noted, however, that present National Recovery Administration policy leaves each member of the industry free to make his own determinations in these matters. The only requirement is that they filed. Likewise, Mr. Mitchell's defense of the use of impartial agencies (2867), for price filing is in accord with present policy. His closing argument (2868) that effective labor minima can contribute to price stabilization, is identical with the position of National Recovcery Administration policy.

It is unfortunate that Mr. Mitchell has intertwined his discussion of price fixing and price filing. The first is clearly a matter of tampering with prices, the second is an attempt to improve the functioning of the market. When properly administered, an open price-filing system offers some approximation to the type of market necessary if competition is to determine price on the basis of fundamental economic conditions. Perhaps its greatest service is in eliminating secrecy from the pricing process. As long as individual prices are unknown, unscrupulous buyers have been able to misquote one seller to another, creating a price situation based upon deception and deceit. There is no method of eliminating this type of unfairness, except through price publicity. Furthermore, it permits buyers to know the treatment given to other purchasers by any manufacturer, thus tending to eliminate uneconomic discrimination.

While open price filing does not necessarily either eliminate or enhance any collusion which may exist, it should be noted that the automatic creation of an official record of individual prices for an industry, will permit a much more adequate judgment of the extent to which it is or is not operating in the public interest than has ever been possible heretofore.

Mr. Horen (p. 2941): "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."

(Comment:)

The facts show that the prices paid by the consumer for coal in the St. Louis area were not raised by reason of the cost determinations made pursuant to the code, although they were raised to some extent by other factors. Only the dealers' margin is fixed pursuant to the code. The price to the consumer was arrived at by adding the mined price of the coal, the dealer's margin and the freight charge. But the code was responsible only for the amount of the dealer's margin. The following tables indicate that the dealer's margin as fixed pursuant to the code was less than the dealer's margin actually charged prior to the fixation of the margin under the code.

	Delivered prices Sept. 1, 1933			Cost determination Nov. 6, 1934		
	Mine price	Dealer's margin	End price	Mine price	Dealer's margin	End price
Standard lump	$1.50	$2.20	$4.75	$2.10	$1.84	$4.99
Standard egg	1.35	2.35	4.75	1.95	1.84	4.84
Middle grade lump	1.75	2.20	5.00	2.30	2.19	5.54
Middle grade egg	1.60	2.35	5.00	2.15	2.19	5.39
High grade lump	2.80	2.40	6.00	2.45	2.39	6.14
High grade egg	2.20	2.50	6.00	2.45	2.39	6.14

Mr. Horen (p. 2941): "The 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 the minimum cost data was gathered prior to this date."

(Comment:)

On September 17, 1934, no floor-level prices were in effect in the St. Louis area.

Mr. Horen (p. 2955): "I want to enter here this cost sheet from the National Recovery Administration in which they add on 6 percent in investment in large property which is contrary to the National Recovery Administration law." (This cost sheet is on p. 2956 of the record.)

(Comment:)

This cost sheet was prepared by the divisional code authority and never had the approval of the National Recovery Administration. The National Recovery Administration has consistently refused to allow such items in cost determinations and this write-up of 6 percent was one of the substantial reasons why the National Recovery Administration refused the first determination arrived at by the divisional code authority.

Mr. Horen (p. 2916): "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."

(Comment:)

On March 10, 1934, all lowest cost determinations on relief coal were abolished.

Mr. Horen (p. 2905): "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."

It is true that at the present time no small dealers are members of this code authority. The records show, however, that all small dealers were given an opportunity to vote on the membership of the code authority and that a substantial number did so. Each dealer had one vote for each 500 tons of coal handled and each dealer was given the opportunity to nominate anyone whom he wished for membership on the code authority.

Mr. Horen (speaking of the representative character of the code authority, p. 2906): "Senator Clark, the National Recovery Administration itself in fairness felt that the selection was not representative, and when the cost figures came through they discarded these cost figures and there was one reason given out: That there was not sufficient notice given of the hearings. In other words, they used the costs of 29 dealers out of a known 1,200 dealers, while really these people engaged in the coal business."

This statement is absolutely untrue. The National Recovery Administration did not abolish the cost determination because the divisional code authority was not representative.

As Mr. Horen states, however, the costs of only 29 dealers out of a known 1,200 were used by the divisional code authority in the price determination. This was one of the substantial reasons why the cost determinations were abolished by the National Recovery Administration itself. The reason was not that the code authority was not representative.

Senator King (p. 2946): "Who is one of them who is getting $10,000?"

Mr. Horen: "Mr. Kern, who is a coal man's son, has 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 an attorney for the code authority."

(Comment:)

Mr. Kern received $1,000 a year as counsel for the code authority and $4,500 a year for representing the code authority in its compliance problems, making a total of $5,500.

ANALYSIS OF THE TESTIMONY BY MR. RUBEN BURTON PITTS (VOL. 25, PP. 3410–3414)

Mr. Pitts (p. 3412): "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."

(Comment:)

The extent to which the code authority is allowed to exercise control over-production beyond the limits prescribed by the code is entirely within the super-

vision of the National Recovery Administration. Under the administrative order of March 26, 1935, the Cotton Textile Code Authority is governed by the recommendation of a special research and planning committee which is advised by a technical adviser selected by the National Industrial Recovery Board. The narrow power of the code authority is limited to a period of emergency which has been declared to exist in the cotton textile industry by the National Industrial Recovery Board during a period of 12 weeks from March 26, 1935. The right of appeal of individuals or groups is preserved so that if any individual complains that a determination of a code authority is unfair or discriminatory or contrary to the public interest, he may appeal directly to the National Industrial Recovery Board, and any action taken by the code authority or the exercise of any authority conferred upon it may, at any time, be revoked, modified, or suspended by the National Industrial Recovery Board.

With reference to the second portion of Mr. Pitts' testimony as above quoted, the question narrows down to the necessity of determining whether the method of controlling production should be a flat limitation of hours of operation of machinery as prescribed by the Cotton Textile Code, or whether it should be an allocation of production quotas based on prior production for a period of 2 years of individual mills, as recommended by Mr. Pitts. In support of the method of control contained in the Cotton Textile Code, it should be pointed out that limitations on machine hours places a premium on efficiency, preserves the competitive element between mills, and is undeniably capable of better enforcement than the production quota system of control.

The burden of securing compliance with either system of control in 1,281 plants is a very difficult one, but it can be stated with assurance that there is a greater likelihood of "bootlegging" under the system of production quotas than under the system of limitation of machine hours. It is extremely difficult as a matter of practical administration to keep a check upon the output of a mill. It is comparatively simple, however, to keep a check upon the number of hours of its operation. The system of allocation of production quotas based upon production of the previous 2 years or any other period effects a "freezing" of operations which will inevitably result in considerable hardship and complaints. It is a far more drastic method of control than the machine-hour limitation. Furthermore, a production-allocation system, according to past records, would result in a rigid apportionment of sales and in a control of price which cannot be achieved under the present system of control so long as the industry averages less than the permissible 80 hours per week in a double shift.

It is also a fact that the method provided in the code has definitely contributed to the stabilization of the industry, and has made notable contributions toward industrial recovery. Weekly payments for wages have averaged $5,170,000 per week from December 1934, or 69 percent above the weekly average for 1932 which was $3,035,000. Pay rolls since the code went into effect are only 17 percent below the 1929 level in spite of the fact that the value of the product is 35 percent or more below 1929.

Analysis of Statement by Mr. Lipsett

A detailed examination of Mr. Lipsett's testimony shows that some of his figures are inaccurate, some of his statements are exaggerated and confuse the issue.

1. On page 3416 it is stated that during the past year and a half the purchase price of waste paper has been reduced about 50 percent and the selling price of the finished paperboard products has been advanced at least 25 percent. The latter part of this statement is incorrect, as paperboard prices were not advanced, but, on the contrary, began to drop around the middle of 1934. On page 3420 Mr. Lipsett gives the following price quotations:

	Per ton
Chipboard:	
1934	$32.50
1935	37.50
Newsboard:	
1934	35.00
1935	40.00

These quotations differ from the prices quoted in the Bureau of Labor Statistics wholesale price list and from the ones quoted in the trade journals, Fibre Containers and the Official Board Markets. The Bureau of Labor Statistics figures for chipboard read as follows

1934:	
January to June	$40.85
January to November	35.90
December	34.30
1935, January	33.75

The trade journals, Fibre Containers and the Official Board Markets, quote the following prices for chipboard (in central territory):

First half of 1934	$45
Second half of 1934	40
February 1935	40

As to the third trade journal of importance, the Paper Trade Journal, we do not have a complete series of its quotations available at the present time. Two quotations for the months of September 1934 and February 1935, however, indicate that the price for chipboard remained unchanged during this period in both eastern and middle-western markets. It thus appears that two out of three available sources show a price drop and the third source shows a stable price level, while none of these sources substantitates Mr. Lipsett's statement of rising prices. The same discrepancy appears between Mr. Lipsett's quotations of news board prices which show a rise from 1934 to 1935, while the above-mentioned sources quote falling or stable prices.

2. As to waste paper, it is true that prices fell during the last months of 1934 and the first months of 1935, but the price of $2.50 for mixed papers as given by Mr. Lipsett is lower than any published price quotation. On the basis of Paper Trade Journal quotations the New York and Chicago prices are at present between $3 and $4, while the Official Board Markets quote a price of $5.50 for Chicago and $3.50—$4 for New York.

3. The profit figures quoted by Mr. Lipsett for six paper-board companies showing a very substantial increase of profits in 1934 over 1933 are correct. His statement of an increase of 715 percent in the earnings of the Eddy Paper Co. is entirely wrong, that company having suffered a loss of $355,500 in 1933 and showing a profit of $360,648 in 1934.

4. The statement made on page 3417 that the waste-paper company which is controlled by Robert Gair, buys for Robert Gair and other board mills waste paper amounting to about 65 percent of the consuming capacity of the East, seems to be a vast exaggeration. Robert Gair's capacity amounts to about 6 percent of the aggregated board mill capacity of the country, and to something roughly in the neighborhood of 15 percent of the eastern mills. The waste-paper company which Robert Gair controls is generally stated to be capable of handling only a fraction of Robert Gair's own consumption. It therefore seems absolutely impossible that the waste-paper firm in question could handle anything but a small fraction of the amount indicated by Mr. Lipsett. Robert Gair's control over the De Benedetto Waste Paper Co. is the only case of a captive waste-paper firm in the East. The general conviction is that the eastern waste-paper markets are free and not controlled markets.

5. It is true that the great majority of the paperboard mills in the country are members of a statistical reporting service which has a decided tendency to work like a system of allocating production and, indirectly, of stabilizing prices at a high level. This control scheme, however, is voluntary and has nothing to do with the National Recovery Administration Code of the Paperboard Industry. The origin of this scheme goes back to the end of 1932, before the inception of National Recovery Administration. Later on members of the industry made different attempts to have the National Recovery Administration approve some kind of control measures, but the National Recovery Administration declined to do so. The present Paperboard Code is a mere labor code containing no significant provisions other than the ones relating to wage rates and hours of work. The most extreme statement that could possibly be made concerning the National Recovery Administration's relation to collusion in the paperboard industry, regards the fact that the National Paperboard Association which operates the above-mentioned statistical reporting and voluntary control schemes, gained increased influence over industry members, because its executive committee was designated as code authority under the National Recovery Administration.

6. Mr. Lipsett's figures on page 3425 regarding the size of board mills are wrong. There are about 125 paperboard companies in the country, operating 180 separate plants. The 20 largest companies control somewhat less than 60 percent of the aggregated industry production.

ANALYSIS OF THE TESTIMONY

Rivers Peterson (p. 4146, lines 20 et seq.): "For about 2 months a Richmond (Va.) druggist has been openly and flagrantly violating the price-fixing provisions in the Retail Drug Code and National Recovery Administration will not bring the offender into court nor has it stopped him by other means. A similar situation exists in New Jersey."

(Comment:)

This statement is partially incorrect and palpably unfair. The witness refers to Standard Drug Co., Inc., Richmond, Va., and the Weissbard Cut Rate Shops, Newark, N. J. His testimony may be accepted as substantially correct. His general condemnation of the retail trade code, express and implied, is unjustified.

Standard Drug Co., Inc., Richmond, Va., about September 4, 1934, a compliance council hearing resulted in the deprival of the right to use National Recovery Administration insignia. Later, a proceeding was commenced in the State court entitled "*T. Gray Haddon, Commonwealth Attorney for the City of Richmond*, v. *Standard Drug. Co., Inc.*, which resulted in a decision favorable to the plaintiff on November 15, 1934. About that time the State supreme court of appeals held a certain Virginia Milk Act unconstitutional, and the lower State court thereupon declined to grant an injunction in the code violation proceedings on the ground that the decision of the supreme court of appeals in the milk case created a doubt as to the constitutionality of the act relating to the code. About March 29, 1935, the supreme court of appeals reversed itself in the milk case, and the lower court thereupon granted a temporary injunction in the code violation case, but the same was stayed by a supersedeas to the court of appeals. The code violation case is now pending in the Supreme Court of Appeals, but the court will not convene again until about June 1, and the State act expires on June 16. Accordingly, this proceeding will prove abortive.

About March 21, 1934, another proceeding was instituted by a bill filed in the United States District Court of Virginia, Eastern District. This proceeding is still pending and apparently is not being pressed.

Weissbard Cut Rate Shops, Newark, N. J.: A State proceeding was instituted about December 15, 1934, and about January 7, 1935, the Acting Governor of the State of New Jersey terminated the State act, with the result that this proceeding came to an end. About December 15, 1934, Weissbard commenced a proceeding in the Federal court to restrain the Government from enforcing the code provisions. About February 15, 1935, a proceeding in the Federal court was commenced against Weissbard under the Retail Tobacco Code and another proceeding under the Retail Drug Code. Later the Federal court declared the act unconstitutional, and the case was lost.

The foregoing demonstrates that, far from permitting these violations to continue and refusing to bring this matter into court, National Recovery Administration has been quite active in these matters.

Rivers Peterson (pp. 4146–4147): "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."

(Comment:)

This statement contains a wholly erroneous implication. The druggists are not under any "delusion" with reference to the loss-limitation provision applicable to retail druggists. The National Retail Drug Code Authority and National Recovery Administration have been exerting a vigorous effort to obtain compliance, both through compliance hearings and court proceedings. The best available evidence is to the effect that the retail druggists, particularly the small retail druggists, are enthusiastic in their endorsement of the loss-limitation provision and have given substantial support to it. The difficulties have arisen with some cut-rate establishments, which constitute a small minority in the trade.

Rivers Peterson (p. 4149, line 7 et seq.): "The Retail Code is not a voluntary document, and general compliance can only be secured through boycott, coercion, and intimidation—if at all."

(Comment:)

This statement is incorrect and unfair. The code was sponsored by nine important trade associations and presented as a voluntary code. There has been no such general attempt to evade the code as this statement implies.

Rivers Peterson (p. 4150, line 1 et seq.): "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."

(Comment:)

This view is not shared by the National Retail Code Authority, Inc., as is shown by the resolution adopted by it at a meeting held on April 12, 1935, which has been sent to Senator Pat Harrison. This resolution, approved by representatives of 8 of the 9 associations constituting the code authority (the only dissenting vote being cast by the representative of the National Retail Hardware Association) stated that the National Retail Code Authority, Inc., favored "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 association."

Rivers Peterson (p. 4150, line 12 et seq.): "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.

(Comment:)

There is evidence to the effect that the failure on the part of the National Retail Code Authority, Inc., to organize additional code authorities was due largely to the opposition of the witness (as chairman of the code authority) who took the position that the National Retail Code Authority, Inc., was not justified in expending the necessary funds. Local code authorities have been extensively organized, and the failure to organize additional code authorities did not indicate a lack of interest on the part of members of the trade.

Rivers Peterson (p. 4150, line 20 et seq.): "The principal activity, so far as is shown, of 348 of these bodies for self-government has been the collection of assessments."

(Comment:)

This statement erroneously implies that the members of local code authorities are solely interested in the collection of assessments. This is not true. The members of local code authorities serve without compensation and only employees of these code authorities receive pay for their services.

Rivers Peterson (p. 4159, line 20 et seq.): Administration of the National Recovery Act to date offers no hope that hardware dealers will be relieved from these undue hardships."

(Comment:)

Various efforts have been made and are being made to relieve small retailers generally of any unusual hardships that arise from the operation of the codes.

Rivers Peterson (p. 4162, line 22 et seq.): "Perhaps these small dealers were too unimportant to be considered. Large interests have been."

(Comment:)

This statement is untrue. A considerable amount of time and attention is being constantly given by the National Recovery Administration to the problems arising in connection with the small establishments.

Analysis of the Statement by Hon. John W. Boehne, Jr.

(Pp. 4277–4279.)

Congressman Boehne, of Indiana, read into the record a letter from certain manufacturers, located in Evansville, Ind. The writers complain that they, as consumers of pig iron, have been discriminated against by southern producers of pig iron since the effective date of the Steel Code. The substance of their complaint is that the southern producers have set a price on pig iron for delivery to the northern bank of the Ohio River which is $2.88 more per ton than for the same product delivered to the southern bank of the river. They point out that the difference in freight across the river is only 30 cents per ton and blame this condition on price fixing under the Steel Code.

(Comment:)

The substance of this complaint has received the fullest consideration of the officers of the National Recovery Administration charged with the administration of the Iron and Steel Code. Price fixing is not provided for in the Iron and Steel Code, and this fact prompted the Deputy Administrator, acting upon the advice of his legal adviser, immediately after he had determined that the gravamen of the complaint was price fixing by agreement among the southern producers, to have the entire complaint transmitted by the proper officer of the Administration to both the Federal Trade Commission and the Department of Justice for whatever action they might take thereon under the antitrust statutes. National Recovery Administration records show that the complaint was forwarded to the Federal Trade Commission for its attention on December 26, 1934, and to the Attorney General on December 27, 1934.

ANALYSIS OF STATEMENT BY B. C. MARSH

Mr. Marsh (p. 3289): "Mr. Leon Henderson, Director of 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 their total in 1926, dividends and interest were 150 percent of their total in 1926. In short, the income enjoyed by those who received dividends and interest was 50 percent higher than in 1926, even though the national income has declined nearly 40 percent since that date and volume of production has declined by one-third, rough as the compilations are, clearly the recipients of profits have not failed to enjoy their proportionate share of the increase in industrial recovery.'"

(Comment:)

Additional information to be considered in relation to the above is as follows:

(1) In the above statement, dividends and interest are combined while it is implied that "profits" stand in somewhat the same relationship to 1926. "Profits", of course, bear relationship only to dividends and not to the combined figure of dividends and interest. Interest does not fluctuate as widely as dividends, profits or pay rolls. Insolvency would result from failure to pay interest.

(2) The facts are as might be expected (see table 37 in booklet entitled "Tables on the Operation of the National Industrial Act, as prepared by Research and Planning Division * * * February, 1935"). Dividends in 1929 were 495 million against interest of 431 million and labor income (nonfarm) of 4,290 million. We find that in 1934 interest payments were fluctuating between 410 million and 441 million (i. e., about the same as 1929), whereas dividends had fallen from 495 million to 186 million, and labor income had fallen from 4,290 million to 2,633 million.

(3) Profits, however, fell even further than dividends and much further than labor income. In other words, the combination figure of interest and dividends is an inaccurate picture of distribution of profits, and the separate figure of dividends is an inaccurate indication of profits, and both dividends and profit have fallen and stayed below wage income.

As indicated in table 36 of the above-mentioned booklet, industrial corporation profits only rose to an index figure of around 126 in the second and third quarters of 1929 on a 1926 base of 100; and fell to an absolute deficit continuing from the second quarter of 1932 to the first quarter of 1933 (both inclusive) ranging from a minus index of 4 to 13. On the same basis, industrial corporation profits for the first three quarters of 1934 ranged between an index figure of 26 to 37.

In other words, corporate profits were slightly more than one-fourth of the 1926 base in the first three quarters of 1934 against pay rolls in December of 1934 of about 60 percent of the 1926 figure.

(4) From the foregoing, it is clear that even the small dividends (relative to 1926) that were paid during the recent depression years, at least including 1933, had to be at the cost of corporate capital, including surplus. The following statement of this aspect of the matter appears on page 7 of Bulletin 55 dated April 11, 1935, of the National Bureau of Economic Research:

"DIVIDEND PAYMENTS AND CORPORATE SAVINGS

"The decline in profits and the appearance of losses did not, of course, affect dividend payments immediately. The natural lag, and the fact that not all companies suffered losses, helped to sustain the stream of dividend payments even though the reservoir from which they flowed was not replenished, in the aggregate. In an effort to take care of holders of common stock as well as those of preferred stock, even concerns that suffered losses continued to declare and pay dividends. The savings of the preceding years of prosperity were drawn upon.

* * * * * * *

"The corporate saving shown is of course a net figure. Although it was negative from 1930 through 1933 (and there is some evidence that it was negative also in 1934), some corporate earnings were saved. Even in 1932 at least some $130,000,000 were accumulated by corporations with net income.

"The situation revealed is a dark one. In the aggregate, the drain in the form of losses and dividends for the period 1930–33 exceeded the corporate savings of the entire post-war decade."

(5) Another fact that needs to be taken into consideration as between dividends and profits on the one hand, and pay rolls on the other, is there relative size in gross figures. (See table 37 in the booklet referred to in par. 2 above.) The dividends disbursed in the year 1934, for example, amounted to a monthly aver-

age approximately 175 million, against a monthly average of labor income approximately 2,650 million. In other words, the total volume of dividends was relatively insignificant compared with the total volume of labor income, and its fluctuation, unless extreme, could not have substantially affected the labor income.

(6) Another factor that needs to be borne in mind is that the base figures on which dividends and interest were paid increased from 1926 to 1932, inclusive, by something like one-third. In other words, the share of the national income distributed to security holders relative to that distributed to labor seems to be spread over a larger amount of capital investment, indicating a shift in the ratio of equipment to employees.

Analysis of Testimony of James M. Butler, Representing the Pharis Tire and Rubber Co. of Newark, Ohio

James M. Butler (p. 3498): In speaking of emergency price declarations, Mr. Butler stated, "It is perfectly self-evident that a little company like mine must quit * * * if it must sell at the same price as the big companies."

(Comment:)

Mr. Butler's testimony is inaccurate and misleading for two reasons:

(1) It is implied that there are price provisions in the Code of Fair Competition governing the rubber-tire industry which require the Pharis Tire & Rubber Co. to sell their products at the same prices as the tires manufactured by large companies bearing nationally known brands. The fact is, that there are no such provisions in the said code governing price.

(2) Due to various conditions in the industry, there is a considerable overproduction which results in an unstable price situation. The rubber-tire industry, therefore, suffers from intensively competitive price wars. A particular disastrous price war in the retail tire field occurred in the winter and spring of 1934. When the Retail Tire and Battery Code was approved on May 3, 1934, an emergency in the retail tire field was declared and minimum retail prices established below which tires could not be sold to the ultimate consumer.

In declaring this emergency, it was the purpose of the National Recovery Administration to provide temporary protection to thousands of small dealers who were being crowded out of business and reduced to unemployment by destructive price cutting on the part of the larger dealers whose buying price and credit resources permitted such tactics as a means of reducing competition. This emergency continued in existence for 5 months.

If it resulted in any hardship to the Pharis Tire & Rubber Co. or any curtailment in their sales it must have been because the Pharis Tire & Rubber Co. were principally selling mass distributors and large retail outlets who were obtaining their business upon a price basis only and underselling the small independent dealers whom the National Recovery Administration was trying to protect.

After the emergency has been in effect approximately 3 months, the National Recovery Administration held a public hearing on August 3 for the purpose of determining the effect on all classes of manufacturers and distributors of the emergency provisions. Following a showing of cause by small manufacturers, the National Recovery Administration issued a modification of the original emergency order (Administrative Order No. 410–15) effective August 22, which established differentials amounting to approximately 10 percent between the minimum price established for the nationally known most publicly accepted brands of tires and the products of the class of smaller manufacturers (such as the Pahris Tire & Rubber Co.) which were either not so well known and favorably received or were sold to large distributors under privately owned brands.

The purpose of this order, as publicly announced by the National Recovery Administration, was to give the smaller manufacturers, such as the Pharis Tire & Rubber Co., a competitive area in which they could operate with greater freedom at price levels slightly below those established for the product of their large and better-known competitors, this order remained in effect for the duration of the emergency period or until October 1, 1934.

The above facts indicate that the claim cannot justifiably be made that the declaration of emergency prices was arbitrary and discriminatory in its effect, and that the welfare of smaller units in the industry such as the Pharis Tire & Rubber Co. was not taken into consideration.

Analysis of Statement by E. R. Haroth

Mr. Haroth (p. 3427–3443): In substance, Mr. Haroth contends that the local Code Authority for the State of Maryland in the Sheet Metal and Roofing Con-

tracting Industry is not truly representative of its appropriate area. He states that on June 8 an election was held at which time seven members were selected by a majority of those present as the Maryland State Code Authority. He contends that later this code authority, even though selected by a majority of the industry concerned, was dismissed by the national code authority and another code authority was appointed which did not give adequate representation to the smaller members of the industry, leaving the control of the code authority's activities entirely with the large members of the industry.

(Comment:)

The code for this industry provides for the establishment of local code authorities or administrative agencies to be appointed by the national code authority upon the condition that the appointees are truly representative of the group affected. The national code authority has followed the wise procedure of permitting local groups to elect their own representatives in the belief that the local members of the industry would provide for adequate representation of all groups. It is the duty, however, of the national code authority to ascertain whether or not those elected are truly representative of the group.

At the election on June 8, about which Mr. Haroth speaks, the vote was taken on a numerical basis without regard to the volume of business or number of employees affected. Mr. Haroth's association, consisting of some 30 members, elected its entire slate with no representation of the larger members of the industry and no representation of the nonassociation members of the industry. The national code authority, upon investigation, found that Mr. Haroth's association, having elected its entire slate, represented only 15 percent of the volume of business done in the affected area. The national code authority, therefore, declared the election void and subsequently endeavored to secure agreement between the various factions upon a truly representative group to be designated as the code authority. This, however, could not be done and consequently the national code authority, as was its duty pursuant to the code, appointed a group which it considered a representative code authority.

There are 8 members of this local code authority, 3 of whom come from 11 larger members of the industry who do approximately 70 percent of the volume of the business, 3 of whom were taken from Mr. Haroth's association's slate representing 15 percent of the volume of business, and 2 of whom were taken from the nonassociation members of the industry. It is apparent that this code authority is representative of the Baltimore and Maryland State areas and that Mr. Haroth's contentions are not based on the true facts.

He also contended that there was a predominance of union shops represented on the present code authority. The facts show that 5 of the members of the code authority are representatives of nonunion shops and 3 are representatives of union shops, indicating that Mr. Haroth's contention in this regard is untrue.

ANALYSIS OF LETTER OF T. J. AYCOCK, SR., OF THE VITA-FOODS, INC., OF JACKSONVILLE, FLA., IN PAGES 4674–4679 OF THE TRANSCRIPT FOR APRIL 16, 1935

(P. 4675, par. 3.)

Mr. Aycock writes "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 the same crowd."

(Comment:)

It is not true that Best Foods, Inc., and Kraft-Phenix Cheese Co. "dominated" the formulation of the code. The Mayonnaise Institute was and is a trade association which, before the approval of the code, was found by the Administrator for Industrial Recovery to be truly representative of the mayonnaise industry and to impose no inequitable restrictions upon membership.

(P. 4675, par. 5 and p. 4676, par. 1.)

Mr. Aycock writes that after having found that an emergency existed in the industry "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." He also states that 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."

(Comment:)

It is not correct to state that the code authority "ordered" certain prices. Pursuant to the provisions of article 10, section 4, of the code an emergency was declared by the code authority because of destructive price cutting in the industry, and the code authority caused to be determined the lowest reasonable cost of products of the industry. This determination was subject to administrative approval and a notice of hearing was given to the industry for the purpose of establishing the lowest reasonable cost. The two largest producers were the price cutters who had brought about this situation. If such prices had continued, the condition of the industry would have been chaotic. Telegrams, letters, and communications of all sorts from all parts of the country were addressed to the Deputy Administrator in charge of the code, indicating the concern of the industry as a whole with respect to the price situation and requesting that immediate action be taken to alleviate it. The Research and Planning Division of the National Recovery Administration was in accord that an emergency situation was in existence. The Deputy Administrator called a meeting of the two largest competitors in the industry and, as a result thereof, the destructive prices were discontinued and the firms involved filed prices which soon had the effect of abating the emergency. The handling of the entire situation was at all times under National Recovery Administration control and it cannot be accurately stated that the code authority dominated the situation.

(P. 4676, par. 3.)

Mr. Aycock writes that the code "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, furnishes the yardstick by which the little manufacturer must do business * * *".

(Comment:)

Standards of quality are set up in article 8, sections 1 and 2 of the code. These standards accord with the principles of the Food and Drug Administration; received the complete approval of that Administration as well as that of the Consumers Advisory Board. The products of this industry look so uniform that it is difficult to tell whether good or poor mayonnaise is being sold. Consumer protection requires the maintenance of standards.

Container standards are set forth in article 9, section 1 of the code. The provisions allow for 4-, 8-, 16-, 32-, and 128-ounce containers. It is difficult to conceive of any need for an off-size container except it be for the purpose of deceiving the consumer. When off-size containers are used, they are usually just under the standard sizes so that the price can be changed without the consumer realizing that he is getting less in quantity. The industry as a whole recognizes the practice of using off-size containers as an unfair trade practice.

(Pp. 4677–4678.)

Mr. Aycock refers to a proposed amendment to article 8 in connection with standards of quality and a proposed amendment to article 10 in connection with the filing of prices. Inasmuch as no action has yet been taken upon the application for the approval of such amendments by the National Recovery Administration and they are not presently in effect, it is difficult to understand upon what basis Mr. Aycock's complaint rests.

ANALYSIS OF STATEMENT OF MR. HAMILTON

Mr. Hamilton (p. 4969): Speaking of the wholesale drug industry, "Senator King. But the N. R. A. labor provisions in their industry? They still exist and they are subject to the wage provisions?"

Mr. Hamilton: "Yes."

(Comment:)

The above question and answer imply that the wholesale drug industry is subject to provisions of an existing code which implication is not factually true, in that no code for said industry has ever been approved.

Excerpts from Federal Trade Commission Basing Point Study

The record contains several excerpts from the report of the Federal Trade Commission to the President on the basing point system in the steel industry. The National Recovery Administration has also made a report to the President on this subject containing findings and conclusions in some particulars at variance with those contained in the Federal Trade Commission report. We respectfully request that such National Recovery Administration report be attached to the record in order that the committee may be fully advised with respect to the subject matter.

Briefs and Other Statements in Writing

Many briefs and other ex parte written statements discussing one side of various issues concerning National Recovery Administration activity have been presented to the committee during the course of its hearings without opportunity for presentation of the other side. Some of these statements are included in the transcript but others are merely identified therein and incorporated into the record by reference. On April 10, we requested the committee secretary to furnish us with a list of such statements in order that we might obtain copies and place any information in our files bearing upon the subject matter in the hands of the committee. No list was available and the secretary advised us that it would be at least 10 days before such a list could be prepared.

A cursory examination of the ex parte statements included in the record which have come to our attention indicates that the National Recovery Administration undoubtedly has factual data in its files which if available to the committee when such statements are considered will enable it to consider both sides of the issues presented. If the committee desires, we shall examine such statements and furnish all available information with respect thereto as quickly as possible.

As pointed out in the opening paragraph, thorough research has been impossible, but the information contained herein has been obtained from the official files of the Administration from the members of the Administration in charge of the various subjects discussed.

In conclusion, we respectfully request that this letter be made a part of the record.

By direction of the National Industrial Recovery Board.

L. C. Marshall, *Executive Secretary.*

Supplemental Statement of Robert W. Irwin, Chairman National Committee for the Elimination of Price Fixing and Production Control

At the time I appeared before the committee I gave the result up to that date of a poll which is being taken by the National Committee for the Elimination of Price Fixing and Production Control. I was requested to give further information in connection with this poll to the committee before its hearings were closed and was also given per mission to amplify, if I desired, the testimony given at the time I appeared before the committee.

The platform of the National Committee for the Elimination of Price Fixing and Production Control asks that there be incorporated in any new National Recovery Administration an affirmative prohibition against price fixing and production control. The question asked of industry was whether or not it approved the committee's platform.

In taking this poll, which is probably the most comprehensive one which has yet been taken, our committee has used the listing of the Thomas Register, 1935 edition, which contains 50,000 names. The ballots are being sent to every concern listed in this register with the exception of the natural resources industries, such as coal, copper, oil, etc. These ballots have been mailed from the alphabetical arrangement of names, so that in each day's mailings or returns there is a fair cross section of all types of industries.

I am giving herewith the result of the poll to date, tabulated in a way which shows in most instances the daily result, with percentages for each day as well as for the total.

The poll asked for not only the signers' approval or disapproval of the committee's platform, but also for an indication of the type of business and number of employees. The total number of employees represented by the returns tabu-

lated below is 251,000. The average number of employees per concern is 92. The small average employment shows clearly that this poll represents a good cross section of industry, both large and small.

Date received	Total answers received	Approve committee's platform	Percent	Disapproved committee's platform	Percent
Mar. 27	510	420	82.4	90	17.6
Mar. 28	392	319	81.4	73	18.6
Mar. 29	511	436	85.3	75	14.7
Mar. 30	256	207	80.9	49	19.1
Apr. 1	566	476	84.1	90	15.9
Apr. 2	117	96	82.0	21	18.0
Apr. 3	221	194	87.8	27	12.2
Apr. 4 to 10	565	447	79.1	118	20.9
Total	3,138	2,595	82.7	543	17.3

Permit me to call attention to the fact that there is a very slight difference in the percentages of approval and disapproval on any one day's return from the percentages of the total returns.

The comprehensiveness of this poll and the close relationship of the daily vote with the total of all votes so far received demonstrate that industry is overwhelmingly opposed to price fixing and production control as is now being exercised under the present National Recovery Administration law.

I am appending to this statement a certified statement outlining in detail how the poll was taken by Everett Phillipus, the mailing service which addressed and mailed all of the ballots in connection with this poll.

I am also attaching to this statement extracts from a few of the hundreds of letters expressing similar sentiments which have been received either by myself or the National Committee for the Elimination of Price Fixing and Production Control, which, if permissible, I desire to introduce into the record.

Our committee asks that there be not only a full reinstatement of the antitrust laws, but in addition that there be written into the law an affirmative prohibition against price fixing and production control. In the judgment of our organization the mere reinstatement of the antitrust laws will not be sufficient to prevent the continuance of a harmful measure of price and production control.

In my former testimony I suggested a form for such a prohibiting clause. I desire to substitute for the suggestion which I gave at the time I appeared before the committee, the following:

"Or the limitation, regulation, or control of production; nor shall such code or codes be in aid of price fixing or permit any form of direct or indirect price fixing or call for any plan of compulsory price filing."

Respectfully submitted.

ROBERT W. IRWIN.

Subscribed and sworn to before me this 15th day of April 1935.

[SEAL] LOUIS M. LARZELERE,
Notary Public, Kent County, Mich.

My commission expires September 6, 1938.

EVERT PHILIPPUS,
MAILING LISTS FOR THE HOME FURNISHING INDUSTRIES,
Grand Rapids, Mich., April 15, 1935.

I hereby certify that in mailing the questionnaire for the National Committee for the Elimination of Price Fixing and Production Control I have used a standard industrial list known as the "Thomas Register, 1935 edition." This list contains about 50,000 names.

I am mailing from the alphabetical arrangement of the names, and the questionnaire is being sent to every name in this register with the exception of those engaged in natural resources.

EVERT PHILIPPUS.

Subscribed and sworn to before me this 15th day of April 1935.

[SEAL] LOUISE M. LARZELERE,
Notary Public, Kent County, Mich.

My commission expires September 6, 1938.

EXTRACTS FROM LETTERS RECEIVED BY THE NATIONAL COMMITTEE FOR THE ELIMINATION OF PRICE FIXING AND PRODUCTION CONTROL OR BY ITS CHAIRMAN ROBERT W. IRWIN

Walla-Walla Gum Co., Knoxville, Tenn., March 20, 1935:

"I might mention that in connection with our National Recovery Administration Chewing Gum Code we have had to fight for our very existence from the beginning. In scrapping over this matter we were told that since 3 large gum manufacturers produced more than 75 percent of the gum output, had the greater part of the money invested in this business, employed the greater part of the labor, and sold the greater part of the output, that it would be unfair to them for as many as 90 percent of the total number of manufacturers in this business, and who are recognized as being the minor manufacturers, to have a controlling voice in any of our regulatory methods.

"Our situation is as follows. We have more than 30 manufacturers making chewing gum. The 3 large manufacturers that produce the larger part of the product are classed as being the major members of the industry. The remaining 90 percent or more are compelled to swallow any kind of bait, hook, line, and sinker that is passed to us.

"If they had cut both of our legs off above the knees and then told us that this would help us to walk better we would have the same kind of an example that has been given to us through our Chewing Gum Code.

Edelblute Manufacturing Co., Reynoldsville, Pa., March 26, 1935:

"As soon as the National Recovery Administration permitted the Sherman Act to be abrogated and allow the suppliers to combine for the purpose of price fixing, they put into effect such scales of prices that are nothing short of outrageous. This was not universal, for suppliers of certain standard steel forgings, steel chain, nuts and bolts, and some other items either had moderate advances in price or else no advance at all.

"Our largest expenditure is for steel and iron castings, and in the foundry industry we have found a very strong combination of all foundries to raise the prices beyond all reason. They state that they are compelled to do this by the code authority, but everyone knows that they themselves support the code authority. We will give you a few examples. There is one steel casting that we have used for 12 years. Over a 10-year period, from 1923 to 1933, we had this casting made at 4 different foundries and the average price over that 10-year period was 10½ cents per pound. The new price under the National Recovery Administration code has been 15.3 cents per pound, which is an increase of 45 percent. Another steel casting had been made for 7 years by 3 different foundries at an average price of 8½ cents per pound. The National Recovery Administration code price has been 13.1 cents which is an increase of 54 percent. A malleable-iron casting, which had been furnished over a 5-year period by 2 different foundries at an average price of 5½ cents per pound, now carries a price of 12½ cents per pound, which is an increase of 127 percent. One foundry told the writer that they would still be able to make this casting at a profit at the same old price, but were compelled to charge the new price. Another malleable-iron casting was furnished at an average price of 7 cents per pound over a 5-year period by 3 different foundries. The new price on this casting has been 11.9 cents, which is an increase of 70 percent. We can recite many more examples, but we believe the above examples are sufficient".

H. Eikenhout & Sons, Grand Rapids, Mich., April 9, 1935:

"The Roofers' Association who work under the code have not and are not making a success of maintaining prices. This organization has even gone farther than the lumber dealers. They are asking us to double our price to the small dealer and the manufacturing plants. In this case we would be held to an unreasonable price and the asphalt can be bought from the Standard Oil Co. and felts from the chain stores or the manufacturers, leaving us out of it entirely."

Drexel Furniture Co., Drexel, N. C., February 18, 1935:

"You know how I felt about this whole National Recovery Administration proposition. It has done just what I thought it would do—plainly and flatly, it has impeded recovery."

Commercial Furniture Co., Chicago, Ill., January 22, 1935:

"I feel that industry must have as free a hand as it has had in the past and that we will get out of this depression much more rapidly if industry can run its own business free from governmental control."

The Cundy-Bettoney Co., Boston, Mass., March 20, 1935: "This is in reply to your letter of March 16, with reference to the purpose of your committee. I have

received the literature contained in your letter and have read it. I agree with you absolutely in everything you say."

The George F. Cram, map and atlas publishers, Indianapolis, Ind., March 27, 1935: "The writer made a canvass of the officials of this company and we are unanimous in saying that the platform as submitted by you and the policy advocated by you is 100 percent in harmony with our own views, which we have reached as a result of observation and experience in our own business, particularly during the past year."

Carolina Wood Turning Co., Bryson City, N. C., March 30, 1935: "We totally, thoroughly, and heartily disapprove of the National Industrial Recovery Act both in theory and practice. We have been victims of the unfavorable phases and have had not one least benefit in any respect."

The Amsler-Morton Co., engineers and contractors, Pittsburgh, Pa., March 27, 1935: "We heartily approve of your program and shall be pleased to lend our assistance in every way."

J. F. Hodgkins Co., manufacturers trolley wheels, trolley-wheel bushings, railway-motor bearings, brass and bronze castings, "Sampson" lifting jacks, Gardiner, Maine, April 2, 1935: "We sincerely believe that National Recovery Administration in its present form has broken a lot of small industries, and will continue to do so, and it is a mystery to understand why a bunch of theorists should be allowed to dictate to American industry as they have been doing the past 18 months."

American Excelsior Corporation, Chicago, Ill., February 5, 1935: "Instead of having industry prepare a code which has almost unanimous acceptance, it cannot be denied that the various code provisions actually were inserted in codes by the larger, more influential members of any industry. This does not necessarily constitute an indictment of such provisions—in most cases such provisions were the best obtainable from a rather critical, inexperienced, and bureaucratic administration."

Cleveland Mill & Power Co., manufacturers and dyers, dealers in general merchandise, Lawndale, N. C., January 30, 1935: "I am very fearful of the ultimate consequences resulting from the Government's endeavor to run and control everybody's business. If I knew positively that this Government is going to pursue indefinitely the activities, plans, and policies which it has been practicing during the last year, I would prefer to liquidate my business and go to another country where initiative and individual efforts are not only unmolested, but actually encouraged."

Chase & Co., growers' supplies, Sanford, Fla., March 27, 1935:

"The whole scheme of price fixing is repulsive to my instincts."

Himmelberger-Harrison Lumber Co., Cape Girardeau, Mo., January 25, 1935:

"I am afraid the smaller business units are being maneuvered into the position where they will be bound by groups and associations controlled by the larger interests, and will be forced to operate under rules and regulations favorable to those in control."

Edward Hines Lumber Co., Chicago, Ill., April 10, 1935:

"I am thoroughly in accord with your program and wish you every success."

Hawkeye Pearl Button Co., Muscatine, Iowa, January 31, 1935:

"I feel that the present price fixing applied in some industries together with the restrictions placed on manufacturers, the interference by the Government in the operation of plants, and the uncertainty of the future is retarding recovery worse than anything else."

Huston-Starr Co., building-supply distributors, slate and roofing materials, Pittsburgh, Pa., April 2, 1935:

"I think the whole thing should be kicked out with the exception of hours and wages, and this should be enforced."

International Shoe Co., St. Louis, Mo., January 24, 1935:

"Therefore, as I see it, our business organizations have offered to concede certain fundamentals in exchange for the deluded hope that the few industries which want price fixing, etc., will be permitted to have them."

National Retail Furniture Association, Chicago, Ill., April 1, 1935:

"Your aggressive efforts to get price-fixing provisions removed from codes merit and deserve the hearty commendation of our association officers."

Standard Valve Manufacturing Co., manufacturers of plumbing and heating supplies, Boston, Mass., March 30, 1935:

"It is about time that business men realized the danger that is confronting the country generally on account of price fixing and production control that is prevailing in the country today as a result of the codes formulated by the National

Recovery Administration. As a suggestion, why not have committees formed in every metropolitan city with the view of interesting business people in your work."

The Wickes Boiler Co., Saginaw, Mich., January 31, 1935:

"Personally, I am most heartily in accord with any movement that would abolish price fixing, bureaucratic control, etc. In fact, we have, on our own intiative, carried a price-fixing feature of our code before the National Recovery Board at Washington. General Johnson issued an administrative order in our behalf which was later rescinded by the National Recovery Board after General Johnson left office."

Peoria Cordage Co., Peoria, Ill., February 21, 1935:

"Merely for what it is worth, please let me make one comment based upon a considerable experience in recent months with groups of business men. I have discovered that about one-half the business men of this country are in favor of continuing price listing, which, of course, practically means price fixing, though a much smaller part of business men favor production control.

"Those who favor this price listing to my notion are those who look at the whole matter selfishly and are aware of the fact that through practically price fixing they have been able to force upon the consumer the extra cost of all this social program, and these people, therefore, are not seriously and earnestly working to the welfare of the entire country."

J. C. Rochester & Co., building specialties, New York, N. Y., March 30, 1935:

"We have returned your postcard saying that we approve and we are just dropping this line to reiterate that we think you are undertaking a job which has been too long left undone.

"We have had considerable difficulty in the last couple of years convincing ourselves that we were still in the good old U. S. A. We had been taught from childhood that life has something to do with human nature, personality, individual initiative, and other similar frailties. It has been, therefore, quite difficult to turn both our business and our personnel into machines even under the alluring pretense of it being a 'new deal'."

Reese & Reese, neckwear manufacturers, Omaha, Nebr., March 27, 1935:

"We are firmly convinced with Calvin Coolidge that no government is big enough to regulate prices, or production or in any way change the natural laws of supply and demand."

The Robbins Knitting Co., manufacturers of fine hosiery, High Point, N. C., March 6, 1935:

"I should like to see the entire Industrial Recovery Act repealed. It has been a menace and every code should be wiped out. They have been nothing but hell, chaos, and confusion to every industry that we know anything about."

Thos. O'Neill Machine Shop, Huntington, W. Va., January 21, 1935:

"Replying to yours of the 19th. Go to it and more power to you, National Recovery Administration was the biggest piece of assaninity ever attempted since it was tried the first time 2,000 years before Christ and failed."

(Letter from Mr. S. Clay Williams referring to previous testimony before the committee:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 18, 1935.

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

MY DEAR SENATOR HARRISON: In accordance with the suggestion that I would file as part of the record of my testimony certain things referred to therein, I now file and ask that there be incorporated in the record as part of my testimony the following:

I

The paragraphs from Mr. Donald Richberg's article in the October 1934 Fortune Magazine to which I referred and subscribed are quoted from page 178 as follows:

"Who can be intrusted with the power to fix a fair price that will insure justice to labor, investor, and consumer? The answer is: No one, neither a private association nor a board of public officials. There is no fair price that does not depend upon the fairness of material and production and distribution costs and a fair return upon investment. But the fairness of each cost depends upon what is a fair remuneration for services employed and property used. What test of

fairness can we apply except the competition between willing sellers and buyers in a free market?

"In this problem we find the justification and necessity for many of the so-called "wastes of competition", and the political economic wisdom of preserving competition. Under the socialistic theory of production for use instead of for profit someone must decide what shall be produced and what are the relative values of services and properties employed, so that prices may be fixed as the basis for an exchange of products. The total elimination of profit in a socialistic program would not eliminate the necessity of fixing costs and using money as a measure of the relative values of things and services exchanged.

"Yet in the face of this fundamental problem of a socialistic economy which they abhor, business men continually seek to experiment with production controls and price-fixing devices; and thus somewhat unconsciously to develop through trade associations a sort of lopsided guild socialism which they misname 'price stabilization.'

"They rush in where wiser opponents of State socialism fear to tread. How can individual freedom and the benefits of a competitive economy be retained if any organization (political or private) is authorized to dictate how much shall be produced and at what prices it shall be sold? The 'golden rulers' of industrial associations, invested with such political power, may easily become the 'tyrannical bureaucrats' of tomorrow. Business men should be able to look ahead at least that far.

"NATIONAL RECOVERY ADMINISTRATION OPPOSITION TO PRICE FIXING

"It has never been the policy of the National Recovery Administration to encourage or approve such a program. From the beginning it was recognized by the administrator, his economic and legal advisers, and all the influential members of the recovery administration, that price fixing by public or private agencies had no place in a normal, competitive economy. It was, however, plain that in emergencies it might be necessary to stop destructive price cutting, and that even in ordinary times the device of selling below cost was an unfair competitive device with which large enterprises or monopolistic combinations could destroy small competitors, or compel a trade or industry to maintain the prices set by a dominant group."

II

The statement referred to by Senator King in one of his questions to me regarding a speech made in New York on December 13, 1934, before the American Arbitration Association, the Chamber of Commerce of the State of New York, and the Merchants Association of New York is included in the following quotation from that speech:

"In the net the business man of these United States is called upon, in the general interest and in his own, to help bring it about that the wage of the working man shall not be submitted to competition that will drive that wage below fixed minimums, and meanwhile, whether as compensation or as an independently constructive plan he is permitted to sit down with his fellows and between them solve at least some of the problems that hinder him.

"In another way of saying the same thing—one item of the cost of making goods or of doing business has been removed from, or at least limited in, the list of things over which competitors compete with each other. But it is not necessary to the success of American business that competitors shall compete on all items of cost or expense. For instance, it has been a long time since it was possible for any business man to get a competitive advantage in freight rates over his competitor in the same location. And just there let us note the perfection of the automatic compensation to the business man for doing what he is asked to do under National Recovery Administration. All of us know many, many business men who have long been anxious to see a greater liberality of wage practice than has been possible at times in the past. But as long as there was a competitor who was willing to use an inordinately low wage as a means of working to a price that more liberal competition could not meet there was no chance for the payer of the liberal wage to protect himself against his less liberal competitor.

"I believe that if there were nothing else than that in National Recovery Administration, its capacity to serve that situation would justify both its creation and the expenditure of much more energy upon it even than has been spent.

"So much will suffice for a review of what National Recovery Administration was intended to be and is. Let us turn to some of our experiences under it. In the time at our disposal I shall discuss only those experiences related to compliance and to attempts at price maintenance.

"Of course the securing of compliance with code provisions, particularly as to wages and hours, has always been the biggest task of National Recovery Administration and the one in the full and final solution of which there is the greatest importance. The workers feel, as do all other well-wishers of the codes, that provisions as to wages and hours are of no avail, may even be a hindrance, except as they are complied with.

"On the other side of the case some code members in those industries in whose codes there are provisions of one kind and another for the purpose of stabilizing or putting a floor under price have felt that all was vain and would in the end fail of all value except as these price-maintaining provisions should be sustained and made fully effective.

"Of course all of these provisions tending to raise the price to the consumer naturally met with much resistance and criticism at the hands of consumer representatives and of the public generally. They present great difficulty of enforcement too. They are not self-policing to anything like the extent that wage and hour provisions are. Moreover, in many cases it is almost impossible to get a starting point or basis on which to test for compliance or noncompliance.

"Actual cost is such a difficult determinable hing that it can hardly be established accurately for all of the varying conditions that prevail. And if it could be established accurately the extensiveness of the operation involved would make it all but impracticable.

"In the face of the developed difficulties of enforcing these provisions, it is very encouraging indeed to find that many of those industries and trades which at first regarded such provisions as essential, have come to regard them as of much less importance and even as of very doubtful value in most cases.

"A part of the explanation of this change of attitude lies in the fact that it has come to be realized that when one's competitor can no longer take a margin of difference in the cost of his goods out of inordinately low wages for his employees or imporper trade practices with his suppliers, his chance of selling goods below the proper prices of his competitors is largely destroyed.

"I am not unaware of the importance in which some groups still hold the provisions of their codes that were designed, inserted, and insisted upon as necessary to their chance of prosperity. And yet, out of the observations I have just made, I raise before you the question of whether the problem of compliance with wage provisions and the problem of price maintenance provisions are in fact two separate problems requiring two separate answers or whether on the other hand the two problems are not so closely interrelated that the answer to the first automatically solves the second for most industries and businesses to as great an extent as it can ever be solved in any other way or combination of ways. Let us look at that again: I am asking you if it may not be true that when full compliance with wage and hour provisions of codes is established it may not then appear that provisions by way of putting floors under prices may not in most industries and businesses be found to be of no importace whatever?

"If that is true, as I believe it is, we are exceedingly fortunate particularly since in so many instances the enforcement of price-floor provisions with fairness to all concerned has been demonstrated to be all but impossible. Maybe the simpler provision with its self-policing quality can, while serving its own immediate purposes, also serve to the greatest practicable extent those other purposes we have sought to serve through highly complicated machinery incapable of exact and thoroughly effective operation and impossible of the fullest acceptance at the hands of the public. Provisions for proper wages and hours can have the full support of public opinion; it is doubtful whether direct provisions for the maintenance of price floors can, in business generally, have that support in this country.

"And there is another enormous advantage, both to business and to Government, in solving the problem of prices through wage and hour compliance instead of through specific provisions to that end. Of course where Government lends its approval and support to provisions, for example, against sales below cost an inquiry into costs is essential to a determination of whether or not there has been compliance. That involves a volume of work entirely out of proportion to that in the simple task of checking pay rolls for wage compliance and, more than that, as any business man or accountant knows, often leads to interminable and even indeterminate arguments as to what cost really is.

"And so I am suggesting this conclusion to that argument: If your code contains no provision by way of establishing a price-floor for the product you make or sell, it is important to you as a complier with the wage and hour provisions of your code to lend your every effort to the cause of requiring every one of your competitors also to comply. Therein lies your only protection against competi-

tive prices you may not be able to survive. And if, on the other hand, your code happens to be one in which there are provisions by way of fixing a price-floor, the chances are that you will still go further in protecting yourself against prices below the floor by lending your aid in wage and hour compliance than you will by disregarding that and simply trying to support the artificial floor. And if any new National Recovery Administration that may be set up should fail to provide for price floors you would meanwhile have solved your problem and taken yourself out of a position of dependence upon a provision which may not be carried forward beyond the period of the present act * * *.

"* * * I am not expecting to find any very vigorous provisions for price maintenance in any re-enactment of the National Industrial Recovery Act * * *. But there are some other provisions which I am convinced will be found in any re-enactment. The banning of child labor under the codes has met with such wide approval and commendation that it is inconceivable that its prohibition will not be continued. Provisions against wages below certain minimums and hours above certain maximums are generally regarded as having made such a valuable contributon to both relief and recovery and the principle of preventing the worker from being subjected to competition below minimum rates that for fixed hours represent a living wage is such an acceptable measure of reform in American life, that I feel sure these provisions too will be carried forward. So, too, will the provision guaranteeing collective bargaining to the workers wherever they want or need to use it. It is my thought too that there will be some provision for the prevention of trade practices that are unfair and for some measure of cooperation—innocent of price-fixing result—between the members of an industry."

S. CLAY WILLIAMS.

April 18, 1935.

(The following statements, briefs, letters, and telegrams received from individuals in lieu of a personal appearance before the committee were ordered printed in the record:)

LETTER AND STATEMENT FROM THE NATIONAL CODE AUTHORITY ADVERTISING TYPOGRAPHY INDUSTRY, NEW YORK, N. Y.

NATIONAL CODE AUTHORITY ADVERTISING TYPOGRAPHY INDUSTRY,
461 Eighth Avenue, New York, April 16, 1935.

Mr. FELTON M. JOHNSTON,
Clerk Senate Finance Committee, Senate Office Building,
Washington, D. C.

DEAR MR. JOHNSTON: Your telegram of April 15, in which you inform us that due to lack of time it is not possible to hear this code authority and that we may submit our case in writing, has been received.

I enclose you a copy of a statement regarding this code authority and its operation.

We think it is important that the attention of the honorable Finance Committee be called to the fact that this is one of the very small codes for a specialized branch of the printing industry; that it is composed almost entirely of small enterprises; that not a single one has gone out of business or been oppressed by the code. On the contrary, we believe that small enterprises, under the code, receive more protection than in precode days when large firms could cut prices, offer advantages, and crush the small enterprises at any time.

This industry desires the extension of the National Recovery Administration as it is necessary for its future existence under present economic conditions.

Very truly yours,

ALBERT ABRAHAMS, *Executive Secretary.*

STATEMENT OF THE NATIONAL CODE AUTHORITY FOR THE ADVERTISING TYPOGRAPHY INDUSTRY

The advertising typography industry, a highly specialised branch of the printing industry, has been operating under a Code of Fair Competition since February 17, 1934, which was the date of the signing of the Code of Fair Competition for the Graphic Arts Industries, under which its jurisdiction is defined as follows:

"No. D-3. *Advertising typography.*—This industry shall include all establishments engaged in the production and sale to others of typesetting of advertise-

ments which are intended to appear in newspapers, magazines, periodicals, and other publications; and all establishments engaged in the production of the typesetting of such advertisements, excepting those establishments included in other industries subject to this code; and all establishments which purchase such typesetting of such advertisements for purposes of resale."

This industry, prior to the enactment of the National Industrial Recovery Act and the innovation of the codes of fair competition, endeavored to sustain and organize itself through its trade association, namely, the Advertising Typographers of America. This organization was established on a national basis in 1926, though local associations had functioned prior to this date.

Through this voluntary organization, efforts were constantly made to encourage uniform trade practices and establish a basis of fair competition and first-class business standards. This could be accomplished to a limited degree only, as the industry found itself constantly harassed by a minority who chose to be a law unto themselves, and this minority always stood as a threat to the existence of the major portion of the industry.

Through the trade association a standard of ethical practices was set up; cost-finding systems were developed and installed and everything possible done to put the business on a common-sense basis that would be fair to labor, to the industry, and to the customer.

With the advent of the depression and the absence of all power to enforce fair trade practices, the business found itself in a deplorable and helpless state. The business volume had dropped down below 50 percent of normal and most houses were headed for certain bankruptcy.

This honorable committee would be interested to know that this industry is comparatively a very small one; and further, that it is composed almost entirely of small business enterprises; and in view of the many statements that have been made and the many tears shed over the fate of small businesses under codes, we are sure that the statistics of this industry, since its operation under the code, prove that the codes in no way injure small enterprises, but on the contrary, the code has furnished a medium whereby small enterprises can be adequately protected and monopolistic tendencies curbed.

There are about 110 establishments in the United States located in the large centers, and at this time we know of not a single one which has gone out of business since the code of fair competition operated in this industry, and we are able to show that several new small concerns have established themselves since the signing of the code. The average number of employees in these plants average from 3 to 150.

Since the operation of the code, our establishments show considerable increases in pay rolls and volume of business. Typical of the improvement is a letter from the firm of Bohme & Blinkman, Cleveland, Ohio, which was sent to all the members of this honorable committee. They claim that their business showed an increase of 40 percent, and that 1934 showed a slight profit in contrast with a severe loss for 1933. We believe from information that this condition is general in our industry and we believe that it is not all due to chance and accident but that the National Recovery Administration played a major role in accomplishing this improvement.

Our establishments are now operating on a basis of safety, security, and optimism in contrast with the hopelessness of the precode period. The discontinuance of the National Recovery Administration would mean unnatural retrogression. It would be economically unsound to turn back the orderly progress of industry under the codes.

It is claimed by those who are against the National Recovery Administration that it is purely a price-fixing proposition. So far as this industry is concerned there is not a scintilla of truth in this charge. We know of no increases in this industry that have taken place under the code.

This industry composed of small businesses, has been able to resurrect itself through the code of fair competition and the overwhelming majority of the establishments in this industry desire the continuance of the code. The average minimum wage scale paid to mechanics in this industry is over $1 per hour.

This industry was able to subscribe to all the requirements of the National Recovery Administration; it was able to show that its code authority was representative of the industry; it was able to secure approval of its budget through the submission of statistical facts; it threw its books and records open to governmental agents, and it is now ready to submit any facts or statistics on any of its activities if required to do so.

This industry of small business men, who perform a highly specialized service in the advertising field, requires a code of fair competition to retain its identity. It has now established itself on a code foundation; to tear it away by any violent legislative changes would destroy the present business structure which this industry needs to assure itself of survival. We operate under the fair trade practices and general provisions of the Code of Fair Competition for the Graphic Arts Industries. We also operate under a uniform sales contract form, which constitutes the trade customs and business regulations of this industry, and their continuance is essential to the orderly progress and future life to this industry.

Surely as there are fundamental laws for the governing of society, there must be similiar laws for the government and operation of business in the future; if not, chaos is inevitable.

In view of the above the National Code Authority for the Advertising Typography Industry respectfully requests that the National Industrial Recovery Act be reenacted into law so that the orderly reconstruction of industries and of our country may continue.

Respectfully submitted.

ALBERT ABRAHAMS, *Executive Secretary.*

LETTER AND EXHIBITS SUBMITTED BY THE AMERICAN MILLERS ASSOCIATION, DAWSON SPRINGS, KY.

AMERICAN MILLERS ASSOCIATION,
Dawson Springs, Ky., April 10, 1935.

Mr. FELTON JOHNSTON,
Clerk Finance Committee, United States Senate,
Washington, D. C.

DEAR MR. JOHNSON: Please accept my thanks for the invitation extended by the Finance Committee through you to appear before your committee to set forth the position of small millers regarding the extension of the National Industrial Recovery Act. We regret very much our inability to accept due to lack of funds.

Like other small enterprises we are greatly handicapped financially and otherwise in presenting our case and trust that your committee will recognize this fact and accept this statement certified under oath for the records of the committee, for which we requested permission in our former communication.

The organization that I represent spent over $12,000 in a futile attempt to secure justice under codes, and since the code was adopted our members have been assessed for the expenses of operations but more important still have been subjected to heavy increased expenses under code rules and most of our members are in a position where every expense except those absolutely unavoidable must be eliminated. Indeed, myself and my associates who are spending a large part of our time for the association are serving without compensation. The gratitude and appreciation of small millers as well as our sincere conviction of the injustice that is being done them inspire us to carry on this fight for fair play. However, in our opinion the consequence of continued injustice to small enterprises generally will produce consequences far beyond the injustice of the owners of small mills. It will mean a decrease of private purchasing power, an increase in unemployment, a large increase in relief rolls, and demand for jobs on public works projects which must be paid for out of private incomes eventually, and through loss of revenue to the Government through the elimination of small enterprises, and through the increased burden on the Government in caring for the people it will throw out of work and their dependents, the credit of the Government already strained will be more seriously jeopardized. (See exhibit A.)

In the light of our experience we believe the act should not be extended because the complication in the enforcement of the act are so great that it is doubtful if injustices can be eliminated through amendment. However, if it is to be extended we respectfully urge that the clause reading: "Nothing in this act shall be applied in such a manner as to promote monopoly or oppress or eliminate small enterprises" shall be amplified and clarified to such an extent that the clause cannot continue to be ruthlessly perverted. Our specific recommendations are covered in a letter to Senator Nye (exhibit A) a copy of which is enclosed. In our opinion this is merely a request for a fulfillment of the promises made by the President of the United States as set forth in his campaign speeches and his book Looking Forward, from which we quote as follows:

"A recent careful survey of industry in the United States develops the fact that two-thirds of American industry is controlled by six hundred-odd corporations, while the other third is owned by 10,000,000 men. I concede the right to every man to make the most of himself but I do not propose that in the name of that sacred work 'individualism', a few powerful corporations shall be permitted to make industrial cannon fodder out of the lives of half the population of the United States. The independent business man is fighting a losing race. Area after area has been pre empted by powerful corporations and the small man is either being squeezed out or absorbed. I propose an orderly and practical set of remedies which shall protect not the few but the great mass of men and women who, I am not ashamed to repeat, have been forgotten by those in power. Equal rights to all and special privileges to none is the cornerstone of my policies."

The clause quoted above from the National Industrial Recovery Act was apparently included in partial fulfillment of the President's promise. Yet despite the clarity and unmistable intent of the clause Mr. Clay Williams, retiring head of National Recovery Administration (incidentally President of the R. J. Reynolds Tobacco Co. which is probably one of the six hundred-odd corporations controlling two-thirds of American industry) is reported by the press to have admitted in testifying before your committee that probably 10 percent of industry would be eliminated if the Recovery Act should be extended and on further examination testified that most of the 10 percent were those of small operations. In other words instead of "an orderly and practical set of remedies which shall protect not the few but the great mass of men and women" we find from the testimony of the head of the National Recovery Administration that it will do exactly the reverse. We submit that it is also the sense of Mr. Williams' statement that the clause purporting to prevent the elimination of small enterprises will be ignored in the future as it has been in the past by the National Recovery Administration. We further submit that the policy of appointing men like Mr. Williams from the large corporations to protect small enterprises from those very corporations such as the one he heads would be ridiculous if it were not so serious.

As to the injustices to small millers under the code, we submit that this case could best be set forth only after a thorough investigation of corporations both large and small and the compilation of great amounts of statistical data which obviously small millers have neither resources nor the accessability to records to secure. However, the proof of the pudding is the eating thereof. Mr. Richberg says the National Recovery Administration should be continued although he admits he has had no business experience. The millers themselves should be the best judge of whether or not the good in codes has outweighed the bad or vice versa. We submit as exhibit B the report on a referendum in which ballots were mailed to every member of the industry asking whether or not they favored or opposed the termination of the code. You will note from this vote that an overwhelming majority of those voting favored the termination of the code as a whole and also favored the termination of the trade practice provisions even if the labor provisions were to be continued. We also invite your attention in this report to the reasons set forth and the expressions of opinion of the industry regarding the code.

We respectfully urge that these results be given your sympathetic consideration not only from a standpoint of justice to small enterprises but from a standpoint of the welfare of the Nation and that the National Industrial Recovery Act either not be extended or else amended as proposed in exhibit A.

Very truly yours,

T. W. VINSON, *Secretary.*

EXHIBIT A

APRIL 10, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

Subject: Amendments to National Industrial Recovery Act.

DEAR SENATOR NYE: We note that Senate Harrison has introduced a National Recovery Administration extension bill which we understand is supported by the administration. We have only seen meager press accounts, but it is reported that the same does not meet with Senator Borah's support although we did not notice any comment from you regarding it.

While it is devoutly to be hoped that the act will not be extended, but since it may be, we submit for your consideration some amendments to this act which

are really clarifications and amplifications of the declared purposes of the act—to increase prices, and at the same time protect consumers. I do not see what reasonable objection can be offered against them. These amendments follow:

"In order to effectuate the aims of this act, namely, to increase employment; to protect consumers; to protect small enterprises against oppression and elimination; and to insure true self-government of industry insofar as it may be consistent with public interest; there is hereby created a National Recovery Appeal Board of the Federal Trade Commission.

"This board shall consist of five members to be nominated by the President and confirmed by the Senate. The members of this board shall serve, barring death, removal, or resignation, for the period of the extension of this act in which case vacancies shall be filled by the same procedure as set forth above. The salaries of this board shall be ——— dollars per annum; and to carry out the duties of the members of the board and to pay said salaries the sum of ——— dollars is hereby appropriated.

"The powers and duties of the Board shall be as follows:

"1. It shall review the method of election of the members of the code authorities for the several industries as approved by the National Recovery Administration and in the event that in its judgment such a method of election tend to promote monopoly and/or discriminate against the smaller enterprises the Board shall have the power to order a revision of such methods or to establish methods and procedure in order that an equitable voice in the selection of the code authority may be accorded to small and large enterprises and to minority groups.

"2. It shall have the power to review the results of elections of members of the code authority and in case of fraud or unfairness shall have the power to declare said election void and to order a new election which in the discretion of the Board may be conducted under its immediate supervision and according to rules and regulations established by the Board.

"3. On petition of 5 percent of the units of any industry it shall be the duty of the Board to conduct a referendum of that industry on any or all of the following questions:

"A. To determine whether or not a trade-practice rule is approved by a majority or the units of industry and if as a result of said referendum any trade practice rule is disapproved by more than half the independent units of an industry voting in the referendum the Board shall declare such trade practice provision null and void.

"B. To determine whether or not any paid employees of the code authority of the Government representative on the code authority are rendering fair and impartial service to the industry. If a two-thirds majority of the independent units of industry voting shall oppose such representative, the Board shall have the power to cause the removal of such employee of the code authority or Government representative of the code authority. In submitting said referendum to an industry the charges of the petitioners and a reply by the accused shall be set forth by the Board in a statement accompanying the ballots.

"C. To take a referendum on the adoption of any new trade practice provision. If 60 percent of the units of an industry voting regardless of capacity or production or over 50 percent of the units of an industry which constitute at least 50 percent of the productive capacity shall approve such a rule then said rule shall become effective provided in the opinion of the Federal Trade Commission said rule is not contrary to public interest.

"4. Whenever the Consumers Advisory Board of National Recovery Administration and/or Agricultural Adjustment Administration shall so request the Board shall investigate any trade rule under National Recovery Administration to determine whether or not said rule is contrary to the public interest and in the event that the Board upholds the charges of the Consumers Advisory Board it is empowered to declare such a rule null and void.

"5. On petition of a minority group of an industry setting forth complaints to show the said group is oppressed, it is the duty of the Board to investigate such complaints and to require such adjustment as may be necessary to eliminate said complaints.

"6. It shall be the further duty of the Board in cooperation with the Department of Labor and Department of Commerce to determine the cost of production of typical units of all coded industries and also to determine the cost of living in typical localities and based on this information to require labor provisions to be set up in such a manner that employees will have fair treatment, but to prevent competitive dislocations between different units of an industry with reference to cost of production.

"The decisions of this Board shall be final except for review by the courts. In the event of appeal from the Board's decisions by the courts it shall be the duty of the Department of Justice to defend the decisions of the Board or the Board in its discretion may employ counsel."

We believe the reasons for these amendments are to a large extent obvious, based on 2 years' experience with the National Recove y Administration. However, will comment on same briefly:

Mr. Richberg is reported to have said that the majority of small enterprises favor the National Recovery Administration. This might be assumed to mean that they favor the rules and regulations and the persons who are enforcing the codes. Therefore he should have no valid objection to referenda on either personnel or trade-practice provisions and if both should be endorsed in referenda it should very effectively silence those whom he describes as "recalcitrant minorities." Furthermore, if minorities have no just complaint he should welcome attention of the fact by a board appointed by the President with the consent of the Senate. Mr. Richberg has further stated that complaints against the National Recovery Administration have come from the chislers and sweatshops.

Mr. Richberg is apparently well pleased with the trade-practice rules, but admits that he has had no business experience. We submit however that the majority of the units of industries would be more capable of judging whether or not a trade-practice provision is for the best interest of an industry which it is designed to protect than by Mr. Richberg himself with the counsel only of large corporations who may have divergent interests from small enterprises and those like himself who have also had no business experience. You will note we do not propose that a simple majority of the units have the power to prescribe a rule. We do submit that they are entitled to veto power over a rule presumably designed for their protection.

As to the "operators of sweatshops" who have claimed relief we believe those thus designated by him want only the opportunity to continue to make a living. We hold no brief for the genuine chiseler and willful sweatshop operator. It is very easy to answer any request for wage adjustment by appealing to prejudice and sentiment which is Mr. Richberg's characteristic method of dodging fundamental issues.

In the amendment on the subject of labor provision proposed you will note that there is no request for sweatshop hours or starvation wages but merely power for the board to act on a basis of fair treatment and on a basis of finding of facts. Those of the low cost production units should have hours short enough to permit adjustment of higher cost units by extension of hours of labor per week on the same weekly wage scale without undue burden on labor. The workman is interested primarily in his weekly pay envelop, and not the hours employed. If the minimum pay were established on a weekly basis equitable adjustments might be made with fairness to all.

We beg to call your attention to the testimony of Hon. Clay Williams before the finance committee in regard to this proposal. Mr. Williams states that if the National Recovery Administration were continued probably 10 percent of industry which was "inefficient" would be eliminated.

In President Roosevelt's book, "Looking Forward", he quoted figures from a survey of American industry which showed that two-thirds of industry was controlled by "600-and-odd" corporations, and the other third by 10,000,000 citizens. Mr. Williams said that the "inefficient" 10 percent that would be eliminated were mostly small industries. It is therefore seen from his statement and data quoted by Mr. Roosevelt, that probably this 10 percent of American industry is really one-third of the smaller industries which are owned by one-third of 10,000,000, or three and a third million persons. Assuming that these owners have an average of three dependents each, and that they employ an average of four persons with two dependents each, it is not unreasonable to estimate that there would be in round numbers 88,000,000 owners, employees, and dependents in this 10 percent of industry.

Data in the possession of the code authority of the flour milling industry will show that large units of industry employ only half so many men per barrel of flour produced as the groups of small mills. If this situation applies in other industries (and it is obvious that large industries employ more labor-saving machinery and the difference between milling and other industries is only one of degree) it is possible if not probable that not more than half this number will be absorbed by the large industries, which would mean that 19,000,000 additional people would become wards of the Government.

Thus the injustice to the owners of the small units is entirely of secondary consideration. With the resources of the Government already strained to the utmost

to care for the present unemployment the augmentation of relief rolls by this huge number would inevitably result in a complete break-down of the public relief program. It cannot be too strongly emphasized that these owners and employees are now assets to the Government but if this cruel, ruthless policy should be continued and enforced it would mean that the large corporations not only lose the aid of these small enterprises in sharing tax burdens, but also they will lose the tremendous purchasing power derived by their own efforts in creation of wealth, instead of, as will happen inevitably, their future purchasing power will be limited to Government funds which will be derived from the revenues of taxing large corporations.

We sincerely trust that you may agree with our views on this and that you may find these proposals acceptable to you and that you will use your influence for their adoption.

With respect and esteem.

Sincerely yours,

T. W. VINSON, *Secretary*.

EXHIBIT B. BULLETIN AMERICAN MILLERS ASSOCIATION

JANUARY 1935.

THE CODE REFERENDUM

Do the millers of the country favor the code? Are the hours and wage provisions satisfactory or a burden on the industry? Has the price situation improved under the code? Has the code helped or hurt the small mill? Has the code and its enforcement been fair and just to both the large and small mill? The code budget for the first year was $244,722. Is the exaction of that amount from the industry justified?

The above are questions which many millers are asking and which all of the industry would wish to know. This information is vitally important at the moment, because the present Congress may have something to say about the National Recovery Administration and the codes. We believe the administration, the Congress, the officials of the Agricultural Adjustment Administration and National Recovery Administration would welcome the facts with regard to these matters.

The Independent American Millers Association has undertaken the task of getting this information. It has no desire to destroy or hinder the code if it is best for the industry and the greater numbers of those affected. It does not wish to interfere with the enforcement of the code or add to the burdens of its enforcement officers. It simply wants the facts and it wants to know whether or not the milling industry approves and favors the code. If it is helpful to the small and independent miller, all well and good, because he is the wheat farmer's best friend. The success of the small mill is an economic necessity.

On the other hand, if the code was the will and wish of the large milling chain organizations, and its enforcement controlled by them with the power to destroy the small units of the industry, the time has come for someone to call a halt, and to make a determined effort for its repeal. The consuming public of this country is in no mood to condone a monopoly, even though such monopoly is made by the enforcement of a code.

The results of this referendum with brief comment by numerous millers will give a very clear insight of what the industry thinks of the code.

On January 1 we mailed the following letter with a post-card ballot to 3,750 mills, the North Western Miller's list, including all large and small mills in the United States. The letter and ballot follow:

DAWSON SPRINGS, KY., *January 1, 1935*.

DEAR MILLER FRIEND: The milling industry has now had a code in operation for approximately 6 months. This should give the members of the industry ample time to determine its net effect, whether for good or bad.

While the millers have had the opportunity to express themselves on certain provisions of the code, they have not been permitted to express their views as to whether or not it has been harmful or beneficial. Our officers believe that millers are entitled to this privilege and that the administration would welcome an expression of opinion from the entire industry, and that the Independent American Millers Association is rendering a distinct service to the millers in taking this ballot. We are asking for a yes or no vote on the questions of whether or not

they approve of the code as a whole and also whether they approve the trade practices to the exclusion of the provision relating to labor and wages.

The reason for asking these two types of questions is because it has been stated, and probably with considerable foundation, that there will be some form of labor and wage provision, whether or not there are trade practice provisions. It is, therefore, well not only to have vote on the code as a whole, but also to vote on the assumption that the industry will be forced to accept hours and wages whether it likes it or not, while the trade practice provision is for the industry to decide.

Please vote on the enclosed ballot Yes or No to both questions. If you care to do so, we will be pleased to have your comments in a separate letter.

Please do not fail to vote.

Cordially yours,

T. W. VINSON, *Secretary.*

REFERENDUM ON MILLERS' CODE

1. Do you favor the Wheat Flour Milling Code now in effect? Yes ____ No ____
2. Regardless of wages and hours provisions, do you favor the other provisions of the present Wheat Flour Milling Code? Yes ____ No ____.

Please make a cross mark after Yes or No according to your preference in answer to each question.

(Name)_____
(Mill)_____
(Address)_____

BALLOT RESULTS

Total ballots cast, 619

Votes cast question 1:		Votes cast question 2:	
Favor of code	69	Favor of code	84
Opposed to code	514	Opposed to code	499
Noncommittal on code	36	Not voting	36
Total	619	Total	619

Total capacity of vote	barrels	104, 135
Capacity vote favoring code	do	35, 780
Capacity vote opposing code	do	68, 375
Number of mills over 300 capacity voting		62
Number of mills below 300 capacity voting		517

The ballot by States, where 4 or more votes were cast, follows:

	Favor	Oppose		Favor	Oppose
Colorado	0	5	New York	1	11
Delaware	0	4	North Carolina	4	15
Idaho	0	13	North Dakota	0	5
Illinois	4	22	Ohio	9	41
Indiana	6	38	Oklahoma	1	11
Iowa	0	4	Oregon	0	9
Kansas	5	12	Pennsylvania	4	57
Kentucky	2	49	South Dakota	1	4
Maryland	0	26	Tennessee	1	28
Michigan	2	31	Texas	0	9
Minnesota	3	5	Utah	4	9
Missouri	3	9	Virginia	8	57
Nebraska	3	9	Washington	1	5
New Mexico	0	6	Wisconsin	2	7

We are quoting briefly from a few letters which came from millers. The name of the State is given, but the miller's name is withheld.

Virginia.—I do not like the code and had nothing to do with making it. They require more than I can do, and I am trying to sell my mill.

Oregon.—The milling industry is still controlled by the big mill combine and the same unfair practices by those mills are permitted. In our opinion the code is made by and for big business. The small mill does not have a chance. The directors in the West are all from the big mills.

North Carolina.—I am running a little 45-barrel mill and have done my best to conform with regulations, but the code gives the mills who are chiseling the United States out of tax a big advantage over the law-abiding mill. They are allowed to do as they please with no investigation. If the Revenue Department would send a man to investigate, it would be a big relief to the rest of us.

Maryland.—It is utterly impossible for small mills to comply with this co-called "Millers Code." There will be, in our opinion, a lot of small millers on the relief gang if they are forced to pay such unreasonable wages for such limited hours. We have labored hard to keep going. They come along and compel us to pay not less than 40 cents per hour for not more than 42 hours per week for unskilled workmen who are perfectly content to work for less to keep off relief. If we were hoarding and making tremendous profits, it might be well founded. When folks are forced to do the impossible, trouble is always sure to arise.

Pennsylvania.—We have sent our referendum card in and we voted no on both questions. We feel very strongly that this entire code proposition is un-American and very prejudicial to the interests of the smaller miller. As we view the matter it is easy to set wages and assess and collect dues, but we have no assurance whatsoever that competition will be fair and that the prospect of increasing our profit to take care of the increased cost will be forthcoming. As a matter of fact, we doubt seriously if the "chiseler" as he is commonly called, can be thwarted by this or any other method. We can say truthfully that in our 30 years' experience we have never had as hard competition to meet as at the present time. Business is simply a game, and we doubt seriously the advisability of the Government getting into it to act as an umpire, and especially one feature of it, and letting the other to the devices of some unprincipled member.

Oregon.—We are handing you card checked as you request. However, just to answer as we have on this card doesn't mean that we don't see any good in the codes. The writer believes there is good in setting a minimum wage scale in the lower brackets in flour-mill work per hour. This would not hurt anyone and would be a protection in the lower wage brackets for those who no doubt need this protection and also that they receive overtime pay. The writer doesn't believe there should be any restriction in any way in competition for business. If you don't look out, the very large milling firms will have it all bottled up so no one but them can operate.

SUMMARY OF RESULTS

The Independent American Millers Association gave every miller in the United States its first opportunity to vote on the Wheat Flour Milling Code. A complete analysis and discussion of the results might cover a good sized volume, but its chief points may be summed up as follows:

About 650 replies were received; some advised they were out of business, others that they did not care to vote. However, 619 millers voted, one way of the other and the vote was approximately 7 to 1 opposing the code now in effect, while 6 to 1 opposed the trade practice provision alone. The proportion of millers voting from the standpoint of numbers was about the same percentage as voted in the recent poll on consumers premiums and other specific phases of the code. The vote on capacity was smaller, showing that the proportion of the voters in this poll came from the smaller mills. However, the total vote cast represented more than 100,000 barrels a day, or a sufficient amount of capacity to supply one-third the domestic requirements of the United States. It is also interesting to note that the percentage of the number of replies equaled the percentage of replies in the Literary Digest straw votes on presidential candidates and prohibition, which were later proved to be a remarkably accurate forecast of elections. It is also interesting to note that the vote was very representative geographically; votes being received from every State where milling was of any importance, and the number of votes received from the different States were roughly in proportion to the total number of mills. The votes from every State showed a majority opposed to the code; while the opposition was more pronounced in some States than others, the unanimity of opposition could not be confined to any section. For instance, Kansas and Nebraska were about 8 to 1 opposed to the code, while Oklahoma and Texas were 9 to 1. Maryland and Pennsylvania cast 83 votes against to 4 for the code, or 20 to 1, while Virginia voted 57 to 8 and North Carolina 15 to 4 against it, while North Carolina's daughter State of Tennessee voted 28 to 1 against the code. Out of 31 votes cast in the Rocky Mountains and Pacific coast sections only 1 favored the code. While none of the chain corporations voted the unassailable conclusion can be reached that the

smaller millers of the United States are overwhelmingly opposed to the code now in operation, both with respect to the code as a whole and the trade-practice provisions in particular. This tremendous opposition is all the more surprising because of the public hearing just a year ago where every size and section were adequately represented only one group of seven or eight southwestern mills opposed the code on general principles. Therefore, it is fair to say that this opposition to the code is a result of experience and not of prior prejudice. It is true that many millers were opposed to codes on principle but were willing to bow to the dictates of a majority in the hope that their fears as to its practical operation might prove ill founded.

While we did not ask millers to explain their votes, many members of the industry voluntarily did so. These letters together with an analysis of previous correspondence and discussions may warrant us in expressing an opinion as to the reasons for this opposition.

CODES—REASONS FOR OPPOSITION

1. Codes in general

(*a*) The code principle has proved contrary to the American spirit.

(*b*) Conditions in the different units of an industry are so varied and complex that there is no formula which is applicable to the industry as a whole.

(*c*) The objectives of the National Industrial Recovery Act to reduce unemployment and place industry on a profitable basis have utterly failed in both respects according to most authoritative sources. There has been a regimentation of industry without compensating benefits (if any) to either employers or employees. The regimentation of industry through a trade association and regimentation of labor through a central labor organization are repugnant to the rank and file of labor and industry.

(*d*) The National Recovery Administration executives and those in immediate charge of codes are composed of possibly well-meaning persons, but partly of men who know little of business and partly of men so saturated with the large corporation's point of view that the small man hasn't a chance.

2. The Milling Code in Particular

(*a*) The members of the code authority are elected by an undemocratic method which allowed one large holding company to outvote a thousand small millers. This method of election was adopted after vigorous protest by our association. While a slight concession was made, it was only a gesture.

(*b*) Four requests were made of the Government by a clear majority of the milling industry which were opposed by a small number of large mills. Washington denied the wishes of the majority and bowed to the wishes of a powerful minority with large capacity. These were—

1. Code authority elections under American principle of representative Government.
2. Prohibition of consumers' premiums.
3. Machine-hours restriction.
4. A stop-loss provision.

Two of these rules may have been contrary to public interest and the Constitution, but, if so, why did the Government permit them in other codes?

(*c*) The annual cost of about one-fourth of a million dollars for the operation of the code is opposed for two reasons:

1. The burden on the industry is not commensurate with its benefits, if any.
2. On principle as an outrageous example of violation of the Constitution which delegates exclusively to Congress the rights to levy taxes. To all practical purposes the code authority determined the burden for defraying the expenses of a police service for the industry's own good (?) which the industry does not want.

It has been stated both publicly and privately in defense of this outrageous taxation without representation that small millers don't know what is good for them. The fact, however, cannot be denied that the survivors in the deplorable mortality among flour millers indicates that many of these small millers have managed to survive terrific competition for generations without help (?) from Washington and Chicago, and would like a chance to do so again.

(*d*) The code permits appointees of a code authority composed chiefly of large competitors of small mills to examine confidential records and to require the setting up of elaborate accounting systems at prohibitive cost.

(e) Its labor provisions discriminate against small enterprises which are, per unit, the largest employers of labor.

The vote, we believe, fairly reflects the basis of opposition to the code by small millers. Our association earnestly requested a square deal and no preferred treatment for small millers, but this was denied, despite approval of our claims by the industry as shown in the poll conducted by Congressman Crowe. We must, therefore, reluctantly conclude that the best the small millers can hope to get is the worst of it, and relief can only be had by its termination, or at least to make compliance with codes voluntary.

LETTER AND STATEMENT SUBMITTED BY THE AUTOMOBILE MANUFACTURERS ASSOCIATION, DETROIT, MICH.

AUTOMOBILE MANUFACTURERS ASSOCIATION,
FORMERLY NATIONAL AUTOMOBILE CHAMBER OF COMMERCE,
Detroit, Mich., April 17, 1935.

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

MY DEAR SENATOR: Knowing your desire to bring hearings on the National Industrial Recovery Act to an early close, the board of directors of the Automobile Manufacturers Association have decided not to ask for time for a presentation of their views before the committee, but, instead, respectfully request that their brief on this important subject be considered by the committee and made a part of its records.

Summarized, our position as follows:

1. We feel strongly that the present provisions dealing with hours should be retained without change. Further rigidity such as that proposed in the new bill (S. 2445) would impose burdens that could not be met without substantial increases in the cost of our product at the expense of the consumer. We are already paying the highest hourly wage we have ever paid. Further reductions would definitely limit earnings of the employee to less than an adequate annual wage.

2. Section 7 (a) should be strengthened by a clause which would prevent coercion from any source and safeguard a man's right to employment regardless of his membership or nonmembership in any organization.

3. In general, the basis for any continuance of the act should be a modification and simplification of the existing act rather than the injection of new conditions which would destroy the very foundations of the recovery program in our judgment.

Our position in detail is set forth in the brief. I am, sir,

Respectfully,

ALFRED REEVES, *Vice President.*

STATEMENT OF THE AUTOMOBILE MANUFACTURERS ASSOCIATION

The Code of Fair Competition for the Automobile Manufacturing Industry was one of the first to be approved by the President under the National Industrial Recovery Act. Although this industry had no problems of unfair competition which it desired to control through a code, and wages and working conditions were generally among the best in any important industry, it expressed its desire to cooperate in the President's recovery program by submitting a code. This code was limited to labor provisions only and contained no price-fixing or trade-practice provisions of any kind. By this action this industry gave evidence not only of its desire to cooperate with the President's program but at a critical period to register its support of the principle of adequate wages, reasonable hours, and good working conditions for labor.

The members of this association now feel very strongly, however, that any extension of the National Industrial Recovery Act should be in a simplified form, which will not provide new bases of controversy or complicate the problem of business recovery by further uncertainties and which will also maintain the present arrangements to which this industry has adjusted its operations.

This industry believes that any extension of the law in modified form should provide a guaranty of collective bargaining with assurance of complete freedom of choice of representation, eliminating, interference or coercion by employers, labor organizations, or others; should continue the present provision for a basic

minimum wage and the present provision for maximum hours, which permits averaging over a period sufficient to guarantee that flexibility in operation which is essential to seasonal industries. It is likewise essential that the law continue to recognize the necessity that an employer have the right to employ and discharge employees on the basis of merit without regard to membership or nonmembership in any organization.

S. 2445 and H. R. 7121 depart in so many particulars from the principles above stated, that the industry feels obliged to oppose their passage for the reasons, among others, stated below.

I. GENERAL PROVISIONS

A. *Section 3 (c), records, reports, and examination thereof; amendment, cancelation, and withdrawal of codes.*—This section provides that "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 books and records and the examination thereof) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide for such exceptions to, exemptions from, and amendments of the provisions of any such code as the President, upon a finding of fact, deems necessary to effectuate the policy of Congress in accordance with the standards of this title."

The first part of this section may very well end all right of privacy of the business man. The innermost secrets of his business will be subject to report or investigation by Government agents at will.

The provision relating to amendment of codes when taken with the following provisions of section 10 (c), "The President may, from time to time, cancel or modify any order, approval, rule, or regulation issued under this title", make all codes in effect unilateral agreements. They are in the nature of contracts with the Government. In effect, these provisions give one party to the agreement the right to amend, modify, or cancel it at any time. If, in fact, some flexibility in control is required by the administration, it should be balanced by an equal right to withdraw a code at any time by an industry both without penalty, or even the threat of an imposed code contained in section 3 (c).

B. *Section 7 (a), labor rights.*—Section 7 (a) is the same as in the present law with one significant change of language. The present law provides that every code, agreement, or license shall contain "the following conditions". The new bill would require every code or agreement to contain "the following statement of rights of employees, which are hereby declared and affirmed." The purpose of this change is clear. The merit clause in the Automobile Manufacturing Code, in essence, was a statement of the right of employers to employ, promote, and discharge on the basis of merit. This change in section 7 (a) would emphasize that that section is to deal with the rights of employees only and would give the National Recovery Administration or its successor a definite ground on which to refuse to approve inclusion of a merit clause in any code.

This change in language serves also to aggravate the inadequacy of section 7 (a) as a declaration of labor's rights. It provides that "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 as in other concerted activities for the purpose of collective bargaining or other mutual aid or protection", and "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."

The history of this section in the original act, is familiar to all. Because of its one-sided, prounion bias, instead of affirming the status quo of labor relations, it was construed by labor agitators as a mandate to take advantage of the country's emergency, and by misinterpreting its meaning to workers, to force unionization upon unwilling workers and their employers.

This failure to hold the balance even in the original act has been the cause of most of the difficulties under the National Recovery Administration. Business men who were willing and anxious to cooperate with the President for recovery have, in many instances, confronted the threat of unionization of their businesses as the price of cooperation.

This error in the original act should not be repeated. This declaration of labor's rights should be made complete by amendment to forbid coercion of employees from any source. During the past 2 years coercion and intimidation of workers

in a great variety of forms has been constantly practiced by professional union organizers.

Furthermore, it is a fundamental American principle that a man's right to work should not depend upon his membership or nonmembership in any organization. It is wrong to require as a condition of employment that a man be required to join any labor organization, and pay tribute to its professional exploiters as the price of a job and a living for his wife and family. This section should be amended accordingly, to restore the fairness which was destroyed by amendment of the section as originally drafted in the course of passage by Congress of the original act under pressure of a great emergency and at the instigation of the American Federation of Labor.

C. *Section 10 (b), legalization of boycotts.*—Under this section, the President would be specifically authorized to provide for the use of insignia and labels and to require that departments and agencies of the United States purchased from persons complying with codes and agreements. He would, furthermore, be authorized to so regulate the distribution, use, and display of such insignia and labels that purchasers and consumers of goods and services "may be assisted in supporting the standards of fair competition provided for in this title."

The purpose of this section is to legalize the hitherto extralegal boycott by consumers and the government of those who for one reason or another found themselves without a code, or in conflict with the National Recovery Administration. No feature of the conduct of the National Recovery Administration has been more widely or justly criticized. On the one hand, it amounted to coercion of business to participate in what was loudly proclimed to be a "voluntary partnership", and on the other to "a sentence of economic death" without trial. Boycotts have long been abhorrent to the law, as they are to the instinctive American sense of justice. The law provides a wide variety of penalites for those who violate it. There is no need to place in the hands of those who will administer it a power so great and so inconsistent with all American tradition.

D. *Section 10 (c), "President's power to cancel at will:"*—(See comment under sec. 3 (c), pp. 2-3.)

E. *Section 12 (b), Penalties.*—In addition to the possibility of a Government encouraged boycott by the public, and exclusion from participation in Government business, violators are subject to conviction and fine as misdemeanants. Also by the provisions of section 12 (a) it is made the duty of the United States district attorneys to institute proceedings in equity to prevent and restrain violations of any code or agreement and by section 12 (f) the provisions, including penalties of sections 9 and 10 of the Federal Trade Commission Act are made available to any agency utilized in the administration of the law. Certainly the desirability of this "partnership" may be questioned in view of the number and variety of penalties invited by those who may venture to enter into it.

The provision of section 12 (f) conferring upon any agency utilized by the President under section 2 (a) the broad powers conferred in sections 9 and 10 of the Federal Trade Commission Act, would have the effect of giving to an unnumbered group of minor Government officials of varying talents and capacities, powers of very broad scope, susceptible of great abuse.

The very novel provisions of section 12 (b) giving any such agency power to compromise any penalty of payment of a sum not in excess of an amount to be determined, and the entry of a consent decree, is subject to the same criticism.

F. *Section 12 (c), (d), and (e), "Complaints by employees and their representatives."*—This section provides that whenever after due notice and opportunity to be heard, any agency of the National Recovery Administration shall find, upon complaint of an employee or his representative that there has been a violation of any code provision as to minimum wages or maximum hours, it shall determine the facts and the amount of damage suffered by the employee, and make an order incorporating the findings, fixing damages and directing payment.

If the alleged violator does not comply with this order, the complainant may sue within 6 months, the findings of the agency to be prima facie evidence, and the petitioner to be absolved of liability for costs. Damages in any case shall be not less than ---------- amount (to be inserted in the bill later), and the petitioner shall be allowed a reasonable attorney fee as part of the costs of suit if he finally prevails.

The inducement which these sections offer to dissatisfied employees, union business agents, and shyster lawyers to promote complaints on the chance of profit, is readily apparent. If enacted, they will result in a constant flood of complaints and litigation.

II. AS TO IMPOSED CODES

The provisions of the pending bill concerning "limited" codes, which may be imposed by the President, are important not merely as terms which may be so imposed in a limited number of cases, but also as they may act as a guide to administrators as to the viewpoint of Congress, and govern their determination of the provisions of codes voluntarily submitted.

(1) *Section 3 (d) D.*—Provides that the President may impose "such provisions as he finds necessary to prevent unfair or oppressive conditions of employment."

The indefiniteness of this provision is such that the agents of the Recovery Administration could impose virtually any conditions they might see fit. Under such provisions, men lacking knowledge of a given industry, could very well impose conditions, through ignorance or in a punitive spirit, upon an industry which they conceived to be recalcitrant, which would in fact be a sentence of "economic death."

(2) *Section 3 (d) E.*—Permits the Administrator to require such information to be furnished, and books and records to be kept, and such examinations thereof to be made as are necessary, etc. (See comment under sec. 3 (c), pp. 2–3.)

(3) *Section 3 (d) E.*—Also provides that "the maximum hours provided for in any code shall not be less than ------ hours, nor more than ------ hours per week (to be inserted in the bill later), except that when it is found necessary, overtime work in excess of the prescribed maximum, to be paid for at the rate of time and one-half, may be provided for in such code."

This industry finds itself handicapped in developing its views on this section by the unusual fact that the number of hours which it is suggested that the President may impose upon an industry is not stated in the bill. In view of its importance to this and other industries subject to a fluctuating demand for their products, thereby necessitating flexibility in operating conditions, it is regrettable that more exact information is not available as to the limitation on weekly hours which it is contemplated that the President may impose.

In any event, it appears that this section leaves to be determined by the Congress, within limits, the total weekly hours which may be imposed by the President and presumably, while not required, will guide the administrators in approval of such provisions in voluntary codes.

It is doubtful if Congress can define such limits successfully for the wide variety of industries which make up our economic system. Certainly to accommodate such differences, a very wide latitude must be allowed.

Any rigid limitation of working hours would have disastrous effects upon the automobile industry, and all other industries subject to fluctuating demand.

This industry is subject to a wide fluctuation in demand for its product. Sales are concentrated largely in the spring months.

Because the product is not susceptible to storage, production must be keyed closely to demand. While the industry, in cooperation with the President, has recently adopted the plan of announcing new models in the fall to stimulate demand at that time, and thereby lessen the spring peak and otherwise seeks to stabilize employment, it will in the nature of things continue to suffer from seasonal peaks of demand and production.

Producers have met this problem in different ways at different times. On the one hand, it has been recognized that there is a limit to the number of hours that an employee should work in any one week. On the other hand, there is a limit beyond which it is inadvisable from a social standpoint, and inefficient from an operating standpoint, to add temporary workmen to the pay rolls for short duration during peak periods.

From the social standpoint, it must be borne in mind that a large proportion of the automobile manufacturing industry is located in communities affording relatively few opportunities for employment other than those provided by the automobile and allied industries and by business primarily dependent upon them. Since the typical automobile producer is situated in such a community, the employment during a short period of a large number of temporary workmen would place an excessive drain upon the relief resources of that community during the months when they were out of work.

It also causes difficulties by creating temporary shortages of certain classes of highly skilled labor upon whose output the steady employment of the mass of production workers is dependent.

Any rigid limitation of hours will impose excessive costs upon the consumer without commensurate benefit, and will create excessive social burdens upon automobile communities.

It will aggravate greatly irregularity of employment in the automobile industry by requiring the addition of a larger number of workers who could be employed for only a few months in each year. This would increase the fluctuation between the lowest and highest number of employed during the year.

Our experience under the present code has demonstrated this. In 1934 the industry operated under a code restriction to an annual average of 40 hours per week with a provision permitting up to 48 hours during peak periods. Despite this limited flexibility, the variation in employment between the lowest and highest months was the greatest in the past 6 years, exceeding even the year 1929 when the collapse of the boom caused a rapid decline in the late months of the year. The high and low points of employment in each year, and the spread between them were as follows in terms of percentage of the average number of employees as 100:

	1929	1930	1931	1932	1933	1934
Peak month	120	120	112	131	117	135
Low month	65	83	83	74	78	69
Spread	55	37	29	57	39	66

If the code had provided a maximum of 40 hours with no elastic provision the number of temporary employees hired for the peak requirements would have been considerably greater.

The effect of this provision upon the worker must be given serious consideration. For example, although the Automobile Manufacturing Code permits weekly hours to be averaged over the year with the requirement of an annual average of 40 hours per week, but permitting 48 hours in any one week, nevertheless in its first year of operation under the code, its employees averaged only 32 hours work per week for the year.

It is perfectly clear, therefore, that under any requirement that an industry do not exceed a fixed number of hours per week, employees will actually secure an average work week much below that figure. For example, a requirement that no employee in this industry be permitted to work more than 40 hours per week would result in an average of about 30 hours or less for each employee. This is another way of saying that if employees cannot expand their hours when work is available, they cannot make up for time lost due to absences, interruptions of production, and seasonal declines in activity. A further result is that employees are prevented from earning a total annual income sufficient to maintain a satisfactory standard of living in spite of high hourly earnings received while working.

This industry has been a leader in the study of regularization of employment for the maintenance of higher annual earnings in an industry subject to wide fluctuation in demand for its product. It has taken many progressive steps to that end. As a result of its studies of the subject, it is convinced that the only feasible way to limit hours of employment is on the basis of an annual average rather than a rigid weekly limit. Thus a fixed limit of 40 hours per week in the automobile industry would be disastrous to industry, worker, and consumer, while 40 hours per week averaged over the year allows necessary flexibility to the industry, permits the workers to earn an adequate annual wage, avoids the social burdens created by the addition of large numbers of temporary employees, and avoids burdening the consumer with unjustified costs.

Section 3 (d) E.—Also provides that the maximum number of hours per week imposed may be exceeded, where the code so provides, by paying one and one-half times the regular wage rate for all time over the fixed maximum. While this may give the appearance of flexibility, in actual practice it will operate as a fixed maximum. In order to keep production costs down, of necessity, the manufacturers will avoid overtime during the peak season and hire temporary employees instead.

The financial condition of most producers will force them to follow this course. Of the 17 companies whose published income statements are available since 1929, only 3 had any net earnings. Even the three who made profits had a profit margin which was very low as compared with previous years. In the case of one of these, the earnings were merely nominal. The other 14 companies failed to make any profit, although they paid out $50,783,230 in wages during 1934.

It is certain also that any material use of overtime would add measurably to the sales price of the product. The success of this industry in increasing sales, output, and employment, and thus leading the way to recovery in the past 3

years, has been based entirely upon the policy of the lowering of the cost of the product. Experience of the industry clearly shows that even very slight increases in cost and price result in lowered sales and consequently in employment. The automobile industry's life depends upon flexibility in working hours without penalties.

Section 3 (e) provides that "the minimum wages so provided may be differentiated according to experience and skill of employees, etc."

This provision clearly permits classified minimum wages. It cannot be justified on the ground which supported a basic minimum wage, namely, that social considerations justified putting a floor under wages to prevent unfair competition by sweating underpaid labor. It is a concession to the American Federation of Labor, which has demanded from the beginning that National Recovery Administration impose its arbitrary union wage scale upon all industry, regardless of economic considerations and whether an industry could stand it or the consumer afford it. It needs little imagination to picture the tug-of-war that will result on every code before the classified minimum wage scale for that industry is determined. It will make this scale the subject of political instead of economic considerations, the result of compromise rather than practical determination. It is inconceivable that any individual or group in the National Recovery Administration organization can determine soundly a classified wage scale for any one of the vast number of industries to be codified. The wisdom and the propriety of any governmental agency attempting such a task is seriously questioned.

The conclusion is inescapable, therefore, that S. 2445 constitutes proposed legislation of a far-reaching and drastic character which departs almost as far in many respects from the original National Industrial Recovery Act as it does from traditional American principles. It thrusts upon the Government new and extensive responsibilities amounting virtually to dictatorship over all business activities. The Automobile Manufactirers Association earnestly opposes its passage.

Respectfully submitted.

AUTOMOBILE MANUFACTURERS ASSOCIATION.

LETTER FROM THE BLACK MANUFACTURING CO., PENNSBURG, PA.

THE BLACK MANUFACTURING CO.,
Pennsburg, Pa., April 5, 1935.

The SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We have been requested by the code authorities of the Ladies' Hand Bag Industry, stating that we are satisfied with the National Recovery Administration and everything that goes with the codes, but we think different.

We are not satisfied with no National Recovery Administration, and we are not satisfied with the code. To our estimation the code is the biggest racket since prohibition, and the sooner we do away with this code business, the sooner the salvation will come and more reemployment.

Our reason for saying that is this: Before this code went into effect we employed about 40 people, today we only employ about 20, because of the code restrictions setting forth that we must pay so much and not less. We had elderly women working in our factory that could not possibly come up to the minimum wage; because of their age we had to let them go. Some of them pleaded with us that they must earn something to sustain life, and that they have no other means of making a living. But the laws of the code authorities forebade to employ anyone without paying them the minimum wage.

The small towns are very hard hit because of these restrictions. It is a known fact that the people in big cities are more efficient and more capable of producing larger quantities. But in order to put the little fellow out in the small town, a few men in our industry got together without consulting the majority of the manufacturers who are out of the city of New York and made up the code and, of course, we have to abide by the rules of the code.

We are enclosing you a letter and a sample copy from the code authorities, urging us to write to you, stating that we are satisfied with the code and that the code is fine.

Do you know why, gentlemen; because they want to keep their big jobs and live on the fat of the land.

We wish to go on record that we are protesting against this outrageous racket, and, to our estimation, the sooner you do away with this code business, the more people will be employed.

Very truly yours,

THE BLACK MANUFACTURING CO.

HANDBAG INSTITUTE OF AMERICA, INC.,
New York, March 22, 1935.

GENTLEMEN: We enclose copies of a few letters that have been written by members of the industry. You may pattern your letter after these, but avoid using the same verbiage, if possible. Write them with a punch.

Very truly yours,

HANDBAG INSTITUTE OF AMERICA, INC.,
SOL MUTTERPERL, *Chairman.*

Mr. Mutterperl is the Code Administrator.

(Enclosure to above letter of Mar. 22, 1935)

YOUR LETTERHEAD

Date ———.

Dear Senator ———:

I have been a manufacturer of handbags for —— years. My factory is located at ———. I employ ——— workers to whom I am paying considerably more than the code wages.

The Code for the Ladies' Handbag Industry, under which I operate, has done excellent work for the National Recovery Administration and for the entire handbag industry. It has lifted the basis of competition in our industry away from the exploitation of labor. It has lessened destructive competition in the industry. It has helped the industry to show a profit for the first time in 4 years, and at a time when twice the number of manufacturers are competing for one-half the normal volume of business. National Recovery Administration must continue if we would prevent a return of our industry to conditions even more serious than those of the early part of the year 1933. If labor provisions will be retained, either in codes or through special legislation, industry must have compensating benefits in the way of fair trade practices.

I urge that you do everything possible to grant the President's request to continue National Recovery Administration for two years more. I urge this also in behalf of my ——— workers who see in National Recovery Administration only hope for the future.

Sincerely yours,

(Signed)_____
(Authorized Signature)

Firm name_____

(Enclosure to above letter of Mar. 22, 1935)

YOUR LETTERHEAD

Date _____.

DEAR SENATOR _____: May we urge your favorable consideration of legislation the object of which would be to continue the National Industrial Recovery Act.

For all the faults which National Recovery Administration undoubtedly has, and despite the great difficulties and weaknesses of its enforcement, it is certainly better than the chaotic conditions, particularly with regard to minimum wages, maximum hours, and business practices, which existed prior to its enactment. Prior to the enactment of the National Recovery Administration, Massachusetts' minimum wage laws and maximum hour laws, so far as our own industry was concerned, were more often ignored than observed. The $8 minimum for a 48-hour work week established for learners as a minimum wage decree for our industry was a high wage. There were inumerable instances where wages were

as low as $3 per week. Firms which tried to maintain decent wage levels found themselves unable to afford employment to their workers, because they could not meet the competition of manufacturers who had no scruples regarding decent standards.

While the National Recovery Administration has not completely cured the situation, it has improved it infinitely, and it would be unthinkable if, having made these advances, we should return to the barbaric and chaotic conditions which existed prior to 1933.

Very truly yours,

Firm name _____

(Signed) _____
Authorized signature

LETTERS RECEIVED FROM THE BLANKE-BAER EXTRACT AND PRESERVING CO., ST. LOUIS, MO.

BLANKE-BAER EXTRACT & PRESERVING CO.,
St. Louis, Mo., March 5, 1935.

Mr. FELTON M. JOHNSTON,
Clerk Finance Committee, United States Senate,
Washington, D. C.

DEAR SIR: We understand that the Finance Committee of the United States Senate will in the near future consider legislation providing for extension of the National Recovery Administration as recommended by President Roosevelt.

In this connection we are heartily in favor of the following provisions of the codes under which we operate:

(1) Maximum working hours.
(2) Minimum wage schedule.
(3) Old-age pension, provided that the cost is equitably distributed among the employer, the employee, and the public.
(4) Prohibition of child labor.
(5) Unemployment Insurance on the English plan.
(6) Standards and definitions for food products so as to maintain high standards, and the enforcement of these standards as outlined in the codes and the Pure Food and Drug Act of June 30, 1906, and amendments thereto. We are also in favor of placing in the hands of the individual States the enforcement of these standards in all instances where interstate commerce is not involved. Furthermore, we believe the industry should cooperate with city governments in adopting and enforcing ordinances and rules covering sanitation and other health precautions in food factories.
(7) Enactment of State Laws on maximum working hours, minimum wage schedules, etc.

All of these provisions are enforcible because they are in keeping with the human and social requirements of our present age, and therefore have the support of public opinion.

On the other hand, we are absolutely opposed to open price filing, and to any attempt to establish minimum cost prices below which the product of the industry may not be sold. The enforcement and proper regulation of these provisions is practically impossible because—

(1) The buying public are not in sympathy with price fixing of any sort since they naturally want to exercise their inalienable right of buying as cheaply as possible in the competitive market.
(2) Price fixing performs no service to society and hinders rather than helps the proper functioning of our economic system.
(3) It practically compels those manufacturers who cannot obtain the established prices to resort to deceit, trickery, and lawlessness in securing orders at lower prices.
(4) Like prohibition, it is unenforcible so long as even a considerable minority are not in sympathy with the regulations.
(5) It is doubtful if the National Recovery Administration could compel compliance from those small manufacturers who sell their products locally, and therefore are not doing an interstate business. For instance, we understand there are about 300 preserve manufacturers in the United States at present, and of these possibly two-thirds are operating entirely in a single State.

This last is vividly demonstrated by an incident which happened right here in St. Louis recently in connection with one of the other codes. The code authority attempted to bring pressure to bear on a small manufacturer to raise his prices to those which had been established by the code authority as the minimum cost prices for the products of that industry. The manufacturer simply explained that he was not doing an interstate business and therefore was not subject to Federal jurisdiction. The code authority was checkmated.

The National Recovery Administration expires in June and it is very doubtful if new legislation can permit open price filing and establish minimum cost prices below which the product of the industry may not be sold, against the protests of the consumer.

Therefore, if conditions become unbearable, large manufacturers could establish small plants in each of the 48 States, placing themselves also outside of Federal jurisdiction; and the beneficial effects of the codes would then be completely lost.

Of course, as you doubtless know, under many of the codes sponsoring open price filing deceit is already being practiced. Some of the most common methods are as follows:

(1) The verbal agreement is made between the manufacturer and the wholesale grocer, for instance, that while a shipment will be billed at the published prices of the manufacturer, the jobber will pay for it on the basis of a lower price.

(2) Spoilage allowances are made by the manufacturer in such a way as to give the jobber a rebate or discount.

(3) Advertising allowances are used to cover price concessions. This particular abuse has existed for years.

Of course, established minimum prices or minimum costs necessitate a uniform and reliable cost system; but in this connection it is practically impossible, in our opinion, to establish one which would apply equitably to all manufacturers. If the manufacturer has an opportunity of buying some raw material at a very low cost to him, he can hardly be compelled to base his cost on the higher prices which his competitors have to pay for their raw materials. Furthermore, if a manufacturer is overstocked with certain raw materials, it is practically impossible to prevent him from reducing his stock by selling the products at a temporary low price, and some of the codes do permit this.

Possibly these particular provisions could be enforced by a dictatorship, or by socialism, but these we do not have today and we doubt if the American people will ever be ready for either of this type of government. We hope not.

We also protest against excessive assessments levied to maintain the code authorities. We do not believe they have any means of enforcing collection of these assessments and we have paid our assessments under protest, pending filing a claim against the respective code authorities, both as members of the code authorities and as individuals. For example, we are enclosing copy of the expenses of the Mayonnaise Institute in connection with maintaining the Mayonnaise Code Authority.

We further protest against certain features of the codes giving the majority of vote to 2 or 3 large manufacturers—particularly do we refer to the Mayonnaise Code, from which we quote the following:

"ARTICLE VI. ADMINISTRATION

"A. ORGANIZATION AND CONSTITUTION OF CODE AUTHORITY

"SECTION 1. There shall forthwith be constituted a code authority for the mayonnaise industry to consist of seven (7) members, which is hereby designated as the agency for the administration of this code. All members of the mayonnaise industry who shall have qualified to participate in the selection of the members of the code authority in accordance with section 7 of this article shall have the right to vote for the members of the said code authority. Four of the members of the code authority shall be elected by and shall be representative of those members of the industry whose individual gross annual sales of products of the mayonnaise industry are less than $3,000,000. Each of such members of the industry shall have one vote for each of such four members of the code authority to be elected, and such voting may be cumulative. The other three members of said code authority shall be elected by and shall be representative of those members of the industry whose individual gross annual sales of products of the mayonnaise industry are $3,000,000 or more. Each such member of the industry shall have one vote for each of such three members of the code authority to be elected, and such voting may be cumulative. Of the votes cast by those

members of the industry whose individual gross annual sales are under $3,000,000, the four persons receiving the greatest number of such votes shall immediately become members of said code authority, and of the votes cast by those members of the industry whose individual gross annual sales are over $3,000,000, the three persons receiving the greatest number of such votes shall immediately become members of the code authority, etc."

We sincerely hope therefore that in arranging legislation that you will—

1. Eliminate price filing.
2. Make the contributions to the code authority voluntary by the members of the industry.
3. Make the operations of the codes purely democratic by allowing each firm belonging to a code to vote, irrespective of size.

We respectfully commend the above to your attention, and believe us,

Yours very truly,

BLANKE-BAER EXTRACT & PRESERVING CO.

Annual budgeted expenses of the code authority for the mayonnaise industry

Executive salary	$12,000
Executive traveling expenses	3,500
Assistants to managing agent	10,000
Traveling expenses for assistants	6,000
Secretary to managing agent	2,080
Bookkeeper	1,684
Stenographers	3,500
Telephone and telegrams	4,800
Printing and stationery	1,750
Postage	700
General office expenses	500
Rent	576
Code authority expense	5,000
Code election expense	300
Legal fees	5,000
Legal expense	1,000
Mimeographing and multigraphing	5,000
Divisional committees expense	3,500
Product standards and analysis	500
Reserve	7,610
Total	75,000

(Please note salaries in this budget.)

BLANKE-BAER EXTRACT & PRESERVING CO.,
St. Louis, Mo., April 2, 1935.

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

DEAR SENATOR: We enclose copy of a letter we are addressing to the Hon. Weld M. Stevens, Deputy Administrator, National Recovery Administration, in connection with application of the code authority for the mayonnaise industry for approval of budget and basis of contribution covering expenses in administering the mayonnaise code for a period from April 10, 1935 to October 10, 1935. We would appreciate anything you and your committee may do towards stopping the approval of this and any other budget for a period past the period of the present National Industrial Recovery Act.

We particularly oppose, as stated in your letter to Hon. Weld M. Stevens, to contributing to any codes which provide for price filing, and we are surprised to note that the National Recovery Administration is even entertaining applications for budget expenses extending past the period of the present National Industrial Recovery Act.

We would appreciate your carefully reading the attached letter, which gives more in detail the reason for our protest against the proposed budget.

Thanking you for your efforts in our behalf, we remain,

Yours very respectfully,

MILLER WINSTON, *Secretary.*

BLANKE-BAER EXTRACT & PRESERVING CO.,
St. Louis, Mo., April 2, 1935.

Hon. WELD M. STEVENS,
Deputy Administrator National Recovery Administration,
Washington, D. C.

DEAR SIR: We are in receipt of Administrative Order No. 349–27, entitled, "Notice of Opportunity to be Heard" in connection with application of the Code Authority for the Mayonnaise Industry for approval of budget and basis of contribution covering expenses in administering the mayonnaise code for a period from April 10, 1935, to October 10, 1935; said notice reading in part as follows:

"The total amount of the budget for the period from April 10, 1935, to June 16, 1935, is $13,522.26. The basis of contribution is at the rate of one-sixth of the annual rate of assessment listed below:

Basis of assessments

Dollar sales year ended Dec. 31, 1934:	*Annual assessment*
Under $500	$5
Between $500 and $5,000	10
Between $5,000 and $15,000	20
Between $15,000 and $25,000	40
Between $25,000 and $50,000	80
Between $50,000 and $100,000	175
Between $100,000 and $200,000	350
Between $200,000 and $400,000	700
Between $400,000 and $700,000	1,000
Between $700,000 and $1,500,000	2,000
Between $1,500,000 and $4,000,000	8,000
Over $4,000,000	12,000

The contribution on the above basis is due and payable upon receipt of a notice of contributions due, which will be mailed to members of the industry by the code authority as soon as practicable after the budget is approved.

The total amount of the budget for the period from June 17, 1935, to October 10, 1935, is $23,977.74. The basis of contribution is at the rate of one-third of the annual rate of assessment hereinabove set forth and is due and payable upon receipt of a notice of contribution due, which will be mailed to members of the industry by the code authority as soon as practicable after the approval of the budget.

We strongly protest against the approval of this or any budgets for administration of codes until Congress has acted regarding extending the National Industrial Recovery Act, and we are particularly opposed to contributing to any code or codes requiring price filing—which is required under the Mayonnaise Code.

The elimination of the price filing proviso of the Mayonnaise Code (if the National Industrial Recovery Act is extended past June 1935) should reduce the expense of administering the code, in our opinion, 50 percent, so would it not seem advisable to wait until Congress reaches a decision regarding price filing and regarding the extension of the National Industrial Recovery Act before approving any further code budgets?

We also protest against any such assessment as this, which is particularly unfair to those companies whose sale of mayonnaise and salad dressing products is only a small part of their total volume. Since our sales of mayonnaise-salad dressing products represent probably not more than 17 percent of our total business, and the proposed assessment for out dues on the basis proposed in application for approval of new budget from April 10, 1935, to October 10, 1935, by the code authority for the Mayonnaise Industry would amount to perhaps one-fifth of 1 percent of our sales of these products, this would obviously work a hardship on us. If we were so assessed by each association under whose code we are operating, it would mean that we would have to pay one-fifth of 1 percent of our entire sales for dues. The capital stock tax of one-tenth of 1 percent is generally considered unreasonably high, and one-fifth or one-tenth of 1 percent of our sales of any item in our business would surely be unequitable and unjust.

There are a number of concerns in the United States whose business is confined exclusively to the manufacture of mayonnaise, salad dressing, sandwich spread, French dressing, and similar products, and it would seem their contributions based on their sales should almost be ample for the Mayonnaise Code budget.

To us it would seem that one-twentieth of 1 percent should be assessed against those manufacturers where the mayonnaise line forms the major portion of their

business, and the top limit for those manufacturers where mayonnaise is not the major portion of their business should not be more than $100 per year.

Would it not seem advisable to you that this budget be reduced to one-third, and particularly since the office of the peanut butter industry and the mayonnaise industry are in the same offices, and the agent of these Code Authorities the same person? Would it not also seem advisable for you to investigate to ascertain if any minor positions of both Codes are held by the same persons?

We sincerely believe that the President's original proclamation of April 14, 1934, and Administrative order, from which we quote section 3 as follows:

"*Provided, however*, That no member of any trade or industry shall be deemed in violation of a code for failure to contribute to the expense of administration of the code for any trade or industry other than for that trade or industry which embraced his principal line of business, subject to such exception as the National Recovery Administration may provide."

should be a guide in this matter. The entire theory of the President's proclamation has been nullified by too many "exceptions". We are being assessed and required to contribute to other Codes governing products, the sales of which products comprise less than 4 percent of our business.

We should appreciate hearing from you in reply to this letter, and thanking you for your courtesy in the matter, we remain,

Yours very respectfully,

BLANKE-BAER EXTRACT & PRESERVING CO.

LETTER FROM M. M. BROHARD, THE BROHARD-RAINER SHIRT CORPORATION, CINCINNATI, OHIO

THE BROHARD-RAINER SHIRT CORPORATION,
Cincinnati, Ohio, April 11, 1935.

Hon. Senator PAT HARRISON,
Chairman Investigating Committee, National Recovery Administration,
Washington, D. C.

DEAR SENATOR: You've probably read in the papers about the "cry babies", and small business man who has been complaining bitterly for definite action of relief from the burden of the codes, but nothing has been done to alleviate this unfortunate condition.

Referring to your letter of March 22, I wish to explain that I received a telegram from Mr. Felton M. Johnston, clerk of the Senate Finance Committee, and was forced to wire him as follows:

"Retel. Sorry physically unable appear. Suggest committee discuss monopolistic tendency section B article 3 Cotton Garment Code against small manufacturers which creates hardships. Not one single solitary reason has been given by officials why $35 week was specified except it took care of key positions of large concerns. This article should be eliminated from all codes and give small concern square deal. Refer to Senator Nye requesting him to ask Mayor Johnson merits of article. Executives of small concerns just as important for protection and promotion of their business as executives of big shots. Letter follows."

However, in view of my physical inability to testify before your committee, I am taking the liberty of asking you to read this letter to your committee, which is written in behalf of the small manufacturer, and request them to discuss the monopolistic tendency of section B, article 3, of the Cotton Garment Code, which reads as follows: "Secretaries, factory department heads, and executives earning more than $35 per week are exempted from this provision." That plays "hob" with the small concerns. Rather lop-sided, indeed.

If that provision is not 100 percent monopolistic, we will give a check for $500 to the Warm Springs Foundation. Furthermore, the writer challenges any official of the Cotton Garment Code, or anyone else, to a public or private debate. Moreover, I'll lay aside my religion, and wager a bet of $1,000 that it is monopolistic.

I'm not making this challenge to be sarcastic or resentful to the National Recovery Administration. Far from it; but, believe it or not, the little fellow is certainly getting a "raw deal" and your investigating committee should know it. We are 100 percent for limitation of hours, minimum wages, and child labor, but aside from these features of the code, we are 100 percent against it. I am certainly surprised indeed that the administration cannot see or realize the harm certain features of the code do small manufacturers.

How in the world can any group of so-called "intelligent business men" consistently say that a salary of $35 a week should apply to both small and large concerns? Why didn't they make it $100 a week? (Evidently, the $35 per week protected the key positions of the "big shots".)

It seems to us that the salary of an executive, or a department head, should be based upon the capitalization, or the net worth of the concern, or the capacity in which they serve. Every business man with an ounce of horse sense knows that you cannot pay the same salary for an executive of a concern doing $100,000 business annually as you can for a concern doing $1,000,000. The executives or the heads of departments of the small concern are just as important for the protection and promotion of their business as the executives of the "big shots."

We want to live up to the code 100 percent, and we believe every little manufacturer is anxious to do the same; but, it is absolutely imperative that the administration eliminate the "army policy" from the codes, otherwise it will make crooks out of honest business men. Absolutely! In other words, I don't think any rigid restrictions should be inserted in the codes to retard the promotion of legitimate business, which is so essential and necessary for our recovery.

Frankly and candidly, we believe the fundamental principles of the National Recovery Administration should be extended. In fact, they should become a permanent law. But, we certainly would give it a different name than National Recovery Administration on account of the fact that National Recovery Administration has a might weak or poor reputation. It has served its purpose and done a good job, and now it should be given an honorable burial. Everybody is sick and tired of hearing about these kindergarten letters. Why not inject a little business sense into our new plans, thereby creating enthusiasm—the basic factor for success. In other words, put the redeeming features of National Recovery Administration in a new bill and call it the "Prosperity bill" and put the right selling campaign behind it. Then, we're off! Cut off this "Continental Army" to enforce it. Put the business man on his honor instead of classifying him as a crook.

Don't forget to have our good friend Maj. Gen. Hugh S. Johnson to give his explanation of section B, article 3, in the Cotton Garment Code when he testifies before your committee.

Is it possible for the Government to give us "little potatoes" a square deal? Good luck and best wishes.

Yours respectfully,

M. M. BROHARD, *President.*

LETTER FROM THE CATERPILLAR TRACTOR CO., WASHINGTON, D. C.

CATERPILLAR TRACTOR CO.,
Washington, D. C., April 1, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

DEAR SIR: I listened with much interest to Senator Black's attempt, during the testimony of Mr. Robert W. Irwin on last Friday morning before your committee, to prove that the enactment of the 30-hour bill would increase total wage payments, stimulate production, and thereby reduce the necessity of heavier taxes to meet our increasing costs of unemployment relief. He said that it would be better in his opinion to increase wages, thereby increasing purchasing power and production than to be forced to levy heavier taxes to carry our ever increasing relief burden.

This is a reiteration of the so-called "purchasing power theory" that is so frequently heard and that has apparently been responsible for much threatened legislation designed to still further obstruct and hamper our production machine, thereby retarding recovery and producing increased unemployment.

Under the circumstances a brief attempt to analyze his case and point out its obvious defects would appear to be in order.

1. Production results from man hours. Men multiplied by hours obviously produce man hours. If we have a thousand men working 40 hours per week, we have forty thousand man-hours of production in that week. If we reduce the hours worked per week to 30 hours then obviously it will take 1,333⅓ men to produce 40,000 man-hours of work per week.

2. If our average rate of pay per man per hour is 60 cents then a weeks' pay roll for a thousand men at 40 hours will amount to $24,000. It is assumed that

the Senator plans to pay each of the 1,333⅓ new men the same weekly pay as each of the former 1,000 men receive, for otherwise his plan would be merely a work sharing plan and not productive, as he said, of increased purchasing power through higher aggregate wage payments.

Based upon this assumption, our total weekly pay roll would be increased from $24,000 to $32,000, a 33⅓ percent increase (each man before received 40 times 60 cents, or $24 per week. Each of the new 1,333⅓ men would also receive $24 per week, or a total of $32,000).

3. It must be admitted that business could not meet an increase of 33⅓ percent in its aggregate wage payments without increasing its prices. There is no other place from which an increase could come. Since the percentage of total national income now going to labor is roughtly 60 percent thereof (I think the actual figure is somewhat higher), or say 33,000,000,000 out of an estimated total of 55,000,000,000, an actual increase of one-third in our national wage payments would mean approximately 11,000,000,000. This increase incidently far exceeds our present annual relief bill. Its sudden imposition might well prove a shock so staggering as to be paralyzing in its effect on business. Certainly prices could not so quickly and so substantially be raised without disastrous effect upon production, from which wages, taxes, and all other forms of purchasing power flow.

4. Any attempt to raise prices generally at this time, when they should be reduced, will inevitably result in further losses of markets for our own goods not only abroad but here at home. It isn't enough just to produce under a price system; that production must be sold and if too much inventory is produced, at excessive costs, the threat to solvency is obvious. Further losses of markets can only mean further reduction in production which in turn can only mean lower, and not higher, standards of living.

5. There are "bottle necks" in industry which must not be overlooked. For example there are many plants that have neither the room or the machines to take care of or utilize an increase of 33⅓ percent in their man power. In such cases, cutting down hours will simply mean cutting down production with further loss of purchasing power. In some localities there exist actual shortages of skilled workers such as tool and pattern makers. Cutting down the working hours of such skilled workers would again mean reduction in production not only in their departments but in other departments dependent upon the output of such pattern and tool makers. The existence and significance of such "bottle necks" should be more generally appreciated and recognized. A 30-hour week will only serve to intensify their constricting effect.

6. We are not now meeting our mounting annual relief costs with taxes. Unfortunately we are merely finding these costs, for the most part, in order to permit our children to pay for them or to subsequently wipe them off our books through inflation when they become too onerous. Consequently the Senator overlooks our present policy when he intimates that any 30-hour bill would lower our present taxes for relief because we are not trying to collect such taxes now. Perhaps if we did, there would be more interest in finding the right solution to our unemployment problem.

7. We are still in a depression. Our total production, the primary factor in national income, continues on a limited basis. There is only one known way to increase production and only one known way to increase our circle of buyers and that is not by increasing costs and prices. Labor's share of national income and of total production is limited and has to be limited as are all other shares. Labor gets more when there is more production. It has to take less when there is less production. Since our world is competitive, when domestic prices get too high then our domestic consumers buy from foreign producers and foreign manufacturers. They are doing that today. Our first step, therefore, is to increase our own production, and that cannot be accomplished by raising costs and prices. We must all be satisfied with less until we get our production back to par. We cannot pay out to labor or to capital or to the Government in taxes more than we produce. Production comes first. As production expands, we will utilize additional labor on a sound and permanent basis and everyone's share in production will be increased, but we cannot pay out more than we produce, nor before we produce.

Labor should properly be assured a fair minimum wage, but let's stop rocking the boat with 30-hour bills, by fixing or encouraging the fixing of prices, by stifling fair, honest, and vigorous competition, by attempting to hold protective "umbrellas" over inefficient and uneconomical production units, and by any other legislation which results in the retarding of our production machine. We can

only divide what we produce and we must produce before we can divide if we are to continue to be a solvent Nation.

We trust that it will be possible for you to place this communication in your records.

Very truly yours,

CATERPILLAR TRACTOR CO.,
DONALD G. SHERWIN,
Vice President.

TELEGRAM AND LETTER FROM MR. FLOYD B. JOHNSON, PRESIDENT CENTRAL WEST GARMENT ASSOCIATION, ST. PETER, MINN.

ST. PETER, MINN., *April 11, 1935.*

FELTON M. JOHNSTON,
Clerk Senate Finance Committee, Washington, D. C.:

Being unable to present our case in person is unfortunate but we ask you consider this telegram as vital to us fast-disappearing small Midwestern garment manufacturers. National Recovery Administration labels to penal institutions is very harmful and legitimatizes their output and competition as never before. Wage differential between North and South favors South to our serious harm. Continuing these practices and the nonenforcement of penalties under the code compels us to urge scrapping the code with the exception of uniform hours of labor and wages and then enforce these two provisions. Other factors tending to wipe out small industry and increase monopolistic business is the price favoritism granted mass producers and buyers. Unless you do something soon our carcasses may be placed beside that of the extinct dodo bird in the business efficiency museum created by monopoly and dedicated to theory that small business is inefficient and wasteful even though it did give the most employment.

CENTRAL WEST GARMENT ASSOCIATION,
FLOYD B. JOHNSON, *President.*

CENTRAL WEST GARMENT ASSOCIATION,
Des Moines, Iowa, April 16, 1935.

FELTON M. JOHNSTON,
Clerk, Senate Finance Committee, Washington, D. C.

DEAR SIR: This association represents 141 garment manufacturers of the smaller and diversified class selling independent and relatively localized retail trade. We have probably experienced more grief and fewer benefits from the National Recovery Act than any group of businessmen in the country. We have even been annoyed and regimented to an extent that we are gradually becoming so distracted that we can no longer give the proper attention to our occupation of buying, manufacturing, and selling.

We are not partisan in our protest. We are among the "new deal" Americans who, perhaps a bit unsophisticated, took the National Recovery Act as 100 percent pure and unadulterated. We raised wages, reduced hours, and complied with the true desire to increase employment and so meet the national emergency. We now find we are unlike the larger producers catering to concentrated distribution, who by so-called "efficiency measures" changed their production set-up, etc., increased machine production per operator for a 40-hour schedule against a 48 to 54 pre-code schedule. Many of these are still increasing their per-machine production to the extent they are producing one-third more per operator this year than last year. Such schedules and methods evade the purposes of the National Industrial Recovery Act.

The above paragraph carefully analyzed is the picture of the monopolistic development of the National Recovery Administration program. It results in centralized manufacturing, and centralized retail distribution—all of which is detrimental to the small and diversified manufacturer, and is tearing down the economic structure of this section of the country, the small community, and the small independent thinking and independently operating businessman. It is changing the old America which was the land of opportunity for the man of average ability.

This analysis of our position with reference to the National Recovery Administration is not based to general National Recovery Administration set-up, but

on our own experience with the National Recovery Administration under the Cotton Garment Code. It is our impression that the National Recovery Act application is not the same for every branch of the various industries which operate under its continued and increasing regimentation and control.

Under our code, the Cotton Garment Code, we have had none of the advantages of fair trade practices, nor have the rulings eliminated even that curse of 50 years standing, prison labor competition (the granting of National Recovery Administration labels for prison garments was the most unjust action ever perpetrated upon free industry and labor at a time when we in America were attempting to meet an unemployment crisis). We have enjoyed none of the promised advantages of trade association management by agreement under Government supervision. We have had only Government regulation and regimentation by a varied assortment of administrators, who were not, in most cases, at all familiar with the industry as a whole. We find a regimented code set-up in charge of and influenced by the sectional and selfish control of large manufacturers in the industry plus the selfish, extremely selfish, influence of special interests such as organized labor. All of this has resulted in extremely favorable rulings for the benefit of the larger manufacturers and organized labor to the detriment of the smaller and diversified manufacturer of the Middle West.

Please note the following which are putting us out of business and are attributed to the National Recovery Administration Cotton Garment Code:

Failure of entire National Recovery Administration program to carry out the original idea of regulation of business by business through its associations with Government counsel and supervision.

Lack of true representation and voice of the multitude of small manufacturers on code authority.

National Recovery Administration label instead of being a benefit in distribution is a detriment, and carries the stigma of class legislation favorable to city industrialists and industrial workers in the minds of small industries, retail merchants, and farmer-population consumers.

Inequality of dollar exchange of the laborers and farmers dollar for cotton garments, due to the high minimum wage in the cotton-garment industry, which is 36.9 cents per hour against a lower minimum in most all industries, even those employing male workers.

Cost of code assessments and entire code administration costs, and multiplicity of codes under which small and diversified industries must operate.

Minimum wage per hour is not fair to worker or manufacturer and is acknowledged so by the union laborer wage schedules, which in the garment industry set up piece rates instead of hour rates, which equalize territorial and temperamental and plant set-up variations.

It is absolutely impossible to operate in most sections either North or South, outside of industrial centers, on a basis of a set minimum wage per hour without gross injustices to both workers and proprietors. The present schedule is working to the advantage of the poorer workers and to a relative disadvantage of the better workers. The human factor must be considered. The schedule is favorable to the careless and speedy and unfavorable to the painstaking and careful but slower body and mind. The present schedule is definitely unfavorable to the type of people who live in the Middle West.

A selfish effort to steal from us as diversified manufacturers a part of our production which for years and years was our business, and confiscate it for an "industry" which has specialized in specific garments. We have all manufactured items in our plants to meet the needs of our general merchants or clothiers in our section. Our "industry" has been the "general needle industry", not "pants", or "shirts", or "woolen jackets", or "dresses", or "children's playsuits", or "overalls." Failure to scientifically analyze the problems or the effect on the workers and the manufacturers in this industry in which there are some thousand or more plants in all sections of the country, so that the entire program would contribute to the purposes of National Industrial Recovery Act—reemployment. The writing of the code and the subsequent changes were executed without an understanding of the conditions existing in the industry as such, and little consideration was given to the majority in both number of employees and number of plants.

Prison labor National Recovery Administration label grant.

Increase of quantity price preferentials since 1933 which have played favorably into the hands of mass producers to the detriment of smaller manufacturers.

Denied universal piece rates the industry needs more wage differentials to care for the slow and less efficient worker, who is now forced out of employment and many cases is on relief. This is more vital in the midwestern area with limited

occupational opportunities and limited supply of labor on the other than in industrial areas.

Inability of purchasing power to consume products on the basis of 36.9-cent hour minimum, and 36-hour maximum work week, which is the lowest work-week schedule in 90 percent of the industries in our country. This schedule is effective as a result of an order arbitrarily issued for the industry, against the wishes or best judgment of the industry, with no beneficial effects as to weekly wage earnings or reemployment of workers. In fact, this order has had a retarding effect.

No allowance for peak periods of production without wage penalties under special dispensation.

The writing into code regulations which are impractical for compliance enforcement and have been acknowledged as such. More of these and all the compliance enforcements under heaven cannot enforce even the best of codes for this industry.

No benefit from fair trade practices, and no serious effort on the part of the administration to foster them or provide for funds already subscribed by the industry to enforce them. The few fair trade practices as were finally written into the code were subject to several interpretations and were weak-straddling efforts.

Inequality of North and South wage differentials. We subscribe to wage differentials as set up in the Presidential code on basis of populations.

Code authority dominated by large manufacturers.

Code domination by East and Washington influences.

The following is an attempt at constructive recommendations:

Eliminate minimum wage; substitute therefor universal piece rates. The industry of this country pays piece rates, not hourly wages in its factories. If one-half of the moneys expended today on code administration had been spent upon the establishing of piece rate by industries, there would now be in operation without friction and controversial criticism a fairly smoothly operating National Recovery Administration in the garment industry. Why must Government be so extremely unscientific? The above is one of the major points which will save the small garment industry.

If National Recovery Act is continued we must have sectional association code administration under Government counsel. A code for diversified garment manufacturers based on the main item of manufacture.

Solution of prison labor abuse through such legislation as H. R. 7297; surely, the withdrawal of National Recovery Administration labels from prison garments.

We are unalterably opposed to all influences resulting in further concentration and control of retail distribution by the so-called "chains."

We recommend that selection of all members of Cotton Garment Code Authorities be voted on by written ballot of the entire industry, thereby giving the small and diversified manufacturers equal voice with the larger manufacturer, and that no man be eligible to election to the code authority or as administrator unless he has a practical understanding of and is familiar with the problem of cotton garment and diversified cotton garment manufacturing.

We also recommend that no code authority or administrator be permitted to make any change in the code, the rules, or the regulations without first submitting such proposed changes to the members of the industry to be voted on by a mail vote for the entire membership of said industry. If such changes are voted upon favorably the result shall be made known to the entire industry and become effective 30 days after such notice.

We recommend a simplification of the Cotton Garment Code within the limits of the ability to enforce complete compliance.

We subscribe to the elimination of child labor.

We subscribe to maximum hours with peak load allowances.

We subscribe to a minimum wage only on a basis of piece rates for piece-work operators and a minimum hourly wage for week workers.

We, 141 western diversified manufacturers and members of the cotton garment industry and the Central West Garment Association and classified as small manufacturers, appeal to you to give our cause for complaint your most serious consideration and grant us the relief and help us to save our industries, not only for ourselves but for our employees. If such relief is not extended, the multitude of small manufacturers throughout our whole country is doomed.

Respectfully submitted.

CENTRAL WEST GARMENT ASSOCIATION,
By FLOYD B. JOHNSON, *President*.

The above is submitted by the special committee appointed at convention of this association held in Des Moines, Iowa, to outline our individual and collective views.

LETTER FROM THE DIXIE MACHINERY MANUFACTURING CO., ST. LOUIS, MO.

ST. LOUIS, *April 11, 1935.*

Hon. Senator PAT HARRISON,
Chief of the Senate Finance Committee,
Washington, D. C.

SIR: As a small manufacturer who is being penalized by added costs, we wish to add our protest to the extension of the National Recovery Administration.

We are one of the many unfortunates who do not have the financial ability for lobby purposes to show many reasons why the National Recovery Administration has affected many of us small manufacturers in the successful operation of our business.

We will appreciate our protest being made a part of the investigating committee's report and will be glad, upon request, to produce facts to show why the National Recovery Administration has been injurious to small industry.

Respectfully yours,

DIXIE MACHINERY MFG. CO.,
C. M. BINDNER, *Secretary.*

LETTER FROM THE DURABLE GOODS INDUSTRIES COMMITTEE, WASHINGTON, D. C., AND PHILADELPHIA, PA.

PHILADELPHIA, *April 13, 1935.*

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

DEAR SENATOR HARRISON: I have had an opportunity to read the testimony of Mr. A. J. Hettinger, Jr., given April 1st and 2d, before your committee on the extension of the National Industrial Recovery Act.

Mr. Hettinger is an economist of national standing who devoted much time and effort to the initial organization and early administration of the National Recovery Administration. He is now the executive secretary of the Durable Goods Industries Committee, of which I am chairman. Mr. Hettinger has stated clearly that his testimony, with respect to the administration of this act, was an expression of his own personal observations and viewpoint and not the opinion of our committee.

The Durable Goods Industries Committee has endorsed and wishes to support the recommendations of the Conference of Business Men held at White Sulphur Springs in December 1934 with respect to the extension of the National Industrial Recovery Act for a further trial period of 1 year only. Codes authorized thereunder should be truly voluntary on the part of industry, but subject to the approval or disapproval of the administrative agency which, however, should be without power to modify a code other than to withdraw its approval, or to impose a code of any kind. The recommendations of this conference on this subject will be found on pages 11 to 14 of the attached copy of the report of the conference, which we respectfully submit for your consideration.

Yours faithfully,

GEORGE H. HOUSTON, *Chairman.*

REPRINTED FROM THE DECLARATIONS OF THE JOINT BUSINESS CONFERENCE FOR ECONOMIC RECOVERY HELD AT WHITE SULPHUR SPRINGS, W. VA., DECEMBER 17–19, 1934

NATIONAL INDUSTRIAL RECOVERY ACT

By its own terms the National Industrial Recovery Act expires not later than June 16, 1935. The administration has indicated its desire for further trial of certain features of the act. Experience has not sufficiently determined whether permanent measures are desirable, or if desirable, the form they should take. In view of these considerations, this conference recommends that new emergency legislation be enacted, prior to June 16, 1935, for a period of 1 year, in conformity with the principles hereafter stated.

Such legislation should be administered by an administrative agency of at least five members possessing the authority to approve or disapprove codes of fair competition in or affecting interstate commerce that had been voluntarily

submitted by an association or group truly representative of a given trade or industry

LABOR PROVISIONS OF THE CODES

The National Industrial Recovery Act was a temporary measure, designed to meet a national emergency, and it is recognized that its expiration would entail hardships in certain industries, the operations of which are being temporarily conducted under its provisions. In view of this fact, and without prejudice to the opposition of industry to Federal legislation in the field of local labor relations, this new emergency legislation should follow the National Industrial Recovery Act upon its expiring date, such legislation to conform to the following principles:

1. Any new legislation continuing the National Industrial Recovery Act should be of the same temporary emergency character as the original act, and one year is recommended as the term of any such law.

2. The continuance of present codes or the adoption of new codes should be conditioned upon the voluntary action of the respective industries or trades.

3. The new act should require every Code of Fair Competition to contain suitable provisions concerning maximum hours and minimum wages, prohibiting child labor, safeguarding both labor and employer by giving to labor the right to deal with employers either individually or collectively, directly or through representatives of their own free choice, without intimidation or coercion of either party from any source.

4. During the emergency period the problems of child labor, of minimum wages, and of maximum hours are likely to be especially acute. In any industry, therefore, not operating under a code of fair competition in which the administrative agency finds that child labor is used or threatened or wages are so low or hours so long as to impair materially our living standards, we appeal to employers in such an industry voluntarily to apply for a code in order to prevent or correct conditions which all responsible employers condemn.

COMPETITIVE PRACTICE PROVISIONS OF CODES

It is recommended that the new legislation provide that any industry or trade voluntarily desiring to do so may, subject to the approval of a governmental administrative agency provided for in such legislation, and after proper investigation and public hearings, adopt and make effective a code of fair competition.

A main objective of codes of fair competition in this period of emergency has been and should be to aid in increasing employment, relieving pressure on wages, and in securing the restoration of the sound functioning of the competitive system by mitigating the effects of destructive competition aggravated by the depression. It should be the objective of these codes thereby to aid in securing competitive conditions fair to producer, distributor, and consumer, the restoration of credit, the resumption of replacements and improvements in operating machinery, and relief from that instability of markets which retards coincident increase in production and consumption.

The standard to be set forth in such legislation, which the administrative agency is to apply in passing on the provisions of a proposed code of fair competition, should be consistent with and should promote these objectives and, to that end, should facilitate the elimination of unsound and unfair methods of competition and, in proper cases in the public interest, should permit of practicable measures to reduce or prevent price demoralization, to secure reasonable adjustment of available capacity to available demand in over-capacitated industries, and to afford protection against the elimination or oppression of small business. No code provision should be approved or continued which results in a price level burdensome and unfair to the public. Provisions of each code should be determined by and adapted to the particular conditions of that industry.

GENERAL PROVISIONS

In some natural resource industries conservation is a matter of great public concern and may require specific treatment. These industries should be able to utilize such provisions of general legislation as outlined herein; but since these provisions may not be sufficient to meet the needs of the industries and protect the public interest, specific legislation should be considered to meet their requirements. Such legislation should follow the general principle that the further the actions thus approved extend into fields otherwise restricted or prohibited by law, the greater the governmental supervision necessary to protect the public interest.

The development and the submission of codes of fair competition should be voluntary on the part of industry, and subject to the approval or disapproval of

the administrative agency, with opportunities for resubmission to the same authority for approval of modifications. The preparation and proposal of a code, in whole or in part, should be a sole responsibility of the petitioning industry.

In order to prevent confusion in the transition period between the expiration of the National Industrial Recovery Act and the adjustment of codes to the provisions of the new law, existing codes for industries so desiring may continue in effect until terminated or amended.

The administrative agency should have the right to terminate, after public hearing, existing codes or those formulated under the new act. Industry through its representatives should also have the right to terminate such codes or propose amendments to them.

There should be opportunity for members of industry to enter into agreements between themselves, which agreements, when approved by the administrative agency, should be enforceable against all parties to the agreements.

As to actions in conformity and compliance with provisions of approved codes of fair competition or approved voluntary agreements, the new legislation should supersede any other statute with which it might otherwise conflict.

The new act, in its application, should extend only to those businesses which are engaged in or affect interstate commerce.

The new act should provide for mandatory assessment of all members primarily engaged in an industry for financing code administration, subject to the approval of the administrative agency, unless the industry has provided for said financing by voluntary methods. It is recognized that in other than the retail distributive and service fields, multiple assessments may be desirable, and in such cases the general objective should be to limit further mandatory code assessments upon any person to those secondary or incidental lines in which he is a substantial factor in competition.

The effectiveness of codes depends upon the prompt enforcement of all provisions. Violations should, in the first instance, be adjusted, if possible, by the code authority with the aid, on proof of violation, of the administrative agency, with ultimate resort to judicial process. The Government in its purchases should not require compliance certificates of any kind nor discriminate against any person not determined by due process of law to be violating a code. The use, application, or possession of National Recovery Administration labels or other such emblems or devices should not be required as a condition of the right to manufacture or sell commodities.

Under appropriate safeguards, approved codes of fair competition shoul be binding upon all members of the industry.

LETTER ADDRESSED TO SENATOR RICHARD B. RUSSELL, JR., OF GEORGIA, FROM THE EMPIRE MANUFACTURING CO., WINDER, GA.

EMPIRE MANUFACTURING CO.,
Winder, Ga., February 22, 1935.

Hon. RICHARD B. RUSSELL, Jr.,
Senate Office Building,
Washington, D. C.

DEAR SENATOR RUSSELL: The National Industrial Recovery Act and the Cotton Garment Code are wrecking our industry and especially the small concerns. I have just read President Roosevelt's recommendation to Congress regarding extending the National Industrial Recovery Act for 2 years and note he made the following statement: "We have begun to develop new safeguards for small enterprises."

The above sounds good, but we have seen no signs whatever of any protection and unless something is done immediately it will be too late.

If I recall correctly, cotton was selling around 6 cents in February 1933, at which time we were selling the best grade overalls at $7 per dozen. Cotton with processing tax is today bringing around 17 cents and we are being forced by the large producers to sell the same garment at a low price of $10.37½ per dozen. You will note that we are getting only $3.37½ per dozen more with 17 cent cotton against 6 cents. Besides having had to raise wages from 75 percent to 100 percent, purchase National Recovery Administration labels and still operate 33 percent less time. The $10.37½ price on overalls is the price set by the large manufacturers and has become the standard price.

We have always had hands worth $1, $2, $5 per day, etc. Why pay the $1 hand $5 or the $5 hand $1?

Of course everyone would like to see everybody employed with good wages, but why kill the goose that lays the golden egg when it is absolutely impossible to sell our goods at a price that will not permit us to break even on the present hours and wages. After raising our piece rates from 75 percent to 100 percent our small concern had to contribute over $1,000 from July through December 1934 to employees who did not earn the minimum wage. Now in addition to all of this burden, we have an Executive order requiring our industry to reduce hours an additional 10 percent and increase wages 10 percent, so you can imagine what we are up against and can see the impossibility of staying in business under such conditions.

While you are having the Nye-McCarran investigation of all codes, we believe you can get evidence enough to show that 3 or 4 overalls manufacturers together with the prison labor competition is setting a price so low for overalls and pants that it is detrimental to small concerns.

Two of the largest overalls manufacturers several months ago sent out a letter to the general trade and one stated in part as follows:

"We reduced all men's overalls and coats $1 per dozen. You can accept our statement 100 percent that there is no justification for today's low prices and they are far below cost and we unhesitatingly advise you to buy your requirements."

Sales, collections, and prices combined have been the poorest in this industry I have seen in my 19 years' experience. I am sure every manufacturer here will vouch for these facts given you and what is true here I believe is general in this industry. I trust you will give this matter your serious consideration and see that the small enterprises get a square deal.

Yours very truly,

EMPIRE MANUFACTURING CO.
R. L. EAVENSON.

TELEGRAM ADDRESSED TO SENATOR HOMER T. BONE FROM H. E. FLEMING, PRESIDENT KING COUNTY ASSOCIATION OF ICE MANUFACTURERS, SEATTLE, WASH.

SEATTLE, WASH., *April 16, 1935.*

SENATOR HOMER T. BONE,
United States Senate, Washington, D. C.

King County Association Ice Manufacturers and Dealers—consisting Seattle Ice, Arctic Ice, Poplar Ice, City Ice, University Ice, Crystal Ice, Rainier Ice, Ice Delivery, Booth Fisheries, San Juan Fish & Packing Co., Highland Park Delivery, Diamond Ice & Storage, Washington Cold Storage, Northwest Ice & Storage, all in Seattle; Renton Ice & Ice Cream, Renton; Des Moines Auto Freight, Des Moines; East Side Ice, Kirkland; Miles Delivery, Bellevue—representing small and large operations in King County, authorize me to wire you conveying our sentiments for continuation of National Recovery Act and Ice Industry Code in present form. Retention control of production provision vital necessity to industry's future and present satisfactory working conditions to labor. Under Ice Code industry in this section enjoying most stabilized competitive conditions in history at no increase to consumer and increased wage scale and improved conditions to labor. We urge your hearty cooperation to continuation of National Recovery Act and Ice Code in present form.

H. E. FLEMING, *President.*

LETTER FROM MR. J. A. MEYER, PRESIDENT FLORADORA DRESS SHOP, INC., ATLANTA, GA.

FLORADORA DRESS SHOP,
Atlanta, Ga., March 30, 1935.

SENATE FINANCE COMMITTEE,
National Recovery Administration Investigation, Washington, D. C.

HONORABLE SIRS: This letter is written as a formal protest on the part of an American merchant opposed to granting President Roosevelt's request for a 2-year extension of the National Recovery Administration.

Our business was organized in 1929, and during the depression years we always managed to maintain a good credit in the markets and at the end of a year show a small reasonable profit. Since we signed the President's National Recovery Administration agreement, we have operated at a loss. Our selling expense has advanced from 6 percent, the maximum allowed retailers (according to the Harvard Research Bureau) to over 10 percent during 1934. This increased selling expense resulted in an operation loss of $2,500. This loss impaired our working capital and was the direct cause of our becoming slow in payment of our bills during the past season. The mercantile agencies in New York, ascertaining we were running slow on our bills, refused to continue to recommend our account favorably until additional working capital was placed in the business. This working capital was obtained by the writer borrowing every cent he could on his life insurance. Our credit has since been reinstated favorably by four out of the "big five" credit agencies in New York. However, should we attempt to live up to the National Recovery Administration requirements for another year, the same condition will prevail, and our working capital will be so jeopardized (and with no more cash values left in my personal life insurance) that our credit will again become impaired and we will be forced out of business. This is the condition confronting small merchants all over the United States, and men like Clarence Darrow, Senators Borah, King, and Nye have certainly informed your committee correctly. Hon. Donald Richberg in stating before your committee that the "small merchants had benefited through operation of National Recovery Administration" misstated the facts.

Big business has been the ones who have profited from National Recovery Administration and they know that a continuation of same will ultimately result in forcing all small merchants out of business. This firm vigorously protests continuation of National Recovery Administration and thinks, outside of the fair trade practice provisions, same should be scrapped. The Government should not interfere with the operation of commercial business.

Even if your august body should recommend granting the President's request, this firm has no alternative but to surrender its Blue Eagle, refuse to comply with provisions of the act, and carry the fight to the United States Supreme Court, as we simply cannot live up to the provisions of the code and remain in business. Natural liquidation or bankruptcy is inevitable under such conditions.

We might further add that this firm organized with a paid-in capital of $10,000, by losing $2,500 last year, which loss has been attributed by our auditors to increased selling expense, reduced its working capital by one-fourth. You can readily see how utterly impossible it would be to try to comply with the code for another year or two.

Thanking you for your consideration, and trusting you will weigh the above facts carefully before reaching a final decision, we beg to remain,

Yours obediently,

FLORADORA DRESS SHOP, INC.,
By J. A. MEYER, *President.*

STATEMENT OF JAMES R. KILBOURNE, BOSTON, MASS., REPRESENTING THE NEW ENGLAND MEAT PRODUCTS CO.

The National Recovery Administration should be scrapped, with the possible exception of the minimum wage and minimum hour requirements. Fair competition has been made impossible because large businesses are able to undersell smaller producers and manufacturers. This is made possible through the large producers and manufacturers securing control of the code authority and establishing regulations and price schedules which the small man cannot meet.

We are principally interested in the imports division of the National Recovery Administration. The reciprocal trade treaty policies of the Government have made it almost impossible for the small business man to hope for any alleviation from foreign competition. Our business is that of preserving and canning meat products, and we are now faced with the tremendous increase in importations of these products from foreign countries. The imports division of the National Recovery Administration fails to take into consideration the elements of trade which exist outside our country—that is, between other countries of the world—and as a result of this we find our export markets being gradually whittled away. I should like to cite and example of the need for intelligent long-range planning insofar as our foreign trade is concerned.

BRITISH-DUTCH CATTLE AGREEMENT

The United States had been killing off thousands of head of cattle and hogs and at the same moment inviting a destruction of our export market for these products. While we undertake a courageous program of reduction in the number of cattle on our western ranges in order to avoid disastrous overproduction, other countries are expanding this same production. The effect of this is becoming apparent. It is understood that the British Government is contemplating a treaty with the Dutch for colonization on the cattle ranges of Guiana. At the present time something like 8,000,000 acres of grazing lands are unused in interior Dutch and French Guiana because the only access to a seaport is through the British territory. Under the proposed agreement the ranges of British Guiana would be extended completely through the Dutch territory and eventually into French Guiana.

This region is adapted to the cattle industry. Breeding stock from India thrives under conditions which would decimate the type of steers grown in this country. If the long-range planning of the Dutch should prove successful, cheap labor, composed largely of bush negroes and Indians, will be able to raise enough cattle on the waste lands of the Guianas to furnish meat for half of the British Isles. What then becomes of our export market? How can we expect to send our meat to Cuba or Puerto Rico or the West Indies?

We must think of foreign trade in terms of world trade and not confine our planning to our present customers. Canada, Australia, and New Zealand are sending 250,000 pounds of meat into this country every month. The importations are increasing. The importations of raw hides and of leather products are likewise mounting with alarming rapidity. Last year Great Britain sold us leather appraised in excess of $1,000,000. The sale of British leather products in American stores is already becoming a menace to our domestic industry.

Our Government should immediately recognize the expansion abroad of those industries which we are attempting to curtail within our own borders. If the British and the Dutch enter into their agreement for the colonization of Dutch territory in South America, the latter, with the aid of Argentina, will have the land and labor to produce sufficient livestock to destroy our market throughout the North and South American continents. If foreign nations persist in long-range expansion of this kind, we must take steps to protect ourselves by placing quota limitations on meat and leather products from those countries. To allow the Dutch to get control of our market for meat and hides in South and Central America, as well as the Bahama and West Indies Islands, is to further encourage the deterioration of domestic agriculture.

TELEGRAM FROM LEONARD BROS., FORT WORTH, TEX.

FORT WORTH, TEX., *April 11, 1935.*

Senator PAT HARRISON,
Chairman Senate Finance Committee:

We are independent retail merchants and cater needs independent merchants through our wholesale house, Fort Worth wholesale grocery. Our opinion price-fixing provisions National Recovery Administration all respects should not be extended but should be specifically prohibited. Our opinion these provisions hurtful and not helpful progressive independent distributors; furthermore, provisions are unfair to consumers and are curtailing consumption at time when movement volume goods is most necessary. Employment is affected directly by movement units merchandise and not necessarily so by dollar sales. Furthermore, provisions are clumsy, always unfair to some types distributors, uninforceable except by bluff and intimidation unworthy of governmental sanction. We know this represents opinion overwhelming majority aggressive distributors Texas our acquaintance and believe it represents view majority of distributors point of volume in State not including national chains. We, along with many others, find we must attend to our business in order keep it going forward and therefore cannot spend time necessary attend hearing. Please include these views records.

LEONARD BROS.
CARL BRUNER.

MEMORANDUM AND STATEMENT SUBMITTED BY THE MERCHANDISE WAREHOUSING TRADE CODE AUTHORITY, CHICAGO, ILL., AND WASHINGTON, D. C.

Memorandum to the Senate Finance Committee in re the position of the Merchandise Warehousing Trade Code Authority concerning the extension of the principles of the National Recovery Administration

GENTLEMEN: The Merchandise Warehousing Trade Code Authority, at its regular meeting, December 5 to 8, 1934, considered the question of the extension of the National Industrial Recovery Act. After full discussion of the question, there was unanimously adopted a resolution to the effect that the National Industrial Recovery Act should be extended for the period of at least 1 year, and the principal reasons therefor are included in the attached copy of the memorandum approved by the code authority at the time.

At the meeting of the members of the Merchandise Warehousing Trade in New Orleans, during the week of February 4 to 9, 1935, inclusive, this action of the Merchandise Warehousing Trade Code Authority was discussed, and attached you will find an excerpt from the minutes of that meeting wherein the members of the trade approved the recommendation of the Merchandise Warehousing Trade Code Authority in this regard.

Our trade has contributed to the economic recovery program of the President of the United States and of our Congress, as expressed through the National Industrial Recovery Act in an endeavor to rehabilitate our industry and stabilize economic conditions by efforts under the code of Fair Competition for the Merchandise Warehousing Trade, and to increase purchasing power through increase in employment. From a survey for the month of May 1934, as compared with the month of May 1933 (the Merchandise Warehousing Trade Code became effective February 10, 1934), the facts determined through a questionnaire to the members of the trade indicate considerable increase in employment, resulting in a total increase in wages of just about 30 percent.

While there are many problems still facing the merchandise trade, it is our considered judgment that benefits to our industry, to labor, and to the Nation as a result have accrued through the effectuation of the provisions of our code under the National Industrial Recovery Act. Stabilization provisions, such as those of our code, are requisite to our trade. Our industry is clothed with a public interest; it is part of our transportation and distribution system. Stabilization is necessary in the public interest as well as for the effectuation of the code provisions within the industry. Without a proper basis for stabilization, it is the unanimous opinion of our code authority members that our code provisions would be of little value; that the labor and wage provisions of our code would not be possible of effectuation, and that the smaller members of the trade would not be protected as now against monopolistic practices.

The position of the Merchandise Warehousing Trade Code Authority regarding stabilization is probably best expressed in the memorandum presented January 11, 1935, before the National Industrial Recovery Board at a public hearing in Washington, at which time the secretary of the code authority presented the position of the merchandise warehousing trade. A copy of this memorandum is also enclosed.

The attached resolution regarding continuance of the National Industrial Recovery Act expresses not only the opinion of the code authority, composed of both small and large members of our trade, but also the position of the trade members, as shown in the minutes of the meeting of the members of the trade about 2 months ago.

Respectfully yours,

A. LANE CRICHER, *Counsel.*

STATEMENT OF THE MERCHANDISE WAREHOUSING TRADE CODE AUTHORITY RE CONTINUANCE OF THE NATIONAL INDUSTRIAL RECOVERY ACT

It is our belief that the National Industrial Recovery Act should be extended for a period of one year rather than permit it to expire and rather than have new legislation enacted at the coming session of Congress.

The present act is an emergency measure and that emergency still exists.

The extension of the present act would only require a joint resolution of Congress. This is a simple matter compared to writing and passing of measures of new legislation which may take place. Any new legislation would only be the product of a limited period of experience under the present act, and insufficient

experience does not permit crystallization of opinion. Another year is required. We are beginning to achieve a degree of stabilization, and this should be permitted to continue. Certainly, strife over any new legislation would contribute nothing to business recovery. Even consideration of new legislation would have a strong deterring effect upon the progress being achieved under the approved codes.

If the present act is permitted to expire, what is to happen to these some 600 codes now in effect? Some of these codes, in fact most of them, are only now becoming really effective; industry is only now beginning to show the benefits of operation under codes. For example, the merchandise warehousing trade finds that under its code of fair competition almost a 30-percent increase in the annual payroll has been its contribution towards increased employment and wages. At the same time, the trade is only beginning to achieve stabilization under the fair trade practice provisions of the code.

New legislation would certainly mean rather ineffective use of the present codes in the last few months of their existence—just at the time that the provisions of the codes are beginning to be understood and applied, and the results of the various programs of education are commencing to bear fruit. Codification of business, were it to continue under any new legislation, would require simply a repetition of the process of approving codes with the attendant uncertainties and confusion involved.

Any criticism of the present National Industrial Recovery Act is not properly aimed at the theory of the act itself; we have studied each provision of this act and believe not only that it has been soundly conceived but also that it is practical in that it presents real opportunity to achieve the policies set forth as its objective.

If the present act is extended for a year, it may be hoped that conditions by that time will have changed. Industry will then have had over 2 years' experience under its provisions and approved codes. With this longer experience the administration and Congress will, upon a basis of fact, be enabled to determine the character of any legislation then to be enacted.

We present these views as the unanimous opinion of the Merchandise Warehousing Trade Code Authority, voted at its meeting held December 5–8, 1934.

MERCHANDISE WAREHOUSING TRADE CODE AUTHORITY,
D. S. ADAMS, *Chairman.*

Attest:
WILSON V. LITTLE, *Secretary.*
DECEMBER 8, 1934.

STATEMENT OF WILSON V. LITTLE, SECRETARY OF THE MERCHANDISE WAREHOUSING TRADE CODE AUTHORITY BEFORE THE NATIONAL INDUSTRIAL RECOVERY BOARD

Any contribution that the merchandise warehousing trade may be able to make to this symposium on the subject of price controls in codes of fair competition approved under the National Industrial Recovery Act must necessarily be made in the light of the trade's needs and its experience under its approved Code No. 232, which was submitted to the National Recovery Administration on August 24, 1933, was approved January 27, 1934, and became effective February 10, 1934.

The merchandise warehousing trade has had an experience of 11 months under its code.

The members of this trade are known in commerce as "merchandise warehousemen". They serve primarily as agents of manufacturers, producers, importers, and other owners of merchandise in the maintenance of stocks of merchandise in the various markets throughout the country, in having custody of these goods, and in making physical deliveries from these stocks to the customers of their owners on instructions from the owners. A single manufacturer may use the facilities and service of from 60 to 100 members of the merchandise warehousing trade in as many different cities throughout this country.

The relations that a merchandise warehouseman has with his customers are not spasmodic, such as the sale of a product, constituting a definite and completed transaction. On the contrary, the warehouseman is an arm of the manufacturer's traffic department, being used continuously so long as need for his service exists and his service and his tariff of rates and charges warrant no change in the relationship.

The facilities of merchandise warehousemen are, therefore, part and parcel of the Nation's distribution system, and merchandise warehouses are distinctly public-service institutions, closely allied with other agencies employed by manu-

facturers and other producers to move their goods in interstate commerce. Indeed, the National Recovery Administration has so recognized this trade as an agency in commerce peculiarly affecting the public interest, by placing this code under the jurisdiction of the National Recovery Administration's transportation section of its Public Utilities Division.

In some States, such as California, Washington, Minnesota, and Indiana, merchandise warehouses are public utilities under the law, along with the railroads, telephone, telegraph, and other utilities. In such States it is necessary for warehousemen to publish tariffs of their rates and charges, and to file them with the public utility regulatory commissions therein. In some cases, the rates and charges have to be approved by these commissions before becoming effective, and changes from existing tariffs on file may not be made until after 30 days' notice to all concerned.

Because of this public-service character of our operations and because no other national law was applicable to this trade, it was felt that the National Industrial Recovery Act was peculiarly adapted to the purpose of bringing about the stabilization in rating procedure needed by merchandise warehousemen anxious to participate in the recovery program. Accordingly, in August 1933, the merchandise warehousing trade submitted its proposed code of fair competition to the National Recovery Administration providing for a sort of public utility regulatory set-up, calling for the filing of tariffs and a waiting period of 30 days with respect to changes therefrom, features in effect for many years in States where there is public utility supervision over members of our trade.

With this background in mind, you will understand why the stabilization features that are in the Merchandise Warehousing Trade Code are natural to and needed by the trade. Article IX of the code reads:

"Each member of the trade shall publish, post in a conspicuous place open to public inspection, and file with the code authority, a tariff containing all rates, charges, terms, and conditions covering his warehousing facilities and services, which rates, charges, terms, or conditions shall not be changed except upon the publication, posting, and filing of a new or supplemental tariff, to become effective 10 days thereafter."

It will be observed that the National Recovery Administration, while readily assenting to the tariff-filing procedure, did not feel able to approve the 30-day waiting period common in the transportation field and even within our own trade where State laws apply.

It is economically unsound for rates and charges in public warehouses to fluctuate from day to day. It is necessary for manufacturers, importers, and other warehouse users to know in advance of their sales what the cost of delivery is to be. There is need for them to know what the warehousing factor is in their distribution expense, just as they know what the railroad rates are for the transportation of their products. They want to know also that their competitors are paying no less than they are for public warehousing service in their various competitive markets. It is, therefore, in the interest of the public served that the rating procedure in the merchandise warehousing trade have stability, and that changes in rates and charges be made by orderly process, just as with other agencies utilized in the movement of goods from factory to consumer. We know of no other way by which this stabilization may be maintained except through the publication and filing of tariffs; and a 30-day waiting period, usual with other agencies in distribution, would be more efficacious than the 10-day period that the trade's code now provides for.

Another price control that the trade should have, in our judgment, and which was in the proposed code but not included in the approved code, is the power of the trade's administrative agency to suspend a tariff or supplement against which complaint has been made on the ground that the rates and charges contained therein are inadequate, such suspension being subject to National Recovery Administration review and disapproval after the trade's administrative agency has made its finding as to the inadequacy complained of. Such supervision over merchandise warehousing rates and charges would be similar to that exercised by the Interstate Commerce Commission over the warehousing rates and charges of railroads that do also a merchandise warehousing business. This procedure would bring about nationally a stabilization within our trade in the same manner that stabilization is felt to be needed and is attained in States where merchandise warehouses are public utilities under the law. We think that this particular stabilization feature is in the public interest and would be practical in our trade under the provisions of the National Industrial Recovery Act. As I say, the trade asked for it, but the National Recovery Administration had not developed sufficiently to assume the roles of a regulatory body of the kind required.

The cost provision in the code is not what the trade asked for but is what National Recovery Administration concocted for us as being in line with its pricing policy as it then existed. A "price floor" is established, no rate being permitted that is below the "lowest reasonable cost of the most efficient and lowest cost operator in the locality." Under this provision a member of the trade may sell below his own cost, provided he is not the most efficient and lowest cost operator in the locality. However, there has been a "floor" established by the code, which, along with the other controls, does contribute its influence in procuring the stabilization that we have assumed the National Industrial Recovery Act contemplates for our trade.

The National Recovery Administration has approved the trade's recognized cost method, with some omissions, and in this connection, as well as relating to other stabilization features in the code, I wish to direct the Board's attention to the fact that our code authority is cooperating with the Federal Coordinator of Transportation in a program having to do with stabilizing the voluntary warehousing services performed by the railroads, steamship lines, State and municipally owned facilities, and port terminals generally. Prior to the National Industrial Recovery Act, such effort had been more or less futile. In other years, intense competition among transportation agencies has brought about a system of charges below cost, allowances, rebates, and improper absorptions, injurious to all concerned, including the public served and particularly taxpayers. These stabilization features in our code give us now the opportunity to cooperate with the Interstate Commerce Commission, the Federal Coordinator of Transportation, and other agencies in order to remedy this situation; and we are positive that the elimination of any of these features from our code will prevent this cooperation and largely handicap the Federal Coordinator. It would then require legislation to place all of these industries concerned under some other Federal control if the problem of voluntary warehousing by transportation agencies is ever to be solved.

We have recently made a survey of employment conditions in our trade and find that the members of the trade have, in the aggregate, increased their pay rolls almost 30 percent over the same period last year, and the number of employees by a like amount. This has been their contribution to the recovery program. The fair-trade practice provisions have not had sufficient time to operate to bring corresponding improvement in sales revenue. In fact, it is only the promise that these provisions give for the future that has warranted the members of our trade in subscribing so wholeheartedly during these past few months to this procedure for bringing about better employment conditions. Take away these stabilization features from the code—the filing of tariffs, the 10-day waiting period, and the cost provisions—and our trade would be in the same status that all industry was in when the National Industrial Act was conceived. It was not able to participate in any employment program unless bad competitive practices would be abolished so as to permit the acquirement of the revenues necessary to pay the increased pay-roll expense contemplated under the program. Take away these stabilization features that are bringing about saner competition, and we are where we started 18 months ago. We shall have the increased pay-roll requirements but nothing to meet them with.

We have no fixation of actual prices in our code. These price controls that we do have are practical, were known to the trade prior to National Recovery Act, are needed now under the recovery program, and they should be retained in this trade because of the quasi-public utility character of the service that it renders to the shippers of this country.

EXTRACT FROM PAGE 29 OF THE MINUTES OF THE MEETING OF THE MERCHANDISE WAREHOUSING TRADE, FEBRUARY 8–9, 1935, NEW ORLEANS, LA.

"Whereas at the meeting of the Merchandise Warehousing Trade Code Authority, held December 5–8, 1934, a resolution was passed urging the continuance of the National Industrial Recovery Act for a further period of at least 1 year from its expiration date, and in accordance with this resolution a statement was prepared and forwarded to the President of the United States and members of the National Industrial Recovery Board, the President of the Chamber of Commerce of the United States, and other officials in Washington: Be it therefore

"*Resolved*, That the American Warehousemen's Association, Merchandise Division, in session at New Orleans this date, hereby approve and endorse the action of the Merchandise Warehousing Trade Code Authority as set forth above.

"If it is in order, I would like to change the words 'American Warehousemen's Association, Merchandise Division', to the 'Merchandise Warehousing Trade.'

"Chairman Adams: You have all heard the resolution offered by Mr. Haslett. Is there a second?

"Mr. C. C. Daniel (Kansas City, Mo.): I will second it.

* * * * * * *

"The question was called for * * *.

"Chairman Adams: All in favor signify by saying 'aye'; contrary.

"The resolution is adopted."

It is hereby certified that the above is a true and correct copy of the verbatim minutes of the meeting of the Merchandise Warehousing Trade at New Orleans, February 8–9, 1935.

WILSON V. LITTLE, *Secretary.*

LETTER FROM MORVAY & SONS, INC., BRIDGETON, N. J.

APRIL 9, 1935.

Finance Committee of the United States Senate, Washington, D. C.

GENTLEMEN: Your telegram received and regret very much that as much as I desire to be present on the 11th to testify against the continuation of the National Recovery Administration beyond the date of June 16, circumstances will not permit the time and expense.

You have directed me in your telegram to prepare a written statement. Therefore, I take the privilege of using this means to bring before you the facts as briefly as possible.

Speaking of the National Recovery Administration and its effects, permit me to state as follows:

We have been in the business of manufacturing ladies' apparel since 1906. Since that time, to the present date, we never had any labor troubles. A little after the National Recovery Administration was introduced with its section 7a, the National Needle Workers' Union took it upon themselves to enroll all workers and they sent their representatives to begin agitation among employees of our town. They engaged people outside of our factory to appear in front of same with large placards on which was printed "We are representing N. R. A." and "You must enroll in the union." Several agitators visited our workers in their homes and used all sorts of persuasions, even coercion and physical injuries, continuing these efforts for nearly 3 months, failing in their efforts only on account of the satisfied conditions of our loyal workers. We made complaints to the National Recovery Administration authorities, but they would do nothing to help us.

After their failure to organize our forces, the disappointed agitators began to file complaints against us for alleged violations; and to answer those groundless accusations, we were obliged to appear in Newark, 130 miles away from our place of business, causing us the loss of time and expense which we could ill afford. No sooner had we disproved one complaint than they launched another.

When the code covering our industries went into effect, none of the conditions vital to us, situated as we are in a small community where efficient operators are few, were taken into consideration. When we applied to Washington, bringing these vital matters to the attention of the various boards, they referred our case to the code authorities at New York which are composed of big city manufacturers and union labor leaders. What chance did we have to get satisfactory action from them? None whatever!

While the administration desires to decentralize the industry, their interest is to annihilate all small, country industries and concentrate all business in the large cities, to have all the field to themselves; the labor leaders, on the other hand, to have all the workers pay tribute to them.

The fact-finding commission covered the field to learn what would be the proper differential in regards to the minimum wage. They arrived at the conclusion, and reported back, that at least 30 percent less should be paid by manufacturers situated as we are, in a small community, than by those conducting business in large cities. We have never received relief in that respect. Therefore, we cannot compete with the large, city manufacturer. Due to our extra transportation charges, the lack of efficiency of our workers compared with those of the city, and the fact that during the spring and summer months quite a number of our trained help stay home to help on the farms and we are obliged to fill their places with untrained or aged workers, we are at a great disadvantage and have a hard struggle to hold our own against the prevailing odds. The fact is

that our losses are piling up due to the high cost of labor and materials, plus the fact that what we produce we are obliged to sell without profit to compete with the large city manufacturer.

Characteristically, the methods used by organized labor will be illustrated by the fact that while we are restricted to 36 hours, one unionized shop within a short block of our factory works 6 days a week all hours without anyone disturbing them and they have no time records, while the open shops are harassed beyond your imagination. Recently, one small contractor of our town who has been called for alleged violations and has been denied labels by the code authorities unless he submits to certain conditions which we all know he cannot comply with, was told by the union representative to sign up his workers and they will wipe off the slate with the code authorities.

I could cite numerous cases which come to my knowledge, one more unequitable and vicious than the other, and furnish their testimonies to prove every word of it if you desire to give me the opportunity.

Thanking you for the courtesy extended, I remain,

Sincerely yours,

MORVAY & SONS, INC.,
VICTOR W MORVAY.

LETTER FROM MR. GEORGE H. MCGOVERN, PRESIDENT BUILDERS SUPPLIES CORPORATION, WILMINGTON, DEL.

WILMINGTON, DEL., *April 5, 1935.*

FELTON M. JOHNSTON, Esq.,
Clerk, Senate Finance Committee, United States Senate,
Washington, D. C.

DEAR SIR: Your letter of April 2, 1935, arrived during my absence from the city.

By reason of illness I wired you today in reply to your telegram as follows:

"Cannot attend meeting of Finance Committee April 8 regarding National Recovery Act. If committee desires to hear me at later date request you arrange to have National Recovery Act or W. H. Talley, secretary of Retail Coal Code, Wilmington, Del., produce their record of public hearings for reference in order to substantiate questions that may be asked. Code authority has refused my request to produce these records. Answer to your telegrams delayed by my absence from Wilmington."

With reference to your suggestion that a statement be prepared by me and that I indicate the time that may be required to present it: We are giving you a statement of the improper procedure under the National Recovery Act which should be guarded against in any future legislation on this subject. The time to be required for the presentation of these points would depend primarily upon the committee and the amount of verification that may be required by it to substantiate each item.

Our statement is as follows:

1. Restrictions should be inserted in any future legislation which would fix responsibility for the making of affidavits and using the prestige of the President and the Government. This could be accomplished by requiring the makers of affidavits to post indemnifying bonds. We have been successful in contesting all litigation against this company despite the false affidavits filed against us. We have been subjected to months of publicity and now that we have been successful, we are without recourse as to costs or damages because all of this litigation has been carried on in the name of the Government.

2. That this company has paid and is paying higher wages than provided for by the code.

3. That the code authority has practiced a fraud upon the public by the use of false price lists as to cost price of coal to the dealer.

4. That the code authority has misrepresented the effective dates upon which prices took effect.

5. That the code authority assumed arbitrarily to change prices and their effective dates.

6. That the prices of coal before their effective date were fraudulently represented in court as of August 18, 1934, while it enforced and put into effect an entirely different schedule of prices on that date and prior thereto.

7. That the code authority violated its own regulations in establishing prices.

8. That the code authority changed prices arbitrarily without the approval of the Administrator.

9. That the code authority represented such changes could be automatically made, but has failed to provide evidence of such automatic authority.

10. That the code authority has attempted to have the representation that prices were approved while as a matter of fact no signature of approval has been produced to support such fraudulent act.

11. That the code authority has avoided and refused to make an honest statement relative to the official approval of the schedule of prices.

12. That the code authority maliciously selected this company for prosecution and oppressive litigation despite the fact that a large number of other dealers were selling coal at prices lower than this company.

13. That this company has successfully combated this malicious litigation, and is still ready to preserve its constitutional rights regardless of the assumption of authority and "hip-pocket" law.

14. That the local code authority was illegally elected in violation of the provisions of the code as signed by the President.

15. That the code, as signed by the President, was changed particularly in relation to the classification of members.

16. That the ballot used in the election of the local code authority was so manipulated as to give preference.

17. That despite the provisions of the code that no inequitable restriction on membership be imposed, the granting of votes upon a tonnage basis, or amount of business done, does impose arbitrary discriminatory and oppressive restrictions upon the small dealer, and therefore, is a violation of article 8, Monopolistic practices.

18. That the arbitrary discrimination permitted the control of the solid fuel industry and the ultimate levying of taxes upon the consumer by a single influence and interest.

19. That this company was deprived of its vote in its proper class under the code by the arbitrary changes effected through the manipulation of the ballot.

20. That a list of proposed candidates was circulated prior to the election whereby the same candidates at large were voted for under each class of membership, resulting in the election of two officers from the largest dealer.

21. That the wording of the certificate of compliance required the assent which in effect was to create a combination detrimental to the constitutional rights of an American citizen.

22. That this company has been denied the right to make extracts from the record of the proceedings of the public meetings of the code authority, thereby depriving it of its proper information for the conduct of its business and its constitutional defense against the unwarranted and prejudiced action in court as promoted through the action of the code authority.

23. That this company has been "boycotted" in the expenditure of our local tax monies as well as Federal funds in an effort to force and coerce us to give up our constitutional rights under our Government.

24. That the consumers' committee was not represented and unable to express their views upon the action of the code authority or the prices as fixed.

25. That the costs were not properly secured by the administrative member.

26. That the administrative member made a false affidavit in reference thereto.

27. That the administrative member was not qualified to secure costs.

28. That the administrative member padded up the basic costs according to his so-called "philosophy", to the injury of this company and the consumer.

29. That the administrative member arbitrarily attempted to coerce this company from doing a cash business, and endeavored to force us to go into a credit business.

30. That the administrative member expressed pleasure at the prospect of having an opportunity to testify in court, making reference to the fees he had secured in cases for so doing, and stated to us that he had "teeth and could use them."

31. That perjured testimony was resorted to in an effort to harass this company.

32. That subornation of perjury was resorted to in having identical affidavits made in the United States district court against this company, despite the fact that in a public meeting the maker of such affidavits made statements contrary to those made in such affidavits.

33. That the effect of such perjured affidavits was an attempt through a collusive combination to destroy the business of this company.

34. That we have been denied copies of the records of the code authority, despite the fact we agreed to furnish all expense connected with the furnishing of same.

Very truly yours,

BUILDERS SUPPLIES CORPORATION,
GEORGE H. MCGOVERN, *President.*

LETTER FROM THE NEW ENGLAND JOBBERS AND MANUFACTURERS MILLINERY ASSOCIATION, BOSTON, MASS.

BOSTON, MASS., *April 16, 1935.*

Mr. FELTON M. JOHNSTON,
Clerk Senate Finance Committee, Washington, D. C.

DEAR SIR: Replying to your telegraphed notice that the Finance Committee would give us a hearing at 10 a. m., Wednesday, the 17th, on the National Recovery Administration investigation, we wired: "Impossible to give personal appearance Wednesday. Mailing written statement with supporting information of our criticism of National Recovery Administration Millinery Code."

Our objections to the National Recovery Administration, as applied to our industry, are as follows:

1. That it is un-American and contrary to the spirit of liberty that we have been taught is our birthright. Our workrooms and books are inspected and audited, our employees questioned by inspectors and auditors looking for violations and transgressions—such inspections being taken as a matter of right, not by permission; whereas, even in a criminal procedure our police department would hesitate to enter our business premises without complaint and a search warrant issued by the court.

2. Our hours of labor are limited to five 7-hour days with permission for overtime not in excess of 12 weeks in 1 year of 7½ hours per week, this overtime to be paid at not less than time and one-third of the normal wage rate. Our wages are classified as to every operation. Ours is a seasonal business with long dull periods between the spring and fall seasons, and wages which are paid by classification, giving no elasticity of cost where the most skilled often is not a fast worker and piecework must be paid equal to the classified hourly rate. These regulations are a hardship to all, especially the small manufacturer, who is deprived of any personal direction of his own business in matters of vital importance to his well-being.

3. Is the matter of extravagant expense of administrating the code. The sales of our industry for 1934 amounted to $105,000,000; the cost to the 1,373 establishments in the business was $576,628.27, or $419.98 per factory. This, we think, is excessive. Our code authority fitted up their New York headquarters 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—

	Salary per year
Code director	$20,000
Code secretary	10,000
Code auditor	10,000

The above figures are excessive, especially the salaries which, to our mind, are out of proportion to salaries paid in more responsible positions and to many occupying positions high in public affairs. In these trying times we cannot help but question the expenditure of such amounts simply to force upon an industry rules and regulations which are necessary only for the small minority of unethical manufacturers among us.

Our association is heartily in accord that sweat shops and exploitation of child labor should be done away with, and that enforceable laws be made to cover not only these evils, but the dishonest chiseler and grafter in industry, as well.

Under the above simple regulations there would be no need of the many different codes that, with their exaggerated expense accounts, are eating the very life-blood out of our business existence and taxing the consuming public beyond their ability to pay.

Thanking you for your kind consideration of the above, and for this opportunity of expressing our views to your committee, we remain,

Yours truly,

NEW ENGLAND JOBBERS & MFGRS. MILLINERY ASS'N.,
ARTHUR R. COOK, *Treasurer.*

P. S.: Figures quoted are taken from Annual Report and Budget of the Code Authority of the Millinery Industry.

(The report referred to above is on file with the committee)

LETTER AND STATEMENT SUBMITTED BY MR. D. H. NEWELL, CONCORD, N. H.

D. H. NEWELL, INC.,
PATRIOT BUILDING, CONCORD, N. H., *April 12, 1935.*

Mr. FELTON M. JOHNSTON,
Clerk, Committee on Finance,
United States Senate, Washington, D. C.

DEAR SIR: This is a complaint against the National Industrial Recovery Act particularly as applied to the distributing of bituminous coal. It is an outline of the way the Coal Codes under National Industrial Recovery Act have affected this business.

I write this not as a conservative, a radical, a democrat, republican, or any other Ism except common-sense-ism—based upon my actual experience and the experience of the company of which I am head.

As an introduction, please note the writer, a man of 51 years of age, has spent approximately 20 years of that time as a wholesaler of coal, chiefly bituminous coal. He had his training in Philadelphia and the mining regions of Pennsylvania; he went through the war period in the wholesaling of coal with headquarters at Philadelphia and, over a period of years, much of his time was spent in the soft coal regions of Pennsylvania, northern West Virginia, and western Maryland.

This concern was established in September 1925 to act as sales agents or mine agents for the sale of coal in New Hampshire and the eastern watershed of Vermont and has served that territory almost exclusively for the 9½ years since that time. Please note that we are decidedly a "small" business. Please note that in that period we have never failed to pay a mine bill on time; and, if our expert knowledge and service was not necessary to this territory, we would not have lasted close to 10 years, particularly through such a period of industrial depression as we have lately suffered.

We are purely a wholesale concern, and only handle coal in carload lots directly from the mine to consumer.

Following the President's proclamation in 1933, we joined the American Wholesale Coal Association and the New England Wholesale Coal Association and paid our yearly dues in advance. We took our time and money to attend meetings of the New England Wholesale Coal Association at Boston. We found that representatives of the largest producing and selling companies (the two are well tangled up) had taken it upon themselves to go to Washington and draw up codes made to order for themselves. We found we had no voice whatsoever. As our first year's membership drew to an end, we resigned from both associations. We resigned because we were convinced these organizations and the coal codes were not living up to either the spirit, letter, or intention of the National Industrial Recovery Act passed by Congress. We withdrew because we made up our mind that, as exercised, the whole thing was no more than a scheme to put out of business small and medium sized members of the coal trade. We resigned because we did not intend to longer contribute toward the cost of the rope that was to be used to hang us.

The producers' coal codes went into effect October 1, 1933, with a minimum price to consumer on each separate coal. We endeavored, through the organiza-

tions we had joined and by direct contact with code authorities, to obtain copies of these prices and code regulations. We could not obtain them until the month for which the minimum prices applied was nearly over.

The operators' coal codes conjured up a scheme whereby distribution of coal was made under the heads of "General Distributor" and "Regional Distributor." The general distributor was one who marketed the entire output of a given mine. The general distributor could make any commission arrangements he pleased with the mine he represented. On the other hand, the regional distributor, who often did the actual sales work, was limited to a 7 percent commission. Allow me to point out the viciousness of the above scheme.

Many mining concerns had their own general sales office under a different corporate head. Sometimes this selling agency nearest to that particular mine or group of mines was a holding company for a second selling concern. Therefore, these one, two, or three selling concerns made their independent arrangements as "General Distributor" with the mines and each other and may have been allowed a dollar a ton or any other percentage for selling.

On the other hand, my small concern, in most instances buying directly from the producing company, was restricted to a 7 percent commission. While one part of the Federal Government is going after "holding companies", another section of the Federal Government is creating them and placing in their hands the opportunity for unlimited bonuses or commissions.

You can easily see that the above "general-distributor" scheme would enable the large wholesale houses, or holding companies, to take large commissions, put agents on the road with the proceeds, and force the smaller wholesalers with their limited incomes out of business. Thereby it would limit the means of distribution of the small or medium-sized mines and force those mines into the hands of the large wholesaling and holding companies at such terms as these large companies, so-called "general distributors", might dictate. The above would be very expensive—but a monopoly would know just how to get it all back from the consumer! In the end, the bituminous coal industry would be smashed just as has the anthracite coal industry. The example is before you.

No craftier attempt to build up a monopoly has ever been devised.

The first part of January 1934 a group of the larger wholesaling concerns—"general distributors"—entirely broke away from the codes and took sizable contracts at prices to consumers considerably under the minimum code prices which they themselves had established the previous 1st of October. We learned of it when we started to meet vague but positive sales resistance. By the middle of January, the tale had leaked out and, of course, we then knew what the resistance meant. Naturally, the industrial buyer, bedeviled by his own codes, was trying to get his coal as cheaply as possible, and contracted as far ahead as possible at the lower than code prices which were offered early in January 1934. Thus heavy tonnages were taken off the market as far as the medium-sized and those "not in the know" factors in the trade were concerned. After the horse had been stolen, the different codes got together, published the fact of how exceedingly sorry their members were, and promised to be good as of the middle or latter part of January. In other words, the bad Indians came back on the reservation, were probably admonished by the loud Johnson not to do it again, and promised thereafter to be "good injuns."

Just how did the above affect my business? Just where do you men get the idea that the decency, honor, and integrity of the coal trade is wrapped up in its largest factors? Just where does the present administrative branch of our Government get that idea? If they don't have that idea, why has no definite attempt been made to consult, or to protect, the small and medium-sized factors of the coal trade, both on the producing and distributing ends? The National Industrial Recovery Act is perfectly clear that the smaller factors should be protected by this scheme that was supposedly devised for the general good. Is it the hidden intention of the present administration to make but two classes of Americans—the over-lords of great wealth and the serfs who must live off welfare associations and doles passed out by the various divisions of Government?

Although the producers' codes and the wholesalers' codes were supposed to control the bituminous-coal industry, we find along the eastern seaboard centered at the port of Boston another code, called the "Dock Operators' Code." Please note this monstrosity and think of the integrity of the Government officials and code officials who have allowed it to go on for so many months with their knowledge. The members of this Dock Operators' Code are large, very large, coal concerns. Maybe some of them own mines. Maybe they are just "general distributors." At any rate, they are the largest coal concerns operating along

the eastern seaboard and have puissant connections and affiliations in the West Virginia and Pennsylvania coal fields and coal trade. They represent some of the largest of our American coal companies.

This is what "The Dock Code", their code, means. If any member wants to change the price of coal f. o. b. cars piers Boston, or other discharging point, they must file such change of price with the secretary of the dock code. Thereby the other members of this select group may know when one of their compatriots is cutting prices. No one not a member of this favored group has the benefit of this information. The members of the group are those bringing tonnages of coal by water, largely from the loading points at Hampton Roads, Va., to unloading points such as Providence, Boston, Portsmouth, N. H., and Portland, Maine.

The minimum code prices on coal should be observed by all honest men. Therefore, my concern buys a carload of coal from a mine in Pennsylvania at the minimum code price of, say, $2.40 per net ton mines. We sell it at that price to the factory, assume the credit risk, and the mine operator allows us 7 percent commission. The freight from the mine in Pennsylvania to the point of destination of the coal is published. Therefore, the mine operator, the distributor, competitors, and the buyer know exactly what the cost of the coal will be f. o. b. destination.

Now take the coal that comes to New England from the West Virginia fields via water from the ports of Hampton Roads; "Dock Code Coal." That coal is supposedly bought at code prices in West Virginia. It has added the rail freight rate from mines to tidewater at Hampton Roads, Va. Here is the joker: It also costs so much a ton for that coal to be brought by steamer to Boston (the going rates the past winter have been published as $0.65 to $0.75 per ton). After it gets to Boston or some other New England unloading point, there is a very definite cost to unloading that coal. Also must be added insurance, shrinkage, interest, and commissions all of these before the f. o. b. cars piers price is given to the consumer. The codes have in no respect forced a statement of all these carriage expenses from these large "Dock Code" companies. They have over $1 per ton hanging loose to play with in the naming of a price to consumers; have tacitly acknowledged that they have broken the code prices and fall back upon their own little dock code as a defense. Their glib reply to a cut price is "We have our own boats. We can charge ourselves anything we want to for transportation and costs."

Just where do we figure against that kind of government-aided competition? We sell coal at the code price. On the other hand, the members of the dock code if they want to take business from us, have the above mentioned mess of expenses from tidewater loading point to f. o. b. cars tidewater destination point totaling more than $1, to juggle with. If they want to take a piece of business away from D. H. Newell, Inc., who is living up to the codes, they just underbid us. This they make up by "socking" the price to some other consumer not located to benefit by our all-rail competition. Our transportation costs are known and published. Theirs are partly hidden. We have no leeway. They have a dollar a ton to play with. They are the great would-be monopolists of the coal trade, one of them in receivership. We are a small concern living up to the law and paying our bills.

The above situation has not gone unknown to the Federal officials over the Coal Codes. It has not been unknown to the code officials drawn from the coal trade. We do not know what swaps and agreements have been made on the quiet among the large factors which would allow the above unjust situation to continue since 1933.

It is well to call your attention to the fact that the production of soft coal in Pennsylvania is not being entirely financed by Pennsylvania operators and banks. It is being financed largely by wholesalers, such as ourselves, scattered all over the East. Banks in each of the Middle and New England States are doing a large part to finance the production and sale of the coal mined in Pennsylvania. Am I wrong in assuming that, after we have been killed out, the Federal Government is going to go down in its pocket and do that financing? Of course, you understand that, being out of business, we won't be able to pay the taxes you must assess.

The Federal Government has allowed itself to be imposed upon by the large factors in the mining and selling of bituminous coal. These claimed that intolerable conditions obtained in the bituminous-coal industry, which the industry itself was powerless to correct.

The writer believes the bituminous industry has been and is no worse off than other great industries. It suffers from the excessive greed of its largest factors.

These factors are now begging you for a monopoly in the mining and distributing of bituminous coal. A monopoly breeds resentment and suspicion in the minds of the people. It is sure to become greedy, dictatorial, and dishonest. Its power is fought for in the political arena and its proponents ask you to adopt this method to poison the whole social body of 124,000,000 people so that a group of less than one million can work together in amity. The consumer is considered only as the one who makes such a method possible, - -he, which is society, pays the bills. Substitute any other price-fixing code for coal and the foregoing is equally applicable.

The writer has no intention of being critical without being constructive. Therefore, if the operators and miners insist to the satisfaction of the Government that conditions in the industry and the general welfare demand a degree of Federal control, I offer the attached method which gives a fair deal to miner, operator and consumer.

Very truly yours,

D. H. NEWELL.

PLAN

We question the wisdom of "price-fixing" under the codes and doubt the justice and equity of arbitrary and artificial price levels set by any authority other than the people themselves acting under their natural interests. We question whether any group or central authority, however high their motives, has wisdom enough to fairly do this task. The results of 18 months' trial carry conviction that justice and general welfare do not lie in that method.

Coal, furnishing power and heat, is a base of industry. The power to fix the price of this essential is the power to tax industry. To give this taxing power to a central group made up of the large factors in this industry, who derive the greatest profit from this scheme, is Bourbonism, not Americanism.

If it is answered as an argument for this method of price fixing that the bituminous coal industry was in such a condition before the adoption of the codes that some regulation was imperative, that labor was being exploited, that it is a quasi public utility being a natural resource on which all industry is dependent, we offer the following method of control:

METHOD AND EXPLANATION

1. Maintenance of present minimum wage schedule.
2. Removal of all price restrictions and regulations whatever.
3. Whenever, after a year's operation, a coal mine shows a loss from operation, it is closed down for that reason; to stay closed so long as the average price of coal remains at or below the level of price of this commodity in the year in which the loss was suffered. If the average rises, and the owners deem they can operate at a profit at the new price, they may be permitted to open. (The conditions of this clause will be accepted by agreement with the factors pressing for Government regulation, if these factors of the coal trade are acting, as they claim, for the public weal.)
4. Federal examiners, similar to bank examiners, would set up accounting systems and determine profit and loss. One item of cost that would be determined by the government, and would be the same for every mine, would be the value to the nation of the coal in the ground. It is this value that is the "social value" and the factor that makes this industry a national resource.

1. This method would protect the consuming public from excessive and unjust prices.
2. It would protect labor from being exploited.
3. It would prevent the capital fund invested in the business from being frittered away in senseless competition.
4. It would prevent the dissipation of a national resource.
5. It would put the test of remaining in business on efficiency and not on special privilege, masquerading as general welfare.

To develop briefly these last five statements:

1. That it "would protect the consuming public from excessive and unjust prices." If prices rose from any cause, more mines would open to increase the supply and satisfy the demand and keep the level of prices fairly even. It would tend to eliminate the excessive dips and rises of the price line on the chart.
2. That "it would protect labor from being exploited." The present wage scale is the result of agreement between employers and employees under circumstances favorable to labor. Producers of coal were assured of prices sufficient to pay labor what was mutually agreed as fair. The present wage scale came

from a council of good will and not warfare. We have no objection to paying a price for coal which is fair to those laboring to produce this necessity. We believe that good wages are economical wages, and that those units in the industry that pay such wages will be the ones to live and profit under this plan. We recognize also that if labor is to be employed it must be efficient and share the responsibility with intelligent management.

3. That "it would prevent the capital fund invested in the business from being frittered away in senseless competition."

4. That "it would prevent the dissipation of a national resource." Our greatest national resource is our accumulated wealth, the result of the labor and thrift of countless millions that have gone before. We cannot spin a thread without it. To waste this greatest national asset in order to despoil the Nation of another national resource is insane folly. Unrestricted competition in this industry has done that in the past and will do it in the future. This plan would conserve both national resources, the capital fund, and the coal in the ground, and at the same time assure consumers of intelligent and effective competition.

5. That "it would put the test of remaining in business on efficiency and not on special-privilege masquerading as general welfare." The prices of soft coal for the last year have been unnatural prices, fixed by the edict of the central government and, in the nature of the circumstances, largely influenced by those in position to reap the greatest profit.

Whatever its aim, the present system marches toward a monopoly. It is admitted that many small factors in this industry have been eliminated in the past year and that this basic industry is becoming more centralized and monopolistic. We believe the welfare of the Nation lies in a reversal of this trend and ask for the end of this unsocial method of control.

The system I present is practical and simple. Tonnage that is shipped in freight cars is easy to check. It would discourage the intricate methods of bookkeeping by which large units are wont to disguise or cover up earnings. To continue in business they would have to show a profit. It would give large capital all the advantages that are claimed for it, and give the small factor all the advantages he claims for his compact supervision and management—and allow the consumer to keep his one weapon of defense—competition.

D. H. NEWELL.

STATEMENT SUBMITTED BY THE RESEARCH PRODUCTS CORPORATION, NEW YORK, N. Y.

To the Senate Finance Committee:

The unaffiliated dental manufacturers and dealers of supplies and equipment through their spokesman, the Research Products Coporation of the City of New York, State of New York, present the following objections to the present set-up of the dental goods and equipment industry and trade code and the code authority for said industry.

As presently constituted the code itself is ineffectual and serves no purpose so far as the betterment of the industry is concerned but merely presents an opportunity for certain individual concerns which, as will be shown hereafter, to obtain advance information concerning the trade secrets of its competitors, and permit them to undersell the market of their competitors and also secure lower operating costs for themselves as against a higher standard set for their competitors. The particular code in question was set up by the American Dental Trade Association, which in the past has been seeking to dominate and control the industry. By reason of the fact that there was too active competition and new inventions for use of the dental profession were making serious inroads on old standard products sold by association members it was deemed expedient to adopt some means or measures to eliminate this competition.

It is urgently brought to the attention of this committee that the industry involved does have a public interest inasmuch as the products of this industry are used for the safeguard of the health of the people. To effectuate a continuing improvement in dental professions and the practice of dentistry a free and open market must be maintained, and to permit stagnation or destruction of progress through stifling competition will react to the damage of the general public.

Concerning the membership of the code authority for this industry, an examination of this code specifically shows that the American Dental Trade Association controls the Code Board and that the authority of this code board will be sub-

verted to further the uses and purposes of the American Dental Trade Association in gaining a monopoly over the industry.

If it is the intention of this committee to formally propose to the Senate body an effective means of promoting fair competition in the nation's industries, it is respectfully suggested that the present Federal Trade Commission be given exclusive authority to govern and protect industries against unfair trade practices and that instead of having regional directors for the National Recovery Administration, the Federal Trade Commission be organized so that each State will have a subcommission whose members will not have any affiliation with any industry whatsoever and who can sit impartially and hear and determine charges of corrupt and unfair trade practices for which a definition has already been accepted and which the Federal Trade Commission already takes cognizance of.

In recognition of the fact that the present policing of industry as to the details of operation has brought about ridiculous and annoying situations which have no bearing upon the fair operation of these industries, it is further respectfully suggested that only those provisions of the National Industrial Recovery Act which tend to protect the wage level and prevent too great overworking of labor, should be retained and all other points against which issues have been raised they should be abandoned.

To the end that this Committee may well and truly serve not only the industrialists but also the nation at large, this brief is respectfully submitted.

Washington, D. C., April 19, 1935.

RESEARCH PRODUCTS CORPORATION,
New York City, N. Y.
By PAUL POLTSCHKE, *President,*
(Through Edward H. Rosenblatt, Counsel.)

LETTER AND RESOLUTION FROM THE RETAIL LUMBER AND BUILDING MATERIAL CODE AUTHORITY, WASHINGTON, D. C.

RETAIL LUMBER & BUILDING MATERIAL CODE AUTHORITY, INC.
Washington, D. C., April 15, 1935.

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

DEAR SIR: We submit herewith a resolution unanimously adopted by the representatives of the 32 divisions of the Retail Lumber and Building Material Code speaking for the retail lumber industry of the entire country. This resolution is expressive of our mature judgment on this subject and we trust that it may receive your careful consideration.

Respectfully,

H. W. WILBUR, *Vice Chairman.*

RESOLUTION ON REENACTMENT OF NATIONAL INDUSTRIAL RECOVERY ACT AND RETAIL LUMBER AND BUILDING MATERIAL CODE, UNANIMOUSLY ADOPTED BY RETAIL LUMBER AND BUILDING MATERIAL CODE AUTHORITY

WASHINGTON, D. C., *April 18, 1935.*

Whereas the declared principle of the National Industrial Recovery Act is the organization of industry for the purpose of cooperative action among trade groups, the maintenance of united action by labor and management under adequate Government sanction and supervision, the elimination of unfair competitive practices, the reduction of unemployment, the improvement of the standards of labor and the rehabilitation of industry; and

Whereas the President has declared that the purpose of the National Recovery Act shall be the attainment of the objectives above set forth through the definite enforcement of standards of business conduct to be enunciated in codes of fair competition; and

Whereas the National Retail Lumber Dealers Association on June 17, 1933, by resolution of the board of directors concurred in by 32 constituent divisional associations submitted for the approval of the President a code of fair competition for the retail lumber, lumber products, building materials, and building specialties trade; and

Whereas the Retail Lumber and Building Material Code Authority and its constituent divisions have earnestly endeavored, with the assistance of the National Recovery Administration to fairly and impartially administer the aforesaid code, and

Whereas after an experience of 18 months in the administration of the code and of intensive study of the problems arising therefrom, it is our belief that the following statement represents our considered judgment as to the present status of this subject and the action which should now be taken by our industry:

1. Our industry, labor and the consuming public has in the main adjusted itself to our code. While the practical operation of the code has not been uniformly successful, to abolish the code now would in many sections of the country, check recovery and destroy returning confidence. Therefore, in the event that a satisfactory National Industrial Recovery Act is reenacted into law, we ask that a new code be adopted to take effect on June 16 when the present Recovery Act expires.

2. Should a new code be adopted it should meet the following conditions:

A. Fair trade practice provisions shall be effective in such divisions as determine to operate under the code. The cost of maintaining the necessary administrative machinery to make effective the aforesaid provisions shall be borne by such divisions as agree to establish fair trade practice provisions and maintain appropriate administrative machinery for this purpose.

B. The present regulations relative to hours and wages should be continued.

C. Definite fair trade practice provisions for the protection of the consuming public should be enacted.

D. The revised code should permit divisions and subdivisions which so desire to make effective the so-called "open-price filing provisions" with modifications required for effective operation.

E. A new revised code should permit divisions and subdivisions to make effective the so-called "liquidated damage clause" as a method of enforcement.

3. It is our judgment that if hours and wages are to be stabilized, that competitive practices which are destructive to the stability of our industry and which make it difficult for the smaller units to survive must be checked. If these code provisions which have to a measurable extent benefited our industry are now swept away, we foresee the depletion of capital and the demoralization of wages, all of which are how being held in check.

4. We are strongly opposed to the adoption of any law prescribing either a 30-hour week or any rigid limitations as to hours and wages. We believe such legislation to be uneconomic, impracticable, and dangerous and that regulation under the code system is highly preferable to such a measure: Therefore be it

Resolved, That this statement be transmitted to the National Recovery Administration and to the Senate Finance Committee, and that the executive committee of our code authority be instructed to take such steps as it may deem wise to effectuate the objectives herein set forth.

PAUL S. COLLIER, *Secretary.*

Attest:

H. W. WILBUR, *Vice Chairman.*

RESOLUTION SUBMITTED BY THE ROCHESTER HOTEL ASSOCIATION, ROCHESTER, MINN.

Whereas, after full and fair trial, extending over a period of 15 months, it is clearly evident that the application of National Recovery Administration to the hotel business has been a failure; and

Whereas, in partial recognition of such fact, President Roosevelt in an Executive order issued May 26, 1934, placed hotels in a special category of service trades and abolished the National Hotel Code Authority; and

Whereas, compliance with the code has been proved impossible without business bankruptcy; and

Whereas, by the very nature of the hotel business, which is essentially a local domestic service and not industrial or manufacturing in character, such regulation by National Recovery Administration is impractical as well as unjust; and

Whereas, further, hotels are not engaged in interstate commerce, which fact is tacitly admitted and proved by the failure of the Government to join in a test case on the grounds of unconstitutionality. Therefore be it

Resolved by the undersigned hotels, members of the Rochester Hotel Association, That we protest against the inclusion of hotels, including hotel restaurants, in any proposed National Recovery Administration legislation.

Rochester, Minn., April 2, 1935.

ROY WATSON,
President Rochester Hotel Association.
FRANK J. PESEK,
Secretary Rochester Hotel Association.

MEMBERS OF THE ROCHESTER HOTEL ASSOCIATION

Hotel Kahler, Hotel Arthur, Hotel Carlton, Hotel Martin, Hotel Zumbro, Hotel Brown, Hotel Campbell, Hotel Damon, Hotel Norman, Hotel Samaritan, Hotel Security, Hotel Cook, Hotel Delano, Hotel Norton, Hotel Virginia, Hotel Wagoner, Hotel Claton.

LETTER AND STATEMENT SUBMITTED BY THE CODE AUTHORITY OF THE SCIENTIFIC APPARATUS INDUSTRY, PHILADELPHIA, PA.

Philadelphia, Pa., April 16, 1935.

Mr. FELTON M. JOHNSTON,
Clerk Senate Finance Committee, Washington, D. C.

DEAR Mr. JOHNSTON: This is to acknowledge with thanks, your telegram of April 15 respecting the termination of the hearings on National Recovery Administration before the Senate Finance Committee.

I realize that a large volume of testimony has already been presented and that more would probably be superfluous. However, we are accepting your invitation to submit a statement in order that our industry may be on record as requesting a continuance of industry operation under a code of fair competition, either under the authority of the present Act or one which is substantially equivalent.

Under the circumstances, we have endeavored to make our statement as brief as possible, giving only the essential and pertinent information. We trust it may be found useful.

For such use as you may choose to make of it, and as part of the record, we are enclosing copy of letter sent to the National Industrial Recovery Board on December 10, 1934.

Yours very truly,

L. B. LENT, *Executive Officer.*

STATEMENT BY SCIENTIFIC APPARATUS INDUSTRY

Pertinent information respecting our industry and its code is as follows:

1. Industry is now composed of 460 contributing members, allocated in nine sections, in accordance with code provisions.

2. Our code of fair competition, no. 114, was approved on November 14, 1933 and became effective on November 27, 1933.

3. Most members are relatively small firms; largest member employs 1,500; smallest employs 2 men. Total present employees is about 15,000; total normal employees is about 20,000.

4. Present annual value of sales is about $75,000,000.

5. Since the code became effective, number of productive employees has increased 30 percent; other employees have increased 25 percent.

6. Code provisions permit the filing of price information, but allow no methods of price or production control.

7. Compliance with all code provisions on the part of members has been very satisfactory. About 99 percent of all possible "equitable contributions" for code administration have been collected without undue effort.

8. Code administration has been satisfactory to industry members and to the National Recovery Administration. It has also proved to be very beneficial in stabilizing what was previously a rather demoralized industry.

9. Code administration has not been oppressive to small enterprises, nor tended to promote monopoly. In fact, smaller industry members have enjoyed a much greater protection (both in kind and degree) than before the code became effective. And the smaller members constitute the larger part of those who desire to continue operation under a code of fair competition—as the results of a recent questionnaire to all members will show.

The industry's wishes are as follows:

The industry desires to record its wish to continue operations under its code. To be deprived of the benefits of 18 months' effort in building industry stability and protection would, indeed, be a serious hardship.

It is our hope that the Finance Committee of the Senate will find it desirable to favorably report the passage of a bill continuing the emergency and the National Industrial Recovery Act for such a period as will determine whether or not industrial self-government under governmental sanction should become a part of our national industrial structure.

Our industry believes that a larger measure of industrial self-government than is now permitted by the multiplicity of National Recovery Administration rules, regulations, and policy memoranda would permit us to even more effectively carry out the policies of the Recovery Act, and that the record of the past 18 months of our industry code administration fully justifies such a belief.

EXHIBIT B

DECEMBER 10, 1934.

NATIONAL INDUSTRIAL RECOVERY BOARD,
Washington, D. C.

GENTLEMEN: From information which has been gathered from official National Recovery Administration sources, and other authoritative sources, it would appear that consideration is being given to legislation which would make permanent some provisions of the present Recovery Act and the corelative provisions of approved codes.

We are led to believe that the so-called "open-price system" may be retained in such industries as find it helpful in carrying out the policies of the Recovery Act.

But it appears to be a fact that those who have studied the subject in National Recovery Administration have come to the conclusion that a so-called "waiting period" is unnecessary, and is detrimental to the interests of those concerned, and is not consistent with the policies of the Recovery Act.

We are convinced that this is not so, as it affects our industry, and desire to protest against any deletion of the waiting period in the open-price policy permitted by the provisions of our code. The reasons therefor are substantially as follows:

A careful analysis of prices filed during the past year, during which the code has been effective, indicates that in most cases revision of prices has resulted in a general decrease rather than in any increase. The tendency seems to be ever downward.

There has been no coercion on the part of the majority, or by the larger manufacturers, to induce the minority, or the smaller manufacturers, to increase prices.

The policies enunciated in title I of the Recovery Act have been our guide in code administration. We have faithfully endeavored to reduce and relieve unemployment and to improve standards of labor. It is fair to say that substantial increases in numbers of employees and rates of pay have occurred in our industry. We are now in the process of attempting to rehabilitate the industry, and surely need the aid granted by the pricing provisions of our code.

Some adjustments of the destructive prices of 1929 have been made, thus preventing the bankruptcy of several concerns and the consequent discharge of many workers.

Our industry is divided into nine sections, all of which are part of the same family, but in which conditions vary. The output, or production, of several of these sections is almost entirely sold to governmental purchasing agencies. In such cases, the quoted price is the prime factor in determining the award. Even if identical prices on the specific product are quoted to governmental purchasing agencies, there should be no legitimate complaint, if the price is a fair one. Under the competitive conditions which surround bids to governmental purchasing agencies, and in view of the fact that the lowest bid must (other things being equal) secure the award, it is to be expected that identical prices should appear in many or all of the bids on a particular product.

If the waiting period were removed, it would be possible for any member of our industry to instantaneously revise his filed prices for the purpose of securing an award, and subsequently revise his prices upward to their former, or higher level. Permitting such a performance would recreate the destructive conditions existing before the recovery act became effective, and restore a situation in

which everybody was essentially bidding in the dark, with no knowledge of what minimum prices might be.

The imposition of a waiting period gives time to publish information to competitors, thus giving them knowledge of the lowest price which may be quoted by any member of the industry, and removing the doubt which most certainly would exist if this price information is not disseminated to those concerned, before it may be used in quotations or sales.

It is our conviction that the removal of the so-called "waiting period" from the provisions of our code would completely destroy the effectiveness and usefulness of the price-filing provisions of our code.

We assert that any degree of rehabilitation which our industry has enjoyed since our code became effective has been largely due to those provisions of our code permitting the filing and exchange of price information respecting particular products. To eliminate this privilege, and more especially to eliminate the waiting period, would be to very largely deprive us of a most effective instrument in rehabilitating the industry.

It may be pertinent to add that not a single complaint has been made against any member of our industry for a violation of the wage and hour or labor provisions of our code, and that throughout the industry the scale of wages is very materially higher than the minimum permitted by the code. Employment has increased since the effective date of our code, and is continuing to increase. The condition of the industry is being improved, and many members have been saved from bankruptcy, and thus permitted to continue the employment of skilled workmen at much higher wages than in most other industries.

While it is difficult to prove, we think it is fair to say that much of this has been accomplished because of those provisions of our code which permit the exchange of price information. In our opinion, it would be a severe blow to the orderly and progressive rehabilitation of our industry to disturb, or otherwise change, the conditions which exist at present.

By order of the code authority meeting in New York, December 3, 1934.

L. B. LENT, *Executive Officer.*

LETTER FROM THE SHEET METAL MANUFACTURING CO., YOUNGSTOWN, OHIO

THE SHEET METAL MANUFACTURING CO.,
Youngstown, Ohio, March 6, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: With further reference to our complaint of February 20, filed with you as to the restraint of trade monopoly in violation of the Sherman-Clayton Antitrust Acts of the Steel Code, we have today filed with Willard L. Thorp, chairman of the Advisory Council, National Recovery Administration, a brief, per copy enclosed, as to the coercive, oppressive, and destructive operation of the Steel Code and its unfair competition in relation to independent jobbers, middlemen, and distributors.

Anticipating the enclosed may be of some service to you in addition with our complaint of February 20 and thanking you kindly for the interest already demonstrated, we remain,

Yours very truly,

THOMAS E. FARRELL,
President.

YOUNGSTOWN, OHIO, *March 6, 1935.*

Mr. WILLARD L. THORP,
Chairman Advisory Council, National Recovery Administration,
Washington, D. C.

DEAR SIR: We herewith submit allegations of the unfair methods of competition in the distributions from the manufacturer to the retailer and/or consumer practiced and operative under the Steel Code, provisions of which were intended to correct.

(a) As to the nature of the unfair methods of competition among the channels of distribution from the manufacturer to the retailer which Steel Code provisions were intended to correct.

(1) The Steel Code provides for minimum selling price schedules to be filed by each steel manufacturer with the Steel Code Authority. These filed minimum schedules have in practice at all times been the maximum selling-price schedules.

(2) The schedule of prices, so filed, are alike applicable to the wholesaler, jobber, broker or middleman, without any allowances or differentials whatsoever and are likewise applicable to the consumer or retailers.

(3) Effective prohibition has thereby been established against the distributor competing with the manufacturer for carload business, effectively restraining competition in this class of business solely to the manufacturers where a close monopoly is had owing to the system of open-price filing—effectively eliminating any price competition.

(4) Covering less carlot shipments quantity differentials are charged by the steel manufacturers which are applied on the purchases of the middleman as well as the consumer or retailer, thereby permitting the manufacturer which has proved under the operation of the Steel Code a very destructive fact to invade, disorganize and disrupt the competitive field of the middleman by the manufacturer.

(5) Under the open-price filing system of the Steel Code wherein no provision whatsoever is made for a schedule of differentials applicable to the middleman's purchases—the manufacturer successfully and absolutely precludes competition from the middleman in either carload or less-carload business.

(6) Through wholly owned subsidiary, distributors, and middlemen who are not, under the Steel Code, required to quote selling prices in excess of the minimum filed selling prices of the parent company which are the minimum cost prices of independently owned distributors or middlemen, the manufacturers are prosecuting a totally unfair and wholly destructive competition through these wholly owned subsidiaries, distributors, or middlemen against the independently owned distributors.

To concretely illustrate: The Wheeling Steel Corporation, member of the Steel Code, wholly owns the Wheeling Corrugating Co., a distributing middleman of steel products. The Wheeling Corrugating Co. in any of its warehouses located in all of the largest cities in the country, as a wholly owned subsidiary do not have to, nor do they quote selling prices in excess of the minimum prices filed with the Steel Code Authority by the parent company, the Wheeling Steel Corporation, which minimum selling prices of the Wheeling Corrugating Co. are the minimum cost prices of independently owned middlemen or distributors competing in any of the said cities against a warehouse of the Wheeling Corrugating Co.

(c) As to the degree to which present code provisions of this type are not operating in the public interest.

(7) Clause C: As to the degree to which present code provisions of this type are, or are not, operating to the public interest. The provisions of the Steel Code are operating entirely against public interests, eliminating from business and throwing out of employment the employees of the independently owned distributing and warehouse companies, formerly engaged in profitable business and rapidly being displaced by the unfair competition of the wholly owned subsidiary, distributor, or warehousemen.

(8) The penalization imposed by the Steel Code at the rate of $10 per ton for any violation by an independent distributor of the filed minimum selling prices of his supplier works a detriment to the public in artificially raising and maintaining an unjustifiable level in the prices of all steel products to the consumer.

Most members of the Steel Code and all of the larger members are now unfairly and illegally competing against jobbers, middlemen, warehousemen, and other small independent industries who sell or consume products of the steel industry; through the unfair operation of the Steel Code whereby such wholly owned subsidiaries, regardless of their classification and the field of trade in which they operate are not required to sell their products at a greater price than the minimum selling price posted by the parent company, which in all cases is the minimum cost price of an independent competing company. These provisions of the Steel Code were drawn with but one purpose in mind—to eliminate as rapidly as possible all independent companies engaged in the fabrication and distribution of steel and steel products.

For the reasons stated herein we submit this request for relief from the present oppressive and destructive operations of the Steel Code and pray for an alteration of the Steel Code to establish a fair schedule of distribution differentials and the elimination of wholly owned subsidiary competition.

Very truly yours,

THE SHEET METAL MANUFACTURING CO.,
——— ———, *President.*

THE SHEET METAL MANUFACTURING CO.,
Youngstown, Ohio, February 20, 1935.

RE: STEEL CODE—RESTRAINT OF TRADE—MONOPOLY—VIOLATION SHERMAN-CLAYTON ANTI-TRUST ACTS

As written and operative, the Steel Code is in flagrant violation of the Sherman-Clayton Acts, creates a monopoly and is an abrogation of the "due process of law" clause of the Constitution.

Section 4 in said Steel Code clearly specifies that should a jobber, warehouseman, or any other middleman, such as ourselves, purchase and take delivery from a steel mill of steel, they would be precluded, under penalty of a fine of $10 per ton, from selling thereafter at a profit if their selling price was less than the mills' selling price at the time the jobber offered the steel for sale.

To illustrate: Assuming our purchase and delivery from a mill of flat galvanized sheets at $3.10 per hundredweight base, the present mills' selling price. Assuming that we offered these sheets for sale next November at $6.20 per hundredweight base, which would represent a 100 percent profit. Assuming that next November the mills' selling price of these same sheets was $6.50 per hundredweight base, if we sold for 1 penny per hundredweight less than the mills' selling price next November of $6.50 per hundredweight we would be fined $10 per ton, not only on every ton involved in that particular sale, but in addition on every ton sold to the involved customer during the current year, regardless of whether prior sales did or did not conform to code prices or covered the same or different products. This, notwithstanding, that to force us to sell at the mills' selling price at the time we desired to make the sale would result in an injustice to the consumer and an extortionate profit to us.

Every jobber, warehouseman or distributor of any classification who signed an agreement under section 4 of the Steel Code has not only made himself liable to the penalization stated above, but further has signed over to the Steel Code Authority an absolute power of attorney, whereunder they can fine him and as his attorney confess for him judgment in the amount of the fine so assessed.

This price compliance section of the Steel Code has effectively prohibited the liquidation, even at a profit, of an inventory which on a declining market would thereby effectively control, restrict, and possibly ruin the finances of any jobber or middleman.

Under the present provisions of the code of fair competition governing the iron and steel industry, all of the steel mills are required to file with a committee of the Steel Code Authority a schedule of minimum prices for the various steel products before the same can be offered for sale, which prices when once filed cannot be changed or deviated therefrom for a period of 10 days thereafter. Any violations of this selling price schedule on the part of the mills subject the offender to a fine of $10 per ton for the material sold and in addition thereto a like sum of $10 per ton for any other materials sold to that same customer during the year, regardless of whether the former sales were within the minimum price schedule or not.

The above is termed "open-price filing." The prices so filed are supposedly the uninhibited fair selling prices of each member of the Steel Code based on costs plus a fair profit. Common knowledge dictates that there is a great spread in the cost of steel as between the various mill members of the Steel Code, with the expectant result that a similar spread would be evident in their filed selling prices. Since the code has been in operation and such prices have been filed, there has not been a single, solitary instance in which the prices filed by each and every member of the Steel Code have not been absolutely uniform, showing definitely collusive and illegal actions prior to filing to secure the uniformity of prices posted.

We are not signators of the jobbers' agreement and penalization provided for by the Steel Code and accordingly are in no danger of any penalities that would otherwise arise thereunder. Freedom of competition is denied us, however, through coercive action by the Steel Institute or Steel Code Authority on our mill suppliers. A concrete illustration is the following:

Under sealed bids we recently quoted the State of Ohio for furnishing 200 boxes of tin plate. On public opening of such bids ours was 10 cents per box less than the otherwise uniform price quoted by all competing mills. Directly this knowledge was made public the Steel Institute or Steel Code Authority endeavored to have our supposed supplier influence or coerce us to withdraw our low bid, which request we complied with as otherwise we would in the future have paid an ex-

cessive penalty through secret, illegal, and coercive actions by the Steel Code or individual members thereof.

Most members of the Steel Code, and all of the larger members, are now unfairly and illegally competing against jobbers, middlemen, warehousemen, stampers, fabricators, and other small independent industries who sell or consume products of the steel industry, through the unfair operation of the Steel Code whereby such wholly owned subsidiaries, regardless of their classification and the field of trade in which they operate do not have to sell their products at a greater price than the minimum selling price posted by the parent company which in all cases is the minimum cost price of an independent competing company. These provisions of the Steel Code were drawn but with one purpose in mind—to eliminate as rapidly as possible all independent companies engaged in the fabrication and the distribution of steel and steel products.

In violation, we believe, of the rules and regulations of the Interstate Commerce Commission as to the inviolability of shipments, the members of the Steel Code, to insure to themselves knowledge of the jobber, middleman, or warehouseman's customers, are inserting on all of their bills of lading covering shipment made for the middlemen the following clause: "The goods covered hereby are the property of the consignor until delivered to the consignee at the destination herein specified and shall not be diverted or reconsigned without permission of the consignor."

They have secured legally or illegally, we know not, the cooperation of all of the railroads in making effective the above-stated clause, so that it is impossible for a middleman to keep from his mill supplier, a member of the Steel Code, the knowledge as to the middleman's customer. The members of the Steel Code, through the operation of this clause, illegally retain to themselves custody of the shipment notwithstanding that under the terms of the Steel Code delivery is always accepted by the buyer f. o. b. cars at the seller's plant.

Schedule B, section 2—the method provided in the Steel Code for apportionment of votes to elect directors who will control the steel industry—automatically gives complete control of the board of directors, the Steel Code Authority, and consequently of the steel industry, to the United States Steel, Bethlehem Steel, and not over one or two other large steel companies inasmuch as their dollar sales are a majority of the total dollar steel sales.

We are enclosing a copy of a brief of complaint filed with Administrative Office of the National Recovery Administration on January 8, 1935, by the Code Authority for the Secondary Steel Products Warehousing Trade which amplifies the complaint made herein as to the distribution of primary steel products.

Operations in the steel industry since the Steel Code became effective have demonstrated the inevitable and ruthless elimination of all independent companies in the industry with the certainty that in a remarkably short space of time the steel industry will have become the worst monopoly ever evidenced in this country.

The Steel Institute has, through the medium of the Steel Code, put across on the United States Government and people an illegal restraint of trade that they have unsuccessfully endeavored to secretly manipulate through the activities of the same Steel Institute for the past 15 years.

The complaints set forth herein as to the monopolistic operations of the Steel Code have borne out the prophesy that we made in our complaint of July 20, 1933, to the Federal Trade Commission, as per copy attached hereto.

Under the Steel Code prices of the most profitable products manufactured by the Steel Industry have been advanced enormously, some cases as much as 58 percent while real dollar wages have been advanced insignificantly, if as much as 10 percent.

If the National Recovery Act is continued at all beyond its present expiration date, then it should only be with the strictest injunction against price fixing, regulations or posting in any form whatsoever with drastic penalties for violation or for any collusive action to regulate, post or fix prices and against subversive, secret and coercive actions as now practiced.

Trusting the information contained herein may be of some service in remedying the evils complained about and assuring you that you have the support of all independent business and all labor which together with the consumer have been the sole sufferers of the operations of the National Industrial Recovery Act and will have only the opposition of monopoly which has been the sole beneficiary of this intolerable act.

We were one of the first 10 companies in the United States to adopt and make effective the conditions of President Roosevelt's blanket agreement and we are

perfectly willing to and are very desirous of according to labor every possible protection, realizing that revival can only come from its increased consumption, but we are certainly unwilling to continue to be the crucified victims of monopoly and special privilege.

Yours very truly,

THE SHEET METAL MANUFACTURING CO.,
———— ————, *President.*

CODE AUTHORITY FOR SECONDARY
STEEL PRODUCTS WAREHOUSING TRADE,
Cleveland, Ohio, January 8, 1935.

Hon. W. A. HARRIMAN,
Administrative Officer,
National Recovery Administration, Washington, D. C.

SIR: The undersigned, the code authority for the secondary steel products warehousing trade, hereby submits its objection to the price-fixing provisions of the Code of Fair Competition for the Iron and Steel Industry insofar as the same relates to the sale of products to the industry covered by the secondary steel products warehousing trade.

Under the present provisions of the code of fair competition governing the iron and steel industry all of the steel mills are required to file with a committee of the Steel Code Authority a schedule of minimum prices for their various steel products before the same can be offered for sale, which prices, when once filed, cannot be changed or deviated therefrom for a period of 10 days thereafter. Any violation of this selling price schedule on the part of the mills subjects the offender to a fine of $10 per ton for the material sold and in addition thereto a like sum of $10 per ton for any other material sold to that same customer during the year regardless of whether the former sales were within the minimum price schedule or not.

The filing of these minimum prices on the part of the various mills has resulted in two things; first, the minimum prices filed are likewise the maximum market price for the material; second, an absolute uniformity on the part of all of the mills as to these price schedules. What has been set forth relates not only to the so-called "prime materials" covered by the Iron and Steel Code, but to the secondary products which is the trade represented by the undersigned code authority.

One of the fundamental principles underlying the National Recovery Administration under which all codes are founded, was the principle that no code should work a hardship on any then existing industry nor should there by any provision in the operation thereof that would be detrimental or injurious to any then existing business. Likewise, in the operation of said codes nothing should be of a monopolistic nature. The net result of price filing and price maintenance on the part of the steel mills, as now conducted under its steel code insofar as the sale of their secondary products are concerned, creates an absolute monopoly on steel seconds, creates a price which is at once both a minimum and maximum price for all secondary materials and in no instance is the same controlled by supply and demand and which leaves the mills without any control over the sale or distribution of their secondary products excepting upon the prices fixed by the filing system now in use.

The remedy that the undersigned code authority submits for the present condition is as follows:

1. Insofar, as the sale of the secondary steel products of the steel mills are concerned the requirement for the filing and publishing of prices should be eliminated and each individual mill should be left free to sell and dispose of their secondary products in such manner and on such terms as they see fit.

2. As an alternative to the foregoing proposition if it is still the desire of the Iron and Steel Code Authority to seek to control the prices of the mills' secondary products, then there should be set up to the undersigned industry a differential in price schedules under the terms of which this trade and industry would be given a price somewhat lower than the price quoted to the ultimate consumer. This special price should apply both to carload lots and less than carload lot shipments from the mills.

Supporting the above the practice of the mills operating under their code is to sell to the ultimate consumer their secondary products on the same basis that the mills sell these same products to the secondary trade. Why the Steel Code Authority has differentiated between the method of handling its secondary prod-

ucts from its prime products is indeed difficult to see. On certain sheets and other prime products the Steel Code Authority has granted to the prime warehousing trade and the prime sheet metal distributors special prices which were not granted to the consumers. Why the same rights were not granted the mills insofar as other secondary products were concerned does not appear clear. It must be perfectly apparent to this Administration that it is impossible for this trade to continue under the present set up. Here is an essential industry that has long been in existence; that it will be entirely wiped out within a few months unless relief is granted immediately, is clear. The present method has eliminated practically all opportunity for any margin of profit for this industry.

In the manufacture of steel all of the products of the mills that pass inspection are known to the trade as "primes", which is a product free from defects and complies with specifications. In the process of making the above product the mills frequently run into trouble and produce material that is not in accordance with specifications, or may be pitted, warped, not true to gage, or have other apparent defects, all of which material is thrown into a class known as "seconds." Further, in the production of prime orders there is an excess of material run which is accumulated and sold in sizeable tonnage to members of this association as excess, shop-worn or obsolete stock. This excess consists of miscellaneous sizes, gages, and finishes.

All of the members of this association are engaged in the sale of the so-called "seconds", "rejects", "excess" or "wasters" of rolled, drawn, or cold finished steel products.

It is apparent from the nature of the material itself that the same rules of sale and distribution that apply to "prime uniform sheets of steel" cannot apply to the secondary products sold by the members of this association.

These secondary and reject materials are resold to manufacturers and fabricators whose finished products require the lower cost afforded by the secondary character of the material. It has extended and enlarged certain classes of manufacturers production that otherwise would not have been possible. Specific illustrations in this connection are the use of these sheets on the manufacture of buckets and shovel toys sold by the 5-and-10-cent stores; the use of these sheets in the manufacture of wall ties for use between brick and mortar; the use of these sheets in the manufacture of turpentine cups for the running and conveying of the turpentine sap from the trees; the use of these sheets in the manufacture of small parts and stampings by building, automobile, trunk, etc., hardware manufacturers. The use of these sheets has positively increased the production and consumption of prime sheets by initiating and opening up fields of manufacture that would not otherwise have been possible in the initial stages because of the additional cost of primary material over this secondary material.

This industry also prevents the creation of distressed stocks and inventories at the mills and acts as a shock absorber between production and consumption, as the members of this industry constantly carry an inventory of between $10,000 and $12,000,000 of steel seconds, insuring a steady source of supply to the small manufacturer at all times, which otherwise would not be available.

Some 20 years ago substantially all of the materials handled by the undersigned trade constituted practically a total loss to the steel mills. About that time a resident of Cleveland by the name of F. H. Morse conceived the idea of purchasing this excess stock and imperfect materials and distributing the same to small manufacturers who could produce an article at a much less cost because of the price of this material and which material for his requirements was in every shape as good as prime materials. He conceived the idea of inducing other manufacturers to change from the use of wood to the use of the cheaper steel materials in the construction of various manufactured articles. Soon thereafter this industry spread until it has reached the sizeable industry represented by this code authority. The same has only been developed by reason of intensive salesmanship, ingenuity of its members in finding avenues for the use of this material and the creation of new ideas whereby this material could be used.

In the manufacture of the prime materials of the mills the accumulations of the secondary steel products vary. It is no uncommon thing for the mill to have from 100 to 1,000 tons of accumulations. These consist of various sizes, gages, finishes, and various stages of imperfection. When these accumulations occur they must be moved. The members of this trade have heretofore been able to purchase clean-ups of these accumulations but under the present regulations it is impossible to do this unless it pays the price that any consumer may pay for even a very few pounds of this same material.

The steel mills today, of course, are primarily in the manufacturing business, not a warehousing business. The steel mills do not have an organization equipped or trained to handle the secondary products equivalent to the industry represented by this code.

The industry represented by this code authority requests only that the steel mills may individually be free to do as they please in connection with the sale of their secondary products granting to the members of this trade such prices as they choose and granting to the mills the right to handle these secondary products in such manner as they see fit. This industry does not seek to compel the mills to maintain prices or method of sales but merely that the Steel Code Authority release the mills from their present obligations to maintain the prices of their secondary products and their present method of classifying these products. That is all this trade asks.

As has been stated heretofore, we have suggested an alternative to the above, which, of course, by no stretch of the imagination could it be as satisfactory as the first heretofore suggested. It would, however, grant some temporary relief to this trade and industry. The members of this trade and industry, however, should be granted a substantial reduction in the published prices of the secondary products. In view of the services rendered to the public generally and to the mills in particular this should be done. Failure to grant the relief requested in this application will result in the destruction of an industry that has been in existence for a long period of time; that has invested in it millions of dollars and employs thousands of workers and more the very fundamental principle underlying the National Recovery Administration will have been violated and an existing industry will have been throttled, hammered and destroyed, fortunes lost and thousands of men thrown out of employemnt.

For these various reasons we submit our request for relief.

CODE AUTHORITY FOR SECONDARY STEEL
PRODUCTS WAREHOUSING TRADE.

JULY 20, 1933.

Re: File Hq. 1446. *Steel Code:* Restraint of trade, violation Sherman-Clayton Antitrust Acts (see sec. 4), decision on jobbers status.

Mr. ISHMAEL BURTON,
Chief Examiner, Federal Trade Commission,
Washington, D. C.

DEAR MR. BURTON: As written, the Steel Code is in flagrant violation of the Sherman-Clayton Acts and an abrogation of the "due process of law" clause of the Constitution.

The portion underlined in copy of the code attached hereto clearly specifies that should a jobber, such as ourselves, purchase and take delivery from a steel mill of steel, they would be precluded under penalty of a fine of $10 per ton from selling thereafter at a profit if their selling price was less than the mill's selling price at the time the jobber offered the steel for sale.

To illustrate: Assuming our purchase and delivery from a mill of flat galvanized sheets at $2.85 per hundredweight base, the present market selling price. Assuming that we offered these sheets for sale next November at $5.70 per hundredweight base, which would represent a 100-percent profit. Assuming that next November the mills' selling price of these same sheets was $6 per hundredweight base, if we sold for 1 penny per hundredweight less than the mills' selling price next November of $6 per hundredweight, we would be fined $10 per ton, notwithstanding that to force us to sell at the mills' selling price at the time we desired to make the sale, would result in an injustice to the consumer and an extortionate profit to us.

This section of the code effectively prohibits the liquidation, even at a profit, of an inventory on a declining market, thereby controlling, restricting, and possibly ruining the finances of a jobber.

The first schedule of selling prices submitted under this code by its members will indicate to your honorable body, its intention to absolutely fix and control sales prices and restrain competition because we are certain that that schedule will be filed uniformly by all members.

Schedule B, section 2: The method providing for apportionment of votes to elect directors who will control the steel industry automatically gives complete

control of the board of directors and consequently of the industry to the United States and Bethlehem Steel Companies inasmuch as their dollar sales are a majority of the total steel sales.

The Steel Institute is endeavoring with this Steel Code to put across an illegal restraint of trade that they have unsuccessfully endeavored to manipulate through the activities of the institute for the past 15 years.

I anticipate this letter and a careful perusal of the code would be of interest to the Commission for the reasons stated above and particularly to your Messrs. Haas and Sibbet who have for some time past, under the file number above, been carefully investigating irregularities and illegalities of the National Association of Sheet and Tin Plate Manufacturers who are a division of the Iron and Steel Institute.

I would very much appreciate your advising whether the Commission intend to give this code their attention and to have an observer at the hearings to be held before General Johnson.

I would ask that you have your examiners carefully study the portions of the code which I have underlined and which to my way of thinking, are strictly illegal and unconstitutional.

Many thanks for the courtesies extended me in the past, remain,

Yours very truly,

THE SHEET METAL MANUFACTURING CO.,
———— ————, *President.*

LETTER ADDRESSED TO SENATOR RICHARD B. RUSSELL, JR., OF GEORGIA, BY THE SMITHS, INC., BARNESVILLE, GA.

THE SMITHS, INC.,
Barnesville, Ga., March 6, 1935.

Senator R. B. RUSSELL, Jr.,
Washington, D. C.

DEAR SENATOR: Attached is carbon of letter to the Manufacturers Division of the National Recovery Administration. We have been watching proceedings in Washington and from the Associated Press of yesterday we conclude that an investigation of the National Recovery Admi istration is to be made by the Finance Committee. Senator George is a member of this committee but we are writing you for the reason that we know you much better than we do Senator George. We feel that you will know what is best to be done and ask that you contact Senator George and either work through him with his committee or present this matter to the committee yourself.

We operated, as you know, the largest buggy manufacturing enterprise south of the Potomac River until the automobiles put the buggies off the road. We converted our buggy factory into a furniture factory 7 years ago and have gradually built up a splendid business. Of course there was no such thing as codes and as the business grew we took care of the increased demand by working a double shift in our machine room, where the parts of the furniture are manufactured.

Our pay rolls show that in 1933 we were employing 121 men. When the blanket code was issued we signed and operated under same with 121 men. When the permanent Furniture Code was issued extra shifts were prohibited and we were compelled to lay off 41 men who were on the second shift. Naturally, our volume was decreased and we have not been able to satisfy the demands of our trade and have been operating practically at a loss because we could not get sufficient volume to take care of overhead.

When these 41 men were laid off, they met and appointed a committee of 3 to go to Atlanta, and their situation was laid before the code authorities in Atlanta. They were told that nothing could be done for them.

By adding some new machines and making some other adjustments we have been able to put 7 of these men back to work, but our pay roll is still short 34 men.

There is no other furniture factory in Barnesville or nearer us than Austell or Toccoa, which are north of Atlanta. These men have made an honest effort to get employment but not a one of them has a job. I consulted today the management of the Georgia Emergency Relief Administration and have the information that eight of these employees are on public relief on Emergency Relief Administration projects and draw 15 cents per hour on a 30-hour week. With us they would have received from 30 to 50 cents per hour on a 40-hour week.

Most of these men are married with families. Further information is given that five others of these men have applied and are hoping for public relief.

Barnesville, as you recall, is a small city of around 4,000 inhabitants, having one cotton mill and two underwear mills. Most of the employees in these textile industries are women and girls. I think it is conservative to say that 80 percent are females. There is no other factory or industry in Barnesville which can or will employ the men and boys out of these families.

The code provides that we can run an extra shift by paying time and one-half, which means that a man drawing 60 cents per hour would have to be paid 90 cents per hour, etc. This evidently is intended to cover a condition which might arise whereby a man on regular employment would be asked to make 1 or 2 hours overtime. It is impossible for us to pay the extra shift extra wages. They will draw the same wages as the same class of workmen on the day shift and they will all be glad to go to work on the extra shift. In fact, as we have stated, they had previously worked on the extra shift.

I am sure that the situations in Washington are favorable for this matter having proper consideration, and we trust that you will present it in the proper way to the proper committee who is investigating the National Recovery Administration.

With personal regards of the writer and our very best wishes, we are,

Yours sincerely,

THE SMITHS, INC.,
Per W. B. SMITH, *President.*

MARCH 6, 1935.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C.

Attention Division Manufacturing

Re: Application for exemption from article IV, section 5, Furniture Manufacturing Code.

GENTLEMEN: This letter is in reply to yours of February 2.

We do not understand what you mean by "certificate of compliance with the Furniture Manufacturing Code." We signed the Furniture Manufacturing Code and are operating under it. Our registration number on our Blue Eagle is 10-4. The following information is offered in answer to your requests numbering from 1 to 11:

(1) The following employees are requested on either a night shift, or an extra shift: 1 foreman, 1 cut-off saw operator and helper, 2 rip-saw operators and 2 helpers, 1 molder operator and helper, 1 tenon-machine operator and helper, 1 mortising-machine operator, 2 shaper operators, 2 band-saw operators, 1 lathe operator, 1 carver operator, 1 router operator, 1 sander operator, 3 helpers, 2 glue-clamp operators.

The above list aggregates 25 men.

If the above employees are approved for an extra shift in the machine room, where all of the furniture is manufactured, the following old employees can be reinstated on the regular day shift operating between 7 a. m. and 4 p. m.: 8 men in cabinet department, 5 men in finishing department, 2 men in shipping department.

This list aggregates 15 on the regular shift, but the addition of these men is impossible without the extra shift.

The number of hours on the regular shift is 8 hours per day for 5 days, or a 40-hour week

(2) For the 25 men on the night shift the number of hours would be 8 hours per night for 5 nights, or 40 hours per week.

(3) These men would be employed regularly and steadily with such lay-offs as might be necessary in dull periods.

(4) No present employees would work on the extra shift.

(5) This information is fully covered in (1).

(6) This information is covered in (1).

(7) The wages would range from 30 cents per hour to 60 cents per hour.

(8) No overtime will be made or extra compensation allowed.

(9) We are paying better wages than each class commands in our vicinity.

(10) No union.

(11) Approximately one-fourth of our orders are canceled or refused us on account of our delay or inability to fill.

We are at present operating from 7 a. m. to 4 p. m., so your suggestion in the concluding paragraph of your letter offers no relief. The night shift would go on at 4 p. m. and off at 12 night.

We wish to repeat the paragraph in our former letter in which we stated that 8 of our former employees are still on public relief and the added information that 5 others have applied.

The employees which we were compelled to lay off are all unemployed and such of them as are not on public relief are supported by the female members of the family who had to go into the textile industry, where three shifts are allowed.

If the object of the National Recovery Administration is to decrease employment you have succeeded in a notable degree with us. Our output has been decreased from above $25,000 monthly to around $18,000 which means that we are operating practically at cost and some months "in the red."

Further progress with us is absolutely impossible under existing conditions and unless we can get the suggested relief the wise thing for us to do would be to discontinue.

Yours very truly,

THE SMITHS, INC.,
Per W. B. SMITH, *President.*

STATEMENT SUBMITTED BY MR. FRANK G. STEWART, EXECUTIVE SECRETARY WHOLESALE AUTOMOTIVE TRADE AUTHORITY, WASHINGTON, D. C.

WHERE DO WE STAND WITH THE NATIONAL RECOVERY ADMINISTRATION?

(A code prospective as viewed by a wholesaler after over a year's experience as executive secretary of a code authority)

We cannot get at the real answer as to what is needed in National Recovery Administration codes today without considering the problem as a whole. All codes were devised and written to accomplish a definite purpose. To consider a single article or provision of these codes without the general plan of operation under which they were conceived accentuates one point and is likely to lead to a decision that would break down the entire code structure. The starting point was well established. Work was to be distributed to absorb the large army of unemployed, and the Government put the problem squarely in the lap of industry with the demand that they take steps to absorb it.

The Administration realized that industry needed a stimulant or redistribution in order to permit already weakened units to absorb this extra burden. The shortened hours and the advanced rates of pay were easily spelled out and definitely established. Each code has its unmistakable share of labor provisions. In most cases these meant a tremendous burden through increased expense of operation. To offset this burden the Government created a formula that would offset this extra load and permit industry to carry it safely. This was to be accomplished through the fair-trade practice provisions which industries were to prescribe for themselves, as a balancing factor.

The increased employment of labor was accepted as a necessity. Business as a whole realized that this was the only way out. They also accepted in good faith the Government's promise to lighten this burden through the protective code provisions.

From this point on, the Government became a guardian of business, and should have been in a position through proper legislation to back up these fair-trade practices which became a part of the agreement and upon which industry based its faith.

Business men realized the many unfair trade practices that had sprung up in their various fields and settled down diligently to write the fair-trade practice provisions for their code that would create a fair and equitable distribution of business by the elimination of practices that were cancerous in nature and sapped their income. There is no question but that many of these provisions were unsound or unworkable. There were possibly some written for the purpose of gaining an advantage for a minority.

It is my opinion that instances of these cases have been magnified by those critics who wish to bring discredit upon all code provisions through these examples. Mistakes made in formulating these code provisions were by no means confined to industry. Articles were written, rewritten, and deleted by National Recovery Administration deputies to conform to policy. These policies were promulgated by the National Recovery Administration to blanket many codes without the

proper individual study as to their propriety in certain codes where conditions differed from those which preceded them.

The final result of this pruning and warping to align with policy frequently left only a shell to replace the structure which was designed to offset their added burden. Where the proper protective provisions have been allowed to remain in the codes and they have been backed up by compliance, the trades or industries have moved forward along the plans on which they were originally intended to operate.

Fundamentally, this is correct. If the original concept is followed through, they cannot help but benefit. The plan is sound and feasible, and business men, large and small, in every section of the country rallied to support the plan.

The first discouragement came with the long delays in getting the codes approved. In our case, we spent 6 months wrangling over the various code provisions before it was accepted and signed.

The next blow came when the finished product was published and it was found that our most valuable points were either deleted or inoperative. This disappointment was somewhat offset by our faith and belief that these would be corrected and we bolstered up our hopes by the promise that the National Recovery Administration would correct these conditions as soon as they could get through the rush of code making and study the individual requirements. On February 21, 1934, we held mass meetings in 50 trading centers throughout the United States and formed district administrative committees, to administer the code in their respective districts. The response as indicated by the attendance at these meetings was gratifying. Enthusiasm still prevailed and members of the trade elected their committeemen with a zeal engendered by the hope that a new deal was actually at hand and they were at last to get the needed protection through the efforts of their code authority and their newly elected committeemen.

The next blow came when these committees met and settled down to the task of administering the code. There were practically no instructions for procedure and the national code authority was powerless to help without the National Recovery Administration's approval of their procedure manual. It was not until about the 1st of April that our much abridged procedure manual was released for their guidance.

The next blow came when their compliance cases were forwarded to the National Code Authority office at Washington, and we were unable to get appropriate action. After 15 months of operation, we have not been successful in bringing a single compliance case through the court for disciplinary action in connection with our fair-trade practice provisions.

This weakness has been meat for the chiselers. At first those who were causing most of our trouble corrected their tactics to a large degree, due to the fear that this code would be enforced in the manner they had been led to believe it would. As technicalities blocked the compliance machinery they became bolder and finally openly defied our committees.

It can be well understood the embarrassing position in which this body of earnest business men were placed when they met in good faith and attempted to carry on. The men administering this code were selected as the leaders in their trades, and it is not difficult to understand why they would lose confidence and enthusiasm in carrying out a program where they were placed in a position of ridicule. All during this trying period the press of the country carried items that were sufficient to break the morale of any organization. The good things about the codes and the points where they were working did not furnish news. The entire burden of bolstering the morale and moving forward was loaded on the backs of the code authorities, augmented by such little help as could be given them through the National Recovery Administration publicity.

In the face of these manifold difficulties, our committeemen not only donated their time and energy, but in many cases actually financed administrative moves out of their own pockets. The voluntary assessments were a failure. Our better firms who conducted their businesses in an ethical manner were the ones who came forward with voluntary contributions. The firms we were attempting to police paid nothing.

The trades or industries that were covered by a single association, and that were thoroughly organized before the advent of the codes, did not meet with the difficulties encountered by the unorganized bodies. The fully organized trades or industries needed the codes the least. Their administration troubles were simplified as well as their financial problems.

Finally, the enforced assessment was developed to assist the code authorities who were not so fortunate as to be fully organized and self-supporting prior to

the National Recovery Administration. This plan should have been put into operation a year ago. However, it is far from perfect now. The actual enforcement is not only complicated, but questionable. Our habitual dodgers realize the many barricades and deficiencies in its operation and are successfully stalling the payment of their equitable proportion of expense in the hope that the act will expire and the burden will be borne by their public-spirited competitors who have done their bit and are carrying the load.

Is it any wonder there are critics denouncing every angle of the National Recovery Administration? I think the average American business man retains faith in his Government institutions, and if given a little encouragement will support them to the limit. Certainly, it cannot be said that they did not rally to its support when this movement started. As I said before, the basic plan was correct, and is correct, but we must go back to the fundamental principle and see that it is carried through in a logical manner. In spite of these manifold difficulties, we still have a large army of men who are holding on with the hope that their convictions will be justified and that the administration will come to the front with legislation that will save them from being buried in an avalanche of ridicule.

The administration gave us a job to do, and I feel as a whole we have created a credible organization that has moved forward in cleaning up many difficulties. It would be difficult to calculate the amount of energy and time that has been donated to this cause. It would be a sacrilege to tear down or dissipate these gains by wantonly scattering this expenditure to the winds. The mistakes and delays of the organization period will be forgotten in the attainment of its purpose.

We cannot tear down and hope to again build up this organization through our lifetime. To tear this structure down now would invite chaotic conditions that would be far worse then if codes were never initiated. Our Congress must move forward to patch up the flaws that will allow the National Industrial Recovery Administration to move forward with confidence.

The entire air surrounding the National Recovery Administration is permeated with the fear that any move that is made is contrary to the act. A return of uncertainty should be avoided. Steps cannot now be taken with assurance, and final actions that should be taken are tabled due to the inadequacy of the tools which Congress has given us. The administrators and the code authorities are left to flounder around in the hope that they will find some way to patch up code procedure and allow us to carry on. Many of the National Recovery Administration deputy administrators have waded into the maze of uncertainty and kept codes alive by this diligence in finding ways to bridge the gaps that were created by inconsistent policy. The National Recovery Administration cannot continue to keep men of intelligence to carry on the work, either in the code committees or their own organization, when they are finally convinced there is no backing for their actions.

One of the strongest safeguards against monopoly is the original policy of functional codes. New legislation should strengthen this feature. No one should be prevented from entering or departing from the field in which he chooses to operate. He must, however, be bound by the rules of the road which govern the members of the trade in the field which he elects to enter. If laws are enacted which will permit a trade or industry to roam the fields of competition unhampered by the fair trade practices which govern the particular function, it will be impossible to maintain an organization working against these odds. For the same reason, all competitors working within a field must bear their equitable burden of code administration costs.

There have been charges of monopolies created and small business oppressed by certain codes. I cannot speak for other trades or industries, but I can speak with assurance and without fear of contradiction that this code has not oppressed small business. I will defy any one of the approximately 7,000 members of this trade to cite an instance where the fair trade practice provisions of this code have been unfair to them. It is probably true that many of them have been unable to recoup the losses brought on by the labor provisions through the application of our fair trade practice provisions. This would not have been true had we been able to support them as they were written.

I can truthfully say that there is no portion of this code that favors large business to the detriment of small business. Such provisions as are operating are the only protection the small wholesalers have against the inroads of large and powerful competitors.

The one glaring weakness in this code is its inability to cope with the elements that use price-cutting as their primary bid for business. The mainstay in our

code was that portion which we felt would block the chiseler. This article was written into our code, but has been inoperative, due to administration policy which has checked the action of the board, in spite of the tremendous volume of factual evidence which we presented to support our need for protective legislation. The hue and cry against price-fixing seems to block every avenue of approach to meet the insidious practice of the chiseler.

We did not contemplate price-fixing in our code. Article VI of the Wholesale Automotive Trade Code deals with resale schedule maintenance on branded or trade-marked merchandise. This is particularly essential in our field, as a certain few large elements in our business are in a position to demand price concessions from our manufacturers; through these they are in a position to undermine our market at will with the same brand of merchandise which we carry. These large elements are enabled to skim off the cream as represented in our volume items, leaving the 7,000 independent wholesalers to carry the large, slow-moving stocks in order to serve the public.

If this is allowed to go unchecked, the public will suffer as well as the approximately 80,000 employees working for the wholesalers. There is an essential service element connected with this business, as well as wide availability. Our fulfillment of these obligations to the motoring public will not be maintained if the seed of a monopoly grows, thus bringing about a break-down of our economic structure. Our need for this protection is vital. The maintenance of resale schedules on these items leaves the field of competition wide open between manufacturers of various brands and trade-marks, as well as the normal competition between retailers. With the proper support, our code provisions can prevent monopolies, not create them.

The codes can be salvaged and made to serve their intended purpose if Congress will give them the needed support and not delay this action until the disintegration has become complete. The attitude of the National Recovery Administration must be changed from one of stagnation to one where action is at least augmented, if not initiated. The code authorities cannot remain as puppets to bear criticism from both sides. The Administrators must be put in a position where they can help the code authorities solve their problems in connection with the administration of fair-trade practices, as well as look out for the interests of labor. Our problems should be their problems. Irregularities in fair-trade practices should be followed with the agility and the sure-footedness that is displayed in policing hours of labor and rates of pay. Both are essential and need to be operated uniformly.

You have created a structure and unless you inject the support that is now lacking, its gaunt wreckage will stand as a landmark for future generations to view as the result of a national experiment that failed, notwithstanding its high purpose and one-time acceptance of its insignia as a banner second only to our flag.

FRANK G. STEWART,
Executive Secretary Wholesale Automotive Trade Code Authority,
Washington, D. C.

LETTER FROM CHARLES H. STONE, CHARLOTTE, N. C.

CHARLES H. STONE, CHEMICALS,
Charlotte, April 10, 1935.

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

MY DEAR SENATOR HARRISON: As to the bill you are now considering for the extension of the National Recovery Administration for 2 years, I wish, in my capacity of a very small manufacturer, to suggest—

First. All the useful functions of the National Recovery Administration could no doubt be properly performed by some already permanently established agency of the Government as effectively and much more economically than these functions are now performed by the temporary National Recovery Administration organization, in connection with the various code authorities.

Second. My experience with and observation of the National Recovery Administration are that no group affected has been materially benefited. This is true of my organization, and I believe it to be true, insofar as the chemical industry is concerned. The scale of wages in the chemical industry was on a fair basis prior to the existence of the National Recovery Administration, and, of course, has been so maintained.

Third. Manufacturers have benefited only in a limited way if at all by the operation of the National Recovery Administration; meantime, they have had to tax the industry with multitudinous expenses of the National Recovery Administration, which have included hearings in Washington, the expenses of the code authority, and the incidental expenses necessary to supply the proper data to the various agencies, all, as I see it, without any recompense.

Fourth. If, however, it seems desirable to continue the National Recovery Administration, I think many of the objectionable features could be avoided by the elimination of codes for many small industries. I employ regularly from 25 to 30 people. I am a member of the Chemical Alliance and operate under the Chemical Code; three other code authorities have insisted that I place all or a part of my operations under their control. If I had done so, this would have led to no end of complications and additional expenses, and the only gainer by having followed such a course would have been the three code authorities who would collect dues.

Mr. Richberg has, according to the articles in the papers of March 13, proposed the elimination of 550 codes, and, if this is done, one main objection to the National Recovery Administration will be removed.

If we are to have National Recovery Administration, master codes should be set up, embracing, insofar as possible, all related industries, and the chief provisions of these codes, in my judgment, should be the establishing of maximum hours, minimum wages, and the prevention of child labor. And in these respects, these results could no doubt be just as well accomplished by an already well-established governmental agency as by continuing the National Recovery Administration.

I thank you sincerely for your kind consideration of my position, and remain,

Yours faithfully,

CHARLES H. STONE.

COMPLAINT AGAINST THE LUMBER INDUSTRIES CODE, SUBMITTED BY E. O. TALBOT & CO., ACCOUNTANTS AND AUDITORS, CHICAGO, ILL.

CHICAGO, ILL., *April 5, 1934.*

NATIONAL RECOVERY REVIEW BOARD,
Washington, D. C.

LUMBER INDUSTRIES CODE

GENTLEMEN: Attached hereto I am submitting the details of my complaint against the Lumber Industries Code, in accordance with the brief statement mailed you under date of March 20, 1934. They are submitted as a matter of public policy, by a private citizen, who holds no brief for another.

This is a subject of more vital interest to the United States than appears on the surface, since it contains not alone the rehabilitation and stabilization of the lumber industry, and the many industries that have their source in our forests, but also affects the result of any policy that may be adopted looking to the conservation of our forests, whether for the purpose of a sustained yield of timber, reforestation for the preservation of game, for recreation, or as a part of the Nation's scheme looking to flood control.

The process of manufacturing and marketing lumber has become more complex than is generally understood, due in large measure to the adoption from time to time of methods originally designed to overcome the effects of changing conditions, and the increased number of species put on the market and the increasing competition of substitutes for lumber during the twentieth century. For this reason it becomes necessary to discuss the subject at some length.

Stabilization of our economic structure cannot be effected by "homeopathic" treatment. The "dry-rot" that has caused its collapse must first be removed, and replaced with sound structural material.

Respectfully submitted.

E. A. TALBOT.

LUMBER INDUSTRIES CODE

Detailed statement of facts submitted by E. A. Talbot, of Chicago, in support of his condensed statement against the code as a whole, and his reasons for asserting that it would tend to oppress small business

REASON 1. "THE CODE BEING CHIEFLY BASED UPON METHODS IN USE PRIOR TO THE ENACTMENT OF THE NATIONAL INDUSTRIAL RECOVERY ACT, WILL NOT EFFECT THE PURPOSES OF THE ACT."

This statement is made as a result of a practical knowledge of the operations of manufacturing, and marketing (both wholesale and retail), from woods to finance, together with an intensive study of the causes for the industry's past "chronic distress" and present "chaos."

This experience has led to the incontrovertible fact that the generally accepted method of calculating the financial results of the industry's operation of converting timber into lumber is contrary to the fundamental principles upon which sound accounting is based, and does not produce figures that reflect the true causes—whether "cost or market" are the major factors in producing the net results as demonstrated in terms of dollars and cents. The continuance of this method of accounting has in a large measure nullified the value of the application of improved mechanical appliances in the manufacture of lumber. It is my estimate that its effect has constituted a tax upon the industry for many years, of approximately 15 percent.

The method referred to is that of arriving at results by "general averages." The basis of these "general averages" being the division of the total financial costs of the operation of lumber manufacture by the board measure, or the total quantity of lumber produced at a given cost, resulting in the cost as expressed in dollars and cents of the recognized unit of measure 1,000 feet board measure. This unit of measure represents 1,000 lineal feet of lumber, 1 inch thick, and 12 inches wide, to which unit all sizes and lengths are reduced By this method the quantitative cost of a cut of lumber is ascertained.

REASON 2. "THE WEIGHTED AVERAGE METHOD PRESUPPOSES CONDITIONS THAT NEVER EXIST"

This is true both of individual operations and of collective or group operations; the reason being that the results as measured by the unit of measure (1,000 feet board measure) are influenced by many inconstant factors incidental to the operation of lumber manufacture. In point of fact no two operators, engaged in the manufacture of lumber from any species of timber have to deal with identical conditions, nor do they manufacture their logs to the same lengths, widths, and thicknesses as other manufacturers that may be included in their particular group The effect of striking a general "weighted average" (art. 11, sec. a) of such groups would have the effect of penalizing one and favoring another member of such group.

It has been proposed to segregate manufacturing costs from the appraised value of the timber. Since the grade of the lumber produced from the timber cannot be ignored as a factor in determining the value of the expenditures incurred in manufacturing 1,000 feet board measure of lumber by quantity, it becomes an absolute necessity on account of the variable percentage of high or low grades which predominate in any cut of lumber, to include the effect of grade upon the operating costs.

Grade the controlling factor.—Whether this has been ignored, or overlooked in the drafting of the code is not clear, but for the purpose of making sound comparison of the financial results of the operation of manufacturing and marketing lumber, the fact of grade control cannot be ignored. The act of segregating lumber cut from any species of timber into grades automatically recognizes that lumber has both a quantitative and qualitative value.

The principle involved is that which determines the value of milk per hundred pounds, the average price being fixed upon a definite cream or butter-fat content. Since the different breeds of cattle produce variable quantities of cream for the same cost of feeding, this factor in cost is obvious, wherever materials are manufactured by one process and subsequently graded. The recognition of this fact is absolutely necessary in determining the value of every item of cost up to the point where rough lumber is placed in the pile. In point of fact the prices at which lumber is sold must be based upon the necessity that the upper grades absorb the losses arising from the sale of the lower grades below their costs. This fact is a result of a custom which cannot be abruptly set aside.

It therefore becomes necessary to establish standards of units of value to meet the varied conditions that have arisen as a result of the grading rules that have been established by regional associations.

How grades affect manufacturing costs is illustrated by the following comparisons of the approximate cost to manufacture northern hardwoods at three

different periods. The increases in costs are based upon the assumption that the average grade value of the lumber produced during each period was the same, or 83⅓ percent by grade.

Year	1913	1920	1929
Average manufacturing cost exclusive of timber per thousand feet board measure	$15	$30	$25
Add additional cost due to predominance of low grade	3	6	5
Actual cost per thousand units of value	18	36	30

This means that the manufacturer would have to log and saw 1,200 feet board measure of lumber in order to obtain sufficient lumber of equal grade (83⅓ percent grade value) to recover his manufacturing outlay, independent of what the market might be. If on the other hand the condition is reversed, as it frequently is, and high grades predominate to the extent of 18⅔ percent above par, the following cost would result.

Year	1913	1920	1929
Average manufacturer's cost exclusive of timber per thousand feet board measure	$15.00	$30.00	$25.00
Deduct reduced cost due to predominance of high grade	2.14	4.28	3.57
Actual cost per thousand units of value	12.86	25.72	21.43

A noteworthy fact is that low-grade lumber increases the unit cost per thousand more rapidly than high grade decreases the cost.

REASON 3. "THE PRICES AT WHICH LUMBER HAS BEEN SOLD ARE THE RESULT OF CONDITIONS THAT HAVE NO RELATION TO COSTS, THEREFORE ARBITRARY"

When we take into consideration the facts already stated under reasons 1 and 2, this statement seems somewhat of a repetition, for it must be evident that without definite proof of costs, any distribution or allocation of the cost of individual grades by any method that did not take into consideration the unit of value cost of lumber would be essentially unsound, since there would be no mathematical proof of the correctness of the calculation of the cost of individual grades.

Frequent reference has been made by those authorized to represent the industry to "haphazard selling" as a primary cause of the lumber industry's present economic condition. The fact is that malinformation, due to "haphazard" grading, and ignorance of the effect of grading upon the cost of the product have been major causes. Since lumber has been chiefly sold "on grade", and the grading rules of the associations under which any species of wood is sold compel the seller to deliver one dollar's worth of lumber for every dollar received, based upon the sales price at which a particular grade is sold, it becomes an absolute necessity that the manufacturer know, as far as humanly possible, the cost of his lumber per thousand units of value. Otherwise he cannot equitably distribute his costs to the different grades. Obviously a manufacturer who does not know his costs is not conducting his business on an equality with the wholesaler and retailer of his product.

Here it seems necessary to support these statements by those originating with men who have taken active part in the councils of both the national and regional lumber manufacturing associations. In reporting the proceedings of the Southern Pine Association's annual meeting February 24, 1916, American Lumberman quotes Mr. Charles S. Keith, president of the association, then acting as chairman of the committee on accounting and statistics, as saying:

"It is the judgment of most men in the business that if we all knew what it cost to produce our product it would not be sold at a loss. We might sell it at cost, but when the price reached a lower basis, in order to save our assets we would not liquidate them at less than they stand on our books, or at less than their cost of replacement."

This, despite the fact that in January 1907 the St. Louis Journal of Commerce caused to be published a cost-accounting statement by Carl Wedderin entitled "The Exact Cost of Lumber, a Problem Solved."

In June 1925 Mr. Keith addressed a letter to the members of Southern Pine Association assembled at Memphis, Tenn., which American Lumberman reports under the caption "Allocation of Southern Pine Costs and Value", which has the appearance of an attempt to reconcile Mr. Wedderin's theories. In his concluding remarks Mr. Keith has this to say:

"As the custom now is, the sales departments are forced to sell the product without any relation to cost, and are blindly marketing our lumber without knowing whether each sale yields a profit or loss. Until we begin to treat this matter seriously, as other industries treat other commodities, we will have wide fluctuations in prices and prices will be made to move stocks regardless of cost. While from the attached statement, you will note that the largest percentage of any one item made is 3.5 percent, losses on item sales made can readily be absorbed and never be apparent in our profit statement."

And this, in face of the fact that millions of dollars were spent in the interim between 1916 and 1925 in ascertaining by experts in various callings the sum due the Government from the lumbering manufacturing industry in payment of excess profits and income taxes.

That the same condition obtained in the industry down to 1929 may be gathered from the following extracts from an article by D. W. Evans, of Chattanooga, Tenn., a hardwood manufacturer and exporter, published in Southern Lumberman of August 15, 1931:

"Has the cost of producing lumber anything to do with its selling price? The answer is, "No!"

"Has the cost to produce lumber anything to do with the profit and loss derived from the manufacture of it?

"The answer is, emphatically "Yes!"

* * * * * * *

"Now you ask, if all this cost-finding business is so valuable, why have not the associations done something about it before now? * * *

"What are we going to do about it? Keep on stumbling along in the dark, or get a little light to see by, even if it be a lantern."

In commenting upon these conditions an editorial in the November 1921 issue of the Western Lumberman (Vancouver, British Columbia) asserted that "lumber is a speculative commodity—industry a gamble."

REASON 4. "THE EFFECT OF PLACING 'AUTHORITY' IN THE HANDS OF THOSE WHO DEVISED THE VARIOUS GRADING RULES IS, IN EFFECT, PLACING THE LARGE MILLS IN THE POSITION OF BOTH BUYER AND SELLER, A VIRTUAL MONOPOLY"

In confirmation of the fact that the large operators have dominated the lumber industry, it is only necessary to refer to published reports of the National Lumber Manufacturers' Association, in which it will be noted that the dominant voices heard in their counsels have been those who have had financial interests in the North (Lake States), South, and west coast.

This fact, in conjunction with the statements already submitted under Reasons 1, 2, and 3 of this complaint, which set forth that the foundation upon which the success of the Code's administration rests is not capable of sound mathematical proof, but is based upon a combination of unrelated factors, confirms the conclusion that the decisions of the administrators would of necessity be arbitrary.

Examples of how the code may operate against the small operator I find in the following: selective logging, grading, price-fixing, trade marking.

Selective logging.—This plan seems to be based upon the theory that the consumer demands better lumber both as to grade and manufacture. This means that the larger and clearest logs must be used for that purpose. In view of the fact that the "small" or portable mills find their supply chiefly amongst small timber, in quantity not of sufficient volume to warrant logging operations as carried on by the larger operators, it is obvious that the selection of only the large trees for the purpose of manufacture would prove a serious handicap to the operator using a portable mill. It would seriously curtail the quantity of timber available at a given point, increasing the operating costs, and in conjunction with the allotment might even close his opportunity to maintain those dependent upon him, and also his ability to meet his obligations, and render his investment in equipment valueless.

As an example of the lack of any definite basis upon which to predicate the point at which timber may be profitably logged, I quote from a report made by Mr. R. D. Garver, senior forester, of the Forest Products Laboratory, as a result of tests made by him at Fordyce, Ark., early in 1929. An exhaustive analysis

of this report proves that no such basis had been established. Instead, the conclusions were not supported by the facts.

In the case of trees of every diameter chosen for this test - 8 to 26 inches in diameter, breast high—not one failed to show a realization of from 9 to 12 percent less than the average selling prices used as a basis of comparison with the average board measure cost of each size of tree used; this loss of income being chiefly due to a preponderance of low grade lumber and an unbalanced market.

Had the grade of the lumber produced had a relative value of 100 percent by grade, or been up to "par", or produced lumber containing one thousand units of value to the thousand feet board measure, trees of a lesser diameter than 12 inches breast high could have been profitably logged and manufactured to lumber, and the value of both the timber and manufacturing costs greatly enhanced, although Mr. Garver shows that trees of a diameter of 12 inches breast high is the minimum size that can be profitably manufactured. This test is an outstanding example of the need of constant bases of comparison for all lumbering operations.

Grading and price-fixing.—From what has been said of the abritrary methods used in determining both grade and prices it seems superfluous to discuss them further here, except to note that the many changes in the grading rules of all species of lumber since 1900 point to the fact that these changes have been the result of competition both within and without the industry, and the need to liquidate the capital asset timber, in order to meet the financial obligations of holders of large stands of timber. A notable example of these changes in grading rules may be found in the record of the National Hardwood Lumbermen's Association, which has changed its rules four times since 1908, the last record being those adopted September 17 and 18, 1931, at Chicago, as a result of conferences and inspections conducted by manufacturers, consumers, and wholesalers of which the membership of this association is composed. Up to that time this association had not interested themselves in costs.

Trade marking.—The chief objection to this ruling arises from the requirement that all lumber sold must be marked with the grade and source of origin. Not alone does this put the small operator to additional expense, but seems to preclude him from selling to others than those who have such "grade marking" facilities. It would also seem to preclude the manufacture of lumber by such operators who have a source of economical use of spare time between seasons when either their crops are growing, or there is a "dull season" to be filled in in their regular occupations; in addition it would prevent their selling lumber to their immediate neighbors.

How important this matter is may be gathered from the statement published in the American Lumberman of November 29, 1930, that during 1929, of nearly 14,000,000,000 feet of lumber produced in 11 southern States, approximately one-half of the production was by 6,851 "small" saw mills (chiefly portable), the remainder being produced by 239 "large" saw mills.

REASON 5. THE CODE IS NOT A SOUND BASIS FOR REFORESTATION, AND ECONOMICAL SELECTION OF TIMBER

It has been somewhat difficult to avoid anticipating this statement in discussing prior reasons of my original reply of March 20, 1934. There are, however, factors outside those already discussed that must be taken under consideration, such as demand, proximity to points of consumption, the competition of substitutes, and imports from foreign sources, a noteworthy factor in determining the value of timber being its location and cost of transportation to the points of consumption. Thus, given a particular grade of any species of lumber produced on the west coast which can be used as a substitute for southern pine, or northern hemlock, the lumber from the west coast has to compete with lumber having freight rates to Chicago from $8 to $14 per thousand feet of lumber less than its own.

Another angle to this subject is the fact that steel and other substitutes have made large inroads into markets formerly held by lumber. According to Bulletin No. 1119 issued by United States Department of Agriculture, "The production of lumber in 1920 was 33,800,000,000 feet board measure, which is 2.2 per cent less than the production in the previous year. This, in itself, does not seem a great reduction. The feature of real meaning with regard to production is that 1920 shows one more slip downward, and that we have reached a point where the cut is 27 percent less than the peak production which occurred in 1907.

These facts seem to have been noticed by the late John E. Rhodes, a former secretary-manager of the National Lumber Manufacturers' Association, when as

secretary and general manager of Southern Pine Association he wrote in the May 1915 issue of American Lumberman, "An appeal to yellow-pine lumbermen", in which he said, "There has been no material increase in the value of standing timber since 1908.

* * * * * * *

"And, Mr. Lumberman, it is right here that you have been asleep:

"You have not realized that thousands of men have engaged in the manufacture of a myriad substitutes for lumber.

* * * * * * *

"We are now face to face with the situation that the prices of lumber in the future will not be influenced quite as much by the fact that the raw material is becoming scarcer as by the fact that substitutes can be procured at lower prices."

Speaking before the Chamber of Commerce of the United States at Atlantic City, N. J., in April 1931, Mr. A. C. Dixon, president of the National Lumber Manufacturers Association, said:

"It is obvious that with a rapidly decreasing per capita consumption the duration of the life of the remaining supply is automatically extended and there is no doubt whatever that the growth of timber in this country, even without further improvement in reforestation plans, plus the remaining virgin stand, will take care of all of the necessary demand; and, if the rate of decrease in per capita consumption continues, there will be always a very great surplus. Lumbermen hope to help themselves by correcting the current error of belief that lumber scarcity or lumber famine is imminent."

The proponents of selective logging as a means to insure a greater demand for their product, seem to overlook an important factor in cost. That is that reducing the quantity of timber to be logged from any area will automatically increase the logging cost per unit of measure.

In this connection it is obvious that some definite rule must be devised by which to determine the size and grade of the log that should be used, in order that the purpose of conservation may not be defeated. This is particularly true in view of the fact that timber can be used for other purposes than its manufacture into lumber.

ARTICLE IX, SECTION A OF THE CODE, STUMPAGE AND LOG COSTS

From the remarks made by Mr. J. S. Siedman of the firm of Siedman & Siedman, official accountant for the administrator, as reported in the yearbook and official report, thirty-sixth annual convention of National Hardwood Lumber Association, year 1933, I gather that it is the intention to deduct the cost of manufacturing the lumber for a given period from the net returns obtained from the sale of the lumber, and that from the balance arrived at, it is assumed that the administrator will be able to determine the value of the timber cut over the period, or to use a method of similar character for that purpose. The objection to this method has already been noted, since it presupposes that the grade value of the lumber cut and the lumber sold during any period contain the same unit of value. It is obvious therefore that not only would this rule produce arbitrary figures, but result in inequitable decisions. A notable instance of the effect of grade upon the net realization from the sale of lumber can be found in the May 1921 issue of American Lumberman, which reports the operations of the Michigan hardwood industries for 1920. In this case, of the six species of hardwoods cut, the net realization varied from 97 to 80 percent of the average selling price of each species. These figures do not take into consideration the effects of market upon the results.

In addition to the average manufacturing cost of these six species when grouped together being considered equal, the average quantity of the whole realization from their sale would be affected by the percentage of each species in the whole cut, since the prices at which they were sold would vary sharply. This brings us to the question of log costs, which will be discussed later.

Now, since it requires large sums of money to provide a sufficient timber supply for a manufacturing unit, and the financing of these projects involves the borrowing of large sums of money, we dare not overlook the fact that taking the most valuable trees from any stand of timber automatically reduces the security given in exchange for such loans.

Here it should be noted that much stress has been laid in the code on the necessity of protecting the consuming public from unfair practices, but I have failed to note any mention of a provision looking to the protection of the investing public. It is obvious that the quality of the timber, apart from its location and the demand for the particular species, will at all times play an important part in deciding its loanable value. This question of value can only be determined by

careful examination, by those who have experience in the manufacture and grading of lumber, as well as cruising the timber.

How great is the necessity for more accurate estimates of the value of standing timber, may be found with prospectuses for the sale of bonds issued during the period between 1920 and 1930. Analysis of the figures on some of these prospectuses indicates that some of the appraisal values have been from 50 to 100 percent in excess of the economic worth of the timber based upon net returns of prior periods.

Log values and log rules.—It has long been recognized that the grade of the log affects its value, but by reason of the custom of figuring their value by certain variable rules, and the fact that it is necessary to differentiate between their cost and the cost of stumpage as a result of the work or labor necessary to produce logs, it is obvious that there must be a more equitable rule than that found in the various log scales, which constitute a combination of values and content measurement. Since higher accounting was given prominence late in the nineteenth century by the formation of large trade combinations, many tests have been made looking to the establishment of cost accounting systems for manufacturers of lumber. One of these tests was made at Goodman, Wis., by agents of the Forest Laboratory. It was familiarly known as the Goodman Test. In the agent's report on this case he makes the following important statement: "To keep pace with the general industrial development in the United States, the lumber industry must as soon as possible base its operations on exact data. The opinions and experience of men are excellent as far as they go, but they do not form the basis needed to meet present-day competition."

Unfortunately this operator commenced his examination with the use of a log scale (a combination of unrelated factors), resulting in a showing of 98 percent more board feet of lumber in the smallest size of logs used, 9 inches in diameter, than the log rule showed to be the contents of the log before sawing. The largest logs used in this test, being 17 inches in diameter at the small end, showed an overrun of 27 percent more lumber than the log contained as shown by the log scale. Since there are many different log scales authorized by law in different States, all of which have been used in various tests, it will be seen that this subject of log scaling plays a very important part in the equitable transactions, particularly where the logging is done by piecework, or logs are bought from small owners of timber.

A recent pronunciation of this subject was published in the March 1932 issue of The Timberman (Portland, Oreg.), by Mr. E. F. Rapraeger, Pacific Northwest Forest Experiment Station, United States Forest Service, Portland, Oreg., under the title "The Iniquitous Board Foot", in which he says:

"This lack of standardization has been recognized by the Pacific Logging Congress. The attitude is expressed in the following extract from the address of President R. F. Vinnedge at the Nineteenth Pacific Logging Congress, Portland, October 24, 1928: 'One of the most lamentable and archaic phases of our operating practices is the method employed in determining the contents of logs, quantitative and qualitative. Our system, or the lack of it, is deplorable. No generally recognized standard exists for intelligently determining the cubical contents of logs * * *.' The lack of standard scaling methods, the use of several log rules and the use of an iniquitous, ill-defined unit, the board foot, log scale, has resulted in mistrust between workmen and employers, log shippers and carriers, log buyers and sellers. Fortunately, of the 45 and more board foot log rules developed in the United States, only four are sanctioned by common usage or statute in Oregon and Washington."

The anomaly of this situation is that the United States Government, with the "best Bureau of Standards", legalized at least two of these prehistoric instruments which in effect give a greater specific gravity to logs of the same species of small diameter, then to those of larger diameter.

PRODUCTS OF LUMBER

This statement would be incomplete were we not to include some remarks on the effect of grade upon most of the items coming under the divisions and subdivisions 20–36 in schedule A. Two will suffice as examples:

1. *Flooring.*—Having frequently heard from those closely allied to this industry that "it all depends upon the market", the following figures resulting from an examination of a statement published in American Lumberman of April 26, 1930, under the caption "Figuring Costs by Grades" led to an analysis of the figures submitted. The conclusion arrived at by the compiler of these figures was that:

The average cost per thousand feet board measure including lumber used	$63. 64
The average realization per thousand feet from the sale of the product was	62. 10
Resulting in a loss per thousand feet of	1. 54

The facts in this case are that the average of the prices at which this lumber was sold was $56.15, or nearly $3.50 less than the actual 100 percent cost of the lumber, the difference between the true cost and the realization being the result of a preponderance of high-grade flooring in the whole quantity. In this instance the rough lumber was included in the costs as $35 per thousand feet board measure. The loss of quantity sustained in manufacturing this lumber to flooring strips equaled 21 percent of the whole, which the report shows to have increased the cost of the flooring strips $11 per thousand feet, or to $46. As a matter of fact, if this manufacturer were to recover his costs at the then market of $56.15 he could not have afforded to give more than $30 per thousand for his rough lumber of equal grade.

3. *Small-dimension stock.*—An outstanding example of the need of a definite basis of comparison may be found in the twenty-third of the committee's series of reports of the consumers' subcommittee on small-dimension stock of the National Committee on Wood Utilization, issued in 1932 by the United States Department of Commerce under the title "Industrial Uses for Small-Dimension Stock" in which two different grades of oak are used under entirely different conditions, the prices for both grades being arbitrary. They do not offer the manufacturer of the lumber an opportunity to discover whether his lumber is costing too much or whether he can better afford to sell his lumber in the rough, or to manufacture it except as determined by the market for his lumber, which already has been shown to be a wholly unsound basis upon which to predicate his board-measure costs.

ADMINISTRATION

In view of the following statement made by Wilson Compton, secretary-manager of the National Lumber Manufacturers' Association, at the annual convention April 1922, in reply to Secretary of Commerce Hoover in regard to the grading of lumber:

"It goes to the very root of the basis of competition. Competition cannot be effective nor be expected to be effective, nor fair nor intelligent nor efficient, unless there is some definite unit under which man can compete, a unit of quality and a unit of quantity. When in any industry it is difficult to define a unit of quality, the problem of grading will be continually a difficult problem. In the matter of quantity the unit is the thing to which references was made a few moments ago. Unless two men are competing for the same thing with respect to both quantity and quality and make delivery of the thing sold, the maintenance of fair and effective competition is exceedingly difficult. That situation in the lumber industry affects all, but some perhaps more than others."

Does it not appear that since no two lumber manufacturers are competing for business at any consuming point under the same conditions, there must be some equitable basis upon which to determine whether they can profitably compete with their neighbors for the business at a given consuming point? It is true that Mr. Compton was speaking of grading as it affects the wholesaler, retailer, and consumer, but it would seem also to definitely establish the fact that the manufacturers recognize the influence of grade upon values. But the Code does not determine how these values are to be established. Hence there can be no "fair practice." And any decision, whether judicial, or by an administrator, in enforcing the provisions of the code would be essentially arbitrary and inequitable.

LETTERS SUBMITTED BY THE UNITED STATES COPPER ASSOCIATION, NEW YORK, N. Y.

UNITED STATES COPPER ASSOCIATION,
New York, April 16, 1935.

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

DEAR SENATOR HARRISON: At a meeting of the United States Copper Association which represents almost the entire copper-producing industry in the United States, held this morning, the subject of the extension of National Recovery

Act was discussed and as secretary I was instructed to forward to you the enclosed letter setting out in general terms the position of the industry.

We would like to have this letter filed with the committee and made a part of the record of the hearings on National Recovery Act extension.

Very truly yours,

A. E. PETERMANN, *Secretary.*

UNITED STATES COPPER ASSOCIATION,
26 Broadway, New York, April 16 1935.

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: The copper industry in the United States has given consideration to certain proposed legislation for the extension of the National Industrial Recovery Act.

It is opposed to Senate bill No. 2445 for the reason that the bill not only fails to meet the requirements and necessities of the industry, but is also objectionable in that it subjects the industry to the jeopardy of an undue measure of involuntary control.

The industry is in favor of the enactment of legislation which will permit its members to cooperate voluntarily, particularly with reference to production, the liquidation of surplus stocks, the marketing of its product and the adoption of rules of fair competition.

The industry respectfully suggests that the legislation necessary for this purpose, whether enacted independently or as a component part of legislation extending the National Industrial Recovery Act, take a form similar to that of the Capper-Volstead Act applying to agriculture enacted in 1922 and in effect since that time. With some slight modifications, both the substance and the language of that act can be adapted to cover the needs of the copper industry and the industry therefore brings the subject of that type of legislation to the attention of your committee at this time and asks that it be given consideration in the formulation of any legislation affecting this industry.

Respectfully submitted.

UNITED STATES COPPER ASSOCIATION,
By A. E. PETERMANN, *Secretary.*

BRIEF PREPARED BY A. HARTLEY G. WARD, MANAGER OF REMINGTON WARD, PRINTERS, NEWPORT, R. I., ON THE CODE FOR THE GRAPHIC ARTS

1. The power of administration of the Graphic Arts Code for this territory was vested in the Typothetae of Rhode Island. This group represents only 10 percent of the industry in this territory, the other 90 percent having absolutely no representation in code matters.

2. To secure representation on the code authority, the independent printer must first join the Typothetae of Rhode Island, which costs in dues alone, approximately $150 per year. In addition he must install complicated cost-finding systems, and pay additional help to operate these systems. In the case of the small shop, the cost-finding systems become unwieldy and impracticable.

3. The National Recovery Administration offices in Washington have assured this office time and again, that everyone was entitled to representation on the code authority, whether or not he was a member of the Typothetae. Such is not the case, however, and the independent printer has absolutely no representation.

4. The matter of assessments is extremely important. The budget for the code in this section was compiled by the Typothetae, without regard to the individual printer's rights in the matter. The expenditures in the budget are unreasonable—salaries being exorbitant, and in one case at least, two salaries being paid to the same man. Inasmuch as every printer is supposed to support the code, he certainly is entitled to a right in the matter of assessments. "Taxation without representation is tyranny" is just as good today as it was in 1776.

5. The matter of appeals should deserve some of your consideration. Under the code, page 24, section 11, "An establishment shall have the right to appeal from any decision * * *." Every printer in Newport appealed last April 1934. I have since appealed individually, but no definite relief has been given, nor has any definite assurance been received from Washington, that the matter would be [illegible]. In this connection, the last communication I had with Washington

about my individual appeal was a letter from Mr. Payson Irwain under date of December 5, 1934 as follows: "I am having a study and analysis made of all the charges which you present in your letter, and just as soon as I have word from the national code authority as to their position, I shall communicate with you further." Whether the arguments I presented at that time were so timely, and couldn't be answered satisfactorily by the code authority—whatever the cause of delay, I have had no further word from that time. Certainly when every printer in a community appeals on the same grounds, some attention should be given the appeal.

6. The code as it is now being worked out works a hardship on small businesses because the majority of Typothetae members are "big" printers. Consequently, their overheads are higher than the small shops, and their hourly costs therefore are correspondingly higher. Through the Typothetae, and therefore the code authority, they are attempting to compel the small printer to use the same hourly costs, when as a matter of record and fact, the small printer can afford to do work far cheaper and still make a satisfactory profit. The small printer has little use for Typothetae methods and cost systems. They have been tried in Newport by four printers with dire results, each one saying that under no consideration would he again become a member of the organization. (Names of printers will be furnished upon request.) The dues of Typothetae membership, together with other expenses involved, coupled with code assessments, make a considerable item of overhead—which after all is entirely unnecessary. This office has been running for almost 80 years, and it hasn't seen the necessity yet for code interference.

SUGGESTIONS FOR IMPROVEMENT

1. Under this heading comes first the matter of representation. In our opinion, it is entirely unconstitutional to compel a person or business to pay an assessment or tax unless he is duly represented in the assessment of it. Under the present set-up this is not the case.

2. Take the code authority away from the Typothetae, and let each community have its own local code authority, as is done in other codes. Newport is a summer resort and is far removed, economically at least, from the surrounding cities. What will work satisfactorily in Providence, the seat of the code authority at present, will not work out at all in Newport. Our business is done in a 4-month period in the summer. Providence enjoys year-round prosperity. At least we understand it does.

3. Cut out expensive and costly code administration. There are too many good men out of work to have to pay $12,500 salaries to people who already have good paying positions.

4. Let every printer think he has a little say in how his business is to be run. Everyone wants "fair competition." There should be an easy and inexpensive way of getting it, but it will never come by a minority group dominating the majority.

STATEMENT OF ERNEST WELLS WILLIAMS, WASHINGTON, D. C.

APRIL 17, 1935.

Because of my interest in certain economic elements of the industrial control features of the National Recovery Administration, and belief that they should be continued in future legislation, I desire to submit certain recommendations to the committee which may be of some interest to its members.

First, may I point to what I believe is an immediate necessity of at least one additional permanent congressional and one Senate committee, to coordinate and supervise the activities of the new governmental department which has apparently been born from the present emergency? I believe that most of the difficulties which the National Recovery Administration has faced could have been avoided had such congressional committees been functioning, and charged with the study and approval of policies, and charged also with reviewing the prior and current business connections, and even the personal characteristics and the economic and social views of those charged with the administration.

It would indeed be miraculous if an organization such as the National Recovery Administration had successfully fulfilled its function under the direction of an international banker, or even under the direction of one primarily interested in

trade-association connections. While it is possible that the effect of such past connections, or even present connections, might be small—of little importance—there are too many possibilities. While congressional committees are normally the center of a storm of adverse criticism, it can be safely said that there has been no outstanding success in the production of a satisfactory substitute; and the salutary effect of a permanent congressional committee charged with the responsibility for such supervision has been proved many times. Appointees to key positions in such agencies as the National Recovery Administration, I believe, should be subject to congressional confirmation. Moreover, with the presence of such a congressional committee, and Senate committee, a certain legislative freedom may possibly be allowed which otherwise might be impracticable; and undesirably restrictive legislation for their administration avoided.

May I suggest, as an excellent reason for the continuance of the industrial control features of the National Recovery Administration, that such control insures the presence of a defensive weapon which under certain conditions might be vital.

As a further general reason for the continuance of governmental control of business, may I say that the present economic plight of an overwhelming proportion of the population proves, if such proof is necessary, that people are no longer able to protect themselves individually from an economic standpoint, and that protection must hereafter be a governmental function? The necessity of governmental protection of the lives and property has been long recognized, and a certain dependence upon the police force, upon the courts, by the citizen for his physical protection, perhaps, is not looked upon disparagingly. A new type of economic protection of the public is not needed because today's people are less clever than their forebears, but commerce and trade have become too complex for the individual to successfully combat.

If further justification of the necessity for industrial control is needed, may I point out that there is a very slight difference between a productive and an unproductive national economic plan, and "industrial control" while that necessary slight change is being effected is essential. The necessity for immediately going off the "charity standard" is apparent.

The second suggestion is brought up in connection with the "sacrifice of personal liberty" which is frequently and strongly brought into the picture, and the more or less mechanical facts which make "industrial control" necessarily a part of the future American scene.

The extent to which "industry" actually was controlled when the Constitution was written should be appreciated. It was a control which involved every feature of the National Recovery Administration, but it was exerted so naturally and so easily that it was not even noticed, and there was no escape from it—there were no "exemptions."

This control was complete; yet it was so complex a thing that it could hardly be translated into law. That natural "industrial control" as it influenced the simple American business of long ago involved startling features which have not yet appeared in the administration of the National Recovery Administration, but which must, I believe, eventually be a part of future legislation, because it was a means by which those people protected themselves; and it did not involve the alienation of anyone's rights, because no one had the rights then, and no one has the rights now, which modern "business" has considered as its natural right.

American history shows a long period of people subsisting mostly from their own farms, and even making their own clothing. The communities—the trading markets—which sprung up were comparatively small, and the business which was done was under the watchful eyes of all parties directly and indirectly involved. The cost of merchandise, the relation of that cost to the price charged, was wide-spread public knowledge—and the final and effective check-rein upon the entire transaction, or succession of transactions, was the individual prosperity of each member of the group; which was also common knowledge.

Whether one had a mortgage upon his home, whether he had money in the bank was public knowledge in every small community. If, in the performance of a business function, an unusual prosperity developed for an individual, it became immediate public knowledge, and the extent of the service rendered, balanced against the price charged for that service, was "gossip", perhaps; but it was, nevertheless, considered a public matter. Likewise, if the thrifty and industrious and competent member of a particular craft apparently was not receiving his due share of the general prosperity of the community, a raised charge for his services normally and naturally would be received without protest.

It was upon this basis that prices were raised or lowered. The idea that prices should be based primarily upon "competitive conditions"—a sweet-sounding

term but meaning the extent of the monopoly and how much the traffic will bear—was outside this picture.

The effect of such a public control was that the industrious and thrifty and, let us say, conscientious members of the community reaped a natural and normal prosperity; and certainly the National Recovery Administration has not yet attempted such a complete control as this.

The difficulty of translating that nebulous but very effective public control into law is apparent. Legally everyone had a right to increase his prices, his charges for his services, whenever he saw fit to do so. Perhaps that was a "right of ownership." Yet there was this public knowledge and public judgment which stood out as an effective bulwark. There was no written law preventing price increases—yet here was a price control, and a control of the individual, and a control of machinery, also, which was in effect superior to the written law. This control, then, was the law; and it was not on any statute books.

This unwritten, but nevertheless functioning and effective law, this complete industrial control, was repealed by the coming of the railroad, the telegraph, the telephone, the automobile, and good roads, which completely and suddenly and without notice broke down a type of social organization which had existed for thousands of years. Statutes and statesmen might make State lines; but transportation and communication repealed those statutes and State lines without a law appearing on the books. There were no legal precedents; few of the effects were seen.

The communities which were practically self-supporting, self-contained social systems were suddenly broken in pieces; and a host of legal precedents and perfectly logical interpretations of property rights and personal rights became in effect legal buccaneers, protected by the Constitution; and a legal structure which was intended to protect homes and farms and to insure men obtaining a just return from their industry was in fact turned against the public.

As I explained before this committee in the hearings on the Economic Security Act—I did not say it, but I believe I explained it quite thoroughly and unmistakably—the Government itself had changed in its relation to its people—not a slight change, but a terrific change, and a very bad change, which has only recently been completely identified—and I believe that the Congress will immediately correct that changed relation. With this changed relation, and naturally standing behind its legal structure, Government was more or less forced to cooperate in aiding an organized raid of business and property interests against the general public to an extent which would be laughable if it were not so terribly serious, and so completely against the will of the Congress; all this due primarily to a sudden centralization of wealth, in combination with mechanization and changes in transportation and communication.

Into this condition came the National Recovery Administration. A recent national broadcast credits or accuses the United States Chamber of Commerce of parentage; I trust that the Congress will not accept such an unreasonable assertion as that. Correction of the condition has never appeared as the purpose of such trade, business, or banking associations. The industrial control features of the National Recovery Administration were intended to replace the natural community controls of business which were suddenly lost to the American people, after having been exercised completely before and after the Constitution was written—controls which were not renounced in any fashion, and which were taken away from them much against their will, and with very great damage to them.

The rights of individuals and corporations to a return upon wealth and property have for some hundreds of years been greatly misunderstood, and in the course of the misuse of those accepted but erroneous property rights, the rights of the individual to produce new wealth and reap substantial benefit thereby have been forgotten.

If the principles of the National Recovery Administration are understood to be primarily these—of a renewed appreciation of the public interest in business that is transacted, whatever its nature; and the right of the productive individual to prosperity as the result of his efforts, involving today a necessary governmental guarantee to him of that prosperity—the "dollar volume" of those wages being merely incidental—the National Recovery Administration and its purposes will be better understood.

The prevalent conception, especially by some business men, that the National Recovery Administration and its principles are primarily for the purpose of maintaining a firm and fruitful price structure, and the certainty of profits and easy payment of all possible charges, regardless of conditions, is erroneous.

The creation of permanent committees in the House and Senate to coordinate and direct the activities of the National Recovery Administration and the extension of its principles into further legislation is, I believe, an immediately necessary step.

In connection with the "purposes and principles" of the National Recovery Administration, and future legislation along this direction, may I invite attention to the principles of patent laws? The purposes of patent laws are plainly stated in the Constitution—to insure proper reward to inventors—to insure the benefits of inventions to the public. If existing legislation, including the definite wording of the Constitution itself, actually and in practice is an open door to monopoly, and if the public benefits are overbalanced by the effect of patents being to place the citizen in unfair competition with the machine, it would appear that the purposes of that constitutional "experiment" have been led astray; and the renewed National Recovery Administration might well include a definite reference to it.

By reference, may I include my statement of February 15, 1935, before the Senate Finance Committee in connection with the Economic Security bill; and invite the committee's attention to the drawings submitted at that time?

I thank you.

TELEGRAM FROM WULF BROTHERS, INC., NEW YORK, N. Y., RELATING TO OPERATION OF MEN'S CLOTHING CODE AUTHORITY

NEW YORK, N. Y.

Re investigation Finance Committee Men's Clothing Code Authority.

Hon. PAT HARRISON:

Undersigned suffered worse experience than Block Co. Code authority preponderantly comprised of central market operators and amalgamated agents persecuted us under charges of alleged violations. Our numerous attempts to obtain full bill of particulars preceding any action were unavailing. Subsequently publicized with damaging charges never supported by facts and we were deprived of labels for period of 2 months and reinstated on posting of bond under threat of economic annihilation. Said bond requiring guarantee of compliance with provisions of code alleged to have been violated, though proof of such violations were not established. Our bond still posted, charges still pending, not deprived of labels, code authority and its administration evading every attempt at showdown. Wulf Brothers, Inc., respectfully request this statement be incorporated in record.

(The following letter from the International Salt Co., Scranton, Pa., addressed to Senator Royal S. Copeland, was ordered printed in the record:)

INTERNATIONAL SALT CO., INC.,
Scranton, Pa., April 16, 1935.

Hon. ROYAL S. COPELAND,
United States Senate, Washington, D. C.

MY DEAR SENATOR: As a member of the code committee of the salt-producing industry, under which our company operates a rock-salt mine and two evaporated-salt plants in New York State, I beg to advise you of a resolution unanimously adopted at a meeting of the Salt Producers Association held in Chicago on April 11, 1935, as follows:

"Whereas the salt-producing industry was among the first of industries to submit to the National Recovery Administration a code of fair competition, this code having been approved by the President of the United States on September 7, 1933, and the early approval thereof has resulted in a considerable period of experience in the operation of this industry under said code; and

"Whereas there is now pending in the Congress of the United States legislation designed to extend the National Industrial Recovery Act; and

"Whereas this industry, while one of the smaller industries, employing approximately 7,000 employees, yet is one of those industries essential to the continued health and welfare of the people: Now, therefore, be it

"*Resolved*, by the salt-producing industry that it transmit to the Senate Finance Committee, with the request that it be incorporated in the record of the pending

hearings on the National Industrial Recovery Act, the following statement expressing the views of this industry in connection with said legislation.

"1. This industry, by its code of fair competition, was among the first to prohibit the employment of persons under the age of 21 years in mining operations below ground.

"2. As a result of the adoption of the code, employment in this industry has increased approximately 23.3 percent and the amount of wages paid has increased approximately 13.1 percent.

"3. The industry, its employees, and the public have adjusted themselves to operation under a code and to now abolish the code would destroy the confidence that has been built up and possibly precipitate chaotic conditions within the industry.

"4. The present rate of unemployment makes it essential that this act be continued to prevent any resumption of the downward course in wages or construction of employment and purchasing power.

"5. The National Industrial Recovery Act should be extended for a further period of at least 2 years in as nearly its present form as is possible because: (a) The public, industry, and labor, as well as the National Recovery Administration, have had nearly 2 years of experience in the administration of the present act, advantage of which will be of no avail if the law is to substantially changed, (b) the flexible provisions of the present act make it possible to deal with emergencies with a minimum of delay; (c) decisions of the courts under the present act will be more nearly applicable to provisions of the new act.

"6. This industry believes that all industries, regardless of size or the number of employees, should have the opportunity of adopting a code to be administered by men familiar with the industry, rather than to be forced to become a part of a large group of industries governed by a single code.

"7. This industry is strongly opposed to any law prescribing a 30-hour week, or any other rigid limitation as to hours and wages, because it believes legislation of this character to be uneconomic and impractical."

We employ in New York State alone upward of 475 employees, all of whom, as a result of the code, are receiving higher wages than prior to its adoption, and I wish to emphasize the fact that these employees and our employees in other States, as well as in the salt-producing industry as a whole, have benefited through the operations of the National Industrial Recovery Act. While I realize that the present act is not perfect and should be modified or amended, nevertheless it is my belief that as a result of the experience under the existing law, if further opportunity were afforded for development and improvement of its administrative features, industry as a whole would be benefited.

There is one feature of the National Industrial Recovery Act which particularly affects the salt producers of New York State, i. e., section 3 (e), which provides for control of foreign competition. We believe the method of meeting this situation should be simplified so as to enable domestic salt producers more readily to protect themselves against the imported product, with which it competes. Such foreign salts are produced in countries having much lower labor costs coupled with the benefit of low water transportation costs, as compared with the labor rates provided in our code and railroad freight rates in effect from the salt-producing points in this country to the seaboard. I hope to have an opportunity in the near future to discuss with you this phase of our situation.

While it is true that our industry is a comparatively small one, nevertheless it is equally true that it is one of the most essential industries in this country, salt being absolutely necessary not only to human and animal life but required in many industrial enterprises.

May I respectfully urge you to give favorable consideration to the resolution adopted by the Salt Producers Association, which represents over 90 percent of the total salt production in the United States.

Thanking you in advance for whatever support you may see fit to give to our request, I remain,

Very truly yours,

P. SILAS WALTER, *Vice President.*

(The following letter and enclosures addressed to Senator David I. Walsh by the Massachusetts Wholesale Liquor Dealers Association, Inc., was ordered printed in the record:)

MASSACHUSETTS WHOLESALE LIQUOR DEALERS ASSOCIATION, INC.,
Boston, Mass., April 17, 1935.

HON. DAVID I. WALSH,
Senate Finance Committee, Washington, D. C.

DEAR SENATOR: At a regular monthly meeting of our State association held at the Hotel Bradford, Boston, Mass., we were instructed to ask your aid in the proposed amendments to the National Recovery Act Harrison bill known as "Senate bill 2445", which amendments have been filed with you by our national association.

Respectfully yours,

HUGH J. MCMACKIN, *Secretary.*

NATIONAL WHOLESALE WINE, AND
LIQUOR DEALERS' ASSOCIATION, INC.,
Washington, D. C., April 17, 1935.

HON. DAVID I. WALSH,
Senate Finance Committee, Washington, D. C.

DEAR SENATOR: With reference to Senate bill 2445, known as the "Harrison National Recovery Act" we should like to see this bill amended as per the enclosed copy.

Practically all codes provide for industry representation on the same. Whereas in the code of fair competition for the various divisions of the alcoholic beverage industry no industry member is represented upon the Board of Directors of the Federal Alcohol Control Administration, and while the various codes effecting the industry have been placed in the hands of the industry members for its enforcement, principally the paid employees, the industry has no voice in the final drafting of any of the code rules, regulations or interpretations issued by the Federal Alcohol Control Administration, and we believe that in fairness to an industry employing 1,000,000 people that they should not only have a voice but likewise a majority voice, and shall ask that you kindly submit the attached amendment.

You will be interested to know that the Federal Alcohol Control Administration have issued 425 sets of rules and regulations; they have issued over 200 of what is known as releases and have issued over 200 legal interpretations, and have set up many departments none of which are represented by industries. Your assistance along these lines is much urged.

Respectfully yours,

HUGH J. MCMACKIN, *Secretary.*

AMENDMENT TO SENATE 2445

The following amendment is offered to section 2, paragraph A, line 11, on page 4 of Senate bill 2445, by adding and inserting the following:

"That the governmental agency known as the "Federal Alcohol Control Administration shall consist of a board of directors of 5, which shall be appointed by the President who shall designate 1 as its chairman, who shall not be affiliated with the alcoholic beverage industry, and 1 member to be appointed from the brewing industry, 1 member to be appointed from the wholesale industry, 1 member to be appointed from the distilling industry, and 1 member to be appointed from the wine industry."

Amend section 3, no. 1, at the end of line 24, by adding after the word "and" "and any secretary of any trade or industry association shall be eligible to act as secretary for any code body or division thereof of industry."

STATEMENT SUBMITTED BY H. E. MILES, CHAIRMAN FAIR TARIFF LEAGUE, NEW YORK CITY

I confine myself in the following statement to the manufacturing codes only, and any references to codes is to be so considered.

Some weeks ago the question of the Fair Tariff League's appearance at your hearings on National Recovery Act was considered by the league's governing

committee which consists of officials of farm organizations with a membership of approximately 1,500,000, of labor organizations of some 600,000; of economists and others. The representatives of more than 1,000,000 farmers and of a considerable portion of the wage earners and economists earnestly desired this appearance. The desire was unanimous on the part of all who expressed themselves. They knew that while their chairman, myself, shared their judgment, it would not be to him a pleasant duty to express that judgment.

The work of the league and of the preceding organizations of manufacturers and to business men to a total of some 80,000, out of which the league grew, has covered for 30 years substantially every issue involved in the National Industrial Recovery Act, wages, hours of labor, child labor, foreign and domestic prices, and, with particular emphasis, monopolies.

We charge that the National Industrial Recovery Act codes are criminal; criminal beyond endurance, so criminal and so destructive as not only to retard but to prevent the prosperity that we long for. We affirm that it is better to continue to suffer whatever ills may come—to suffer these ills for God and for righteousness than to compromise longer in any form or manner with the crime of monopoly. We affirm that if Congress and the administration does not enforce the antitrust acts, the time has come when the American people must for righteousness sake, for themselves, and their children act independently with the good judgment that frequently has distinguished them in emergencies.

The statement of General Johnson and others that the capitalistic system is in danger is false. Every American is a capitalist or hopes to be. But today and at last crime is in danger, the biggest economic power in America, crime is in danger. And we are justified in expecting, and possibly in believing, that the laws against crime are to be enforced, not only where the Attorney General likes to, but where he most ought to.

That done, monopoly prices will end and competitive prices will, after a few weeks or months of convalesence, bring us all the prosperity we want and with such betterment in the distribution of wealth as will lift our civilization to new levels.

Let every man post the words "The Crime of Monopoly" upon his walls and in public places to stir the mind and move the will and the job is done.

The Attorney General.—Without much exaggeration it may be said that the Attorney General of the United States is both the biggest and the littlest man in America; the biggest if he will mind his oath of office, the littlest because he wont. The power of the Department of Justice is shown in its stopping kidnaping, and now bank robbing, almost overnight. Its detestable weakness for 30 years has been our near destruction in that it chums with, encourages, and abets that group of criminals whose loot exceeds that of all other groups combined. It is this group in its several divisions in manufacturing that for the first time in history has been given badges of honor by the Federal Government with each subgroup made a part of the Government in violation of the major criminal statutes, the antitrust acts. Says Johnson (Saturday Evening Post): "We did not repeal the antitrust laws; we simply ignored them." Repeatedly he says that the two cannot exist together; that the antitrust laws do not deserve respect.

Then, in complete reversal, Johnson turns about and says that the codes are not monopolistic, that they can't be. Says he:

"Code combinations * * * are open to a whole industry on absolutely equal terms, to great and little companies. It would be impossible to create a combination of that kind that could be monopolistic. * * * If all competitors in an industry operate under the same code rule, that rule could not possibly be monopolistic" (Saturday Evening Post, Jan. 19, 1935).

This is to say that when a combination includes every maker in the United States of a certain product it cannot be monopolistic. When a monopoly is 100 percent organized and effective it ceases to be a monopoly!

You know the extreme care and patience, with which the now outmoded and superseded laws and practices of the United States were made. The codes were made "principally by plain horse trading and bare-faced poker playing," said Johnson (ibid., Jan. 26, 1935, p. 91, col. 2), in speaking of the Coal Code:

"Long grueling sessions—night and day, day after day, week after week—in an effort, by persuasion, sometimes by bluffing, principally by plain horse trading and bare-faced poker playing, by which most of the early great industrial codes finally came into being."

I would like not to quote Johnson, but where, as here and later, he discloses that he (and the rest of his associates) knew all along the things he tells of. It

is important to thus disclose the character of the persons, then and now, of the code folk by their own confession, what kind of folk insist on governing us.

I wouldn't call it poker playing. The rules of [illegible]er were not observed. On one side of the table was a noisy bluffer playing a lone hand who said in advance that he could insist on nothing in any code but must take what he could get. On the other side of the table were, in each of the many games, from 10 to 50 powerful men who had nothing to lose because they were doing without codes in the trusts just what they would do in the codes. Each of these 10 to 50 men saw into the hands of all the rest on his side of the table. It wasn't even poker playing. And every industrial trust duplicates in all essential particulars those first trusts. And where there weren't trusts, as in lumber and lead pencils, trusts were created.

Of course, I am sorry to use the words criminal and theivery; but I have seen, for 30 years, the helpless victims of monopoly afraid to designate monopoly by its sole major characteristic, crime. By dodging the word, we have weakened our understanding and our will. Thousands of business men whom I have represented in this field dare not speak out because their businesses depend on monopolies for their supplies of material. They hate monopolies. At one time some 80,000 business men were more than grateful to me, their official representative, for speaking plainly their judgments at my risk and not theirs. So is my present organization pleased.

Are monopolists criminals? How great is the crime of monopoly? So great that its agents are subject to fines for each offense (hundreds of thousands of them annually) and to the penitentiary; so great that all their merchandise (many millions every day) in transit between States is subject to confiscation; so great that anyone suffering from monopoly is entitled to threefold damages. Is there any greater punishment except for murder?

It is these controlling and criminal men who, as General Johnson says: "created, for the first time, an economic Government throughout the United States imposed upon the political Government and nearly as wide in extent"—their government instead of the people's government.

If we don't visualize this clearly and the character of the control, we can neither understand nor cope with it. All that the trusts want is a chance to go on. They will go on anyway, as for 30 years past, but it is of great convenience to them to be able to say to the public that they continue under the guise of the statutes. That they don't care particularly how the new law is worded is shown by their amazing disregard and negation of the present Recovery Act in its monopoly provisions.

NATIONAL INDUSTRIAL RECOVERY ACT CODES, VIOLATE THE RECOVERY ACT

The very first requirement in the Recovery Act, the all-inclusive, all-compelling requirement, is that (sec. 3 (a)) the President shall accept no codes unless he "finds * * * that such code or codes are not designed to promote monopolies * * * and * * * *Provided*, That such code or codes shall not permit monopolies or monopolistic practices."

I know of no other statute that states a prohibition twice in six lines. The double prohibition should palsy the minds of the Federal agents who would attempt to evade it. The second prohibition also provides that it shall not be pleaded in court that the President's findings are sufficient. If he is in error, a code is void if it "permits monopolies or monopolistic practices"; that is, if it is contrary to the antitrust acts except as it stops child labor, starvation wages, etc., as later provided.

This provision is a scrap of paper to the trusts. Each trust wrote into its code, or what is the same thing, provided through its code for the continuance of every worst trust practice of the last 30 years. Thus, the United States Government, heretofore protecting the trusts by its inaction, became a major partner in the promotion of each trust to the limit of the powers of government. I beg you to ponder this. Also not to confuse this all-important fact with other elements in the code that have no necessary relation to it.

If the steel code were not criminal in fixing its prices, that industry, running only 47 percent of capacity, would not be out of the red with only the producers who are carrying inefficient and obsolete plants still a little in the red. Evidently, the industry is making the public pay a profit on both halves of the plants when only one half is in use. No industry should be profitable under 80 percent or 85 percent of production. None would be under competition. This industry and all other trusts are as much on the dole as are the millions who are on relief. Yet some 250 of these industries and their financially allied outside groups own a very great percentage of the national wealth.

THE SUPREME COURT CAGED AND HAMSTRUNG FOR 40 YEARS

Do you love and respect the Supreme Court? How godly and comforting was its decision in the *Gold case*. The framers of the Constitution thought that they made the Supreme Court the bulwark of our liberties. Potentially, it is the bulwark and there is no other. But the founders counted on the Attorney General's invoking the Court in every important question of law. Here was the failure. This public agent came, years ago, to be less honest than the founders thought possible.

The Supreme Court is as dead and useless as a parked automobile unless and until an outside force steps on the gas and releases its energies. The Attorney General is the outside force. He is under oath to act. A private suit is for private gain. In such suits the public is Lazarus under Dives' table. It gets a few crumbs, but its inclusive and compelling interests can, fairly speaking, be secured only through the Attorney General and his department. It is his most particular duty to see that the public interest is presented to the Court quickly and with utter intelligence and effective purpose.

It is not unlikely that when the Almightly took from President Roosevelt's side, by death, Thomas J. Walsh, 2 days before he would have become the Attorney-General of the United States, the Nation suffered a loss comparable to the death of Lincoln, just when he had set about to unite immediately the South and the North in a happier, stronger, and more effective Union that ever before, a Union of understanding and good will. Lincoln might have saved 20 years of shame and loss.

Walsh would have made the Nation honest; first by compulsion of law and then by habit. Walsh saw straight. More important, because he went straight. Teapot Dome had a thousand difficulties for others, and none for him.

Had Walsh cleared the judgment of the exceedingly burdened President concerning the proposals and the insistence of the trusts, the codes would have complied with the law and the then marvelous goodwill and purpose of the suffering public would have done the rest.

With Walsh the Supreme Court would have set everyone right quickly on the questions that now palsy judgment and will. Who can measure the upswing of our millions of people when they know that they are going right. Now millions believe they are going wrong. The others are uncertain.

My study with the assistance and advice of able counsel in the last year assures me that, as my advisers say, the Attorneys-General have, without important exceptions, and for 30 years, as respects monopoly, made of the Supreme Court only "a lion in a showman's case with the Attorney-General holding the key." Let him who doubts read, as everyone should, Fetter's Masquerade of Monopoly, and the chapters on Monopoly and the Courts in Senator La Follette's autobiography, or other like authorities. They disclose that, in substance, the Government has lost even the cases that it has won against the trusts. At times, the conviction of a trust has been followed by enormous increases in the profits of the trusts, witness the *Standard Oil case*, or in the issuance of huge sums of watered stocks and the like, witness the *Northern Securities case*. In almost every instance the Government's case was poorly drawn or poorly presented or both.

The *Cement Decision* by the Supreme Court discloses virtually the entire situation. An entirely competent Federal representative tells me that during the oral arguments in the *Cement case*, an attorney for the Government, answering questions from the bench, said repeatedly that the Government did not charge conspiracy, price-fixing, or extortion. Said the Court in its decision:

"The Government (the Attorney General) does not charge any agreement or understanding between the defendants placing limitation on either prices or production. The evidence does not establish that prices were excessive or unreasonable.

"It is neither alleged or proven that there was any agreement * * * either affecting production, fixing prices or for price maintenance. * * * It was neither seriously urged before this court that any substantial uniformity in price had in fact resulted * * * The Government does not charge that there was any understanding or agreement, either expressed or implied at the meeting or elsewhere with respect to prices."

This quotation is from the *Maple Flooring case* that was decided the same day and, by reference, made substantially one with the *Cement case*, the principles involved being the same.

More important was the Court's reference to the *American Column case* (257 U. S. 377) which denounced that company's practices "because of inevitable

tendency to destroy real competition as long understood and thereby restrain trade."

Also reference was made to the *Linseed Oil case* (262 U. S. 371) wherein concerted action "is forbidden when the necessary tendency is to destroy the kind of competition to which the public has long looked for protection."

In the above quotations is direct notice to the Department of Injustice to mend its case and win. Every informed person including 10,000 buyers know that the "cement trust" is as extortionate and wicked from the trust standpoint, as shrewd and conscienceless producers have been able to make it with the help of the devil for 40 years. Why won't the Attorney General bring suit?

Answering my question, Why? An agent in the Department of Injustice said to me, "We feel sensitive about the loss of the *Cement case*. We think we should have won. We are sensitive. You can't expect us to bring another suit." Well, I don't expect them to. Nor do the cement producers.

Meantime cement carries a first, or mill, cost in efficient practice of about 53 cents a barrel, and, at most, twice this including all costs. Against this consumers pay $2.35 and up, and at the representative low bulk wholesale price on the Hudson River, $1.70, the producers make at least 50 percent net cash profit as against 2 to 6 percent net profit in department stores on their retail sales of general merchandise—10 times more profit on burnt and ground limestone in carloads than on little packages of pins, shoes, and shirts.

I also learned at the Department last summer that a man was, and long had been, busy, or pretending to be busy, in getting evidence on cement and with no consequence. It must be assumed that the Trade Commission's report on cement a year before and its second report about a month before my visit were known to the Department's agent. They were widely discussed in the public prints and elsewhere. This Department's sleuth could have gotten all the information in the world from these reports. He hadn't them. When I asked why he would not get them by mail or by walking eight blocks for them he replied, "We here have a feeling that if the Trade Commission wants us to see anything they will send it to us." These aren't the Department's methods against criminals that it dislikes.

Of such is and has been the "Department of Injustice" as respects trusts for 30 years. It has kept away from the court as much as it dared. When it has acted, it has brought defective charges, poorly supported by counsel, and about April 1 when it feared the judgment of the Supreme Court it picked up its brief cases and ran out of the court. Now it returns with a case of its choosing which I am told involves in part the sale of diseased meat. If it wins that case will be heralded as a victory for the National Recovery Administration.

The *Cement case* was like bringing a murder to court charged with horse stealing and discharged because he had not stolen a horse. The *United States Steel case* was as crooked. Read Fetter's Masquerade of Monopoly and the La Follette's Autobiography (chapters on courts and trusts) and you'll discover a close conspiracy through all the years to make it easy for the trust criminals who stole twenty billions in the 1920's at a cost of 40 billions to consumers, with a maldistribution of wealth in that amount. There is nothing to the trust codes but a continuance of the 1920's practices.

TIME IS MONEY—IN TIME IS JUSTICE AND HONOR

The Sherman Act requires that the lower courts shall act immediately upon trust cases if so requested by the Attorney General. The writer finds no such request. The *Cement case* was filed in the district court on June 1, 1921. A request from the Attorney General might have brought a decision in from 3 to 5 months. Instead, the decision was made October 23, 1923. The stealings of the trust during 21 months that might have been saved by a note from the Attorney General amounted to about $100,000,000.

A new suit might have gone through both courts in something like a year. Instead the Attorneys General of that day and since have brought no suit.

The Cement Trust has stolen meantime from 500 million dollars upward. Today it is not acting as heretofore from the tacit approval or negligence of the Attorney General but is itself an arm of the Federal Government. It is in effect the law itself. It is stealing tens of not scores of millions of dollars from the Federal and State appropriations for Public Works that are largely of charitable intent, not expected to return in economic value their total money cost, to be paid in taxes that will burden the present generation and the next.

Buyers of cement, steel, etc. for public projects say that they are paying uniform and extortionate prices because the Attorney General has told them that

uniform prices are lawful. The statement warrants the official declaration of an English judge when he sentenced an English nobleman to prison as a common felon. Said the judge, "A half truth is no different from a downright falsehood."

A half dozen persons can agree each to buy shoes at $4 and sell them to the poor at the uniform price of $2. Insofar the alleged statement of the Attorney General is right. But if a number of persons corner the shoe market and raise the price of $4 shoes to $6, they are criminal.

That the codes do not alter the legal status is shown by United States District Judge Mack's decision (Southern N. Y.) last year against the refiners of imported raw sugar. He busted their monopoly and stopped precisely the practices here complained of. There was an honest prosecuting attorney in that district and he was not subject, in this case, to the Attorney General. That's all.

The decision busted the trust, lowered consumer prices greatly, declared in some 40 items of cease and desist and in effect, that all the declarations made in my present statement and in the findings of the Federal Trade Commission in its Steel Report are right in law and necessary in morals.

The industrial codes were in effect when the decision was rendered and for many months before. The Recovery Act was not pleaded because it could not be. In substance the decision damns the trust codes and emphasizes the delinquency of the Department of Injustice.

The Supreme Court is the Nation's moral and legal umpire within the statutes, God's interpreter, as nearly as a human agency can be. Life is a game in the sense and the joy of high endeavor for excellence. The more honest men are the more they seek our "greatest court in the world" and the oftener, that there may be no question about the meaning of the law, the rules of the game. But there comes a brutal bunch who make and enforce their own rules and avoid the umpire. The consequences are shown equally in the debauch in the 1920's and the misery in the 1930's. No men can see this so clearly as the members of the Supreme Court. Who can doubt that these men must feel a sorrow and a wrath akin to the sorrow and the wrath of God as they ponder upon the Nation's course for these 30 years, and the consequences that the Court would have saved us from if successive Attorneys General had not prevented the Court from performing its constitutional functions.

Reestablish the lost power of the Supreme Court by compelling the Attorneys General to release its powers to "open the cage" and keep it open—a government of law won't hurt us.

THE ANTITRUST ACTS

Says Johnson, "We did not repeal the antitrust acts; we simply ignored them." Repeatedly he says that the codes and the antitrust acts are antagonistic; that they can't exist together. And what are these acts? They are only an expression of the common law of the centuries, of the Constitution, and of human rights.

John Sherman said when his act was before Congress, "It is as clear, simple, and direct as the English language can make it." President Taft said:

"The Antitrust Act is the expression of the effort of a freedom-loving people to preserve equality of opportunity, the enterprise of the individual, his industry, his ingenuity, his intelligence, and his independent courage."

Again and again he thundered for the complete and immediate enforcement of the antitrust laws. Would that every citizen knew the economic and spiritual values that these laws would safeguard if the Attorney General would mind his oath.

As you know, the opponents of the law have, upon several occasions through the years, sought to modify it exactly as the proponents of the National Industrial Recovery Act now seek to modify it. Congress decided when the act was passed, repeatedly since, that the act cannot be modified.

The law is like the law against murder. Don't kill. Don't offer excuses. The public interests involved are so great that the risk of breaking the law must be borne entirely by those who take the risk. Everyone who joins with others in conduct that tends to restrain commerce knows what he's doing. As says St. Paul to the Romans, even the heathen who have no laws "exhibit proof that a knowledge of the conduct which the law requires is engraven on their hearts." The human mind is not capable of qualifying sin. It has infinitely more phases and more means of expression than the mind can anticipate. The court knows when it gets the facts in the case. Meantime, the law written in the hearts of the American people make them know our trusts for what they are and hate them.

THE CORRUPTION OF LANGUAGE WITH CRIMINAL INTENT

It is human speech that distinguishes us from animals. It is speech that has made us what we are. He who rapes our language would destroy our understanding. None so skilled in this as the trusts and their friends. Congress didn't imagine when it required the elimination of "unfair competition" that evil men would fix maximum prices in the name of fair competition.

Witness this: The South Chester (Pa.) Tube Works located at tide water (Federal Commission, p. 49, first steel report), "sought assurance from the board of directors of the Institute that it would not be deprived of the advantage in competition which its location on tide water gave it, urging that 'it was not the intention of the National Recovery Act to destroy or impair advantages incident to the geographical location of a plant.'"

In reply Mr. Lamont, president of the Steel Institute whose directors administer the Steel Code, said:

"* * * to leave such advantages with you would result in continuing unfair competition in your favor as against your competitors who, for some reason or other, may not be as advantageously located in respect of transportation as are you."

This ruling compelled the tube company to continue to rob its customers by depriving the tube works of their natural advantages. Orange, Va., flooring case next mentioned.

It was in the name of "unfair competition" that the maker of oak flooring in Orange, Va., who got his rough lumber from nearby mills on a $3 freight charge and shipped the finished product to Washington, D. C., at the same freight charge was compelled against his will to charge the consumer on the basis of $10.50 in freight as if the rough lumber has come from Memphis, Tenn., plus $7.50 outfreight as if the shipment were from Johnson City, Tenn.—a total of $11 in fictious and dishonest freights to be borne by the Washington householder.

A Grand Forks, N. Dak., lumber dealer had a fair income buying a kind of lumber for $24 desired by his farmer customers and selling to them for $32, a margin of $8. The code forced him to charge $43. That might have pleased him, except that at $43 he could sell none. The farmers wouldn't buy. They couldn't. They shouldn't. The $43 price included $6.50 for delivery to the customers when in fact the farmers backed their trucks up to the pile and took the lumber away themselves. The code authority said that this made no difference. In this case only, I speak from a good memory. It is in the Darrow report.

I was born in the tall timber. The big fellows in Wisconsin, Michigan, and on the Pacific coast stole the timber tracts, as I suppose you know. False affidavits of preemption were common. They stole in such quantities as to make even taxes on the stealings a hardship. About half of the present capacity must quit. I have no care which ones, nor can the Government have. The cases can't be umpired. I was a large buyer for 25 years. I think I know.

I trust that you know that in the interests of the "big three" makers of bathroom fixtures, the United States Government requires that such fixtures, bathtubs, washbowls, etc., as are slightly defective shall be destroyed instead of being sold as previously at a discount profitable to users and makers—fixtures so good that all hotels are said to be equipped with them. To be sure the United States Government still permits these "seconds" to be exported; but this arm of the Government, this "big three" knows that the little fellow can't export while the "big three" can and do "fair competition forsooth."

Every citizen should know of innumerable other cases running through all the codes and exactly as nasty as the above illustrations; but your time must be spared this recital. Doubtless you know.

Let me note the method of the code authorities respecting these iniquities when the public is generally advised of them. The Government corrects, say, 1 in 10. The Federal Trade Commission calls attention that it does not cure, nor measurably correct, an evil to single out illustrations and doctor them.

Self-government.—This is another vicious corruption of language. In honesty there can be no such thing. Dillinger governed himself. Al Capone's group governed themselves. Those who plead that they may govern themselves have shown in the codes precisely what they are after under the plea of self-government and precisely what they will do with it. The billions that the lessor has cost should be in final payment. But the pleaders won't stop till their purpose, lost, is stopped.

President Roosevelt said to these self-government fellows when first summoned to make their codes, that it was their chance to show in practice what their self-government would mean. They have shown.

Not an honest group in America wants, or could want, self-government. Who will name one? Government means nothing but the government of all by a central body of law, bearing equally and fully upon everyone. Group government is group secession. If the idea is scotched forever there will be some gain as against the evils of the present experience.

At the annual meeting of the Chamber of Commerce of the United States in 1933 I listened for a half day to dreary pleas for self-government, all to the effect that big business can manage itself better than the Government can manage it. Then I said, "Everyone knows that business can run itself better than the Government can run business. The point is that business won't. You know it. Why not say so. You'll never run your businesses right until the Government makes you come under the law." There was no answer because there could be none.

COMPETITION—ITS JOYS AND ITS REWARDS

Few American business men know the joys of competition except the old men who were in the very thick of it for long years prior to 1902, when trusts and price fixing were enthroned. Competition implies rules. Without rules there cannot be competition. Competition fails if a player fouls or is fouled. It is for Congress to make the rules concerning child labor, wages, hours, etc., and then let every man alone except for policing in the good old ways that made us happiest and best. In the days of competition, when a man got ahead everyone knew that he had done something of unusual excellence. Always the law of competition gave the greater part of the benefits of his performance to the public. It could not be otherwise. There was no chance for the millions to hate the few.

It is misleading and untrue for some to say that the evils of the 1920's and the different evils of the 1930's were "under the antitrust acts." They were not. They were for want of the enforcement of the antitrust acts; which acts were mere words on paper. Dead for want of use.

Regretfully I speak of my personal experience for 25 years under severe competition. I know not otherwise how to describe the joys and the consequences for good in competition.

The public does not understand that every factory has a relatively enormous free fund, the shrewd control of which is a principal factor in success. The difference between the first or mill cost of a factory product is, virtually always, one-third of the factory selling price. In trust products, the mill cost is half or less. In cement one-third. In the 1920's the heavy steel producers had around $900,000,000 of free money above their mill costs. Mill costs include wages, raw materials, and whatever goes directly into the product. The other charges mostly run on regardless whether the factories are running full or at only a fraction of production. Under competition the use of this margin determines largely between success in various degrees and failure. Under competition, if a man makes his prices too high or makes them inflexible, he fails measureably or wholly. Under competition, every hour of every day all the manufacturers in any industry are playing cards, as it were, in the sum represented by their gross margin, one-third of their selling price, to which this margin is restricted by competition. When asked if I played cards, I used to say, "Yes. From 9 in the morning until 6 at night; never after supper."

I made vehicles of every sort, except pleasure vehicles for the very rich. In early spring and summer everyone wanted vehicles. They cared little about the exact price if they could get deliveries. Consequently all producers asked full prices. Then came 4 months of diminished demand and in common sense and honesty concessions were made that induced increased orders to the advantage equally of producers, distributors, and consumers.

Then came winter months, with no demand. I stood to lose $20,000 per month for 3 months. Codes would have made me lose it, and I would have cursed them. Instead, I completely reversed my policy to a stop-loss basis. In justice, it was and could be no man's business what I did in selling my own property. I paid proper wages and observed the commandments. That is enough. But I did more than that, and by the only means possible. I bought business. I broke every rule that a code would make, simply because I was not a fool. I kept my shop busy. I stopped a loss of $60,000. I made every sort of concession that could be thought out. Sometimes terms would get an order. 8 months' time instead of 4; sometimes I would throw in a delivery truck with the customer's name in gold that he would not buy, but delighted to possess. It meant to him $135, regular price. It meant to me $75 because I was lucky in the methods of production and made it when otherwise I would be idle. By

paying rent for space whereever a customer would buy and store, I gained much business at inconsiderable extra expense. Sometimes I sold on consignment to people virtually not worth a dollar—an utterly unbusinesslike procedure, as a general rule, but through all the years worth $10,000 a year to me because of the oversight and special provisions of my commission contracts. For years I made one sale of a thousand buggies each mid-winter at no slightest profit that I could discover. This because the buyer would rent an old, wooden, lopsided rolling-skating rink and fill it to the top of its 50-foot ridgepole with these buggies, and would give me a fat, perfect note of hand in payment, which I sooner would endorse over to a bank than borrow direct. This sale kept the factory full in the 2 weeks that otherwise, in the dead of winter, my workers would have been idle, spending and not earning. The sum of these dull-season sales kept local retailers from anxiety over credits to people out of work, and brought probably $200,000 to my community for general liquidation purposes.

This simple story could be repeated in other terms by substantially every factory producer of like commodities in America. I delight to think of myself as one of 250,000 manufacturers who each hour of each day kept their little worlds happy, comfortable, and with money in pocket, not by keeping some 50 rules made by nobody from nowhere and "superimposed" upon the lawful government that would let us render our considerable, social, and economic service by selling our merchandise at the price that the conditions applicable to each sale warranted, and required if we were to be directed by common sense and the elements involved in each transaction.

Sometimes at the end of a year the three most fortunate of us would compare profits, pleased as schoolboys that our profits were almost identical and so satisfactory; and more pleased that we had profited through service and not by bludgeoning our customers. Each of us, in effect but not of purpose, had done all he could to make the others' prices as low as possible in reason; but each had insisted on a living profit for himself. In a word, we were old fashioned. If the game was hard in the tax upon our characters and our ingenuity, it remains that the three best of us were nationally recognized and honored for our services in business. Today, we might be in the penitentiary, for we were not made of the stuff that would yield to lunacy.

If you want to see the difference between the methods above indicated, note that under competition factories were always running throughout the year, except in crises that carried their own cure, buyers were satisfied, consumption was enormous. I bought steel for 80 cents per hundred pounds, bars, against $1.80 now; cement for 75 cents to $1.10 against $2.35; other things in proportion, and I sold on the basis of these costs and 7 percent to 9 percent net profit, because I was unusually fortunate in my practices. So were all of the leading manufacturers everywhere. Competition did not account for all the good in those days. Far from it. But it very nearly exemplified President Wilson's statement that private business is public service for private profit. And competition saw to it that the profits from enterprise went mostly to consumers, as it should. In that way everyone shared in them.

In those days there was no whining about the fellows who lost out. They were simply misplaced. They found places that fitted. No one lost employment except temporarily. Some who went broke came back and got rich from the experience. Is it not best that the unfit change to places that they fit? The present codes are based entirely upon keeping unfit people in unfit places, and at such expense in excessive prices of commodities as required the recent congressional appropriation of nearly $5,000,000,000, a huge sum, entirely unnecessary except that the code policy in industry penalizes and prevents the innumerable and convenient adjustments that would be made under competition, as above indicated, if Americans were free, as once they were. That freedom to make and to lose, to grow in statute and in strength by freedom, subject to the rules that competition requires in order to be competition at all—that competition would have in the last year brought back the $30,000,000,000 of lost income per year, or most of it, the loss as compared with the nineteen-twenties.

Do not think that price reductions by manufacturers mean trade disorganization. The contrary. Shrewd buyers are shrewd sellers. They get all they fairly can. The firm that bought the 1,000 vehicles above noted sold at full prices. My $5,000 discount was for a definite unusual service. No one else would have rendered it. I admire the buyer for making me pay high though it smarted. His customers had no interest in the matter. They were given none. The goods were sold them at market. Just so the thousands of price reductions, etc., are in substance on the principle that no sellers can get more than buyers

will pay, and concessions are to get business rather than go without it. In depressions there is nothing so good as concessions on merchandise, etc., that is produced with fair consideration to wage earners.

The horrible reductions in wages and working conditions in 1932 were solely a substitute for starvation. The common-sense judgment of buyers whose pockets were virtually empty and whose fears justified their keeping every possible penny, had to be overcome, and no one has told yet what else could have been done in those days before relief came by act of Congress. That prices were not too low on the basis then prevailing is indicated by the fact that consumer purchases were so limited even at those prices. The explanation may not be more pleasant than the facts were horrible. But for these facts to be exploited by criminals and their friends with the purpose of carrying the criminals through the rest of the depression to the retardation of recovery and—their particular aim—that they may be in full form and fettle to steal four billions a year for all the following years of prosperity—this to me is no prettier story than the story of 1932 and its wage prices

How many know that upwards of 200,000 of our manufacturers, including all the little fellows, hate the trusts because the trusts so injure these lesser and "intermediate" manufacturers by making the cost so high to them on their supplies that they cannot produce at prices that induce sales and consumption. Three-fourths of these smaller manufacturers have little capital and almost no free capital. That's one reason why they die off in such numbers in a depression. Another reason is that there are always a few rich and fortified makers of substantially everything that the little fellows make, or of substitute articles. For instance, a high official in the next largest farm implement company in the country told me that the International Harvester can sell its enormous product at the bare cost of this next greatest customer with a profit to the Harvester company because it makes its own steel. If you would the intelligent tens of thousands of little manufacturers, see that they get their supplies under competition.

I know how tens of thousands of small manufacturers, intelligent, admirably competent, worth from a half million down to $5,000 and less, feel because I have officially represented them and heard the prayers and the implications that they dare not utter aloud lest they die for want of "raw materials" so-called. In this connection please note the mark-ups on criminally priced merchandise. One instance will do. The figures are made with utmost care. In 1927 the heavy steel producers sold for $300,000,000 above competitive prices. The mark-ups of implement manufacturers necessarily added, plus the 50 percent mark-up of retailers, added $100,000,000 to the farmers' implements, $400,000,000 to consumer purchases of automobiles and precisely similar mark-ups on everything made of steel. The mark-up to railroads was not much more than 400 millions because they bought direct or wholesale.

Judge my surprise respecting chain stores when the managers of one of the greatest showed me, probably without their realizing it because it was incidental to other business, that their low prices are often the result of these managers showing manufacturers how to produce at margins satisfactory to the latter and lower than the manufacturers had thought possible. That is beginning at the beginning and with trained intelligence. All the advantage goes to the consumer except that the stores get a fixed and larger margin, though entirely reasonable, than I had thought. Those stores certainly serve the poor. I speak not for them but for the truth in this respect. I accept Justice Brandeis' dissenting opinion in the *Florida case* that any State has a right to tax chain stores out of existence if the State believes that the disadvantages of these stores outweigh the advantages. Even then manufacturing and storekeeping has been made more intelligent because of them.

Would that all could know the righteousness of price reductions, and share in the delights of those who make these reductions when they are due to what I call the American miracle of low costs combined with high wages. In ordinary times half the complaints at least come from those who don't know why the prices were reduced. This may permit a last story.

The first cost of proprietory medicines, etc., "including the cork and the wrapper," as a great distributor said, is one-eighth of the retail selling price. When I bought an article at the great Macy store in New York that carried a standard price of $1.50 for $1.17, my general price convictions were shaken for an instant. Then I realized that the first cost was around 20 cents and that Macy, in my judgment, got it for not above 80 cents. Also that Macy must have delighted the maker with an order 100 times greater than the average, and that the price to Macy enabled the latter to sell out quickly and repeat. Was anyone hurt? Not I, the consumer.

Then I thought of Macy's balance sheet for 1934 showing sales of some $112,000,000, largely to poor people and when about one-third of the people in New York City were on relief; that they were saved, about $6,000,000; that Macy's gross margin was around 35 millions; and that this margin was used with such honor and intelligence as to save for the stockholders more than $3,000,000 in a bad year; and with everyone concerned so pleased as to assure succeeding years of like operations. This is simply one instance of the way that "price" policies help to make business what President Wilson said that it ought to be, "Public service for private profit." And lastly, some $30,000,000 of Macy's gross margin some 6 or 8 thousand unusually choice sales people—happily and was all used to lighten the burdens of the community.

It was by free prices, induced and required by free competition, and changing constantly to meet the infinite permutations of each different set of circumstances, that Carnegie made his millions, America astonished the world by her superiority in production and accomplishment. It is by criminal and excessive price fixing that one-third of our factories (for which there is no possible use because the remaining efficient factories will supply us for years to come) have become obsolete and are still operated because the excessive prices make them profitable and the efficient factories three to five times more profitable than they should be; all, of course, at the cost of those who cannot enter combinations and are bled white by them because the laws against them are not enforced.

What of wage earners? Every reduction in hours, from 16 per day 150 years ago to 8 recently, has resulted in higher wages per day because of greater production in the shorter hours. Indeed we are approaching a time when we can say with the employer of the man mentioned in the brickyard whose machine produces 50,000 bricks per day, "it does not make a bit of difference what I pay", the cost per thousand being 2 cents. I hope to live to see many more such machines and a million or millions of workers of average excellence getting $10 a day to consumers' advantage.

I submit that trust prices must be liquidated. Every man should boycott heavy steel products and all other such products until trust prices are liquidated. If his roof leaks let him mend it himself with a piece of old tin. Trust securities have been liquidated—everything liquidated except trust prices. When trust prices are liquidated and freedom is given to the energies and self-expression to our marvelous and generous people, we must have by natural consequence the almost instant recovery that has followed every depression.

The Federal Trade Commission.—This Commission looks to God only. The fact is as unusual as the statement. No one questions its findings concerning the codes. That is why there is general denunciation by those who cannot answer. British commissions are commonly of this sort. I hope we have another commission that is absolutely honest and straightforward; but long familiarity with Washington has shown me none. It would have been worth billions if the Tariff Commission had stayed honest after 1922.

When I say honest I mean honest; looking straight to God with no intervening clay idols or fears.

I mean the kind of honesty that would naturally compel the Interstate Commerce Commission to require the railroads to buy their supplies at fair prices. This Commission controls railway incomes by fixing their freight and other charges. It determines the outgo in wages. Then it shuts its eyes and lets the railway supply people charge the roads what the sellers will to a fair estimate of 400 million dollars in excess charges per year in the 1920's—a total of 4 billions in 10 years. As President Wilson said, through directorates, stock ownership, etc., the people who supply the railroads control 55 percent of them. Thus, as we all know, the supply people are on both sides of the table. They sell to themselves. And it amounts to a common understanding that when by these sales, the railroads are badly weakened (or weakened by other means that would be endurable were it not for the losses named), then the Interstate Commerce Commission permits freight rates to be increased at public cost. It thus contributes to thievery, and especially to the farmers misery. Mark the difference between this smug commission and the Trade Commission that suffers slander and risks the curtailment of its proper powers by sly new phrases that enemies would have you insert in the law. To weaken the Federal Trade Commission or take the slightest chance of weakening it would be a national calamity, partly because it is our only example of utter efficiency and righteousness among the commissions that affect the monied interests.

The "Darrow" Board.—It seems a duty to say a word about the Darrow Board. I know no member of it. I am absolutely anti-communist. I know the Board

only by its report. Everyone should read it. To me it is inconceivable that the plain statement of facts with which the report is filled are untrue. This is not a question of the Board only—it is a question of the integrity of the manufacturer in Orange, Va., above quoted, and of other business men in many parts of the country and their statements of fact. It is inconceivable that American business men would lie in quoting their own prices; their actual freight charges; and the charges for merchandise and freights that the code authorities require them to charge. The figures speak for themselves and leave the reader to agree or not with the opinions of these men that the code exactions are ruinous to them and hurtful to the consumer.

To general readers Johnson's general and all inclusive denuncia of the report is a denunciation of these manufactures. His utterly false statement to you April 18 that "it recommended communism" and his "dead-cat" use of this statement was a national calamity in that he was so far believed that the public had no desire to read the report and profit by its startling and most helpful disclosures. The gist of the findings should be printed and available to every voter. There is no word about communism in it as you know.

I must accept the statement made me in the Board's headquarters that after the report was finished and signed and the Board gone, a member of the Board formerly Darrow's partner, nagged Darrow to read what became a supplementary report of these two men. Darrow is old, not strong. He was exhausted by his labors. He said, "I can't read it, I won't." Persisting, the other man told the contents to Darrow, omitting the Communist statement. Said Darrow, "If that's it, I'll sign." A subsidiary report is not the report of a committee. I am told that the method of its procurement broke a lifelong friendship.

There are rules in sport; there are none, not even in the reasoning of men seeking plunder, nor in their propagandizing representatives.

I beg you to consider the foregoing statements, not as mine, but as the best expression I can give of the judgment of the millions of farmers and others who share the views of the committee which I here represent to the best of my ability.

I speak not in malice. I like and admire those whose criminal conduct I abhor. We must love America more than we like them.

LETTER FROM MR. NATHAN YAMINS, FALLS RIVER, MASS., RELATING TO TESTIMONY PREVIOUSLY MADE BEFORE THE COMMITTEE IN CONNECTION WITH THE MOTION PICTURE INDUSTRY

NATHAN YAMINS,
Fall River Mass., April 17, 1935.

SENATE FINANCE COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: I read with considerable interest a report that appeared in a New York newspaper, of the hearing held by your committee on April 8, on the code for the Motion Picture Industry. This report stated that Attorney Albert charged a member of the code authority, Charles L. O'Reilly, with not being an exhibitor but rather as a vendor of candies in theaters and intimated that he did not truly represent the interests of the independent exhibitors on the code authority.

In justice to Mr. O'Reilly, I, as a member of the code authority representing the independent exhibitor interests, wish to go on record as stating that Mr. O'Reilly is a legitimate theater operator, and even though in the candy business as well, has fought valiantly in protecting the independent exhibitor interests, and that the independent exhibitors of the United States could not find a more loyal champion of their cause than Mr. O'Reilly. My only regret is that there are not more members of the code authority who have the sense of loyalty, patriotism, and fairness that Mr. O'Reilly possesses.

Yours respectfully,

NATHAN YAMINS.

STATEMENT SUBMITTED BY THE BUILDING TRADES DEPARTMENT, AMERICAN FEDERATION OF LABOR, WASHINGTON, D. C.

APRIL 19, 1935.

We deem it our duty to take issue with the statements made before your committee by representatives of the National Association of Real Estate Boards attacking the Construction Industry Code; also desire to bring to your attention

many of the unfair practices which will occur if the Land Development and Home Building Industry Code, sponsored by the above-named association, is approved by the National Recovery Administration.

There is no land development which is peculiarly associated with the construction industry, as land development is a speculative activity founded upon forecasts as to possible land uses and needs. The process of land developing, or the subdivision of land into lots, not only relates to small homes but also to larger homes, businesses, and industries. Land development is not peculiar to home building and is not definitely associated with it; it is geared to the desire for profits from real-estate activities rather than from construction. Its primary concern is the profitable sale of land.

We believe that home building is not separable from the construction industry; the definition of the construction industry includes the building of homes and all types of residential buildings. It is ridiculous for the real-estate operators to protest the construction code and propose a separate code for the erection of the 1-family, 2-family, and 3-family houses, and then to distinguish between the detached, semidetached group, and row housing as the service that is performed in all is that of construction.

The Construction Code is the proper place for this building division since it furnishes the necessary protection for the public. The industry is essentially a service one. Quality is, therefore, the paramount consideration. Great care has been taken by the labor organizations and the legitimate contractors to maintain high standards. Homes are built to exist and to preserve that guarantee it must come within the industry where it is most likely to be preserved, which in the opinion of the organized building trades workers of this country is the Construction Code.

The experience of labor with many of the realtors and speculative builders who are members of the Real Estate Board, attacking the Construction Industry Code, is that they are merciless chiselers of wage scales paid to the workers in the industry, though we will admit, there are exceptions.

The Construction Code provides for the establishment of mutual agreements for a specifically defined region or locality, the standards of hours, wages, and such other conditions of employment when approved by the President, is applicable to those engaged in the area.

The construction code also contains a minimum rate of pay for unskilled workers, and several of the supplemental codes contain minimum rates of pay for the skilled workers. It also provides for a national planning and adjustment board composed of an equal number of representatives of labor and employers, presided over by an impartial chairman appointed by the President.

The unfair trade practices in the construction industry are developed around the rate of wages paid to the worker; hence it is our belief that all of the construction industry should be integrated through the basic code for the construction industry. It is our opinion that the protest to the Construction Industry Code made by the real-estate board is on account of their desire to not adhere to the more favorable labor provisions contained in the supplemental codes of the construction industry.

As many of the codes in the construction industry have been approved for only a short time, and believing that it will require further time so that these codes can properly function, we believe that the National Recovery Act should be extended, and as president of the building trades department of the American Federation of Labor, which is composed of international unions engaged in the construction industry, I respectfully urge that your committee approve the National Recovery Administration bill in accordance with the recommendations made to your committee by William Green, president of the American Federation of Labor.

Very truly yours,

M. J. McDONOUGH,
President Building Trades Department.

STATEMENT SUBMITTED BY THE CONTRACTING PLASTERERS' INTERNATIONAL ASSOCIATION, INC., CHICAGO ILL.

APRIL 20, 1935.

Your petitioners, the contracting Plasterers International Association respectfully file this brief in support of the continuance of the National Industrial Recovery Act from and after June 16, 1935, and for a further period of not less than 2 years from such date.

In support of this request and petition, we respectfully submit that the Contracting Plasterers International Association is a national association of local associations and individual members located throughout the United States. The Contracting Plasterers International Association is the only national coordinating association of the plastering and lathing industry from the employers standpoint in the United States. The lathing and plastering craft or trade is of the greatest antiquity, with a historic background of centuries. Its commodity is inseparably connected with the housing and other structures, necessary for the health, comfort, and safety of our people.

Over 150,000 highly skilled and semiskilled workers are directly dependent upon the industry for their normal and usual employment. The association is the sponsor of the Code of Fair Competition for the Plastering and Lathing Division of the Construction Industry. In its sponsorship of the code the association and the code has the sanction and support of the representatives of all organized labor employed in the industry.

The salient features of the code are reflected in the minimum wage scales for skilled and semiskilled workers, maximum hours of work and standards of work necessary for the protection of building ownership. During the past 4 years it is estimated that less than 20 percent of the workers of the industry have been able to find trade employment. This has resulted in a breakdown of wages and hours of the industry's workers.

We believe that the code requirement will correct such exploitation of labor and will result in the responsible employers in the industry to successfully compete for work. Although the code of the industry was approved by the President as effective July 27, 1934, even to attempt to coordinate such a farflung industry as ours in within a few months, is a matter of impossibility, and we submit for your consideration our opinion that the time has been entirely too short, so far as our industry is concerned, to demonstrate the inherent possibilities for good of the National Industrial Recovery Act.

We therefore petition your honorable committee to recommend a continuation of National Industrial Recovery Act with such changes as the committee in its wisdom may deem necessary to insure the principles of fair competition for employer, employee, and building ownership alike.

Respectfully submitted.

OSCAR A. REUM, *President,*
EDWARD MCDONNELL, *Secretary-Treasurer.*

LETTER AND STATEMENT SUBMITTED BY THE NATIONAL-AMERICAN WHOLESALE LUMBER ASSOCIATION, NEW YORK, N. Y.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

DEAR SENATOR HARRISON: We have been furnished with a copy of statement submitted to your committee on April 16 by Mr. David T. Mason, executive officer of the Lumber Code Authority. In this statement Mr. Mason says:

"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."

Enclosed is copy of statement which this association filed with the National Industrial Recovery Board at its lumber-price hearing commencing December 11, 1934. We refer especially to the last paragraph in this statement, which was our answer to some statements at the December hearing that the break-down in certain prices occurred because wholesalers were not under the code. It has been demonstrated that where groups of wholesalers were already under the code satisfactory price compliance was not obtainable.

We wish to emphasize what we said at the December hearing, to the effect that there has been the same relative degree of compliance among wholesalers as among manufacturers and that violations by wholesalers were caused principally through initiation or connivance on the part of manufacturers. There is no reason to believe that bringing all wholesalers under the Lumber Code would result in any greater degree of compliance than existed among the manufacturers when code prices were in effect.

We wish to file this communication with the enclosed statement as part of the record of your committee hearing.

Respectfully,

W. W. SCHUFNER, *Secretary.*

STATEMENT

The National-American Wholesale Lumber Association has reluctantly come to the conclusion that minimum prices should be eliminated. The association has made inquiry among the wholesale industry at large and replies were received from wholesalers who handled over 5 billion feet last year. The sentiment is overwhelmingly opposed to the continuance of minimum prices, the vote being nearly 3 to 1 (both as to number of wholesalers and volume handled).

The principal reasons for this decision divided themselves, first, into those which affect the lumber industry as a whole, and second, those which particularly affect wholesalers.

AS TO THOSE FROM THE POINT OF VIEW OF THE INDUSTRY AS A WHOLE

1. Code prices are being drastically and flagrantly cut, not in all species, but particularly in those which furnish the greatest volume of present-day requirements such as yellow pine, fir, and many classes of hardwoods.

2. And very important, is the fact that substantial voluntary compliance is apparently no longer obtainable, and without it successful enforcement is unobtainable also. This is true of any general law, rule, or edict, as has been repeatedly proven in the past, and only recently in connection with the Prohibition Amendment—either there is voluntary compliance to a large extent, or failure. One whole year has passed since minimum prices were put into effect, and each month has witnessed a lessened degree of voluntary observance, and a greater degree of chiseling and evasion along many lines.

3. The growing lack of observance of code prices will encourage disrespect for other important provisions, such as hours and wages, control of production, and essential trade practices and regulations. Lawlessness is contagious, and when one important provision of a code is constantly violated to the extent that it is more honored in its breach than in its observance, it rapidly tends to lower respect for and obedience to all of the other provisions, and the value of the entire Lumber Code structure to our industry is rapidly being destroyed by the retention of a price structure from which voluntary compliance has largely been withdrawn.

4. In many sections large numbers of producers are in revolt against price maintenance. It is reported from the West Coast that a very large percentage of the mills are not adhering to established prices. In the South the Roofer Manufacturers Club, Small Mill Pine Association and many hardwood manufacturers have openly pronounced against prices. Most railroads have actually abandoned placing their business with any consideration of or adherence to minimum prices.

5. The fixing of prices on a delivered basis, using arbitrary freight calculations, average weights, and zoning of territory has placed a burden on mills unequipped to cope with complicated tariff rates and traffic problems. The arbitrary freight-rate barriers have removed the benefit of proximity to markets, thereby unfavorably affecting those whose investments depend upon geographical advantage.

6. Present court decisions are conflicting and raise doubts as to the legality of the whole price structure. Public statements as to the attitude of National Recovery Administration officials create uncertainty as to the length of time price fixing will be permitted.

7. If it be argued that elimination of price protection would bring price cutting, the answer is that price cutting is now on the increase to the disadvantage of those who comply. On the other side, when the prices are controlled only by natural forces and the present artificial barriers are removed, those buyers, who at present are holding off because of the uncertainty as to the maintenance of Code prices, and because of the prospect of the continuance of chiseling, will come into the market and do their buying in the normal way for their future requirements.

REASONS FROM THE POINT OF VIEW OF THE WHOLESALER

1. The chiseling of code prices has brought in its wake a train of other evils such as the improper granting of discounts, which is caused by the absence of definitions of wholesaler and wholesale trade, such as the industry has constantly sought to obtain. Not only have retailers received this discount, but it has been also granted to other customers who are in no way entitled to it. This is of

particular concern to wholesalers whose normal customers receive the discount which should be allowed only to wholesalers for performing specific functions. This is the most disrupting influence in the entire industry today.

The fallacious argument has been advanced that the public benefits through the improper allowance of discounts to retailers. This is clearly not so. The retail modal mark-up is based on the Lumber Code prices with no deduction for wholesale discounts and retailers getting the discount have an unfair advantage over their competitors who observe the rules.

2. Through order X-48, the administration itself improperly permits the allowance of the wholesale discount to Government agencies and has ruled that cooperatives are entitled to such discount. Neither the Government agencies nor the cooperatives perform the services required of wholesalers nor do they meet the wholesale terms of sale. The wholesaler is thus eliminated from this business and so also are his small mills. These improper allowances of discounts have greatly added to the confusion of our interbranch relationships and the lumber market in general.

3. The price provisions are largely responsible for the confusion in the Lumber Code and require most of the Authority's time to remove inequities, yet inequities still exist and will continue as long as minimum prices are in effect.

It should now be realized as a fact that the situation is fraught with too many complications and human equations to expect to keep some 30,000 units in line, particularly when with so many the question of self existence is involved. We hoped for something that could not be accomplished and we have been disillusioned.

4. Eliminate minimum prices from the Lumber Code and such vexatious questions as maximum wholesale discounts, requirement for selling delivered, intermill exchange, small mill differentials, order X-48, quantity discounts, proposed obnoxious contracts with wholesalers, will disappear.

5. We believe in minimum wages, maximum hours, and control of production. We recognize the difficulty of enforcing even these provisions, but we also believe public sentiment favors and supports them. Public sentiment opposes price fixing and will not support it. There is consumer resistance.

Our conclusion is that the maintenance of hours and wages and control of production are entitled to and will continue to receive a large measure of voluntary compliance, and are backed by public sentiment. These together with voluntary divisional basic price lists, more readily responsive to the law of supply and demand, will furnish a more generally satisfactory price structure for the lumber industry than any further attempt to maintain minimum code prices, in the face of the complete failure that now confronts us.

During this hearing several speakers stated that the break-down in certain prices occurred because wholesalers were not under the code. Let me point out that yesterday you heard from the Intercoastal Lumber Distributors, who as wholesalers are now under the code as a subdivision of the west coast division, to the effect that they are unable to obtain satisfactory compliance. I wish to emphasize the fact that there has been the same relative degree of compliance among wholesalers as among manufacturers. We concurred in the original code as submitted at the first public hearing and placed much importance on the value of article 9e as a means of enforcement among wholesalers. Lack of enforcement of that section is not our fault. I also wish to repeat what was said at a previous hearing, that violations by wholesalers are principally caused through initiation or connivance on the part of manufacturers. We hold no brief for any wholesaler who resorts to subterfuges and while it is possible for wholesalers to chisel on their own initiative, the meager discount allowed them does not permit their cutting the price to any great extent on their own account. When they cut prices it is primarily because their mills do so in the first instance. Those mills are now under the code and their orders and invoices are supposed to be checked by the divisions. In that manner cut-price sales by mills to wholesalers should be caught and stopped, which in turn would stop most violations by wholesalers. We recognize that experience demonstrates it is physically impossible for the divisions to catch these mill violations, but failure in that respect in turn accounts for most violations by wholesalers.

W. W. SCHUPNER, *Secretary.*

STATEMENT SUBMITTED BY THE NATIONAL CONSTRUCTION PLANNING AND ADJUSTMENT BOARD, WASHINGTON, D. C., (WITH REFERENCE TO THE NATIONAL INDUSTRIAL RECOVERY ACT AND RECOMMENDATIONS FOR PROVISIONS IN THE PROPOSED NEW ACT)

For the construction industry, continuation of the National Industrial Recovery Act is of vital importance. The present act and the code have offered the industry its first opportunity for solving the distressing problems which have brought it close to a complete prostration. A splendid beginning has been made but the time of operation under the code has been insufficient to permit the industry to do much more than clear the road for progress toward realizing the high hopes stirred by the prospect of integration and for unity of action and industry planning.

Because of characteristics which are peculiar to the construction industry and which distinguish it from all other manufacturing industries, any act extending the National Industrial Recovery Act should contain provisions which will facilitate and not obstruct its application to construction.

The cost of labor in construction is one of the two controlling cost factors. As between areas and communities there are wide differences in wages and conditions of employment. These differences are of long standing, reflect local living conditions, are firmly established and cannot be disregarded.

The construction industry is characterized by extreme mobility and intermittent employment. The industry moves from site to site, assembling at each site the required materials and labor, and leaves its product behind it. The industry moves, creating and stimulating interstate commerce. Its product is immovable.

Nearly all construction contracts are secured through competitive bidding between contractors. The competition is on estimated future costs. There can be no fair competition unless wages and conditions of employment are established in the area where the project is located and are known to the bidders. Wage stabilization, therefore, is essential to fair competition, and the maintenance of suitable wage rates.

The only possible application of section 7 (a) of the present act to the construction industry is through agreements arrived at by collective bargaining for specified areas which establish rates of pay, hours of work and conditions of employment. This method of stabilizing the wage has been provided for in the code.

In order that these collective area agreements may be consummated in both organized and unorganized areas and so provide wage protection for employees and bidding parity for employers, the act continuing the National Industrial Recovery Act should so define the term "truly representative" that it means in referring to both employers and employees, those regularly e gaged in the industry.

The new act should also provide for a system of electing representatives of employers and employees for the purpose of collective bargaining for the consummation of area arguments which is based upon the procedure in electing representatives to State legislatures and Congress in this country and for the selection of legislative representatives under any representative form of government. Representatives selected for the purpose of collective bargaining should be elected by a majority of those voting when all those qualified to vote as "truly representative" have been given proper notice and an opportunity to vote.

In connection with any new National Industrial Recovery Act, the matter of compliance requires special consideration. The whole system of securing code compliance must be simplified in the interest of prompt prosecution of code violators. It is urged that the new act permit a code authority to file directly with the United States district attorney a complaint against a code violator, and also charge the district attorney with the responsibility for prompt prosecution if, in his judgment, prosecution is justified by the facts.

LETTER SUBMITTED BY R. U. DELAPENHA & CO., INC., IMPORTERS AND PACKERS OF FOOD PRODUCTS, NEW YORK, N. Y.

NEW YORK, *April 19, 1935.*

FELTON F. JOHNSTON,
Clerk Senate Finance Committee, Washington, D. C.

DEAR MR. JOHNSTON: Thank you for your telegram of the 15th instant, notifying me that lack of time prevented your calling me to be heard on the National Recovery Act hearing, but that I might forward a written statement which will

be given consideration by the committee. I take pleasure in enclosing herewith such a statement.

It is unfortunate that you had to hear so many witnesses that I was deprived of the pleasure of addressing you personally in regard to the hearings that have been held for the last fortnight on the National Recovery Act.

I do not propose to burden you with a long statement, because you have sufficient data from witnesses that have appeared, to have given you a pretty clear picture.

I do desire to say, however, that in my judgment it would be little less than a crime to allow the National Recovery Act to lapse on June 16. If we look back to the conditions that existed in the last half of 1932, and in 1933, one would have to possess a very poor memory not to recall the chaotic conditions that existed at that time in industry generally. If the National Recovery Act should be allowed to lapse, in my judgment we would immediately be faced with the same conditions that existed at that time.

We consider that substantial progress has been made since then. Nor could any sane person expect that a change so radical in our system could have been worked out to function even as well as it has done without grievous mistakes having been made, and without dissatisfaction from certain quarters. There isn't any law or any regulation that Congress would pass that wouldn't find disfavor amongst a certain percentage of our people, and we should all of us look to the larger benefit that accrues rather than to the lesser. There is no question but that labor has been benefitted, and those industries whose codes have permitted them to stabilize their industries have also been greatly benefitted. I could mention several, but they are so well known to you that it would be purely in the line of repetition, which I wish to avoid.

As chairman of the Code Authority for the Preserving Industry of the United States, whilst we have whole-heartedly asked for and obtained a code of fair business practice, we have been unable to put this code into operation because we had no way of enforcing the regulations of fair business practice provided for in the code, and we have had no assistance whatever of a practical nature from the National Recovery Administration.

Much has been said, and much has been written, in regard to monopoly, but even with the Sherman Act in existence the whole trend of business in the United States has tended toward monopoly. In other words, large aggregations of capital are banded together for the purpose of controlling industry, and this statement can amply be proved if sufficiently and carefully analyzed.

One of the functions of the National Recovery Act was to save the small man, and prevent business being controlled by the few. This can still be accomplished, provided some means can be found to enforce the requirements of each code. Some of you will remember that the statements that I made before the Senate Finance Committee, prior to the passage of the Industrial Recovery Act when it became so self-evident to industry that unless the Federal authorities took some action to prevent the ruinous competition that the country was passing through, that there would surely have been a collapse in business, and by consulting a report of the hearings at that time, the remarks that I made then will be confirmed to you.

I feel exactly the same today. Whilst our industry has suffered, and is still suffering, nevertheless minimum wages and shorter hours of work have done considerable to increase efficiency and I feel confident that if Congress passes a new act to supersede the old, eliminating some of the features that were found unworkable, that industry during the next 2 years will continue to benefit by being under a form of control that is absolutely necessary during this period of emergency.

I do not believe that any code can be successfully established, unless there is some control over the price structure. As I write to you, jams, jellies, and preserves are being sold freely below the cost of production, purely because the code authority has apparently no control over those engaged in industry who refuse to voluntarily abide by their own code. Some measure of control must be given the control authority, backed up by the Federal Government, to prevent manufacturers from selling their products below the cost of production, and so far as our industry is concerned, if this can be accomplished the farmer will get a better price for his products, and the industry can once more be put on a stable foundation.

We anxiously trust, then, that in your deliberations you may take into consideration the ideas hereinbefore expressed.

Yours very sincerely,

R. U. DELAPENHA, *President.*

LETTER AND STATEMENT SUBMITTED BY GILBERT & GILBERT, NEW YORK, N. Y.

APRIL 9, 1935.

CHAIRMAN SENATE FINANCE COMMITTEE,
Senate Building, Washington, D. C.

DEAR SIR: You are undoubtedly interested in the legal questions to be presented to the United States Supreme Court in the so-called "Schechter case" which involves the live poultry code in force in the metropolitan area in and about the city of New York.

We are the attorneys for a group of receivers, commission merchants, and jobbers who are affected by this code, and on their behalf we have filed a protest against the code and have requested the amendment of the code, the effect of which is to free these commission merchants, jobbers, and receivers from the compulsion of the code.

For your information, we enclose a copy of our protest.

If the matters therein contained are of interest to you, we believe that some of the people affected, whose names are attached, would be willing to appear before your committee in Washington and give you such information as they can in connection with the matter.

Yours very truly,

FRANCIS GILBERT.

To the ADMINISTRATOR OF THE NATIONAL INDUSTRIAL RECOVERY ACT and Hon. H. A. WALLACE, SECRETARY OF AGRICULTURE:

We, the undersigned, comprise 80 percent of the commission merchants, jobbers, and receivers in the live poultry business in the metropolitan area and 100 percent of the commission merchants, jobbers, and receivers, members of the New York Live Poultry Commission Merchants Association. We represent 80 percent of the volume handled. We hereby present our request and petition that the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the city of New York, promulgated on April 13, 1934, and thereafter amended, be further amended by eliminating therefrom all provisions which in any way apply to the undersigned and impose upon the undersigned any obligation to contribute to the expense of administering the said code. In the presentation of this application, the undersigned do not waive any rights which they might otherwise have by law to challenge by way of legal proceedings the nature and extent of the obligations which purport to be imposed on the undersigned by the said code of fair competition.

Nothing herein contained is to be deemed an expression of unwillingness on the part of the undersigned to accept the beneficient provisions of the National Recovery Act insofar as they relate to hours of labor and rates of pay. On these points, the undersigned desire to cooperate with the President of the United States to the fullest extent so as to increase employment, to improve standards of labor and generally to promote and increase the well-being of our people. To this end, we are willing to subscribe to a code properly designed to meet the problems of our particular branch of the industry, and this protest is not to be construed as hostile to the principle of the National Recovery Act, but only as an objection to the particular code now under consideration.

The grounds of this application are the following:

1. Although the aforesaid code is designated as a code of fair competition for the live poultry industry, it comprises within its scope branches of the industry which are not in competition and while it imposes on the commission merchants, jobbers and receivers obligations and restructions with respect to their manner of dealing with their vendees, namely, the proprietors of slaughter houses, it imposes no corresponding obligations and restrictions on the vendees with respect to their trading with the undersigned as the vendors.

2. The power to administer the said code is lodged in a code supervisor and an industry advisory committee. The industry advisory committee is so constituted, however, as to leave the undersigned without adequate or effective representation. The advisory committee consists of 15 members, of whom 7 are receivers, jobbers, and commission merchants, and 8 represent slaughterhouse operators. It must be obvious, that whenever the 8 members representing slaughterhouse operators vote in favor of a given proposition, the power to vote reserved to the other branch of the industry has been reduced to a mere form. This balance of power in favor of the operators of slaughterhouses necessarily will always be used by them to further their own commercial interest and against the interest of those from whom they purchase, namely, the undersigned.

3. The industry advisory committee, among its other powers, has the power to authorize the expenditure of moneys, and to levy and collect from the members of the industry contributions to this expense by way of a tax. It is elementary that the power to tax is equivalent to the power to destroy. We protest, therefore, against this situation which leaves one branch of the industry at the mercy of another branch of the industry, subject only to the control possibly of the code supervisor or the Secretary of Agriculture or the National Recovery Administrator.

4. Under the provisions of this code and the power vested in the operators of slaughterhouses, the effect is to enable the slaughterhouse operators by power of their majority vote, to appropriate to their use the capital invested by the undersigned in their respective business ventures.

5. The budget, originally recommended by the advisory committee and adopted, has been discarded and a much larger budget adopted through the recommendation of the code supervisor. While, to be sure, the members of the advisory committee are in theory free agents, nevertheless, it must be remembered that if the code supervisor has the power to institute or to cause to be instituted proceedings, both civil and criminal in character, we would have to disregard all human experience if we did not assume that the members of the advisory committee in voting for or against any particular proposition, were conscious of this power resting in the code supervisor. In any event, when the increased budget was adopted, the undersigned (omitting for the moment those who are members of the advisory committee) were not given a fair opportunity to protest and to be heard.

6. Each of the two main branches of the industry has a different status under the law and is subject to different commercial, economic, and competitive factors and each is regulated by different provisions of law. The operators of slaughterhouses are engaged principally in intrastate commerce. Many of the jobbers and receivers are engaged in interstate commerce. Both branches of the industry are to some extent subject to the regulations of the city of New York. The commission merchants are subject to the regulations of the State of New York. The commission merchants, receivers, and jobbers are to a greater or lesser extent subject to various provisions of the laws of the United States. Insofar as unfair trade practices are concerned, those engaged in interstate commerce are subject to the provisions of the Federal Trade Commission Act, while those who are engaged exclusively in intrastate commerce are not subject to the provisions of the Federal Trade Commission Act. The operators of slaughterhouses, all of whom are situated in the city of New York, are engaged in competition among themselves, but do not have to meet competition outside of the limits of the city, or more particularly outside of the limits of the particular portion of the city in which they happen to be located. The commission merchants, jobbers, and receivers are in competition with all similar enterprises located throughout the United States, and while the undersigned are subject to the provisions of this code, their competitors, and particularly those in the territory within a radius of 100 miles of the city of New York, and most of which area is not included in the code, are not under similar restrictive provisions. The undersigned are therefore placed at a serious commercial and competitive disadvantage against which they protest. Moreover, the operators of slaughterhouses, parties to this code, keenly aware of this competitive disadvantage under which the commission merchants, jobbers, and receivers are laboring since the promulgation of the code, have increased their purchases from sources outside of this codified area because in an uncodified area they are able to purchase their merchandise at a price less than that possible within the codified area. During the period of the code, the shipments of live poultry to nearby points in the uncodified area have increased, while during the same period shipments to the codified area have diminished.

7. The code is unfairly discriminatory in favor of those who engaged in more than one activity and against those whose activity is limited to one branch of the business.

8. When this code was presented for public discussion, the undersigned, through their representative, stated that we were willing to subscribe to this code only as an experiment, and as an attempt to help the operators of slaughterhouses eliminate from their branch of the business unfair and ruinous methods of competition. It was stated that our capital could only be protected if the credits which we extended to the operators of slaughterhouses were protected. We were willing to become parties to this experiment in the hope that by so doing, not alone would our customers be benefited and their businesses stabilized, but that this benefit would in turn reflect itself in our own businesses. After these 11 months of the experiment, we have seen no improvement in the slaughter-

house trade. On the contrary, we have seen that trade more disorganized than it was heretofore. We, in turn, have continued to suffer, our outstanding credit situation has not improved, and in fact it has grown worse, and generally we find ourselves worse off than we were before the code. We were willing to devote a portion of our capital as our contribution to the experiment, but convinced as we are that the experiment so far as we are concerned, has proven a failure, we are unwilling to continue under the financial burden imposed on us by the code. Subject to the proper limitations to be placed on us in order to protect labor, and subject to any other desirable limitations that affect us and our competitors equally, we are willing to accept a code that will be designed to meet our problems, but we are unwilling to continue to be held subject to the obligation to contribute our capital or any portion of our earnings for the maintenance of the business of others.

9. *As to the budget obligations.*—Shortly after the promulgation of the code and the appointment of the code supervisor, the industry advisory committee, after conference with the code supervisor, arranged for a budget for the coming year of approximately $48,000, because it was then contemplated that the expense to be incurred would not exceed approximately $42,000. It was not contemplated that any additional expense would be incurred, but it was thought wise to prepare for a budget of $48,000 even though the expense actually in contemplation amounted only to $42,000.

An assessment against the commission merchants, receivers, and jobbers of 1 cent per hundred pounds of sales, and with respect to guinea hens and other articles 1 cent per dozen heads sold, was agreed upon; and with respect to wholesale and retail slaughterhouses an assessment of 1 cent per 50 pounds of sales and 1 cent per dozen heads of guinea hens was agreed upon. Apparently, the proposed assessment did not realize sufficient money with which to pay the current expenses of the code authority due to a number of facts, among them: (*a*) during the summer months the receipts of poultry were less than the monthly average contemplated, based upon the preceding year's receipts; (*b*) a large number of the wholesale and retail slaughterhouse proprietors failed to pay their assessments; and (*c*) some, constituting a small number of the commission merchants failed to pay their assessments.

The code supervisor conceived the idea of raising the assessment temporarily to cover the summer period, and this temporary increase of assessment was not objected to. Thereafter, a budget was presented which contemplated an expense for the entire budgetary period of $88,997.85. This budget was objected to by many of the undersigned, but notwithstanding their objections, the budget was adopted and the present rate of assessment was established and now is in force, namely: For commission merchants, brokers, receivers, and jobbers, 2 cents per hundred pounds of sales, except guinea hens and pigeons, and on guinea hens and pigeons 2 cents per dozen heads sold; for wholesale and retail slaughter houses, 2 cents per 50 pounds of sales, except on guinea hens and pigeons; and on guinea hens and pigeons, 2 cents per dozen heads sold.

Although we do not have access to the books of account, we are informed that the code authority has been spending at the rate of $2,000 a week, and that such amount is far in excess of the pro rata weekly amount contemplated by the present budget nor intended to be expended when the present budget was adopted.

The present budgetary period ends on May 1, and in contemplation thereof the code authority has presented for consideration a new budget which calls for an authorized expense for an additional budgetary period from May 1, 1935, to April 30, 1936, in the sum of $105,120. As we have already pointed out, this code expires by limitation of law on June 15, 1935. There can be no occasion then to consider the adoption of a budget for a 12-month period, except, possibly, in the expectation that a majority on the Advisory Board, unaware of the legal significance of their act and disregarding the wishes of the minority, may be induced to adopt this budget so that it may then be claimed that indirectly the members of the industry have consented to a continuation of the code.

The undersigned do not want to continue under the burdensome provisions of the code now in existence. They feel that the money spent or contemplated to be spent by the code authority can be spent by them to better advantage in their own businesses. They look with alarm at the ever-increasing amount of the budgetary expense and they emphasize that if they are to be saddled with the continued obligations of the code, with an ever-increasing budget, they are facing disaster. They appeal to the two governmental agencies charged with sole authority in the premises to recognize the justice of their demands and to relieve them forthwith from the burdens of this code.

10. We entered the code in the belief and on the representation that the National Recovery Act was to terminate on June 15, 1935. We did not subscribe to any code of any longer duration. We are now rapidly approaching this expiration date. As business men, we must always be prepared for a particular situation long in advance of the eventuality. Having in mind, then, that this code must terminate in any event on June 15, 1935, we respectfully ask the cooperation of the governmental agencies having jurisdiction thereof in our desire to bring this code to an end so far as we are concerned on or before April 15, the end of the budget year, so that we may make our plans now for conducting our business under conditions which will exist after the code has been terminated. We urge, therefore, that this matter be given immediate attention, to the end that we may have a prompt disposition of our request.

Respectfully submitted.

Samuel Werner, Inc., by Charles F. Werner, treasurer; Avon Commission Co., Milton Rosenstein; Acme Commission Co., Louis Spatz; Central Commission Co., Dave Danziger; Chas. Collins Co., E. V. Dwyer, president; Chelsea Commission Co., George Levin, secretary; Samuel Fleck & Co., Samuel Fleck, Jr., president; Sol Frankel, Inc., Bert Frankel; Garlick Poultry Co., Albert Garlick, president; Sahn Bros., Charles Sahn, president; Ideal Commission Co., J. Bloom, secretary; Julius Kastein, Inc., Julius Kastein, president; James N. Norris, Inc., William H. Norris, president; L. J. Schwab, Philip J. Schwab, secretary-treasurer; Charles Werner, Inc., Morris Werner, president; Western Commission Co., Irving Sokoloff.

The following letters and telegrams, some advocating the extension of the National Industrial Recovery Act, with or without modifications, and others recommending that it be allowed to expire on June 16, 1935, have been selected as typical of thousands of letters that have been received by members of the Senate and referred to the Committee on Finance for its consideration. It was impossible to hear all of the persons desiring to appear in favor of or against the extension of this act, and these letters have been selected as representing the sentiments of those who might otherwise have been called before the committee. They do not indicate the ratio of letters asking for extension to letters opposing extension.

The Following Advocate the Extension of the National Industrial Recovery Act

The Cooking and Heating Appliance Manufacturing Industry,
Washington, D. C., April 10, 1935.

Chairman of the Finance Committee,
United States Senate, Washington, D. C.

Sir: We are taking the liberty of submitting to you herewith for your careful consideration in connection with the hearings on the bill for the extension of the National Industry Recovery Act for a period of 2 years after June 16, 1935, a resolution adopted by the Code Authority for the Cooking and Heating Appliance Manufacturing Industry.

This industry earnestly advocates the extension of the National Industrial Recovery Act and the continuance of codes in their present form. In addition to our petition for extension of the National Industrial Recovery Act, we respectfully request that the Code for the Cooking and Heating Appliance Manufacturing Industry be kept separate and distinct from all other codes for the following reasons:

1. This industry is a distinct unit whose operations could not effectively be combined with any other industry or code without working an undue hardship on the manufacturers in this industry because of the competition which exists in the cooking and heating held between appliances using various fuels.

2. The operations of the industry are of a decidedly interstate character.

3. This industry is sufficiently large, both in dollar volume and number of employees to warrant a separate code and a separate code administrative agency. The volume of the industry in 1934 is estimated to be approximately $40,000,000. We believe this volume to be the largest in the cooking and heating appliances field although we do not have sufficient statistics to make this statement authoritatively. The industry in peak season employs approximately 20,000 persons and in the normal months of operation between 16,000 and 17,000.

We hope that this letter may be incorporated in the transcript of the hearings on the proposed legislation for the extension of the National Industrial Recovery Act.

Very respectfully submitted.

SAMUEL DUNCKEL,
Confidential agent.

RESOLUTION UNANIMOUSLY ADOPTED BY THE CODE AUTHORITY FOR THE COOKING AND HEATING APPLIANCE MANUFACTURING INDUSTRY AT ITS MEETING HELD ON FEBRUARY 10, 1935

Whereas the Cooking and Heating Appliance Manufacturing Industry has been operating since February 12, 1934, under the terms of the code of fair competition approved by the President of the United States (Approved Code No. 236), pursuant to title I of the National Industrial Recovery Act, hereinafter referred to as the act; and

Whereas the said act terminates not later than June 16, 1935; and

Whereas the Code Authority for the Cooking and Heating Appliance Manufacturing Industry is convinced that the industry as a whole has sincerely endeavored to conform to the code in the belief that it is a salutary and effective medium for the self-regulation of business; and

Whereas the code authority in its relations with the National Recovery Administration is convinced that all the policies of its code have been fairly considered and equitably disposed of to the benefit of the members of the industry as well as the general public and in full consonance with the objects of the act; and

Whereas it might be of import to suggest certain modifications in the implementation of the act to further facilitate the operation thereof: Now therefore, be it

Resolved, That the Code Authority for the Cooking and Heating Appliance Manufacturing Industry endorses the general purposes and principles of the act; and be it further

Resolved, That this code authority petitions the Congress to extend the effective period of the act, in recognition that the basis of the act was an emergency which, in its opinion, still exists; and be it further

Resolved, That the procedure for securing enforcement of the act and of codes be simplified to permit prompt and effective handling of fair trade practice as well as of labor violations; and be it further

Resolved, That section 7 (a) of the act be clarified to enhance the rights of manufacturers and that these rights be more specifically defined; and be it further

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; and be it further

Resolved, That to "eliminate unfair competitive practices" the National Recovery Administration approved standard cost principles consistent with good accounting practice, to insure enforcement of the undercost selling provisions of codes; and be it further

Resolved, That more clearly defined powers te given to code authorities in the handling of code violations in order to promote self-government of industry; and be it further

Resolved, That this resolution be transmitted tc the National Industrial Recovery Board for distribution to the appropriate committees of Congress.

Respectfully submitted.

SAMUEL DUNCKEL,
Confidential Agent.

MARCH 1, 1935.

KNOXVILLE, TENN., *March 30, 1935.*

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR SENATOR: I notice you have introduced a measure to extend the National Recovery Administration, and in this I think you have done the country a

service. I have a lot to do with the enforcement of the labor provisions of this act, or rather the codes provided under the act. I have filed many suits in the State court to collect National Recovery Administration wages under the various codes and have collected many claims. I am always met at the very threshold of the suits, a plea that the State courts have no jurisdiction, but in each case so far, the courts have held that they do have jurisdiction but one Nashville circuit court judge held otherwise and as result laborers have up to date been deprived of any wages, except in some cases, the compliance division have succeeded in requiring a refund. I just wondered if you could not insert an amendment to section 3 (c) of the National Recovery Administration Act and at the end of the last clause thereof, the following: "But the above remedy shall not preclude any laborer from prosecuting a suit, for wages or overtime, under any code of fair competition, in the State or Territorial court having general jurisdiction of the parties and the amount involved." If this above amendment is added, it sure will insure the prompt compliance with the various codes, as it removes one of the main defenses in such cases.

I refer you to Hon. J. Will Taylor, Member of Congress, from this State.

Very truly,

S. E. N. MOORE.

MORRIS LEVINSON & SONS,
New York, March 27, 1935.

SENATE FINANCE COMMITTEE,
Senate Office Building,
Washington, D. C.

GENTLEMEN: The continuance of the National Industrial Recovery Act is to be voted on soon, and at this time we want to take this opportunity of going on record as being favorably inclined towards keeping this act in effect.

We feel that since the enactment of the National Industrial Recovery Act our business has been put on a more equal basis with our competitors, and our costs of operation have been equalized to the extent that none of the trade can operate at a much smaller overhead than others in the line.

Before the National Industrial Recovery Act our inventories had depreciated in value to such an extent that large losses were sustained within a very short space of time, but, since that time, there have been fluctuations in prices up and down, and we feel that while this law is in effect, there will not be a possibility of wide fluctuations in prices downward that will cause any serious loss in our capital.

If the National Industrial Recovery Act had not come into existence at the time it did, the majority of business men in the country would have been practically wiped out, as expenses could not have been reduced as fast as profits curtailed, due to the reduced value of merchandise, and at the same time merchandise depreciating in value because of overproduction at that time, which naturally forced the prices of commodities and labor to a very low level.

If this law is permitted to expire, we feel that a chaotic condition will overtake the country, because we do not know what the result will be at this time, of uncontrolled production, which will tend to reduce wages of labor and capital values.

Although there are good and bad points in all of the codes, we believe that the experiences of the past will be the means of perfecting the codes so that all those concerned will be benefited to the fullest extent.

We therefore urge upon you, the committee, to recommend and vote for the continuance of the National Industrial Recovery Act.

Yours very truly,

ALFRED LEVINSON.

STROM & SMITH,
San Francisco, Calif., March 27, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: I am reading in the newspapers about a lot of opposition to the National Recovery Administration. I cannot figure out how anyone can be opposed to a code of fair trade practice, provided it is enforced by the top code authorities. No doubt there are a number of loopholes in all codes of fair competition as I know there is in the construction code which I am trying to comply with.

For instance the awarding authority on a building job starts calling for bids of all crafts, and then I understand the Construction Code allows them to reject all

these bids and get a so-called "noninterested party" in and he goes ahead and does the job on cost-plus basis, or time-and-material basis. Then this same general contractor can go out and get bids from subs that did not figure on the job the first time, and this all happens within 1 or 2 weeks. To me that is chiseling and by no means fair competition, because anyone with common sense knows that the awarding authority or owner of this property is not going to let someone do their work without knowing what it is going to cost them.

So by all means, Senator, help us to get fair competition in the building line, as the way we operated before was terrible, as I did not make a profit, and bid peddling was a common practice in this part of the United States.

Yours truly,

E. STROM.

HIRSCH-WEIS MANUFACTURING CO.,
Portland, Oreg., March 28, 1935.

MR. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: We consider the National Industrial Act necessary.

It has eliminated many unethical trade practices. It has made many business men conscious of their unfair business tactics, giving them a moral responsibility which has been conspiciously noted of late in our business relations.

We realize that this act should be boiled down. Many parts can be eliminated. The beneficial portion should be continued.

We are referring particularly to those sections that try to eliminate unethical business methods, chiseling, discontinuance of child labor, wages, hours of labor, collective bargaining, etc.

Those beneficial portions will be instrumental in gradually reducing to a minimum, unfair and unethical business methods.

Those in charge of business and industry whose methods have not allowed them to boast of their business integrity and business ethics will gradually become more conscientious and trained to the thought that unethical, unfair business methods as well as chiseling is a thing of the past.

Yours truly,

MAX S. HIRSCH, *President.*

MACARONI CODE AUTHORITY,
Chicago, March 30, 1935.

The HONORABLE CHAIRMAN AND MEMBERS,
Senate Finance Committee Investigating National Recovery Administration,
Washington, D. C.

GENTLEMEN: At a meeting of the members of regions 6 and 7 of the macaroni industry, embracing the States of North and South Dakota, Minnesota, Iowa, Wisconsin, Missouri, Illinois, Michigan, Indiana, Arkansas, Kansas, Nebraska, and Colorado, held in Chicago, Ill., March 29, the following resolution was passed with but one dissenting vote. The members voting, represented approximately 30 percent of the total production of the macaroni industry.

Whereas the President of the United States has proposed to Congress the enactment of legislation to extend the National Industrial Recovery Act for an additional 2-year period, and

Whereas the Senate Finance Committee desires to learn the attitude of industry, labor, and the consumer toward the President's recommendation, and

Whereas the members of the macaroni industry, having endeavored seriously and earnestly to adjust themselves to the provisions of the act and the Code of Fair Competition for the Macaroni Industry, therefore, be it

Resolved, That we give, herewith, this public expression of our views on the proposed extension of the National Recovery Act:

That we favor its extension for an additional trial period for 2 years, provided that:

1. The act be amended to be more easily enforceable, equitable alike to employer, employees, and to the public.

2. We retain the present hour and wage provisions with slight modifications, and the abolition of child labor that have proven so beneficial to labor.

3. Since the proposed 30-hour week and similar rigid limitations are uneconomic, impractical, and dangerous, they should not, under any conditions, be included in the amended act.

4. Definite provisions be made to prevent practices that have resulted in harmful disruption of prices making it nearly impossible for the macaroni industry to maintain the increased burden of wages amounting about to $1,700,000 per year in addition to the processing tax on raw materials amounting to nearly $4,000,000 per year.

Yours very truly,

G. G. HOSKINS, *Chairman.*

ST. LOUIS, MO., *March 30, 1935.*

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We are enclosing, herewith, copy of letter sent to Mr. H. A. Toplitt, acting code director, as per his request.

Very truly yours,

ADJUSTABLE ENGINEER'S CAP CORPORATION.

ST. LOUIS, MO., *March 30, 1935.*

H. A. TOPLITT,
Acting Code Director, Code Authority of the Cap and Cloth Hat Industry, New York, N. Y.

DEAR SIR: In reply to yours of March 22, we wish to state that we are not in favor of continuing the code as it exists at present. We are in favor of a code which will do away with price cutting, selling below cost, sweatshop conditions, and other forms of dirty and unfair competition.

Very truly yours,

ADJUSTABLE ENGINEER'S CAP CORPORATION.

HERZ CUP CO., INC.,
New York, N. Y., March 29, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

HONORABLE SIR: We desire to place before you our position in the matter of the National Recovery Administration, which we understand will be put before Congress shortly.

We feel that the National Recovery Administration should be continued in substantially its present form. While there are doubtless many weaknesses in various codes which can and should be corrected, we feel that the codes themselves have been of distinct value to American industry; that they have been a stabilizing factor and that to abandon them at this time would be very dangerous.

To pass a bill which would govern only wages and hours of labor, we believe, would be disastrous, because, unless manufacturers are enabled to operate on a basis that will give them a fair profit, the result can only be a slowing up of industry and a consequent increase in unemployment. To avoid this, we believe that the "open price" plan should be continued in those industries that feel they require it and that industries in general shall operate under the freest kind of self-government consistent with the best interests of the public at large, and we believe that these interests can and should be protected by reasonable Government regulations and supervision.

We are not in favor of blanket codes because regulations governing such codes are too general and do not take into consideration the individual needs of individual industries.

We are one of the smaller concerns in the cup industry and we feel that without the protection that our code has given us in the last 2 years, our path would have been a difficult one. Under the protection of the "open price" plan, which has existed in this industry, we have been able to operate successfully.

While in many instances the plan has not operated 100 percent effectively, we do believe it has greatly improved conditions and that with more experience, conditions will continue to improve.

We feel you will give your careful consideration to the foregoing and we sincerely trust that you will use your vote and influence in the direction of maintaining the National Recovery Act substantially in its present form.

We are, sir,

Respectfully yours,

G. A. BRESCHEL, *Sales Manager.*

BLANKE-BAER EXTRACT & PRESERVING CO.,
St. Louis, Mo., March 5, 1935.

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

DEAR SIR: We understand that the Finance Committee of the United States Senate will in the near future consider legislation providing for extension of the National Recovery Administration as recommended by President Roosevelt.

In this connection we are heartily in favor of the following provisions of the codes under which we operate:

1. Maximum working hours.
2. Minimum wage schedule.
3. Old-age pension, provided that the cost is equitably distributed among the employer, the employee, and the public.
4. Prohibition of child labor.
5. Unemployment insurance on the English plan.
6. Standards and definitions for food products so as to maintain high standards, and the enforcement of these standards as outlined in the codes and the Pure Food and Drugs Act of June 30, 1906, and amendments thereto. We are also in favor of placing in the hands of the individual States, the enforcement of these standards in all instances where interstate commerce is not involved. Furthermore, we believe the industry should cooperate with city governments in adopting and enforcing ordinances and rules covering sanitation and other health precautions in food factories.
7. Enactment of State laws on maximum working hours, minimum wage schedules, etc.

All of these provisions are enforcible because they are in keeping with the human and social requirements of our present age, and therefore have the support of public opinion.

On the other hand, we are absolutely opposed to open-price filing, and to any attempt to establish minimum-cost prices below which the product of the industry may not be sold. The enforcement and proper regulation of these provisions is practically impossible because—

1. The buying public are not in sympathy with price fixing of any sort since they naturally want to exercise their inalienable right of buying as cheaply as possible in the competitive market.
2. Price fixing performs no service to society and hinders rather than helps the proper functioning of our economic system.
3. It practically compels those manufacturers who cannot obtain the established prices to resort to deceit, trickery, and lawlessness in securing orders at lower prices.
4. Like prohibition, it is unenforcible so long as even a considerable minority are not in sympathy with the regulations.
5. It is doubtful if the National Recovery Administration could compel compliance from those small manufacturers who sell their products locally, and therefore are not doing an interstate business. For instance, we understand there are about 300 preserve manufacturers in the United States at present, and of these possibly two-thirds are operating entirely in a single State.

This last is vividly demonstrated by an incident which happened right here in St. Louis recently in connection with one of the other codes. The code authority attempted to bring pressure to bear on a small manufacturer to raise his prices to those which had been established by the code authority as the minimum-cost prices for the products of that industry. The manufacturer simply explained that he was not doing an interstate business and therefore was not subject to Federal jurisdiction. The code authority was checkmated.

The National Recovery Administration expires in June and it is very doubtful if new legislation can permit open-price filing and establish minimum-cost prices below which the product of the industry may not be sold, against the protests of the consumer.

Therefore, if conditions become unbearable, large manufacturers could establish small plants in each of the 48 States, placing themselves also outside of Federal jurisdiction; and the beneficial effects of the codes would then be completely lost.

Of course, as you doubtless know, under many of the codes sponsoring open-price filing deceit is already being practiced. Some of the most common methods are as follows:

1. The verbal agreement is made between the manufacturer and the wholesale grocer, for instance, that while a shipment will be billed at the published prices of the manufacturer, the jobber will pay for it on the basis of a lower price.

2. Spoilage allowances are made by the manufacturer in such a way as to give the jobber a rebate or discount.

3. Advertising allowances are used to cover price concessions. This particular abuse has existed for years.

Of course established minimum prices or minimum costs necessitate a uniform and reliable cost system; but in this connection it is practically impossible, in our opinion, to establish one which would apply equitably to all manufacturers. If the manufacturer has an opportunity of buying some raw material at a very low cost to him, he can hardly be compelled to base his cost on the higher prices which his competitors have to pay for their raw materials. Furthermore, if a manufacturer is overstocked with certain raw materials, it is practically impossible to prevent him from reducing his stock by selling the products at a temporary low price, and some of the codes do permit this.

Possibly these particular provisions could be enforced by a dictatorship, or by Socialism, but these we do not have today and we doubt if the American people will ever be ready for either of this type of Government. We hope not.

We also protest against excessive assessments levied to maintain the code authorities. We do not believe they have any means of enforcing collection of these assessments and we have paid our assessments under protest, pending filing a claim against the respective code authorities, both as members of the code authorities and as individuals. For example, we are enclosing copy of the expenses of the Mayonnaise Institute in connection with maintaining the Mayonnaise Code Authority.

We further protest against certain features of the codes giving the majority of vote to two or three large manufacturers—particularly do we refer to the Mayonnaise Code, from which we quote the following:

ARTICLE VI. ADMINISTRATION

A. ORGANIZATION AND CONSTITUTION OF CODE AUTHORITY

SECTION 1. There shall forthwith be constituted a code authority for the mayonnaise industry to consist of seven members, which is hereby designated as the agency for the administration of this code. All members of the mayonnaise industry who shall have qualified to participate in the selection of the members of the code authority in accordance with section 7 of this article shall have the right to vote for the members of the said code authority. Four of the members of the code authority shall be elected by and shall be representative of those members of the industry whose individual gross annual sales of products of the mayonnaise industry are less than $3,000,000. Each of such members of the industry shall have 1 vote for each of such 4 members of the code authority to be elected, and such voting may be cumulative. The other three members of said code authority shall be elected by and shall be representative of those members of the industry whose individual gross annual sales of products of the mayonnaise industry are $3,000,000 or more. Each such member of the industry shall have 1 vote for each of such 3 members of the code authority to be elected, and such voting may be cumulative. Of the votes cast by those members of the industry whose individual gross annual sales are under $3,000,000 the four persons receiving the greatest number of such votes shall immediately become members of said code authority, and of the votes cast by those members of the industry whose individual gross annual sales are over $3,000,000, the three persons receiving the greatest number of such votes shall immediately become members of the code authority, etc.

We sincerely hope therefore that in arranging legislation that you will—

1. Eliminate price filing.

2. Make the contributions to the code authority voluntary by the members of the industry.

3. Make the operations of the codes purely democratic by allowing each firm belonging to a code to vote, irrespective of size.

We respectfully commend the above to your attention, and believe us,

Yours very truly,

SAMUEL H. BAER, *President.*

Annual budgeted expenses of the Code Authority for the Mayonnaise Industry

Executive salary	$12,000
Executive traveling expenses	3,500
Assistants to managing agent	10,000
Traveling expenses for assistants	6,000
Secretary to managing agent	2,080
Bookkeeper	1,684
Stenographers	3,500
Telephone and telegrams	4,800
Printing and stationery	1,750
Postage	700
General office expenses	500
Rent	576
Code authority expense	5,000
Code election expense	300
Legal fees	5,000
Legal expense	1,000
Mimeographing and multigraphing	5,000
Divisional committees expense	3,500
Products standards and analysis	500
Reserve	7,610
Total	75,000

(Please note salaries in this budget.)

NEW YORK, *April 4, 1935.*

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.
COMMITTEE ON APPROPRIATIONS,
House of Representatives, Washington, D. C.

SIRS: May I respectfully advance several suggestions on the subject of the bill to revise the National Industrial Recovery Act which has been introduced in the Senate?

1. I respectfully submit that the regulation of industry should be vested in a commission on industries analogous to the Interstate Commerce Commission, and not in the President.

Such regulation is not an executive function, and, therefore, should not appertain to that office.

In addition, it is obvious that the President in person can exercise very little of the power provided for by the bill, and the result is that he acts through personal appointees, who, in the circumstances, cannot be expected to develop an independence of judgment and a sense of responsibility, which are indispensable to a proper functioning of the system. And the device of exercising Presidential power through agents, seems to result in comparatively frequent changes of personnel and shifting of authority, such as we have witnessed in the administration of the Recovery Act now in force.

Furthermore, the delegation of power to a commission, as a quasi-legislative as well as quasi-executive mechanism, can be expected to be looked upon by the Supreme Court with much greater favor than the delegation of such vast power to the President. I venture to suggest—although it is pure surmise on my part—that the underlying inarticulate premise of the Supreme Court's decision in the "hot oil" case, was an abhorrence and fear of the vesting, in the Chief Executive, of power tantamount to that of dictatorship or leaning very strongly in that direction. And it seems to me that by that decision, the Supreme Court has issued a very timely and sagacious warning, which should be heeded by all lovers of democratic government.

Finally, useful regulation of industry is such a Herculean task that in the performance thereof there should be developed an expertness such as can be expected best in a board or commission that has a firmer standing than executive proclamation, revocable and alterable at will.

2. The appearance in the bill of reliance upon "voluntary action" on the part of the several industries, I respectfully suggest, is undesirable. Judging from what transpired under the present law, the theorem of voluntary action is, to an appreciable extent, untrue; and yet its presence in the law gives rise to a feeling

that codes are subject to the will of the respective industries, and should be discontinued when so desired by them. There is no more reason for making regulation of industry dependent upon the willingness of the respective branches to submit themselves thereto than there is in the matter of the regulation of the railroads, or the stockyards or the boards of trade, or the issuing or marketing of securities.

While it is well to enlist the cooperation of those whose conduct is to be regulated—and agencies may be set up for the promotion of such cooperation—the power of government must be dominant and prevail over the selfish interests of groups, whether such interest be enlightened or Bourbon.

3. We must despair of developing a truly stable and ever-flowing properous interstate commerce unless we so order our economy that the entire population of the country can share fairly in the produce of our soil and industry. So long as we have incomes that unreasonably exceed the consumption or spending ability and habits of those who receive them, it is inevitable that there should be consumed less than is produced, with the result that not only have we starvation and privation on the part of large numbers, but industry and commerce itself in the course of several years becomes constipated with accumulated stocks, causing the more marked periods of economic infelicity that we call depressions. It has been quite generally recognized by those who have thought on the subject that the only way of avoiding the insanity of starvation in the midst of plenty is to enforce a more equal distribution of income. Minimum wages and maximum hours, alone, cannot effect the desired result, because those who are in control of industry insist upon satisfying their exaggerated notions of what they are entitled to, and to achieve that result merely increase their prices. In that way we are brought back to where we start, despite years of tremendous effort and turbulence and strife. Therefore, there must be a control of prices and of profits.

The proposed bill provides for the fixing of minimum prices where that is necessary to avoid cutthroat competition. But it wholly omits a provision for the fixing of maximum prices when that is essential to the prevention of general throat-cutting.

Maximum prices should be fixed so as to effect the limitation of profits. Further limitation can be effected by provision for the distribution of excessive profits of an enterprise among the wage earners employed therein. And of course taxation—high rates in the high brackets of income—is a means of turning back to organized society income that is unsocially large; but taxation I assume is outside the scope of the regulatory law hereconsidered.

I am aware that the constitution of such price and profit limitation will be questioned. In my humble judgment, based upon very thorough study, section 1 of the bill sets forth an adequate and sound basis for such regulation.

4. If the larger social aspirations voiced above are not to be essayed upon at this time, I would like to make, if I may, several suggestions with respect to the bill in its present form:

(*a*) Concerning section 3 (d), should there not be power to impose codes whenever such are necessary to effect any of the results enumerated in the very excellent section 1 (c)? As drawn at present, the power seems to be much more restricted.

(*b*) Concerning section 3 (e), I respectfully suggest that the minimum wages "shall be those which the President finds to be fair and reasonable and calculated to promote or to maintain the free and equitable flow of interstate commerce and the prosperity thereof and calculated and promoted to maintain fair competition * * *."

(*c*) Concerning section 7 (a), I suggest that there be added at the end of clause 2: "Nor shall any employee be discharged or demoted, or have his compensation reduced, or be refused an increase in compensation, or otherwise discriminated against by reason of his membership or activity in a labor organization of his own choosing or by reason of his nonmembership in, or refusal to join, any company union." I think that some such specific provision is necessary in order to avoid such a holding as was made by the court of appeals of this State in *Sherman* v. *Abeles* (265 N. Y. 383), wherein it was held that section 7 (a) did not limit the right of discharge. While I am convinced that the court of appeals failed to construe section 7 (a) properly—for it seems to me rather clear that that section did limit the right of discharge to the extent of prohibiting a discharge because of union activity or nonmembership in a company union—nevertheless it would seem wise to make the point perfectly clear.

(*d*) With reference to section 12 (a), I suggest that there be added immediately preceding the first semicolon", at the instance or upon suit of any person in interest."

I respectfully submit the foregoing suggestions for such consideration as you may deem them worthy of; and I beg to remain,

Respectfully,

COPAL MINTZ.

GREAT LAKES SUPPLY CO.,
GREAT LAKES SUPPLY CORPORATION, SUCCESSORS,
Chicago, March 26, 1935.

Senator JAMES HAMILTON LEWIS,
United States Senate, Washington, D. C.

DEAR SIR: We are taking the liberty of addressing you, as an Illinois corporation, to express our views on the National Industrial Recovery Act.

We wish to go on record as favoring the continuance of this act in essentially its present form, so far as particular industry is concerned. We operate under what is known as the "Code of Fair Competition for the Industrial Supplies and Machinery Distributors' Trade."

On the enactment of this legislation our personnel was increased by 11 percent and our pay roll by 13 percent.

It is our opinion that while it is possible mistakes have been made in the administration of this law and that the law itself was of such broad scope that it was necessary for refinement and interpretation, in the main it has been beneficial to industry and to labor. The undertaking itself was so great that no thinking man should expect 100 percent. We are firmly convinced, however, that the benefits to both industry and labor greatly outweigh any of the disadvantages.

It is our understanding that the Congress of the United States will be called upon to decide the fate of the National Recovery Act. We sincerely trust that you will support a continuation of this act for at least 2 more years.

While it is quite true that due to inexperience and great rush many of the codes incorporated impractical provisions, basically it is our opinion that the act was sound and by cooperative thoughts and measures a refinement can be brought about in an orderly way which will remove some of the phases that have been found objectionable.

We sincerely hope that you will support such a new act and will include provisions which will serve to prevent demoralizing price competition.

Yours very truly,

GREAT LAKES SUPPLY CORPORATION,
C. A. CHANNON, *Vice President.*

GEO. W. DIENER MANUFACTURING CO.,
Chicago, March 26, 1935.

Hon. J. HAMILTON LEWIS,
United States Senate, Washington, D. C.

DEAR SENATOR: We understand the question of continuing or discontinuing the National Recovery Administration in its present form is being seriously considered. We would much dislike to see it discontinued or in fact any change made in it at this time. It has been a big help to us in our business and a big help to the industry at large.

Our industry, the Fire Extinguishing Appliance Manufacturing, before the adoption of its code of fair competition on November 4, 1933, was in a most deplorable condition, a condition that spelled ruin for at least the smaller manufacturing plants, such as ours and we have been able to rebuild our business somewhat, only through the help of National Recovery Administration. In other words, it has been a blessing for our company at least and we believe we are expressing the opinion of many other such factories in our industry.

We, therefore, write to ask you to do all in your power to prevent discontinuing the National Recovery Administration or any change being made affecting the trade practice provisions of our code. We urgently solicit your support in this, a matter of vital importance to us all.

Thanking you for doing what you can for us, we remain

Yours very truly,

H. W. DIENER.

THE NATIONAL ASSOCIATION OF COTTON MANUFACTURERS,
Boston, Mass., March 27, 1935.

Hon. AUGUSTINE LONERGAN,
United States Senate, Washington, D. C.

DEAR SENATOR LONERGAN: At a meeting at which over 90 percent of the spindles in the northern section of the cotton industry were represented, it was voted that the abandonment of the principles of the National Industrial Recovery Act at this time would bring about a more serious and chaotic condition than now exists, and it was urged that, with such modifications as appeared necessary, the National Industrial Recovery Act be continued after the date of expiration of the present act.

The cotton-textile industry has had more experience operating under a code than any other industry, and without question it has been of much benefit to both employees and employers.

When this matter comes up for consideration we trust it will receive your support.

Yours very truly,

RUSSELL T. FISHER.

LE ROY SHIRT CO.,
South Norwalk, Conn., March 22, 1935.

Hon. A. LONERGAN,
United States Senator,
Washington, D. C.

SIR: Regarding the legislation pending in Congress for the extension of the National Recovery Act, we favor a new and simplified law which will provide a minimum wage, a maximum number of working hours (preferably a 40-hour working week), the abolition of child labor and sweatshop conditions.

We are unalterably opposed to price-fixing provisions in any of the codes. We also feel that the bureaucracy which is developing and perpetuating itself under the present law should be stopped. Any bureaucracy is contrary to the spirit of the Constitution and the traditions of the country.

The present law has many oppressive features, the worst of which is the delegating of lawmaking powers to individuals on code authorities whose regulations are hampering industry, individual initiative and enterprise.

In the matter of enforcement, the best results can be achieved by referring this part of the law back to the respective Labor Departments of the individual States, under the general supervision of the United States Department of Labor.

In giving you these views, we are not only expressing our own sentiments, but those of every manufacturer in this part of the State of Connecticut.

Very truly yours,

I. KLEPPEL.

CAMERON ICE & FUEL CO.,
Cameron, Mo., April 16, 1935.

Senator PAT HARRISON,
Washington, D. C.

DEAR SIR: We respectfully urge that the National Recovery Act be continued as now written, and that no legislation curtailing control of production, or any other provision concerning Ice Code industry be enacted.

Very respectfully,

C. S. ESTEP.

BIRMINGHAM FLASHING CO., INC.,
Birmingham, Ala., April 15, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: While there is considerable discussion about the continuance of the National Recovery Act, the consensus of opinion seems to be that it should be continued until the business of the country gets accustomed to ethical methods.

The greatest trouble, in the past, seems to be cutthroat competition, thereby destroying the profits and prospects of all concerns. One phase of the National

Recovery Act should be strengthened to the point where at least minimum prices and wages would be established in every business and, besides that, teeth should be put in the law to put a penalty on violators of prices and wages. If this were done, small concerns like ourselves would have no fear and every concern would have an equal chance to get out and get legitimate business. I know, myself, that codes established in industries are being violated every day in these two phases. Sometimes this is accomplished by private discounts, by the shipping of extra goods, or a confidential arrangement between seller and purchaser. Conditions of this kind, of course, would destroy the purpose of the National Recovery Act and in the end would accomplish nothing because it could not permanently be kept a secret.

My opinion is that, under present conditions, the question of antitrust laws should not be considered. In fact, the antitrust laws were never effective and accomplish very little, as no matter how large a concern can be they can always be regulated when they start to exercise their power in an unreasonable way. The talk about price fixing being unconstitutional should have no place either in the effort for recovery and most people consider it at most a purely technical matter

If something is not done so that reasonable prices and profits and wages can be maintained, it would really mean that the National Recovery Act would become a very weak measure.

Yours very respectfully,

GEORGE M. CLEARY, *President.*

NATIONAL CODE AUTHORITY OF THE ROOFING AND SHEET METAL CONTRACTING DIVISION OF THE CONSTRUCTION INDUSTRY,
April 17, 1935.

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR SIR: I had the pleasure of meeting you many years ago in my home town, Memphis, Tenn., and am taking the liberty to write you in connection with Senate bill 2475.

I have been actively interested in N. R. A. and particularly the code for our industry which is the roofing and sheet-metal contracting division of the construction industry. I assisted in the writing of our code and am on the National Code Authority, being chairman of the finance and budget committee of that body.

An effort is being made by the United States Chamber of Commerce, the National Association of Manufacturers and others to have voluntary codes for only those industries that wish them.

In the light of my experience, I can positively state this would be a serious mistake, as you know there are a tremendous number of our citizens who have the right of suffrage, but through indifference and other causes, failed to exercise this right and I am reasonably sure a large number of the members of our industry are just as indifferent toward anything that is for the general good of the industry.

At a recent meeting of the Association of Roofing, Metal, and Heating Engineers of which I am president and which was attended by over a hundred members of our industry, I asked the direct question, "Do you want a code?" and the unanimous answer was "No." However, when I asked another question, "Do you want a mandatory code with mandatory provisions requiring the compliance of all members of the industry to the trade practice provisions and the payment of equitable proportion of expenses of operating codes," the unanimous answer was "Yes."

May I ask you to consider the following suggestions in connection with the new recovery act:

1. Codes should be made mandatory.
2. Mandatory provisions should be made for compliance with trade practices as set up in the code. Provisions should be made for real legal collection of assessments.
3. The right should be given code administration boards to secure injunction against violators of trade practice provisions, so that the violation may be corrected before the member of industry executes the work covered by his violation.
4. The division of National Recovery Administration having charge of the various divisions in the construction industry should have a personnel that knows the construction problems. At present, this is not the case, which results in indecision on the part of the present personnel who only gain knowledge of the construction problems through method of "trial and error".

The feeling of our industry is that National Industrial Recovery Act can be made to work only if it is mandatory and enforceable as above suggested. Our industry has lost heart and code administration and compliance is at an extremely low ebb due to the present codes not being enforceable.

I have personally given practically all of my time the past 2 years to code work, but I will have to cease my efforts unless the new act gives us mandatory and enforceable codes, as I realize it will be a waste of time otherwise to endeavor to get compliance.

We recently had a National Code Authority meeting in Cincinnati followed by a national meeting of the industry and I believe the sentiments expressed as to my own feelings was reflected by all members of industry taking part in these meetings.

Assuring you of the utmost cooperation of the members of our industry, if the new act can correct the above evils of the old one, I am,

Sincerely yours,

W. ROY EICHBERG.

CALIFORNIA CONTAINER CORPORATION,
Emeryville, Calif., April 15, 1935.

Hon. PAT HARRISON,
Chairman, Senate Finance Committee, Washington, D. C.

DEAR SIR: As there is so much advocacy before the Senate in favor of the repeal of the National Recovery Act, so many claims made that small business has suffered through its operation, we feel our best interest demands that we present to you just how the National Recovery Act has affected this business which is a small unit in a large industry.

We employ a little over a hundred people on an average and manufacture corrugated cases, being governed by the Container Code under the National Recovery Act, and we have found that during its operation, it has greatly improved the conditions in the industry here on the Pacific coast and has operated to the advantage of both large and small interests within the industry.

We believe that an overwhelming majority of the members of our industry will still agree that the National Recovery Act has enabled the container manufacturers to at least start a constructive job in eliminating unfair competitive practices and improving labor conditions, both in wages and working conditions.

While our code contains very few provisions that are mandatory, except those covering hours, wages, and working conditions, it has created a cooperative psychology which is changing the philosophy of competition from a "dog-eat-dog" to a "live-and-let-live" type of individualism. It has brought about a change in the individual's mental attitude resulting in greater cooperation for the common good.

This corporation has been able to improve its position materially since the operation of the National Recovery Act and feels that it would be a step backward for this splendid machinery to be thrown in the discard.

We emphatically do not wish a return to the 1932 conditions, which we feel will happen if the National Recovery Act is repealed.

We therefore urge you with all the sincerity at our command that you act favorably on an extension of the act for a further period of 2 years from June 16, 1935.

Yours very truly,

WILL EVANS,
Vice President and Sales Manager.

VIRGINIA WHOLESALE CONFECTIONERS ASSOCIATION, INC.,
Lynchburg, Va., April 15, 1935.

Senator PAT HARRISON,
Washington, D. C.

MY DEAR SENATOR: As strongly as possible the Virginia Wholesale Confectioners Association, Inc., representing a large number of candy jobbers in the State of Virginia, urge and insist upon the extension of the National Industrial Recovery Act. Without it half of the candy jobbers face failure and bankruptcy.

Also we think effective price fixing provisions should be incorporated whereby destructive price cutting and chiseling may be reduced and wiped out.

Thanking you, we are,

Yours very truly,

J. E. REDFORD, JR., *President.*

THE OHIO SALT CO.,
Wadsworth, Ohio, April 10, 1935.

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

DEAR SIR: The President of the United States on September 7, 1933, approved a Code of Fair Competition for the Salt Producing Industry under the National Industrial Recovery Act.

While our industry is small, yet it is one of those industries essential to the continued health and welfare of the people.

Experience has established the fact that our code of fair competition has prohibited employment of persons under the age of 21 years in mining operations.

Also, it has increased employment in the industry approximately 23 percent.

The industry has now adjusted itself to operation under a code with evident atisfactory results. Discontinuation of this code would destroy these results and possibly precipitate chaotic conditions.

Therefore, it is our opinion that it is essential this act be continued as nearly as possible in its present form to avoid a downward course in wages and a contraction of employment and purchasing power.

We desire, also, that all industries, regardless of size or the number of employees, should have the opportunity of adopting a code to be administered by men familiar with the industry, rather than to be forced to become a part of a large group of industries governed by a single code.

We are strongly opposed to any law prescribing a 30-hour week, or any other rigid limitation as to hours and wages, because we believe legislation of this character to be uneconomic and impractical.

We wish to go on record as being opposed to the National Labor Relations Act, otherwise known as the "Wagner bill."

Yours very truly,

L. F. FILEY, *Vice President.*

THE C. M. PITT & SONS CO.,
Baltimore, Md., April 16, 1935.

HON. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: We believe that the National Recovery Act has done an immense amount of good and that if properly enforced continued improvement in business would result.

There is no doubt that it has been the means of providing more jobs with less hours of work and better pay, and that business has benefited to an appreciable extent.

In our own business our pay roll has increased very materially, our selling prices while very much below the predepression prices and only very slightly higher than the low point, have been fairly stable and we were able to make for the first time in the past few years, a fair profit.

We strongly urge that the National Recovery Act be continued in approximately its present form as we feel that the discontinuance of the National Recovery Act would result in vicious and destructive price cutting thereby pulling down the wage rates, lengthening hours of work, and forcing many business concerns out of business, throwing more workers out of jobs and on relief.

On the other hand, if only the child labor, maximum hours, and minimum wages were retained, all of which in themselves are most excellent features, yet if they were not backed up by the open-price plan, prohibition against selling below cost, prohibition of unfair trade practices, we are afraid that the whole business structure would be so weakened that it would be impossible for business to continue to pay minimum wages and restrict the work to the maximum hours provided for.

In order to carry out the aims and purposes of the National Recovery Act we urge that the National Recovery Act be extended and that there will be continued in the codes the following provisions:

1. The open price list plan. This plan stabilizes prices and does not work to the advantage or disadvantage of any particular class of buyers whereas without this provision the very large purchasers were oftentimes sold below cost and this demoralized the trade from all angles, penalizing other buyers and causing losses to the sellers as a whole.

2. Prohibition against secret price discriminations.

3. Prohibition against selling below cost. Cost should be defined as the cost of the raw materials (based on market or replacement costs), plus direct labor, plus indirect labor, plus packages and labels, and plus delivery freight (if same is prepaid or allowed), and plus a percentage equal to the weighted average of the other necessary costs of doing business computed on the average costs of entire industry.

4. Prohibition against advertising allowances.

5. Prohibition against the payment of brokerages or other compensations to trade buyers or the corporate chains, voluntary cooperatives, or any other form of buying associations. Sales brokerages should not be paid to anyone except the salesmen hired by the seller and to legitimate independent sales brokers who utilize their sales efforts in selling various lines to various outlets.

6. Protection against imports sold at duty-paid prices less than cost of domestic manufacture. Where it is shown that costs under National Recovery Act have so increased the cost of domestic manufacture that imported merchandise can be sold on a duty-paid basis at less than the cost of the domestic product, the duty is to be increased accordingly.

7. Prompt and strict enforcement of all provisions of the codes with appropriate penalties for noncompliance.

The retention of the above provisions is imperative and absolutely necessary if we are to continue to pay the wages as specified in the codes and to limit the number of hours to the maximum allowed in the codes.

The consumer will be amply protected by the forces of competition within each industry because each member is allowed to base his selling prices on his own cost and the eagerness of each manufacturer to increase his sales will tend to keep the selling prices down very close to the cost of the most efficient producer.

Very truly yours,

C. B. PITT, *President.*

WEST CHESTER HOSIERY MILLS, INC.,
West Chester, Pa., April 16, 1935.

CHAIRMAN SENATE FINANCE COMMITTEE,
Washington, D. C.

DEAR SIR: Knowing that your committee is at present studying the advisability of extending the National Recovery Act for another 2 years I wish to express, on behalf of the company which I represent, my strongest approval for such legislation.

Although I do not consider by any means the Code of Fair Competition for the Hosiery Industry perfect in every respect I wish to point out that the provision of restricting productive operations to two shifts of 40 hours each only, is invaluable to our industry. Further I wish to state that although our present wage scale is approximately 50 percent in excess of the minimum wages stipulated in the code the minimum wages have checked and corrected the undesirable low wages which had developed in some branches of the industry as a result of lower demand and competition.

Lifting of all restrictions at this time would undoubtedly create a chaos out of which only a small percentage of the present manufacturers would emerge.

If at all possible I would welcome an early decision regarding the extension of our code, since the present uncertainty as to the future is retarding buying immensely and at the same time makes it impossible to work out plans for the future development of our business.

Very truly yours,

G. D. H. PRUSSING, *President.*

J. H. BRAMSTEDT & SONS,
St. Louis, Mo., April 15, 1935.

Senator PAT HARRISON,
Capitol Building.

DEAR SIR: We manufacture ice in the St. Louis district and would appreciate it if you would lend your assistance to the continuation of the National Industrial Recovery Act in its present form, so far as it applies to the ice industries. We have been benifited by the National Industrial Recovery Act through the stabilization of the prices, hours, and wages, thereby putting each on an equal basis.

Hoping you pass this bill in our favor.

Yours truly,

A. N. BRAMSTEDT.

ELMER W. MILLER, PRINTER,
Cincinnati, Ohio, March 28, 1935.

Hon. PAT HARRISON,
Chairman National Recovery Administration
Investigations Committee, Washington, D. C.

DEAR SIR: I am heartily in accord with the National Recovery Act. Labor has been taken care of. The smaller groups from whom we buy our materials are getting along fine. But something must be done for the employing printer.

I would ask that some form of fair trade-practice provisions be made in the Graphic Arts Code; particularly the prohibiting of selling below cost. With the present set-up, we cannot make a profit when so many printers are willing to sell below cost just to get an order.

I personally suggest the adoption of the Franklin Price List as the printers' yardstick for the determining the economic cost for printing.

Your careful thought and cooperation will be appreciated.

Sincerely,

ELMER W. MILLER.

ST. LOUIS STEEL CASTING CO.,
St. Louis, Mo., March 27, 1935.

Senator PAT HARRISON,
Senate Office Building,
Washington, D. C.

HONORABLE SENATOR: We wired you on March 22 as follows: "We desire to voice our opinion in favor of the continuance of the National Recovery Act. We are classed as one of the small industrial concerns and feel that the National Recovery Act has been fair to the larger corporation, small corporation, and labor.

The operation of the National Recovery Act has served to eliminate many of the bad practices which were being used in industry prior to the advent of the National Recovery Act.

Our employees as well as ourselves have benefited by the National Recovery Act.

The steel founders' industry is operating under the code on an open price plan with a 10-day waiting period. This plan has been fair to both the large and small concerns alike. Wages of the workmen have been raised in a larger proportion than the prices of steel castings. The open-price plan with a 10-day waiting period has not caused price fixing. Instead it has caused as much competition as previously, but without the unfair trade practices.

Very truly yours,

C. A. BINDER, *Vice President.*

THE CHAMPION COATED PAPER CO.,
Hamilton, Ohio, March 29, 1935.

Senator PAT HARRISON,
United States Senate, Washington, D. C.

MY DEAR SENATOR: This company is the largest manufacturer of coated paper in the world; also one of the very large manufacturers of other grades of book papers and similar paper products. National Recovery Act has enabled us to employ hundreds of additional men and women, and through the provisions of minimum wages and prevention of unfair practices, we have been able to raise our hourly rates considerably, and great progress thereby has been accomplished in the industry, which would not have been possible, in our opinion, without National Recovery Act.

National Recovery Act has assisted in restoring confidence, and we greatly fear if it is not continued for at least another year, or possibly 2 years, chaotic conditions, such as we were enduring some 3 years ago, will again be upon us; and this chaotic condition will be accentuated by the confusion incident to the change from code to noncode operation. The crying need of the country is stability. Frequent changes greatly retard recovery because industry cannot progress rapidly in the face of an uncertain future.

We believe that small units in our industry have been helped to an even greater extent that larger units, and this is no doubt true of a great many other industries. As you probably know, our codes in the paper industry have no price-fixing clauses,

but only call for price filings, leaving the way open for any manufacturer to make lower prices if he so desires. Even with the high wages being paid today, prices of practically all grades of paper are lower than at any time during the past 10 years with the exception of a short period when the effect of the depression was greatest.

We feel that it is to the best interest of our Nation, and of the paper industry as well, that National Recovery Act be continued and we earnestly urge your effort to this end.

Yours truly,

ALEXANDER THOMSON, *President.*

THOS. MOULDRING FLOOR MANUFACTURING CO.,
Chicago, Ill., March 29, 1935.

Mr. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: The National Recovery Act has been of benefit to us and we would not like to see Code No. 150 for the Asphalt and Mastic Tile Industry abolished next June.

Were you to attend any of our meetings you would be assured of no monopolistic tendencies.

Yours very truly,

STAVER MOULDRING, *Manager.*

ROWLEY ELECTRIC,
Pasadena, Calif., April 1, 1935.

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

DEAR SIR: We strongly urge that your committee recommend the retention and strengthening of the fair trade practice rules of the construction industries' codes and the extension of the National Recovery Act for at least 2 years.

The rules mentioned have very materially improved competitive conditions in our industry. To suspend them or modify them downward would do us irreparable damage.

Yours very truly,

C. A. ROWLEY.

KIERNAN-HUGHES CO.,
Jersey City, N. J., March 29, 1935.

Senator PAT HARRISON,
Chairman of Committee on Finance,
Washington, D. C.

DEAR SIR: We have noted with interest the attitude of Congress in regard to the National Industrial Recovery Act which expires by limitation on June 16, 1935.

Discussing all angles of this act with different branches of our industry, we agree with them that continuance is quite essential in our industry, "Set-up Paper Box Industry." We note that the public press does not represent the opinions of industrial interests and that a movement is afoot to abolish the National Industrial Recovery Act.

This act has helped considerably to stifle cut-rate competition and to regulate costs of manufacturing in order that business can be conducted on profitable basis instead of continual loss. We hope that you will consider the thousands of manufacturers who feel the same as we do, and work in behalf of continuing the National Industrial Recovery Act, so well titled.

Very truly yours,

JAMES I. KIERNAN, *Assistant Treasurer.*

WEBER DRY GOODS CO.,
Cairo, Ill., March 29, 1935.

Hon. PAT HARRISON,
United States Senate Office Building,
Washington, D. C.

DEAR SIR: We are writing to request that you, as a member of the Senate Finance Committee, give particular attention to the National Recovery Act and the feasibility of continuing it for 2 more years.

We consider the National Recovery Act necessary chiefly because it defines and clarifies the functions of various types of business and has codified rules of practice for fair competition.

On the whole, the National Recovery Act appears to have been very beneficial to business. Although there have been some mistakes in administration and some unworkable features such as section 7a, these could be rectified, and the beneficial sections retained. For example, through the existence of the National Recovery Act child labor and sweatshop conditions have been prevented.

The working hours and wages in our business have always been as good or better than those prescribed in the code, but if the act is permitted to expire our business will suffer from the most pernicious form of unfair competition. This is outlined in the enclosed circular letter to our customers, the retail merchants. All the wholesalers and retailers have protested against the nonenforcement of the differential provision of the General Wholesale Code. This provision was intended to protect them from being undersold and forced out of business by chain stores and other large retail organizations who have unfairly forced manufacturers to give them lower prices than those to legitimate wholesalers. This is obviously detrimental to the public interest, for when thousands of independent retailers are forced out of business, the chain stores then mark up their prices to whatever they choose; after they have unfairly chiseled manufacturers and obtained from them prices to which only wholesalers are entitled, and these make up a large volume of the Nation's business.

If the differential provisions of the code were enforced as approved by the President, unfair competition and price discrimination would end and the results would be beneficial. In the future we hope that the code will be a great safeguard for good business ethics, and that it will clarify the rules of business for all concerned. It could supplement the Sherman Antitrust Act and the Clayton Act and make them more effective, so that unfair and unethical competition would not be tolerated.

I trust that you will see the benefits and good features of the National Recovery Act and you will recommend to your committee that it be continued for 2 more years.

Yours truly,

HAROLD S. WEBER.

STRATHMORE PAPER CO.,
West Springfield, Mass., March 30, 1935.

Hon. MARCUS A. COOLIDGE,
Senate Office Building,
Washington, D. C.

DEAR SENATOR COOLIDGE: Will you kindly record us as favorable to a continuation of the National Industrial Recovery Act, possibly somewhat simplified but retaining provisions which definitely benefit labor and permit industry to operate without damaging effects of unfair practices?

In the paper industry—particularly those divisions to which we belong, namely the writing and cover paper divisions—we wish to say unqualifiedly that the act has been on the whole very beneficial.

It has stabilized labor conditions throughout the country, increased employment, and given stabilization through practical elimination of unfair practices.

The open-price filing system has been responsible for the elimination of destructive price cutting on the part of a few to depths which permitted no profits whatever but in general heavy losses. A continuation of these conditions would, of course, have resulted in much less employment whereas there has actually been a considerable increase in employment with higher wages than before.

We greatly fear a return to the destructive cutthroat conditions which existed prior to the passage of the act.

Very truly yours,

———— ————, *Treasurer.*

CHICAGO, ILL., *March 18, 1935.*

Hon. J. HAMILTON LEWIS,
Senate Office Building, Washington, D. C.

It is of vital importance to continue Code No. 37, Builders Supplies Trade, Chicago area, hoping you will do everything possible to continue same.

A. L. STRATHAN & SONS, INC.

NEW YORK, N. Y., *April 16, 1935.*

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

As one of the smaller units of the steel industry, we wish to impress upon you as strongly as possible our conviction that National Industrial Recovery Act should be extended for a further 2-year period. Our experience has convinced us that small steel producers have been aided in maintaining competitive position under the Steel Code which has been we believe fairly administered, and discontinuance at this time would only lead to confusion and obstruct recovery. Extension is imperative.

NEWMAN CROSBY STEEL CORPORATION.

STATE OF NEW JERSEY RETAIL ICE DEALERS' ASSOCIATION, INC.,
Harrison, N. J., April 15, 1935.

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

MY DEAR SENATOR: Please be advised that this organization is composed of small operators; National Recovery Act and Ice Code must be continued in its present form.

We further request of you that National Recovery Act as now written is the salvation of the ice industry, no legislation curtailing control of production or any other provision to Ice Code be enacted.

Respectfully yours,

JOHN F. RYAN, *Secretary.*

METALS & ALLOYS, INC.,
Grove City, Pa., April 13, 1935.

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

MY DEAR SENATOR HARRISON: We wish to enter our vigorous protest against the passing of either the Black 30-hour week bill or the Wagner national labor relations bill. It is inconceivable to us that legislation of this character should receive serious consideration.

We would also like at this time to register with you our approval of the National Industrial Recovery Act. We feel that this particular organization and the industry of which we are a part have been benefited by the National Recovery Administration. We sincerely hope that you will lend your support to the continuance of the National Industrial Recovery Act beyond June 16.

Very truly yours,

H. B. EVANS,
General Manager.

EVANSVILLE, IND., *April 16, 1935.*

Hon. PAT HARRISON,
Chairman Senate Finance Committee.

We demand continuance of National Recovery Act. Control of production does not oppress small enterprises but on the contrary makes possible payment of wages demanded through Government partnership.

STERLING BREWERS, INC.

THEODOR LEONHARD WAX CO.,
Paterson, N. J., April 8, 1935.

Hon. BENNETT CHAMP CLARK,
Senate Office Building, Washington, D. C.

HONORABLE SIR: As a member of the Candle Manufacturing Industry and the Beeswax and Bleachers Refiners Code, we request the Finance Committee to expedite its investigation and report out at the earliest date the best possible legislation obtainable to extend an improved and strengthened National Industrial Recovery Act.

Very truly yours,

R. J. MAYER, *Secretary.*

CODE AUTHORITY OF THE SADDLERY INDUSTRY,
Chicago, Ill., April 15, 1935.

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

MY DEAR SENATOR HARRISON: The National Recovery Act, under which the Code of Fair Competition was established for the Saddlery Industry, has benefited members of the industry, principally through equalization of hours and wages.

The Saddlery Code provides a minimum for unskilled labor, with a differential of 2½ cents per hour in favor of certain Southern States, and a differential in favor of skilled labor amounting to 20 cents over and above the minimum for unskilled labor, which differential in favor of skilled labor exists in all sections. This has stopped the exploitation of labor by some companies that formerly paid only 25 to 35 cents per hour for skilled labor, and only 15 cents per hour for unskilled labor, even when working 60 hours per week. Such wages were paid by several companies engaged in the manufacture of saddlery, according to their own testimony.

The establishment of reasonable maximum hours, and reasonable minimum wages by the Saddlery Code has made it necessary for the firms that were exploiting labor to bring their labor up to the reasonable basis observed by other members of the industry, and made it necessary for companies that formerly exploited labor to bring their prices of products somewhere near in line with prices made by companies that paid reasonable wages even before the code went into effect.

The net result has been to distribute business more evenly over the United States, and to increase the volume of manufacture and sales of a great many small manufacturers that can get business in their own trade territories now because they have been relieved from competition by factories that had been exploiting labor.

This equalization of hours and wages has benefited the great majority of companies engaged in the manufacture of saddlery to a greater extent than is generally realized.

In my judgment, as a manufacturer of saddlery and as Chairman of the Code Authority of the Saddlery Industry (in which position I receive no remuneration but which does bring me in contact with firms throughout the country) I believe that a substantial majority of the members in the saddlery industry desire to see the National Recovery Administration extended at least 2 years to test out more fully the effect of such equalization of wages and hours.

It has not been possible to hold a meeting of the members of the saddlery industry since this question came up, hence no definite verdict can be sent in at this time; but in a meeting of the members in the Southeastern Division, to wit, east of the Mississippi River and south of the Ohio River, including the State of Virginia, but not West Virginia, which meeting was held at Nashville, Tenn., April 5, a direct vote was taken of the 12 firms there represented, on the question of whether or not the National Recovery Administration should be extended for another 2-year period. Only one-third voted against the extension of the National Recovery Administration.

In my judgment, group meetings in the other zones and a poll of the members therein, would show similar returns.

Very truly yours,

J. W. BROWNLOW,
Chairman Code Authority Saddlery Industry.

LEVINE & TANZ, INC.,
St. Paul, Minn., March 23, 1935.

SENATE FINANCE COMMITTEE,
Senate Office Building, Washington, D. C.

GENTLEMEN: Our firm is specifically interested in the advancement of retailing here in the Northwest, as we have several stores scattered throughout this district, mainly in Minnesota.

It is our belief that the National Recovery Act has materially benefited our business since it was started over a year and one-half ago. We wish to go on record at this time as being in favor of having the National Recovery Act continued.

Respectfully yours,

T. L. WARNER.

DAWSON COTTON OIL CO.,
Dawson, Ga., March 22, 1935.

Senator PAT HARRISON,
Washington, D. C.

DEAR SIR: We strongly favor the operation of the National Recovery Act. 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 National Recovery Act we paid common labor 4½ cents per hour. We are now paying them 25 cents per hour. We find that we can pay 25 cents better than we could pay 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.

We are for the National Recovery Act. 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."

Yours very truly,

ED STEVENS, *President.*

ADMINISTRATIVE COMMITTEE OF THE
NATIONAL RECOVERY ADMINISTRATION,
PRINTING INK MANUFACTURING INDUSTRY,
New York, N. Y., March 25, 1935.

Hon. PAT HARRISON,
Senate Office Building,
Washington, D. C.

MY DEAR SENATOR: I write urging favorable consideration of the National Industrial Recovery Act. Business has far too long been permitted to run riot. Liabilities listed in insolvencies over the past 5 years are: 1930, $442,799,681; 1931, $736,309,102; 1932, $928,312,517; 1933, $502,830,584; and 1934, $264,248,176.

These figures do not include commercial settlements made out of court. The annual bill of commercial economic loss can safely be calculated at approximately one-half billion dollars. The public pays that price.

With Federal regulation of trade practices, industry could help correct that situation.

Much appears in the public prints about squeezing the little fellow. This industry is decidedly one of small units, 56 percent in number doing under $50,000 in annual sales. The so-called "little fellows" in our industry want Federal regulation to make the "big fellow" behave. How else can they accomplish it? They can't do it by unbridled competition. They haven't got enough capital. The real opposition to National Recovery Act has come from "big fellows" either directly or indirectly in the guise of prompted covered resistance.

The present act has probably not accomplished all that was intended for it because of lack of enforcement, uncertainty as to Supreme Court approval, and general error involved in a movement of such magnitude. Then too, time allotted for acclimation has been far too short. But to throw out the entire notion of industry regulation will merely bring back old conditions which caused the chaos. And industry regulation is not new in principle what with the Interstate Commerce Act, and the Sherman and Clayton Acts.

I have refrained from discussing labor conditions because labor interests will do their own urging—not that we are opposed to maximum hours and minimum wages; but Government should regulate business in some measure such as reasonable trade practices so that business doesn't run hog wild.

Truly yours,

DAVID H. SLOANE.

THE DURAFLEX CORPORATION,
Baltimore, Md., March 25, 1935.

Hon. PAT HARRISON,
Senate Finance Committee,
Washington, D. C.

DEAR SIR: As a small manufacturer, it is our experience to date with the National Recovery Act in our industry, that the continuation of National Recovery Act is vital, if not essential to the life of the industry, and to prevent monopolization in the hands of limited financial interests.

Strengthening of the act is needed in fair and judicial administration, with due consideration for the actual differences in conditions obtaining in small industries.

In general, the effect of National Recovery Act on this industry to date is better rather than worse, and it should by all means be continued.

Very truly yours,

RALPH BOLGIANO, *President.*

[Telegram]

NEW YORK, N. Y.

Senator PAT HARRISON,
Senate Building:

Emphatically recommend continuance of National Industrial Recovery Act with elimination of section 3e from the act and prohibition price-fixing practices under fair trade practices provision.

LEACOCK & CO., INC.,
R. S. BENEPE, *President.*

FISHER & SANG, INC.,
Buffalo, N. Y., March 26, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SENATOR HARRISON: We are writing you for your cooperation in the continuance of the National Recovery Act. We believe that it would be the worst possible action to eliminate all the good work that has been done up to this time.

The National Recovery Act has benefited us greatly. It has removed unfair competition to a very large extent and we are heartily in favor of its continuance.

We will appreciate your support.

Very truly yours,

PHILIP P. SANG.

FRANK C. BINGENHEIMER,
Niagara Falls, N. Y., March 26, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: Your favor is asked for a continuance of the National Recovery Act.

It has been a decided factor in stabilizing the retail coal business in Niagara Falls, N. Y., shortening working hours and making a higher wage scale possible.

Very truly yours,

FRANK C. BINGENHEIMER.

CARTER DRY GOODS CO.,
Louisville, Ky., March 25, 1935.

Senator PAT HARRISON,
Washington, D. C.

DEAR SIR: We are wholesalers of dry goods and kindred lines. It is our opinion that the National Recovery Act should be continued. The basis of this

opinion is the result of operating under the Wholesale Code and the supplementary Dry Goods Code.

If the act is permitted to expire, as far as this business is concerned, many unethical practices now prohibited will again become customary.

We favor the simplification of those codes wherein there are provisions of a controversial nature or not in the public interest.

Yours very truly,

JOS. P. DUMESNIL, *Vice President.*

THE STRONG, CARLISLE & HAMMOND CO.,
Cleveland, March 25, 1935.

Hon. PAT HARRISON,
Washington, D. C.

DEAR MR. HARRISON: We believe that the code system as developed under National Recovery Act has been helpful to business generally. Each industry has its problems, many of which are hard to solve unless a large majority in the industry work together. National Recovery Act was the means of bringing the noncooperators together to assume their share of the responsibilities of the industry.

Our industry is highly diversified, but in spite of this we have seen distinct betterment in the way of cooperation between the members of our industry; we have less sales below cost, and a tendency toward greater price stabilization.

We believe the tendency of the code system under National Recovery Act is to restrain the indiscriminate price cutters and thus to enable the employers to conduct a profitable business, thereby enabling them to pay reasonable salaries and wages. The first thing to be cut when profits evaporate is the price of labor, and the proper conduct of the code system enables the fair-minded employer to compete with the ones who have no sense of responsibility toward their employees and who exist solely by destructive price cutting.

Yours truly,

H. W. STRONG,
President-General Manager.

GRAND TRUNK TERMINAL WAREHOUSE CO.
South Bend, Ind., March 25, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

HONORABLE SIR: In view of the fact that the fate of the National Industrial Recovery Act is now pending before Congress we wish to express our opinion that by all means this act should be extended for a period of 2 years.

During the short time that the code, applying to the refrigerated warehousing industry, has been in effect we have obtained innumerable benefits that have resulted in the reduction in the amount of red ink used in our accounting department. Our pay roll is considerably higher than it has been for several years but naturally the only road back to prosperity is the restoration of the purchasing power to the consuming class.

We earnestly urge that the National Recovery Act be extended and that the code for the refrigerated warehousing industry be continued as a separate and distinct code.

Very respectfully yours,

CHARLES F. IWAN, *Receiver.*
R. VAN DIEN, *Manager.*

CUTLER & CUTLER, INC.,
Portland, Maine, March 25, 1935.

PAT HARRISON,
Washington, D. C.

DEAR SIR: There has been considerable talk in regard to the continuance of fair-trade practice rules in codes.

We might say that this portion of the National Recovery Act has been a godsend to the electrical industry and places no hardship on electrical contractors. If

this practice should be eliminated, conditions in our industry will become chaotic and result in bankruptcy and ruin.

We are heartily in favor of the continuation of the National Industrial Recovery Act and fair-trade practice as incorporated in code.

Very truly yours,

S. H. CUTLER.

CHICAGO, ILL., *March 26, 1935.*

Hon. J. HAMILTON LEWIS,
Washington, D. C.

Agitation to discontinue National Recovery Act next June disturbs us. Believe same should be extended 2 years. Ours is a comparatively small unit in the shipping-container industry and we believe that advantages to our workers in raising of level of wages have been most salutary and in the direction of restoring buying power. Discontinuance of National Recovery Act would surely demoralize competitive conditions to a level in which the dog-eat-dog practices of pre-National Recovery Act days would be resorted to again. We ask your support for its continuance.

ATLAS BOX CO.,
WALTER S. GOODWILLIE,
President.

BOSTON, MASS., *March 29, 1935.*

Senator PAT HARRISON,
Washington, D. C.

The report of consumer goods industries committee filed with you is sound and if followed will definitely help smaller-sized business enterprise like our own. We urge that the National Recovery Act be received with more effective enforcement. The set-up paper box industry needs it.

MARKET PAPER BOX CO.,
Brighton, Mass.

EUREKA FURS, INC.,
New York, March 28, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: I note that tremendous pressure is being brought about from time to time by assiduous sources to eliminate the National Recovery Act.

I have been an employer in the fur business for over 25 years, during which time one naturally experiences many trying problems. To my way of thinking, and from every possible angle, the Fur Code in the fur industry has practically saved the industry from ruin and destruction in the past year.

To eliminate the National Recovery Act from the fur industry would be fatal for the employer as well as the employee. The great good that the National Recovery Act has injected into this industry is the 35-hour week for the employee, and control of marketing of goods, as well as discounts, for the employer.

To eradicate the hereinabove will positively mean a drastic set-back to both. I very humbly urge you, in the interest of common good, to vote for the positive enforcement of the National Recovery Act.

Very truly yours.

S. S. SAMUELS, *Secretary.*

FUERSTENBERG & CO.,
Chicago, March 26, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: We are writing this letter to you so that you may know something about our experiences with the National Recovery Act.

For our company we have found it very beneficial. Our company is not a large one, however, we have been in business for more than 20 years and for 3 years prior to the National Recovery Act we did not know where we were at but since the National Recovery Act went into effect the textile business has had some stabilized influence.

Furthermore, National Recovery Act has made it possible for us to make a profit whereas before its use we were unable to make any for several years.

From my own personal observation I found that the South is buying goods instead of only selling them, and while it has made some mistakes I believe the benefits have far exceeded its failures.

We are aware of the fact that you no doubt are receiving many letters from people who oppose the National Recovery Act, but we want you to list our name in favor of it.

Our business has more than doubled and we know a great portion of this additional business is through the efforts of the National Recovery Act, and if you would like to have a more detailed record of our experiences we will be pleased to furnish it to you.

We feel that at this time should the National Recovery Act be disposed of that it would throw the entire textile business into a chaotic condition which it cannot very well stand for and we feel that the benefits of the National Recovery Act have been so many that regardless of what faults it may have had we benefit more by having it with all its faults. We are also very much interested in the new social item.

Yours very truly,

H. B. FUERSTENBERG.

RESOLUTION OF OREGON MAYONNAISE MANUFACTURERS ASSOCIATION, PORTLAND, OREG.

Whereas dispatches from Washington, D. C., indicate a belief current in some official circles that small business is opposed to the National Industrial Recovery Act and whereas this association has operated under the National Mayonnaise Code for the last year, and has had an opportunity to compare conditions with and without a code of fair practice; therefore be it

Resolved, That the Oregon Mayonnaise Manufacturers Association, in meeting assembled this 16th day of March 1935 approves the general principles of the National Industrial Recovery Act, including the minimum wage scale, and likewise affirms the belief that in order to continue the principle of fair minimum wages, it is necessary that the small manufacturers be protected from destructive price cutting and unfair methods of trade competition and that removal of one or both of these principles from the average code would make the code ineffective: And be it

Resolved, That this resolution shall be spread upon the minutes of this association and that the secretary be instructed to send copies to the members of the Oregon congressional delegation.

K. C. ELDRIDGE, JR., *President.*
H. P. EDWARD, *Secretary.*

McKEE & Co.,
Cincinnati, March 29, 1935.

Hon. PAT HARRISON,
National Recovery Administration Investigating Committee,
Washington, D. C.

DEAR SIR: We earnestly hope that you will do your utmost for the continuance of the National Recovery Act and the Graphic Arts Code. Also that you will give some thought to include provisions to induce fair trade practice and prohibit selling below cost.

Trusting we can depend upon you for cooperation in this matter and thanking you, we are,

Respectfully yours,

McKEE & Co.

MONROE COUNTY ASSOCIATION OF BUILDERS' SUPPLY DEALERS,
Rochester, N. Y., April 9, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

HONORABLE SIRS: At a meeting of the Monroe County Builders Supply Association on April 8, 1935, the following resolution was passed representing the group opinion of approximately 50 builders supply dealers in the county of Monroe, who are operating in conformance with the Code of the Builders Supply Trade as amended October 25, 1934.

We believe the Code of Fair Competition for the Builders Supply Trade has been and still is beneficial to our business. It has stabilized wages on a uniformly higher level. It has benefited the larger as well as the smaller dealers by minimizing destructive price chiseling and has promoted a feeling and practice of fairer and more ethical business methods.

We therefore respectfully request your cooperation and support in the continuation of the Recovery Act for another period of at least 2 years

Yours very truly,

H. P. DOMINE, *Secretary.*

SALT PRODUCERS ASSOCIATION,
Detroit, Mich., April 13, 1935.

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

DEAR SIR: In view of the fact that the members of the salt-producing industry of the United States are vitally concerned in the proposals for a continuation of the National Industrial Recovery Act, the following resolution was unanimously adopted at a meeting of the Salt Producers Association held on Thursday, April 11, 1935, Chicago, the members of which manufacture over 90 percent of the total salt tonnage produced in the United States:

Whereas the salt-producing industry was among the first of industries to submit to the National Recovery Administration a code of fair competition, this code having been approved by the President of the United States on September 7, 1933, and the early approval thereof has resulted in a considerable period of experience in the operation of this industry under said code; and

Whereas there is now pending in the Congress of the United States legislation designed to extend the National Industrial Recovery Act; and

Whereas this industry, while one of the smaller industries, employing approximately seven thousand employees, yet is one of those industries essential to the continued health and welfare of the people: Now, therefore, be it

Resolved by the salt-producing industry, That it transmit to the Senate Finance Committee, with the request that it be incorporated in the record of the ending hearings on the National Industrial Recovery Act, the following statement expressing the views of this industry in connection with said legislation:

1. This industry, by its code of fair competition, was among the first to prohibit the employment of persons under the age of 21 years in mining operations below ground.

2. As a result of the adoption of the code, employment in this industry has increased approximately 23.3 percent and the amount of wages paid has increased approximately 13.1 percent.

3. The industry, its employees and the public have adjusted themselves to operation under a code and to now abolish the code would destroy the confidence that has been built up and possibly precipitate chaotic conditions within the industry.

4. The present rate of unemployment makes it essential that this act be continued to prevent any resumption of the downward course in wages or contraction of employment and purchasing power.

5. The National Industrial Recovery Act should be extended for a further period of at least 2 years in as nearly its present form as is possible because—

(*a*) The public, industry, and labor, as well as the National Recovery Administration, have had nearly 2 years of experience in the administration of the present act, advantage of which will be of no avail if the law is to be substantially changed;

(*b*) The flexible provisions of the present act make it possible to deal with emergencies with a minimum of delay;

(*c*) Decisions of the courts under the present act will be more nearly applicable to provisions of the new act.

6. This industry believes that all industries, regardless of size or the number of employees, should have the opportunity of adopting a code to be administered by men familiar with the industry, rather than to be forced to become a part of a large group of industries governed by a single code.

7. This industry is strongly opposed to any law prescribing a 30-hour week, or any other rigid limitation as to hours and wages, because it believes legislation of this character to be uneconomic and impractical.

8. This industry wishes to go on record as being opposed to the National Labor Relations Act, otherwise known as the "Wagner bill."

Very truly yours,

FRANK MORSE, *Secretary.*

APPAREL INDUSTRIES COMMITTEE,
FOR THE RENEWAL OF NATIONAL RECOVERY ACT,
New York City, April 5, 1935.

Hon. PAT HARRISON,
Senate Finance Committee, Washington D. C.

DEAR SENATOR: I have the honor to submit to you a memorandum prepared by the Apparel Industries Committee for the Renewal of National Recovery Act, and passed at a meeting of that committee held at 99 Park Avenue, New York City, today. This memorandum was prepared on the basis of questionnaires sent to various branches of the apparel industry and upon published statistics of the Department of Labor.

It was the sense of that meeting that however much individuals may be opposed to the workings of this or that specific regulation, to drop the National Recovery Act now would take from every intelligent manufacturer and merchant in this country his initiative and legitimate means of defense, and leave him adrift in the fog in a boat with no oars, no compass, and no port in sight.

I ask you on behalf of our committee to speed the wheels of congressional machinery as rapidly as possible and remove this uncertainty which is hurting our business in its most critical season and retarding general recovery.

Respectfully submitted.

J. R. MCMULLEN, *Chairman.*

FROM THE APPAREL INDUSTRIES COMMITTEE FOR THE RENEWAL OF NATIONAL RECOVERY ACT

We are a group of manufacturers representing the apparel industry. Our business interests lie in varied and even unrelated types of manufacture, participating in an industry that maintains nearly 20,000 units (most of them operated by small business men), employs over 600,000 workers, absorbs approximately 16 percent of the national income, and contributes more than $2,000,000,000 annually to the national wealth in the form of the merchandise it manufactures. We join together in the firm belief that National Recovery Act has conferred benefits upon our industries, and that its withdrawal constitutes a common danger for all of us. Knowing the results of National Recovery Act from our own first-hand business experience, we can properly value its advantages and defects. National Recovery Act must be discussed in terms of fact and not in political generalities, and we present the facts pertinent to our industry so that those who must ultimately judge may first accurately know them.

Our industries are referred to as the needle trades, and proverbially as the "downtrodden needle trades." Ours has been, in the past, the outstanding example of an economic cockpit business of the most bitterly competitive character. It covers a field in which there have been in the past an almost total absence of decent restraints to prevent the less scrupulous in the struggle for existence from setting the standard which must be followed by all. Ours has been a business in which the sweatshop has longest survived and thrived. Ours now is the experience and conviction that the collective action which we have been authorized to take and are now taking under National Recovery Act has been enormously helpful as an aid to decency in the establishment of fair standards and in the breaking down of ancient abuses.

Let us look at the facts. How were these apparel industries affected by the depression? According to the Federal Bureau of Labor Statistics, during the years 1929 through 1932, employment dropped by 25 percent and pay rolls were cut in half.

What happened after the National Recovery Act? During the years 1933 and 1934, the number of men and women earning a livelihood in our industries increased by 7 percent. Our pay rolls were augmented by 21 percent. Thus, while labor's share has increased by over one-fifth, the cost of living between June 1933 and November 1934 has, according to the Bureau of Labor Statistics, risen by only 8 percent. The more remarkable is this when we consider that these employment figures represent not only a rise in themselves, but a complete reversal of the violently depressive tendencies during the preceding years.

Then, the fair-trade practice provisions of our codes have, for the first time, given us a chance to make the conduct of business in our industries more self-respecting. They have strengthened our hand against the grinding economic pressure of superior bargaining power.

Criticism that National Recovery Act fostered monopolies is utterly without point in our industries. There could be no monopolies constructed even if our manufacturers were permitted to do so. Our product is too varied too impossible to standardize, our manufacturers too individualistic. Although our pay rolls have swelled by 21 percent during the past 2 years, the prices of apparel to the consumer have increased by only 12 percent. Not a monopolistic tendency but the very opposite has been the case. According to a study made by the code authority of the coat and suit industry, since that code went into effect, there have been fewer business mortalities and a greater number of new entrants into that industry than during the preceding year.

Other glibly used criticisms of National Recovery Act are equally without foundation in our industries. Some have talked about oppressive regulation by code authorities. The fact is that if the regulation of fair competition is better than a brutal competitive anarchy, respectable powers of control must be placed in some suitable agency. We would rather have those powers vested in our own representative code authorities than in some distant officialdom, remote from an understanding of our peculiar problems and unresponsive to our true needs. Complaints of oppression by code authorities generally do not come from those who play fair, who accept in good faith their industry's standards of fair competition and abide by them.

Also, some critics have lost sight of the design of the whole project by picking on details and exaggerating them out of their true proportions. It should be remembered that the National Recovery Act has been in existence less than 2 years, and most of our codes for a much shorter period. Industrial self-government cannot be expected to spring into existence fully developed. Like all government, it is an object of cultivation and growth. Let it be recalled that our very Constitution was the result of nearly a decade of governmental difficulties in a loose federation of 13 Colonies before our present government was established. Under an extended National Recovery Act, we could use the experience of the past 2 years to perfect an instrument for the self-regulation of business.

Then, again, some critics have pointed to the National Recovery Act label as placing men at the mercy of a legalized boycott. Do they not realize that without some distinction between the product of the "chiseler" and legitimate merchandise, we shall all be at the mercy of the sweatshop? Since the beginning of the century, interested groups of consumers have wanted to know the conditions under which their purchases were manufactured. The National Recovery Act label is a symbol to the conscientious consumer.

Possibly, the loudest and most hollow criticism has been that National Recovery Act is oppressive to small business men.

We are small men. In the 20,000 establishments of the various apparel industries throughout the country, the average number of workers employed totals 30. Many of the employers were themselves factory workers before establishing their own small businesses. Contrasted with the great concentration of economic wealth and power that exist in American industry today, and that can so readily and loudly express themselves on all political changes affecting them, our industries are scattered and inarticulate. Rather than have others express solicitude for the small men, we prefer stating their case which is our own in the apparel industries.

We want the National Recovery Act. We do not want sweatshops in our industries, but without National Recovery Act, we shall have to compete with them. We do not want to beat down the wages of labor, but without the National Recovery Act we will not otherwise be able to sell our products. We do not want to engage in unfair trade practices, but our buyers will press us to yield if they can wrest such unfair concessions from a few competitors.

We know that the major sentiment of our industries is overwhelmingly in favor of National Recovery Administration. We are convinced that the abandonment of this great industrial project would mean nothing by , return, so far as we are concerned, to the old tooth-and-claw methods of destructive and relentless competition, immensely injurious to the multitudes of workers who depend upon our industries for their support. Its abandonment would mean something more. The savagery of the old business warfare would be aggravated by the shattering of the promise of a new industrial ideal, immensely helpful to us and consistent with fair dealing of just men and women.

In our opinion, National Recovery Administration has made a contribution not to men in these industries alone, but to the general character of American business. We ask Congress to recognize this contribution, and by continuing National Recovery Administration to preserve and perfect the values already demonstrated.

CODE AUTHORITY FOR THE UNDERGARMENT AND NEGLIGEE INDUSTRY,
New York, March 25, 1935.

CHAIRMAN SENATE NATIONAL RECOVERY
ADMINISTRATION INVESTIGATING COMMITTEE,
Washington, D. C.

DEAR SIR: Please be advised that at a special meeting of the Code Authority for the Undergarment and Negligee Industry held on March 23, 1935, the following resolution was adopted:

"Whereas the Congress of the United States is now engaged in consideration of the continuance of the National Industrial Recovery Act; and

"Whereas the Code Authority for the Undergarment and Negligee Industry has had actual experience of the operation of the law and the code approved pursuant thereto, its benefits and its deficiencies; and

"Whereas the operation of the code has proved to be a stabilizing factor in our industry, with resultant benefit to the employer, employee, and consumer; and

"Whereas our industry is composed mainly of manufacturers employing less than 60 workers; and

"Whereas the code authority has always given careful consideration to the special circumstances involved in the business of the small manufacturers; and

"Whereas our industry never requested the inclusion in our code of any price fixing or curtailment of production provisions; and

"Whereas the abandonment of the act, in our opinion, will have an effect to destroy the benefits thus far gained: Now, therefore, be it

Resolved, That we approve the position of the President of the United States as expressed in his message to Congress for the continuance of the National Industrial Recovery Act, with such modifications as experience has shown to be necessary; and be it further

"*Resolved*, That a copy of this resolution be sent to the chairman of the Senate Investigating Committee."

Yours very truly,

THOMAS I. DUBE, *Secretary.*

FAYETTE R. PLUMB, INC.,
Philadelphia, March 11, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

WHY WE WANT TO KEEP OUR CODE

GENTLEMEN: We are a small business operating under the Supplementary Code of the Tool and Implement Manufacturing Industry engaged in the manufacture of hand tolls for mechanics for about 80 years.

The writer has been president of the company for 30 years, and for 29 of those years has been oppressed by the uneconomic effect of the antitrust laws on small enterprises. In our experience the effect of the antitrust laws has been to favor the large businesss units with their highly developed sales forces, their power of influence and their capital resources, while denying to the small units the right to even consult together or organize in any way to meet this competition. Under the code the freedom of self organization under Government supervision has been granted us and we want to retain it.

Before the code we were told it was unlawful for two competitors to even exchange information regarding prices, because if as a result they met each others competition, it would be considered that the result was an agreement in restraint of trade. But it is necessary for any manufacturer to know what his competitors' prices are. If a seller must rely solely on the statements of buyers, he is frequently misled. What is more natural for him therefore than to attempt to check the accuracy of the information he receives by asking his competitor. Self preservation demands it. And if he is able to worm out of his competitor that he is giving rebates or special prices to certain favored buyers, what is more natural than an agreement that "if you will confine these special favors to certain

buyers I will confine mine to certain others." The very difficulty of and delay in getting correct information leads to agreements.

There is no more chance of enforcing the Sherman law against the multitude of small business units than there was of enforcing the prohibition law. A remark one of our competitors made to the Chairman of the Federal Trade Commission more than 10 years ago represented a common attitude. He said if he had to choose between sending his family to the poorhouse and going to jail, he would go to jail.

A manufacturer must know what his competition is. One with a small organization cannot spend all his time running down the claims of buyers and so he must attempt to stabilize or remedy whatever condition he finds to exist. In this the small enterprise is at a disadvantage against a more powerful competitor with a large sales force.

Under the code we and all our competitors are required to file our prices with an impartial agency. These prices are distributed to all competitors and are open to the inspection of all other interested parties including customers. Having this information we know the competition we have to meet and we do not have to divert our energies from the problems of better manufacturing, reducing costs, labor relations, financing, and selling, to run after competitors trying to check up the claims of buyers as to what they are doing. Also, as we know we will be immediately advised of any revision of price by any of our competitors, the need for fixing a price that was formerly discovered with difficulty, does not exist. During the last year that our code has been in effect there has been hardly a week that some competitor or we have not revised some price. Notice of these revisions we get immediately and generally we file a revision of our own to meet the new prices or conditions of sale filed by a competitor. This principle of open price filing under Government supervision is extending to industry the measure that was adopted to meet the evil of railroad secret rebates. It is also extending to manufacturing the practice adopted by the better retail trade when they abolished secret cost marks from which the salesman bargained with the customer in favor of open price tags. When prices are open they are more apt to be fair. Unfairness hides. We are willing to take our chance with any competitor who will come out in the open.

Other provisions in our supplementary or basic code forbid unfair practices that existed such as misrepresentation of product, untruthful disparagement of competitor's product or business, imitation that trades upon a competitor's reputation, deceitful records such as false invoices, selling below cost provided it is destructive to fair wages or to capital investment efficiently managed, favoritism to special customers, or uninformed new competition. It may be that there are remedies in law for any of these abuses, but the small enterprise has neither the time nor the money to spend individually on law suits. Organized under the code the industry can.

I was a member of the committee that drafted our code and struggled many long months with the National Recovery Administration to get it approved. In framing the code for presentation we held many meetings of the members of the industry during which we talked and wrangled and compromised, much as Congress does in framing a law. We thought we had worked out a pretty good code that was satisfactory as a whole to 90 percent of the industry, but when we presented it to the National Recovery Administration we found we did not realize the effect of some of the provisions or that they were not clearly enough stated.

Objections to various provisions were raised by the consumers, advisory board, the labor advisory board, the industrial advisory board, and the legal division. The consequent delays were very irritating to our industry, but we must admit that the changes were in the public interest and, in the long run, in our interest, except possibly the uniform administrative provisions imposed upon us, which some members believed involved the relinquishment of constitutional rights.

We found that the National Recovery Administration officials, while necessarily lacking a knowledge of the details of our industry, did have a broad knowledge of general principles gained from experience in handling other codes and a concept of the general welfare that we lacked and that were a real help in avoiding mistakes that we had not realized in the original framing of our code.

This code, the law to govern our industry, was developed first by the technical expert knowledge of the members engaged in the industry, then submitted to the critical examination of others who might be affected by it and then subjected to the approval of representatives of the Government, mindful of the public welfare and the policy of the Government. In this way a law adapted to the needs of our particular industry was framed.

No general law could be framed to fit so well the particular needs of our industry. Privileges might be denied to us for which there was not sufficient need that could be safely granted some other industry or privileges might be granted us under governmental supervision that would lead to bad effects in some other industry.

This supervision under National Recovery Administration is continuing. A representative of the Administration attends our meetings to check us if we go astray. This is the kind of supervision that industry needs and can adapt itself to. Business men want to obey the law. The time to correct them is before they break it. Catching and punishing them afterward has little deterrent effect on others, and to go back to such a method at this time would have a paralyzing effect on industry. Continue the codes in the manufacturing industries to give the 80 percent who are neither big enough to oppress or chiselers who want to cheat a chance to compete fairly, openly, and intelligently.

Very truly yours,

FAYETTE R. PLUMB, *President.*

ILLINOIS ENGINEERING CO.,
Chicago, April 1, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

DEAR SENATOR: On March 25, Mr. E. K. Lanning, chairman of the code authority of our industry, wrote you as per attached letter, which you doubtless already have in your file, and I am writing you as one of the smaller members in this particular industry to not only confirm what Mr. Lanning has said in his letter regarding the National Recovery Act, but to advise that I believe—contrary to the general type of publicity given by the press—that the National Recovery Act has in the majority of cases helped the smaller manufacturer, and that with some minor modifications in set-up, it should be continued for at least 2 years more.

I further feel that an unbiased investigation would show that a great many of the smaller members of all industries feel just as I do. I have just returned from a 4,000-mile trip covering the South and East, as far as the South Carolina State line and New York City, and have had an opportunity of discussing this with a great many of the smaller manufacturers in the territories that I have gone through, and the sentiments that I express in this letter were expressed practically universally throughout the territory I covered.

Thanking you for your consideration in this matter in advance, I am,

Yours very truly,

J. C. MATCHETT.

HARRY BUTTER & CO.,
Dorchester, Mass., April 12, 1935.

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

DEAR SIR: We understand at the present time that you are debating on whether or not the National Industrial Recovery Act is to be continued in its present or modified form, or other bills may be enacted to take the place of the National Industrial Recovery Act.

We are members of the Brass and Bronze Ingot Code and have found that during the period that the National Industrial Recovery Act has been in force that we are able to keep our plant in operation 5 days a week primarily because of the doing away of unfair competition.

We are putting ourselves on record as favoring the continuation of the National Industrial Recovery Act in its present form.

Yours very truly,

HARRY BUTTER.

TRIANGLE INK & COLOR CO., INC.,
Brooklyn, N. Y., April 12, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: As you undoubtedly know, the printing ink industry of which we are a part is a small industry with annual sales of approximately

$30,000,000. Up to the present writing, the National Recovery Act has not done this industry any great direct good beyond the fact that it has brought the various manufacturing units in the business into closer accord, which beneficial influences we feel would be lost should the National Recovery Act be scrapped entirely.

With a more closely knit industry, we feel that we can eventually eliminate some of the harmful trade practices and for this reason, we believe that some sort of a National Industry Act, which would make it possible to keep our industry together under governmental influence, should be passed by the Congress.

We are chiefly concerned with the fact that as our industry is constituted, it might be possible for a small handful of men to upset the normal conditions of this industry if the governmental influence is withdrawn.

We are therefore writing to urge your support for this class of legislation.

Yours very truly,

A. O. ELDRIDGE.

NATIONAL CODE AUTHORITY FOR THE PAINTING, PAPERHANGING, AND DECORATING DIVISION OF THE CONSTRUCTION INDUSTRY, INC.

PHILADELPHIA, *April 12, 1935.*

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

SIR: The National Code Authority for the Painting, Paperhanging, and Decorating Division of the Construction Industry, Inc., representing more than 50,000 contractors throughout the United States, at its first annual meeting in the Book-Cadillac Hotel, Detroit, Mich., April 9, 1935, unanimously adopted the following resolution:

"Whereas the National Code Authority for the Painting, Paperhanging, and Decorating Division of the Construction Industry, Inc., is the administrative body for the code of fair competition for this, the largest group of subcontractors in the great construction industry, on the rehabilitation of which full national industrial recovery largely depends, and

"Whereas competitive conditions prior to the institution of the code of fair competition for this industry had reached a condition of chaos through the operations of unskilled, dishonest, unscrupulous contractors, and

"Whereas the above conditions menaced not alone the capital investments, life savings, and means of livelihood of tens of thousands of reputable, established painting, paperhanging, and decorating contractors, but actually menaced the country's real wealth as represented in its homes and business properties, through cheap, shoddy, unreliable workmanship and the substitution of worthless materials for good materials, and

"Whereas the first year of administration of this code of fair competition, in the course of which administrative agencies and other bodies have been set up in more than 350 American cities, has proved to our satisfaction that we have in this code precisely that instrumentality by which the evils of our industry can be eradicated, and

"Whereas continuation of this code of fair competition will permit the completion of a task begun which has for its object the establishment of fair and honest competitive conditions, proper wages, proper working hours and conditions and the protection thereby of the American property owner; therefore be it

"*Resolved*, That the National Code Authority for the Painting, Paperhanging, and Decorating Division of the Construction Industry, Inc., in annual meeting assembled in Detroit, Mich., this 9th day of April 1935, go on record as favoring the continuation of the National Industrial Recovery Act, with such changes as are necessary to clarify its intent, to make it more effective, and assure more rigid enforcement, for a period of at least 2 years after June 15, 1935."

Very truly yours,

G. S. STUART, *Executive Secretary.*

CHICAGO TUBING & BRAIDING CO.,
Maywood, Ill., April 4, 1935.

Hon. PAT HARRISON,
Senate Finance Committee,
Washington, D. C.

DEAR SIR: You have heard much from many champions of the "little fellows" about how National Recovery Act is depriving them of everything from their

constitutional rights to their life blood. We are small manufacturers in a small industry and differ with our champions whom we did not appoint.

Instead of sapping from us our lifeblood, National Recovery Act has given us new good blood. Pre-National Recovery Act blood was bad-thin; labor felt it because employees were willing to work for little to stave off starvation; big buyers profited by whipsawing one manufacturer against his competitors, and we poor fools let them—and down again went prices and wages. Profits had disappeared long before.

Come National Recovery Act. Immediate result labor benefited—and still does. Next raw-material cost advanced rapidly. Result no profits. Reason: Our entire industry, unorganized, without precedent for concert of action, obviously ignorant of National Recovery Act benefits, floundered.

There followed a period of education of what the entire industry could accomplish under National Recovery Act—what we had to accomplish to live. Our selling prices had to rise to balance our increased costs; they have risen—most, not enough.

Our education continued; confidence is growing. But if you take from us the benefits of National Recovery Act labor will suffer—all of us will suffer.

National Recovery Act probably has some faults—but today's trouble is not National Recovery Act primarily. Today's trouble is those men, both large and small, whose fear of one another so paralyzes their vision that they can do nothing constructive for themselves nor for anyone else.

Solution: Educate them to the benefits of National Recovery Act and at the same time assure them you will not tax away all their profits.

Very truly yours,

JOHN F. P. FARRAR, *Vice President.*

THE UNITED RETAIL GROCERS & DELICATESSEN DEALERS ASSOCIATION, INC.,
Brooklyn, N. Y., April 9, 1934.

SENATE FINANCE COMMITTEE,
United States Senate.

GENTLEMEN: We, representative of the United Retail Grocers' and Delicatessen Dealers Association, consisting of a membership of 725, do wholeheartedly support the National Recovery Act and approve of its continuation for another 2 years and urge your committee to approve its reenactment.

May we impress you now, that the discontinuance of the protection of the code at this time would result in a chaotic condition, unparalleled in the history of our industry.

This code has been a protection to the small business man and has helped him in his business.

JOHN F. BEHRMANN, *Secretary.*

THE CHAMPION FIBRE CO.,
Canton, N. C., March 27, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

MY DEAR MR. HARRISON: We are greatly interested in the pending legislation affecting the continuation of the National Recovery Act. Our experience under the operation of the act in the past 2 years has indicated definitely that it has resulted in increased employment, both in numbers and in wages, and, through the provisions for minimum wages and for prevention of unfair practices, has accomplished a stabilization that has made possible progress which could not otherwise have been achieved.

It has prevented chaotic conditions in industry and trade which would have been harmful to all elements of community life.

Confidence has not yet been restored; and without some such artificial means of exercising control, cutthroat competition, uncertainty, and unemployment would inevitably follow.

Our observations have indicated that small units have been protected to an extent even greater than the benefits obtained by the larger units. This is certainly true in the pulp and paper industry and I am sure it is also true of many others.

I am firmly of the opinion that an extension of National Recovery Act is urgently demanded if the best interests of our Nation are to be served.

Yours very truly,

REUBEN B. ROBERTSON, *President.*

CODIFIED INDUSTRIES AND TRADES OF TEXAS,
Houston, Tex., March 28, 1935.

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

DEAR SENATOR HARRISON: At a meeting March 25, 1935, held under the auspices of Codified Industries and Trades of Texas, a large group of representative business men of this city were present and a resolution was passed, unanimously, endorsing National Recovery Administration in principle and to petition our representatives in Congress and the Senate to use their best influence to get an extension of the National Industrial Recovery Act or the enactment of a similar bill.

I am further directed to advise you that our organization thinks that the Government should undertake a vigorous advertising campaign on the "blue eagle."

We shall appreciate an expression from you as to the probable date of passage of the new National Industrial Recovery Act, as business interests here are rather confused.

Very sincerely yours,

Capt. H. DICK GOLDING,
Secretary-Treasurer.

P. S.—I am attaching newspaper account of our meeting as well as copy of letters urging continuance of the National Industrial Recovery Act by the labor group of this city. Any comments will be appreciated.

REVERE COPPER AND BRASS, INC.,
New York, April 5, 1935.

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

DEAR SIR: We hear considerable comment and see varied opinions in the press concerning the continuance of National Industrial Recovery Act after June 16, 1935. No two commentators apparently have exactly the same opinion concerning the provisions which may remain in effect after that date. It is usual when an existing law or policy becomes controversial, that the opposition makes itself heard to a greater extent than the supporters.

Under the circumstances, it is believed that you will welcome and will desire to give consideration to the viewpoint of a member of industry. In the final analysis, the success or failure of the National Recovery Administration depends upon the support and cooperation of industry, labor, and government.

As a member of the Copper and Brass Mill products industry, we have cooperated under a code which has been eminently successful in achieving the results contemplated by the passage of the National Industrial Recovery Act. Average wage rates have been increased by 30 percent while hours have been decreased, with the result that hundreds of men have been put back to work and our pay rolls increased by 75 percent.

All of this has been made possible by improvement in competitive conditions brought about by the fair trade practice provisions of the code. These provisions have not increased the burden on consumers but have merely tended to support price structures in a market so highly competitive that cut-throat competition would necessarily have resulted without them. We have had no labor troubles.

To sum up, we believe that industry should be allowed to govern itself after June 16, 1935, under substantially the same conditions as under the present National Industrial Recovery Act. To continue the labor provisions alone will not be sufficient. If industry is to be controlled as far as hours, wages, and relations with employees are concerned, it should be permitted to retain fair trade practice provisions that have made possible compliance with these labor provisions.

Yours very truly,

C. D. DALLAS, *President.*

NATIONAL SKIRT MANUFACTURERS ASSOCIATION, INC.,
New York, N. Y., April 8, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR: Enclosed you will find a certified copy of a resolution unanimously adopted at a meeting, on April 6, 1935, by the National Skirt Manufacturers Association, supporting President Roosevelt's industrial recovery policy and favoring the proposed extension of the National Industrial Recovery Act.

The resolution has been forwarded to all the members of the Senate Finance Committee. Our industry wishes to express its hearty endorsement of your constructive work and to assure you of its willingness to cooperate.

Very truly yours,

H. J. PERAHIA, *President.*

NATIONAL SKIRT MANUFACTURERS ASSOCIATION,
New York City, April 6, 1935.

Whereas the National Skirt Manufacturers Association, in meeting assembled are in favor of a continuation of the National Industrial Recovery Act with modifications tending toward greater flexibility in industrial self-government and in administration and

Whereas the association is unanimous in its support of the President of the United States in his recovery policy, and

Whereas the Code of Fair Competition for the skirt manufacturing industry has raised standards in labor relations and in business conduct, which, without re- actment would be destroyed: therefore be it

Resolved, That the members of the National Skirt Manufacturers Association are unanimously in favor of the proposed extension of the National Industrial Recovery Act and

Be it further resolved, That copies of this resolution be forwarded to the members of the Senate Finance Committee.

Certified as correct.

MACK SEPLER, *Secretary.*

THE HINDE & DAUCH PAPER CO.,
Sandusky, Ohio., April 5, 1935.

Hon. ROBERT J. BULKLEY,
United States Senator, Washington, D. C.

MY DEAR SENATOR: On March 25, I sent you a telegram like the enclosed. The Washington correspondent of the Sandusky Star Journal forwarded the information, which they published locally.

I am so sincerely interested in the continuation of the National Recovery Act, and I understand that any telegrams or letters, when turned over to the Senate Finance Committee, secure proper recognition, and further, that requests are made that they be published in the Congressional Record. If my information is correct and you concur, will you please follow the above suggestion.

Your acknowledgement of my telegram, under date of March 26, stating that you will give the legislation your careful attention when it is reached, is much appreciated.

Sincerely yours,

SIDNEY FROHMAN, *President.*

SANDUSKY, OHIO, *March 25, 1935.*

Hon. ROBERT J. BULKLEY,
United States Senate, Washington, D. C.

Any scrapping of the National Recovery Administration or cancelation of code for the container and paper board industries would, in our opinion, seriously endanger the entire structure, breaking down in turn the wage and hour operation in spite of any law to the contrary. In behalf of 2,400 wage earners and department heads of this company who have benefited in increased earnings from the National Recovery Act please vigorously protest any withdrawal and urge continuance of codes for another 2 years.

THE HINDE & DAUCH PAPER CO.,
SIDNEY FROHMAN, *President.*

HINDE & DAUCH PAPER CO. ASKS N. R. A. CODE CONTINUANCE FOR 2 MORE YEARS

(Sandusky Star Journal, Mar. 29, 1935)

WASHINGTON—Continuance of the National Recovery Act for another 2 years was urged by Sidney Frohman, president of the Hinde & Dauch Paper Co. in a telegram received today by Senator Robert J. Bulkley.

The Senate Finance Committee is now holding hearings on the legislation sponsored by President Roosevelt to extend the National Recovery Act for a 2-year period starting next June. Upon completion of the hearings, the Senate will consider the measure.

Frohman's telegram reads as follows:

"Any scrapping of the National Recovery Act or cancelation of the Code for the Container and Paperboard Industries would in our opinion seriously endanger the entire structure breaking down in turn the wage and hour operation in spite of any law to the contrary.

"In behalf of 2,400 wage earners and department heads of this company who have benefited in increased earnings from the National Recovery Act, please vigorously protest any withdrawal and urge continuance of codes for another 2 years."

CENTRAL FIBRE PRODUCTS CO.,
PAPER MILL DIVISION,
Quincy, Ill., April 3, 1935.

Hon. J. HAMILTON LEWIS,
United States Senate, Washington, D. C.

DEAR SIR: From information we are receiving, there appears to be a tendency toward elimination of the National Recovery Act, with the possible substitution of a law regulating wages and hours but without recognition of any right on the part of industry to regulate competition in any degree.

We are writing to urge you to oppose any legislation to discontinue the National Recovery Act at this time, as we feel, unquestionably, that should the code in the paperboard industry be discontinued, the result would be a return to the chaotic condition which existed in this industry for a period of several years preceding the National Recovery Act.

The industry, as a result of this legislation, has been placed on a fairly sound basis and, as a result, is employing a large percentage of additional men at higher wages than existed for years, notwithstanding the fact that there has been no great increase in the amount of output.

In behalf of the 800 wage earners and department heads of this company who have benefited greatly in increased earnings, as a result of the National Recovery Act, we ask that you vigorously protest any attempt to discontinue the code for another 2 years.

We hope that we may have your support in this matter.

Very truly yours,

J. G. MCFARLAND.

ELGIN SWEEPER CO.,
Elgin, Ill., March 26, 1935.

Hon. PAT HARRISON,
Senate Finance Committee, Washington, D. C.

DEAR SIR: Knowing that your honorable committee is considering the matter of recommending to Congress the advisability of continuing the National Recovery Act, we wish to say that we heartily approve of continuing the desirable features of the National Recovery Act. There is no question but that the establishment of fair-trade practices has corrected many of the abuses that business has been subjected to, and we hope that this feature of the National Recovery Act will be continued.

As for ourselves, we are a small manufacturing concern making a specialized product and located in a moderately small community. Most of our employees are men of long training in our particular line, and they were receiving as much or more than the minimum wages specified when the National Recovery Act was enacted.

We have operated at a loss for 3 years but now have increased business in prospect, and our problem is our inability to operate our plant more than 35 hours

per week because we are unable, in this community, to secure qualified men to duplicate our present force and thus permit the operation of our factory equipment to its regular capacity at this time of the year when the demand for our product is at its peak.

Our inability to satisfy this demand not only means the loss of business, but creates a restricted earning capacity which is unsatisfactory to our employees, especially at this time when business is available.

We sincerely trust that your honorable committee will decide upon a recommendation to Congress that will provide for retention of the useful and helpful features of the National Recovery Act and for the elimination of those features which handicap production to meet increasing demands.

Respectfully,

D. M. TODD, *President.*

GEORGE BRUNSSEN CO., INC.,
New York, N. Y., March 27, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We take this occasion to register our protest against the threatened scrapping of the National Recovery Act.

Our factory gives employment to 37 individuals. We have always paid union wages for union hours. For some time previous to the founding of the National Recovery Administration a terrible condition arose in the industry. Unemployed workers established themselves as manufacturers in their own homes, and with no regard for working hours, living conditions, or business ethics, took whatever price they could get for their merchandise. Needless to say, avaricious buyers made this condition considerably worse in their efforts to continually drive better bargains.

The National Recovery Act has relieved this condition: It has stipulated a minimum wage and established livable working hours. It has prohibited the selling of merchandise below cost of production. By limiting working hours it has necessitated the hiring of additional labor.

We dread a return to pre-National Recovery Act conditions. At this time we feel it would be more proper to have the National Recovery Act strengthened and improved: To give it the proper "teeth" for enforcement purposes.

Please consider the foregoing: There must be thousands of other business organizations who feel exactly as we do. Please bear in mind that outcries against the National Recovery Act generally come from those who are reluctant to pay a living wage and who want to extract intolerable working hours from their help. The recent cases which were brought into court will fear witness to that statement.

Respectfully yours,

HERMAN JULICH, *Treasurer.*

TEXTILE FABRICS ASSOCIATION,
New York City, March 27, 1935.

Hon. PAT HARRISON,
Chairman Senate Finance Committee,
Washington, D. C.

DEAR SENATOR HARRISON: Our association is composed of over 150 integrated producers and converters of cotton piece goods. In line with many other industries in the country, our industry has been operating under a code of fair competition approved by the National Recovery Administration and which code is known as Supplementary Code No. 1 to the Cotton Textile Industry Code.

Our code contains only fair trade practice rules as the industry is governed under the hours and general labor provisions of the Cotton Textile Industry Code.

Our board of directors believe that you and the members of your Finance Committee should know that the members of our industry are very well satisfied with the operation of the trade-practice provisions as carried in our code and believe that through the operation of these rules many unfair methods of competition have been eliminated. We wish to make it plain that our code trade-practice rules do not include any price-fixing arrangements or other features tending toward monopolistic control. Our rules cover such trade matters as deliveries, terms of sale, fabric demonstrations, etc. In fact, the rules are very

similar to those approved by the Federal Trade Commission under their Trade Practice Conference Division.

We therefore wish to record ourselves as favorable to the extension of the National Recovery Act as requested by President Roosevelt. In fact, we believe that if such extension be not granted by Congress, an extremely chaotic and disastrous situation will result.

Very truly yours,

W. V. PICKETT, *President.*

CODE AUTHORITY WHOLESALING OR DISTRIBUTING TRADE,
New York, March 27, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: By authority of a resolution passed by the Code Authority for the Wholesale Trade, at its last regular meeting, I am instructed to transmit the following:

"It is the sense of the Code Authority for the Wholesale Trade that the abandonment of the codes in the distribution trades would be calamitous at this time; that widespread criticism now being aimed at National Recovery Act is definitely resulting in demoralization and injury to business as a whole; that prompt action should be taken by Congress to determine the future of National Recovery Act, as the confusion and uncertainty which now exists have already caused a cessation of operations in many lines of trade and, to a noticeable degree, are slowing down business operations generally."

The above is respectfully submitted with the very earnest request that your influence be exerted to the end that the present confusion may be promptly terminated.

Very truly yours,

F. GARRISON, *Chairman.*

KLEIN, FRANKFELDT & ARNOFF, INC.,
New York, March 27, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We are taking this opportunity to write to let you know that we do not want the National Recovery Act scrapped for the simple reason that the National Recovery Act has helped our industry in the following ways:

1. It has equalized the working hours of all employees within our industry.
2. It has established a minimum wage.
3. It has established certain terms for all the manufacturers.

All this has benefited our industry as it helped decrease the terrible cutthroat competition in our line. Should the National Recovery Act be scrapped, it will kill our business. There will be no bottom, to which our prices will drop. They will be cut to the bone and will be sold for less than cost. The National Recovery Act prevents all this.

We are employing 41 people and we believe that the National Recovery Act has helped us all. We do not want you to scrap the National Recovery Act.

Yours very truly,

KLEIN, FRANKFELDT & ARNOFF, INC.

THE METHODIST BOOK CONCERN,
Cincinnati, Ohio, March 26, 1935.

Hon. PAT HARRISON,
Chairman National Recovery Act Investigations Committee,
Senate Office Building, Washington, D. C.

HONORABLE SIR: We strongly urge your support in advocating the continuance of the National Recovery Act and Code of Fair Competition for the Relief Printing Industry, without fundamental changes.

Governmental agencies should enforce code regulations without distinction between labor and fair-practice provisions. Hour and wage regulations should continue. Selling below cost should be especially prohibited.

Much advancement has been made toward stabilization, and to return to the old practices would be most unwise.

We thank you for your support.

Very truly yours,

W. E. GARRISON.

LEWIS & AYLESBURY,
Los Angeles Calif., April 16, 1935.

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

DEAR SIR: We respectfully submit to you our wish that the National Recovery Act be continued. Also that in an extension of this act that the interests and welfare of all small and independent business firms be protected by adequate provisions which will eliminate unfair price discriminations in favor of the large corporations or combinations of large companies. And in this connection we refer particularly to the payment of brokerages or commissions to trade buyers as outlined in the testimony of Mr. Paul Fishback before your committee on April 4, which testimony we have read carefully and sincerely believe is a true statement as to the unfairness of such a practice.

Yours very truly,

E. T. AYLESBURY.

BOWERS ENVELOPE & LITHOGRAPH CO.,
Indianapolis, Ind., March 29, 1935.

MR. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR MR. HARRISON: Recently the officials of this company have had brought to their attention the fact that there is a very strong lobby in Washington against the National Recovery Act and that there is a possibility that these folks will be of considerable influence in seeing to it that the National Recovery Act is discontinued.

We wish to protest against any change whatsoever in the present National Recovery Act and would like to see it continued for another 2 years. Before the National Recovery Act came in, the envelope industry was in terrible condition with no one making even a decent wage, and competition was so keen that it was very ruinous and practically everyone in the industry was on the verge of bankruptcy. With the interest of the National Recovery Act the industry was put back on its feet, more people were employed and at a good wage. It would be a calamity for our industry if the National Recovery Act were discontinued.

We urgently request that when this subject comes up for discussion you stand by the National Recovery Act and do everything in your power to see that it is continued in the same form as it stands at the present time.

Very truly yours,

CLYDE A. BOWERS, *President.*

ALEXANDER THOMSON, INC.,
Cambridge, Mass., April 11, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: We are informed that the above bill extending the life of the National Recovery Act is now pending in the Congress of the United States.

As a small business concern we would advise that previous to the passage of the National Recovery Act we were about ready to close our business for an indefinite period. Through the National Recovery Act this has been postponed for the present, and we strongly urge that the bill extending this recovery act be passed immediately.

Very truly yours,

T. L. DEVINE.

R. H. TODD LUMBER, CO.,
Ocala, Fla., March 30, 1935.

Hon. DUNCAN U. FLETCHER,
Senate Office Building, Washington, D. C.

DEAR SENATOR FLETCHER: Please pardon me for worrying you, but I do want to urge you to support legislation for the continuation of the principles of the National Industrial Recovery Act.

The operation of the National Industrial Recovery Act has been a great benefit to the retail lumber industry and its employees and we want to see it continued.

I trust you will lend your assistance to its continuation, adding to whatever new legislation there may be enacted a plan of enforcement that will be effective, as the only weakness there has been in the act is the lack of proper enforcement.

Hoping for your efforts in this work, I remain,
Sincerely,

RUSH H. TODD.

THE FOLLOWING ARE OPPOSED TO THE EXTENSION OF THE NATIONAL INDUSTRIAL RECOVERY ACT

SILVERDALE LIMESTONE CO.,
Wichita, Kans., April 15, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SENATOR: We have been requested by our code authorities to write our Senators and Congressmen as to our opinion on the extension of the National Recovery Act.

National Recovery Administration has had a retarding influence on the buyer and because he justly feels that industry is organized against him, he must be sure he is buying in an open market or he will retard buying rather than increase it.

The increase of operating cost to the average small industry such as ours is just another burden, in times when we have difficulties in keeping the wheels turning.

We are operating under two codes—the Retail Monument Industry Code and the Limestone Industry Code.

In the limestone industry our assessment for code administration alone is over 5 percent of our gross sale price, being 2 cents per foot on rough quarried blocks, which sell for 35 cents per cubic foot on sawed slabs, which is the bulk of our business. The assessment is also 2 cents per cubic foot and the selling price is 77 cents. These extra taxes added to other increased costs on the slow market for our product are a burden and not a help. Bid filing in the cut-stone industry is slowing up the consummation of sales and retarding fair competition because the small bidder cannot afford to hire the services of expert estimators who cannot be obtained at a moment's notice to fill out all the technical blanks so that he may file his bid with the code authority a certain number of hours before the letting date, etc.

The extra cost of approved forms, summary sheets, stationery, time involved in filing, and computing needless information which must be sent to code authorities, and the threatening attitude of needless phrases and phases of law, hundreds of pages of reading matter of a voluminous, tiresome, and irritating nature, instilling fear and contempt for the industry in which he is engaged, all keep the small man so busy that he has little time left to work at producing or otherwise using his spent energy in the regular channels of his trade.

If business needs a child labor law and minimum wage law, such a law can be had without discouraging and disrupting the initiative of the individual who tries to maintain a small business and who cannot lift himself by his boot straps. Thousands of small industries have used their surpluses and have wisely cut down their overhead to weather the depression, and if the heavy toll and added expense, disruption of concentrated effort and distraction from undivided attention to producing and sales is further aggravated by the burden of the National Recovery Act, small business will fade out of the picture, and the public will pay the price to large corporations and great combinations who by the twisted intent of the National Recovery Act to their own use will shortly throttle the last breath out of small industry. If recovery is to come through business, the small business man should be aided the same as the large one.

Thousands of small industries have depleted their stocks, and under the present set-up of higher expenses and greater costs, cannot employ more people and pay higher wages until the actual upturn of business warrants such expenditure.

Our present experience leads us to believe that business will never govern itself to the best interests of all concerned, and that the worth while phases of the National Recovery Act such as the elimination of child labor, hours of labor, and minimum wage should be directed and enforced by the Government.

We hope that if the National Recovery Act is extended it will not be the cumbersome unenforceable law that it is at the present time.

Yours very truly,

WM. QUISING.

J. H. McADEN, INC.,
Charlotte, N. C., March 22, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, N. C.

DEAR SIR: We are writing to ask that you allow the National Recovery Act to die in June and do not renew it or extend it in any way whatever. We believe that it is illegal and unconstitutional and should be repealed at once. As it is almost at an end, we think it would be proper just to let it expire in June.

After experience with it we do not consider it is at all necessary, and we do not think it has accomplished nearly as much good as it has evil and do not believe in the future that it can be of any substantial benefit to the country. In fact we think it is holding back the country and helping keep it in the depression. We are opposed to this act and believe that the average people who operate under it are decidedly opposed to it. We consider it an un-American form of control which is violative of States' rights and fundamental American principles and ask that you do not extend it or continue it in any form or manner whatsoever.

We do not believe that any possible ill effects which may result from its expiration in June will be anything like equal to the detriments, dangers, and damages which will be inflicted on the country by its continuance. We have no patience whatever with the view that it will be disruptive of business not to continue it.

This letter is written to all members of the Senate Finance Committee in response to a communication received this morning from our code authority suggesting we get in touch with you regarding it. Instead of writing you to continue it in whole or in part, as they suggest, we write you to discontinue it fully and completely.

Yours very truly,

J. H. McADEN.

HAUCK MANUFACTURING CO.,
Brooklyn, N. Y., March 23, 1935.

SENATE FINANCE COMMITTEE,
Senate Office Building, Washington, D. C.

GENTLEMEN: On March 19, Mr. W. J. Parker, who is retained as manager of the Code Authority of the Industrial Oil Burning Equipment Manufacturing Industry, circularized the members of the industry and of its code on the code authority's letterheads, in effect advocating the continuance of the National Recovery Act, and urging members of the industry to communicate with your committee.

The writer is a member of the code authority of the industry, and wishes to advise you (and by means of a copy of this also Mr. Parker) that the use of the code authority's letterhead was unauthorized. Further, it may interest your committee to know that not one member of the code authority feels that the National Recovery Act should be continued.

Speaking for this business alone, we have found that the National Recovery Act has been an expense, an annoyance, and a handicap, and we trust that its extension will not be authorized by Congress.

In referring to the expense and annoyance, we also have in mind that the slight increase in our business, whether or not due to the National Recovery Act, has not resulted in any material benefit to this company on account of the fact that our costs have risen, whereas our sales prices must of necessity remain where they were.

Yours very truly.

H. T. GERDES, *President.*

TICKNOR BATTERY MANUFACTURING CO.,
Jacksonville, Fla., March 22, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

OUR DEAR SIRS: We say scrap it in big letters. 'Tis the big fellows eating up the little ones and nothing else. Especially in our line. Thirty-six small battery plants in Florida will have to quit. For Heaven's sake, let us alone. We can live and do honest work if let alone.

Land of liberty, of thee I sing—or not.

Yours truly,

A. R. TICKNOR.

[Enclosure to above letter of Mar. 22, 1935]

NATIONAL CODE AUTHORITY,
ELECTRIC STORAGE AND WET PRIMARY BATTERY INDUSTRY,
New York, N. Y., March 21, 1935.

BULLETIN NO. 23—TO THE ENTIRE INDUSTRY

EXTENSION OF THE NATIONAL RECOVERY ACT

There is a very grave danger that the National Industrial Recovery Act may be scrapped or at least robbed of essential details unless pressure is immediately brought to bear upon unsympathetic Senators and Congressmen.

According to reports reaching us, the Senate Finance Committee is apparently opposed to National Recovery Act as a general proposition and is particularly hostile to the trade practice provisions now contained in codes.

This hostility extends through the Senate, and among the members of Congress, and the cause of this opposition is the large number of letters which Senators and Congressmen have received, complaining of the effect of National Recovery Act in general and against the trade practice provisions of certain codes in particular.

Unless there is registered in Congress, and particularly with the members of the Senate Finance Committee within the next few days an industry sentiment favorable to National Recovery Act, then the report of the Senate Finance Committee is certain to be in opposition to any continuation of trade-practice rules in codes.

Labor provisions will be retained either in codes or through new special legislation, but all rules of fair competition will be scrapped unless there is positive evidence from industry that the retention of these rules is vitally necessary.

I do not know what your attitude is toward our code. I do know that all of our fair-trade-practice rules have not worked as well as we might have wished, but on the whole they have been beneficial, and it would seem a shame to go back to unrestrained competition.

Some of the more obvious benefits thus far derived from our code are:

1. The definite 90-day guarantee with the fixed adjustment periods for batteries of different capacities in the different groups.
2. The uniform terms of payment.
3. Stricter observance of proper branding.
4. Less unfair competition through the misuse of seconds and discontinued lines.
5. Better control of the rebuilt-battery situation.
6. Less consignment, less misrepresentation in advertising, and less selling below cost.

Now, if you want to retain the trade-practice provisions of your code, I urge you to write to the members of the Senate Finance Committee, and to the two Senators from your State.

Tell them in your own way as a citizen and as an individual business man:

1. Why you consider the National Industrial Recovery Act necessary.
2. What the National Recovery Act and the code has accomplished for you.
3. What the effect will be on your business if the act is permitted to expire.
4. What you hope or expect your code to accomplish in the future.

We all know that you can't pull a rabbit out of a hat, and that nothing is perfect, but since June of 1933, as a result of the National Industrial Recovery Act, we can point to some very definite accomplishments.

1. Over 3 million people reemployed.
2. Purchasing power increased by about 3 billion dollars.

3. Hours of labor decreased.
4. Child labor abolished.
5. Considerable cutthroat competition eliminated through the fair-trade-practice provisions of codes.

(The members of the Senate Finance Committee herein referred to are listed below, and all may be addressed in care of the Senate Office Building, Washington, D. C.)

I think the majority in our industry feel that the act as a whole has been beneficial. If you honestly feel that National Recovery Act has been helpful, let me urge you to write and express your views unless you want to see an industrial upheaval and a return to perhaps even worse business conditions than we experienced early in 1933.

SENATE FINANCE COMMITTEE

Pat Harrison, William H. King, Walter F. George, David I. Walsh, Alben W. Barkley, Tom Connally, Thomas P. Gore, Edward P. Costigan, Josiah W. Bailey, Bennett Champ Clark, William Gibbs McAdoo, Harry Flood Byrd, Augustine Lonergan, James Couzens, Henry W. Keyes, Robert M. La Follette, Jr., Jesse H. Metcalf, Daniel O. Hastings.

Yours very truly,

FRANK E. CONNOR,
Secretary, Code Authority.

[Enclosure to above letter of Mar. 22]

ORDER NO. 40–22, NATIONAL RECOVERY ADMINISTRATION, INTERPRETATION

Name of code: Electric Storage and Wet Primary Battery Industry Approved Code No. 40.

Applicant: The Boston Regional Office.

Facts: Schedule II, section 2 of the code provides as follows:

Guarantees an adjustment policy: Every storage battery shall be covered by the following standard guarantee, and no battery shall be covered by an adjustment policy for periods longer than are provided for in the following standard adjustment policy.

Standard guarantee: The manufacturer agrees to repair or replace at his option, for the original user, f. o. b. factory, or at any authorized service station, without charge, except transportation, any battery of his manufacture which fails to give satisfactory service within a period of 90 days from date of sale to the original user.

Standard adjustment policy: The manufacturer further agrees, after expiration of the 90 days' guarantee period, to replace with a new battery on a prorata basis for the original user, any battery which fails in normal service.

A manufacturer contends that the guarantee period of 90 days is a minimum period and a contrary opinion is expressed that same is a maximum period.

Question: Is the 90-day guarantee period provided in schedule II, section 2, a minimum or a maximum period, or both?

Interpretation: The 90-day period is the maximum period for which free repairs or replacements may be made and the minimum period, prior to the expiration of which no prorata adjustments may be made.

NATIONAL INDUSTRIAL RECOVERY BOARD,
By BARTON W. MURRAY,
Division administrator, division 2.

February 21, 1935.

Approval recommended: B. T. Romney, code legal adviser; Dexter A. Tutein, deputy administrator, division 2. Found not inconsistent with established policy; E. M. Jeffrey, chief review division.

VERENES ICE CO.,
Aiken, S. C., April 16, 1935.

Hon. PAT HARRISON,
United States Senate, Washington, D. C.

DEAR MR. HARRISON: We beg to confirm our telegram of even date, wherein we voiced our opposition to the Ice Code now in affect. In so doing we were prompted by a lengthy telegram addressed to the various ice manufacturers, in

this State by Kline E. Harris, who, we understand, is secretary of some ice manufacturers' organization.

In this telegram are quoted excerpts of another message received by him from Leslie C. Smith, secretary of the National Association of Ice Industries, in which the situation is termed as "critical." We are urged, as each manufacturer is urged, we suppose, to communicate with our Representatives in Congress, urging them to support the present code. In our telegram we advocated the opposite course.

As is true of many codes and many industries, the small operators are not represented in the various codes, nor have they really had a part in the formation of these codes, while the larger operators also see to it that they are amply represented. For instance, it is natural to suppose that the Great Atlantic & Pacific Tea Co. would have a representative in Washington in the interest of the Grocers' Code, whereas the hundreds of thousands of small independent grocers would find it difficult, if not impossible, to send representatives. With particular reference to the ice industry, we wish to reiterate that adherence to the code placed us in the red last year for the first time, a heavy loss resulting from the limitations placed on us and our operation.

We know many instances where an ice manufacturer is permitted to give poor service, charge unreasonable prices, and sell filthy ice. Since the code gives them a monopoly the ice-consuming public have no alternative, while if matters were left to develop by natural economic laws, it goes without saying that the prices would be more reasonable, the service more courteous, and the negligent manufacturers would take the trouble to wash their ice cans. With reference to our particular case, we have been excluded from the major part of Horse Creek Valley, in our own county and State, in favor of Georgia manufacturers, who had been recognizing this territory as rightfully belonging to Aiken and had relinquished for a quarter of a century.

This matter is of vital importance to us and we are voicing, we believe, the sentiments of a vast majority of small operators in respectfully urging that you ignore petitions for the perpetuation of this code and the attendant limitations on private initiative.

Yours very truly,

VERENES ICE CO.,
E. A. GREGORY.

YORK ICE MACHINERY CORPORATION,
Philadelphia, Pa., March 18, 1935.

Hon. A. HARRY MOORE,
United States Senator from New Jersey,
Washington, D. C.

DEAR SENATOR. I understand that the administration is now considering extending the life of the codes with view to making them more or less permanent. With this understanding in mind, I enclose herewith a copy of the Ice Industry Code and draw your attention to article XI. You will see by this, coupled with the fact that this particular code administration is in the hands of established ice manufacturers, whose first interest is to limit competition, that establishment of new plants has become almost an impossibility and that therefore all of us who have all our interests tied up in the manufacture of ice-making machinery have been seriously affected.

Further, many hundreds of mechanics engaged in such manufacturing and who heretofore were always able to make a good living have been forced to look to other lines, already overcrowded, to find employment with the result that many of these worthy men have been forced to accept relief.

So long as the code was considered a temporary expedient, we were perfectly willing to work with the administration, even though we realized that it cost us fully 80 percent of our business in this line. However, we are not in favor of the extension of the code with article XI as it now stands. We see no reason why we should stand idle while our business interests are being sacrificed to this extent.

This article XI is so radical as to absolutely out-Hitler Hitler. The permanent limiting of legitimate business enterprise is so contrary to American ideals as to be offensive to all who still think that we can get along without accepting socialism as a theory of government and follow it out in practice.

I write you this letter so that you will see the ice-machinery manufacturers' side of this question and will therefore use all your efforts in getting article XI of this code eliminated.

Respectfully yours,

FRED. W. MAYER.

THE NATIONAL SURVEY,
Chester, Vt., April 1, 1935.

The CHAIRMAN COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

DEAR SIR: We understand that your committee is investigating the operations and results of the National Industrial Recovery Act. This organization operates over 14 Eastern States and has very numerous contacts through its salesmen with businesses both small and large, but particularly small businesses throughout the East and New England. From the nature of our work and the extensiveness of our contacts we of course get a very much better picture of conditions than that accorded the business man with a local business or with a business dealing in large units or in a business selling to one class, as we sell to all classes.

A year ago we found very little support for the National Industrial Recovery Act and a great deal of condemnation. At the present time we find no support at all and unanimous condemnation of its operations as a serious detriment to business and to recovery.

Furthermore, we find everywhere that the codes are circumvented, disregarded, and "bootlegged." The dire results of this organization have been so forcefully brought home to us through numerous contacts and the harm done is manifested in such a multitude of ways that any enumeration would be hopeless from the start. It is our earnest hope that this organization will be totally and completely done away with as not only a wasteful and unnecessary Government expense, but an exceedingly harmful interference with normal business recovery.

Very truly yours,

LAWTON V. CROCKER, *President.*

BARNARD & LEAS MANUFACTURING CO.,
Moline, Ill., March 22, 1935.

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

DEAR SIR: We read the various reports from many angles with reference to the future of the National Recovery Act.

We have been conforming to this act as best we can, having an association and code.

During the past year, that is, 1934, we spent several hundred dollars supporting this proposition. The benefits we have received consist of a material reduction in volume of business with an added expense.

The trade which we serve, that is, the flour milling industry, and a large portion of the units are at the present time almost forced out of existence and operation by endeavoring or being brought under a code.

We refer to the smaller units, which are forced out of business by a few of the larger combinations, and if the existing conditions are continued it simply means the closing of thousands of small flour mill plants throughout the country, throwing out many thousands of workmen and of course means our closing up.

Due to these conditions, our business so far in 1935 is below the latter part of 1933 or the forepart of 1934.

It will be obvious to you that in view of these conditions and the fact that we would all like to have a chance to exist, we would be very glad indeed to see the National Recovery Act pass out in a natural and quiet going June 16, 1935, as we feel it would be quite an advantage to us and to all of the small industries throughout the country.

On the other hand, if it continues in anything like its present form, it will mean a large increase on the relief rolls and a monopoly confining the volume of business to the large concerns in mass production.

We simply mention these things, hoping that through your influence some condition may be brought about in this act that will give everybody an equal show.

Yours very truly,

W. S. BRASHEAR, *President.*

B. & O. Battery Manufacturing Co.,
Huntington, W. Va., April 4, 1935.

Senate Finance Committee,
Senate Office Building, Washington, D. C.

Gentlemen: I am writing you this letter in regard to the National Recovery Act as it applies to my particular business. This letter may be a little long, but if you have the interest of the small industries at heart you will read it.

About 13 years ago I started a small battery factory in this city. At that time batteries were only sold through battery dealers; tires through tire dealers. Since that time tire dealers have taken on batteries and battery dealers have taken on tires. This partly eliminated some of the sale of my product here. Later tire manufacturers took on a line of batteries and told their dealers, "If you sell our tires you got to sell our batteries." And automobile manufacturers took on a line of batteries and told their dealers, "If you sell our cars, you have got to sell our batteries." This again eliminated part of our sales. Later the chain stores came into the city with what we thought then were cutthroat prices and this again eliminated part of our sales. Then gasoline companies took on batteries and told their dealers, "If you sell our gasoline you have to sell our batteries." This eliminated still more of our sales. This all leads up to chain-store merchandising.

We were able to compete with all this and still stay in business and pay our employees a living wage. Due to the fact that our factory is small our product is made almost entirely with hand labor. We had to compete with a machine-made product and yet we were able to hold our own and still pay our employees satisfactory wages. Then the darn National Recovery Act came along and told us that we were expected to shorten the hours of labor and employ more help and pay more wages per hour. And in doing so we were told that we would be able to get more money for our product and service, to compensate us for doing so. Having the interest of our country at heart we gladly complied with all this.

Then the code authority started to send reports to fill out and in order to comply with all these reports I was compelled to hire extra office help to do so. Then the Government through the code began to tell us how to manufacture our product, and in order to do this I was compelled to invest several hundred dollars in new equipment which was quite a sacrifice on our part, due to the fact that we are small in the industry. Since the code has been put into effect, in place of being able to get more for our products we have been compelled in order to meet competition to make several cuts in prices, and we were still able to keep our employees at work at a living wage.

Recently a store has been opened in this city, known as the "Liquidators", selling what they call "factory surplus", actually selling batteries, tires, and other accessories below factory cost. If the Government expects me to meet this new competition and comply with all code requirements and still remain in business, it just can't be done. I will eventually be compelled to close my little factory and let the Government feed 8 or 10 more families which I have been taking care of.

I am only a West Virginia "hill-billy", but I have sense enough to know that at least 75 percent of our trouble is due to chain-store methods of buying and selling. And the sooner this method of cutthroat competition is broken up by legislation, the sooner our country will revert to normal times.

You can step into a large department store now and get a hair cut, get your shoes repaired, get your eyes fitted with glasses, get restaurant service, or practically anything else that you want, all under one management or ownership. Do you realize what this is doing to the small places of business down the street? That is the reason why you will find so many small vacant store buildings in a town like Huntington, and unless this chain store method of buying and selling is eventually broken up into units, there will be an explosion in this country that will jar the foundation of our Government.

I will tell you frankly that from now on I am going to conduct my business in such a way that will satisfy my customers and my employees regardless of the code authority, and if the Government through the code wants to law me out of business, I will gladly be relieved of the responsibility of taking care of these families, as I feel that I have this responsibility, due to the fact that these employees have worked for me faithfully during the times that I was able to make a little money.

Yours truly,

R. J. Ball, *Proprietor.*

THE GRIFFITH LABORATORIES,
Chicago, April 1, 1935.

Hon. PAT HARRISON,
Senate Chamber, Washington, D. C.

DEAR SIR: I have carefully watched the passing review going on in your committee referring to the National Recovery Act extension bill.

The people are against this bill all over the country. They feel that monopoly should not be encouraged and price fixing should not be encouraged and that every man, both large and small, should have an equal chance to get ahead in business as American men have been able to do for the last hundred years. The intention of the National Recovery Act was to raise prices so that manufacturers could employ more people and we found that raising of the prices increased monopolies. The small man was squeezed out because his community of sales was too small to stand any increase in his prices. Thus the small business man was destroyed. The larger group could form a monopoly and raise prices, as they did, and no one could stop them because of the antitrust laws which were to be eliminated.

We think the National Recovery Act should die on the 16th of June as was the original intention, and we call upon you to think carefully before you fasten this un-American law on the people. We ask you to work and vote against the extension of the National Recovery Act.

Very truly yours,

E. L. GRIFFITH, *President.*

KOBACKER'S,
Gary, Ind., April 3, 1935.

SENATE FINANCE COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: Regarding the continuation of the Retail Jewelry Code, which is coming up for consideration, we would appreciate it if you would give this matter your valued attention and oppose it.

This code is particularly obnoxious because it prevents the legitimate advertising of price for watch repairing.

We do not know of any other similar restriction to the advertising of a legitimate service to be performed and see no reason for such a restriction to be placed on this item.

We thank you for your attention.

Very truly yours,

L. F. SNYDER.

PEERLESS HOSIERY MILLS, INC.,
Burlington, N. C., April 4, 1935.

FINANCE COMMITTEE,
United States Senate, Washington, D. C.

GENTLEMEN: Recently there have been several press reports of conferences with your committee and big financiers, representatives, of big industries, and Mr. Richberg pertaining to National Recovery Act and proposed or suggested changes in National Recovery Act after June 16.

It seems to us that in justice to small corporations their ideas might well be considered also, particularly since the majority of all employees in the Nation are employed by firms who employ less than a hundred people.

We can speak intelligently only about the hosiery industry, it being the only one in which we are engaged. The effect of National Recovery Act on the small hosiery mill is rapidly becoming disastrous for the reason that when the 89-hour machine law became effective the large corporations begun buying additional machinery to build their production of 80 hours per week operation up to pre-National Recovery Act levels, thereby continually bringing about a greater difference of manufacturing costs between the small mill and the large mill until the small mill operating as he must under code and National Recovery Act rulings is finding it a very tough existence.

If you are going to permit the big corporation to increase production and lower cost at the same time by buying additional machinery, it is very difficult for us to see why we should not be permitted to operate our equipment a third shift. This would give just as many more people work as the new equipment method.

The big mill puts more people on his pay roll and takes the same number off some other because he has increased production by that much without increasing the consumption of his product by a single unit.

The hosiery production is overproduced greater now than it was in 1932 according to code statistics which is only saying that limited machine-hours is only a very temporary relief and in the end only adds to one's troubles.

Yours truly,

R. L. COLEMAN.

IVAN H. GORE,
Columbus, Ohio, April 3, 1935.

Hon. PAT HARRISON,
Senate Finance Committee, Washington, D. C.

DEAR SIR: In the face of continued evidence that construction costs are handicapping the revival of new-home construction, and with the apparent action developing that tends to confirm our conclusion that low-cost-house projects will not be feasible on a practical basis under these conditions; I am herewith urging and requesting on behalf of the Columbus Real Estate Board and Home Builders Organization that, first, you support action that will abrogate the Construction Code now in effect and, secondly, that in any event land development and home building should not be included under the Construction Code.

Recognizing that the building industry must revive before any healthy business relief develops, we shall appreciate all the cooperation which might be given toward bettering these conditions.

Respectfully yours,

IVAN H. GORE,

WHITCOMB & KELLER, INC.,
South Bend, Ind., April 3, 1935.

Subject: Construction Code.

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

DEAR MR. HARRISON: We have been building in normal years about 100 homes and have sold, on time largely, over 2,500 homes. We are quite familiar with the ability of people these days, with their reduced incomes, to pay for homes. We realize that it is impossible for the average home owner to pay for a home built under the Construction Code on account of the high prices caused by the code.

We have always built a good class of homes, but have never paid the amount of wages paid on office buildings, apartments, and other big construction work. In normal years we were able to keep our men at work nearly the year around, and they were satisfied to work for less wages per hour than the wages paid on big construction work, and on account of the irregularity of work on big construction jobs they made more per year on home-building work.

We believe there should be no code whatever governing house construction, but if there is to be a code, we are in favor of the code proposed by the home builders.

With kindest personal regards, I am

Yours truly,

FRED W. KELLER, *President.*

TILO ROOFING CO., INC.,
Stratford, Conn., March 22, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR MR. HARRISON: This letter is prompted by the numerous requests being circulated to flood the Senate Finance Committee with points in favor of the National Recovery Administration. We cannot accede to these requests, but feel that under the conditions it is wise to give you additional information on the other side of the National Recovery Administration question.

Our business in included in chapter VII of the Construction Code. Chapter VII covers roofing and sheet metal, and our experience to date in regard to this code has been as follows:

1. Our section of the industry has no contact with architects or general contractors but deals direct with the home owners, and since the Construction Code and chapter VII are dominated by the large contracting and architectural firms,

our protests in regard to the action they have taken have been completely disregarded.

2. We asked for a separate code, or a separate chapter because our method of doing business is entirely different. We were denied this opportunity, although we furnished figures showing that a large number of firms were employing 25,000 employees.

3. According to conferences in Washington before the Administrator, the code committee drafting the code had 5,000 assentees claiming approximately between 9 and 10 thousand in the industry. At the public hearing in Washington on December 19, 1934, in filing statistics regarding assessments, they claimed there were 25,000 members. In other words, the code was written by 20 percent of the industry.

4. At the time the code was approved they claimed the industry did a business 28 million, but when they wanted a budget of 1¼ million, they suddenly found the industry did 150 million.

5. At the public hearing in Washington on December 19 every individual who talked in favor of the budget and assessment was either on the pay roll of the National Code Authority, or hoped to obtain a paid position as secretary to some regional or local code authority. Not one person who was not going to obtain a monetary return spoke in favor of the budget and plan of assessment.

6. Every day it is more evident that this code is a racket for the benefit of a few who hope to obtain salaries. We sincerely believe that if it were left to a vote of the individual members of the industry, the code would be dead, as they are showing absolutely no interest either in living up to its regulations or in paying assessments. It is being kept alive, if you can call it alive, by the efforts of paid secretaries, most of whom have not received any pay because the assessments are not paid, but who hope to receive pay.

7. Although enthusiastic at first, it was evident in a very short time that a code covering at least 25,000 members (and we sincerely believe this figure should be 50,000), composed of firms doing as high as two or three million dollars a year down to individuals doing two or three hundred dollars a year (in accordance with the statement of the Administrator), is absolutely impossible to enforce. The result has been that those firms and individuals with some conscience and responsibility, in trying to live up to the code, have suffered at the hands of those who do not even attempt to live up to the code.

8. The code has caused an unnecessary burden, and if assessments were paid would cause an additional burden, without one iota of benefit to the employees, the employers, or the public.

Very truly yours,

TILO ROOFING CO., INC.,
R. J. TOBIN, *Vice President.*

THE BEAUFORT GAZETTE,
Beaufort, S. C., March 30, 1935.

Senator JAMES F. BYRNES,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRNES: We gather from press reports that a special committee is giving consideration to the redrafting or extending of the National Recovery Administration Act. While we are in sympathy with the general purposes of the National Recovery Administration, we find that the same is not working to the advantage of our people and is a great detriment to us. In fact we have lost more business since the code due to the general increased prices required under the code. We ask you to use your influence as to inserting a provision in the act or code applied to us as to exempt all small printing concerns doing a yearly business of less than $12,000 or $15,000. Our business was down in 1932 to 40 percent of what it was when we organized in 1927. Since the codes have come into operation we have dropped an additional 40 percent.

We would like to have an investigation as to why the State emergency relief administration has in the past, as we understand it, not followed the code governing prices, etc.

Very truly yours,

E. O. WILSON.

HOUSTON OXYGEN CO., INC.,
Houston, Tex., February 22, 1935.

Hon. JOE H. EAGLE,
United States Congress, Washington, D. C.

DEAR SIR: Through the newspapers we notice that you are championing the cause of small manufacturers from being oppressed by the laws or codes that emanated from the National Recovery Administration.

Through the appeals of the newspapers, as well as those of our President, made to citizens of this Republic that they ignore the depression and use their savings for the purpose of building, creating, and repairing homes, factories, etc., we decided to do our bit by withdrawing our savings and building a small oxygen gas manufacturing plant, in Houston, Tex., for the purpose of manufacturing and selling oxygen gas for welding and cutting of metals and for medical purposes. This plant was finished February 1, 1935, and as soon as we sold the first cylinder of oxygen, we received a complaint from some supervising agency, located in Chicago, Ill., to the effect that we had violated the law and were liable to be prosecuted by the Department of Justice.

We began to investigate matters and here is what we found:

First. That we had two competitors; namely, the Linde Air Products Co., a subsidiary of the Union Carbide and Carbon Corporation of New York, and the Magnolia Airco Gas Products Co., a subsidiary of the Air Reduction Sales Co. of New York.

Second. That the two above-named competitors have for the past 10 or 15 years bought up about 95 percent of the competitors in the United States.

Third. That, being the only two such firms in the State of Texas, they divided the business among themselves, increased the costs to the consumer, and were acting in accord as to terms, price, and other conditions, to the point that many consumers felt that they were oppressed by these two large trusts, without redress, as there was no second or third party from whom to purchase this oxygen.

Fourth. That these two trusts have increased the price of oxygen to those who would not sign a 5-year contract with them. Thus both trusts were able to sign up almost all consumers on contracts.

Fifth. That these two trusts drafted their own code, and thus made it a felonious offense for an independent concern to approach, or solicit the business on oxygen gas, of a consumer with a contract, and as they all had contracts, no one else could manufacture and sell oxygen gas.

Sixth. That previous to our actual operations of February 1, these two trusts had broken their own contracts by inducing their customers to cancel such contracts which were to expire within the next 2 or 3 or 4 months, by decreasing prices or by other considerations, thus making new contracts for the next 5 years. They did this with the purpose in mind of preventing us from being able to secure any possible business from consumers whose contracts might expire within a few months.

Seventh. That these two trusts have threatened consumers with the refusal to sell them, or to increase the price on, carbide and compressed acetylene gas, if they purchase oxygen gas from us.

Eighth. That these trusts have refused to sell us carbide on the basis of wholesale carload lots, and have managed it so that European countries would not sell us any carbide at any price; carbide being the raw material from which acetylene gas is made, which gas is used in conjunction with oxygen gas for cutting and welding of metals. However, the ratio of consumption of these two gases by industries is about 75 percent oxygen and 25 percent acetylene gas, and we can sell our manufactured oxygen at a fair profit, provided these two trusts, with the help of the Department of Justice, will not cause us to be fined, shut down, or thrown in jail. A citizen would feel very bad if he could not purchase a pound of sugar in one store or a pound of coffee in another store; nor would any citizen care to sign a contract with any manufacturer that, for a period of 5 or more years, he must purchase only one kind of bread or one kind of automobile. We believe the same condition should prevail with regard to the manufacture and sale of oxygen gas, and that, if a consumer wants to buy it from an independent manufacturer or from us, we will be free to sell it to him without the threat of going to jail in so doing.

Ninth. That we will obligate ourselves to pay salaries and work hours as per proclamation of our President, and that we will always sell at a fair profit.

Tenth. That our total production of oxygen gas is only 5 percent of the amount used in the State of Texas, and as long as we spent our money in building this plant at a cost of $35,000, we feel that as free citizens of this Republic, we are

entitled to earn our own living by engaging in the manufacture and sale of oxygen gas, without being threatened by prosecution.

Eleventh. That we did not know, when we built this plant, of the existence of a code for this industry which makes it a felony to sell oxygen gas to customers who want to purchase it from us. Had we known this we would not have built anything.

Twelfth. That we did not sign such a code, nor the National Recovery Act because the plant was finished February 1, 1935.

Thirteenth. That we do not care to belong to the code, but would gladly sign the National Recovery Act, because our business is not interstate, it is too small, whereas the two trusts have hundreds of plants all over the Nation, and for that reason we want to be exempt from a code established by the trusts with the purpose in mind of closing the door to any new enterprise, as well as of not permitting the customers of Houston to purchase their oxygen requirements from a third party.

Fourteenth. If the time has come, however, when the younger generation has no opportunity in business and the law of the land will say to the young men that they go to seed and not be permitted to go into business and there are no jobs to be secured; and if you will find that we will have to comply with this egotistical, impossible code, then let either the Government or the two trusts purchase our plant and give us jobs so that we can make a living in the city of Houston, Tex.

Fifteenth. My father and I are Democrats; have voted the ticket since 1921; we own our home; we own this oxygen plant; we have always paid taxes; we were never bankrupt; we have never had a law suit, and we have always worked hard and saved so that some day we might become independent as manufacturers.

Sixteenth. We wish, dear Senator, that you would look into this case seriously and advise us whether to go on and work, or to sell under duress to the trusts. We do not want to sell, because this is the means of our earning a living, but we also desire to keep up our record as long as we live, through honesty, fairness, and hard work, and not to be framed by an unnatural law that may send us to jail.

Wishing you the best of health and success, my dear Senator, we remain,

Respectfully yours,

HOUSTON OXYGEN CO.
AL SMITH, *President.*

(Copies to Hon. Patrick McCarran, Senator from Nevada, Washington, D. C.; Hon. Pat Harrison, Senator from Mississippi, Washington, D. C; Hon. Donald Richberg, Director of Recovery, Washington, D. C.)

NEW YORK BOARD OF TRADE, INC.,
New York City, April 12, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR HARRISON: The New York Board of Trade favors the abandonment on its expiration date, June 16, 1935, of the National Industrial Recovery Act and opposes the enactment of any similar legislation to replace this act or maintain its agency, the National Recovery Administration.

The statement of the reasons upon which this conclusion is based is attached hereto.

The New York Board of Trade is an association of business men and its roster of members is a very accurate cross section of the diversified business interests centered in New York City. The attached statement and resolution was mailed to each member 5 days in advance of the meeting.

It is our firm belief that experience for almost 2 years with the National Recovery Act has amply demonstrated that it has failed in its primary purpose. We believe other established agencies of government could and should be empowered to handle all the problems presently under the jurisdiction of the National Recovery Administration, and we believe that there is no need of this present costly, cumbersome agency of doubtful legality.

We, as business men, earnestly request you to give your most thoughtful consideration to the new bills introduced designed to continue the National Recovery Administration.

Respectfully yours,

M. D. GRIFFITH,
Executive Vice President.

THE NATIONAL INDUSTRIAL RECOVERY ACT

The National Industrial Recovery Act was enacted as an emergency measure for the purpose of encouraging industry into activity and of absorbing into industry appreciable numbers of the unemployed.

The act was proposed as a method of establishing a partnership between Government and business at a time when all the normal agencies usually adapted to this purpose were prostrated.

In return for the provisions for collective bargaining and for the protection afforded labor, the employers were promised codes of fair competition having the force and effect of law. All the abuses of price cutting and trade wars were thereby to be abolished

Scarcely had the first codes been adopted when the National Recovery Administration instituted oppressive practices against industry. The codes materially increased production costs while the administration strove to maintain low distribution and consumption prices. Industrial strife manifested itself in an epidemic of strikes.

Most of the experiment under this act has proved a failure and a dangerous obstacle to genuine, substantial industrial recovery. Four features of the act have proved beneficial to a degree: (1) The elimination of child labor; (2) collective bargaining; (3) the establishment of minimum wage rates; and (4) the institution of maximum work hours. But even these benefits are of doubtful permanent value and they all depend on the permanent enactment of this act.

Meanwhile, there are departments and bureaus already established in the Government which can and should carry out normally the functions of the National Industrial Recovery Act and National Recovery Administration. They should be put in condition so to function.

Furthermore, the weight of legal opinion, the growing popular conviction, practical experience, and even the Government's own authorities are opposed to the act on the fundamental grounds of its unconstitutionality and its practical unworkability in a country and upon a people constituted as are this Republic and the American people.

The honest, practical, sensible thing to do is to return to American first principles and to adapt those departments of government already constituted to meet the changed conditions and requirements of our times in a normal manner.

The directors of the New York Board of Trade, therefore, recommend the adoption of the following resolution:

Be it resolved, That the New York Board of Trade favors the abandonment on its expiration date, June 16, 1935, of the National Industrial Recovery Act and opposes the enactment of any similar legislation to replace this act or maintain its agency, the National Recovery Administration.

DUNTEN & NORRIS,
La Grange, Ind., March 18, 1935.

Hon. PAT HARRISON,
Chairman Finance Committee of the United States Senate,
Washington, D. C.

DEAR SENATOR: We have been advised by the Indiana Retail Hardware Association that it is not compulsory for our firm, which deals in retail farm equipment and runs a general hardware store, to comply with the code, and yet Mr. David E. Darrah, executive manager of the Central Code Authority for Retail Farm Equipment Trade, claims that it is necessary that we pay a percentage on our business to help operate their office.

The town of La Grange has a population of about 1,800, and our understanding is that we are exempt from all codes. He writes us as follows: "The official budget period of this code will close March 31. The code is law. It is not voluntary. It applies to all dealers selling farm equipment. Assessments are mandatory. Failure to pay on the part of any dealer leaves this code authority the option of certifying his name to the Compliance Division at Washington. No exception can be made in your case."

It is our desire to cooperate with the Federal Government in any way possible, to obey all the rules and regulations that come within our knowledge, as we believe the Government in turn is doing its utmost to aid us, but we do want full under-

standing of these matters before we pay out money, which, under present conditions, is damned hard to get.

Sincerely yours,

P. H. DUNTEN.

P. S.—Mr. David E. Darrah's address is 400 West Madison Street, Chicago, Ill.

WEST SIDE CUT STONE CO.,
Chicago, April 11, 1935.

Senator PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: In regard to the bill now pending in Congress for the extension of the life of the National Recovery Act, I wish to say that I sincerely hope that you will be opposed to its continuance.

The code for the limestone industry was made up solely by the big quarry owners in the Indiana limestone belt district for their benefit only. They set the price at which we are to estimate our work while they themselves do not figure accordingly. It is impossible for us to compete with them. Prices today are lower than before we had a code. All we do is support the officials of the code office. Everybody in the industry does as he pleases, so why continue the code?

Very truly yours,

H. BREDFELDT.

MARCH 23, 1935.

Hon. Senator HARRISON,
Washington, D. C.

DEAR SIR: Being one of the victims of the National Recovery Administration, I feel like expressing a few facts in regards to same as it may help you in your investigations right now.

Being a small manufacturer my experience is that the only way to get exemption from the code authorities, regardless of whether it is a Dress, Coat, or Blouse Code is by bribery and graft. This ruins the small business man who cannot afford to pay hundreds of dollars every time he wants certain exemptions.

I find that the National Recovery Administration has instigated more racketeering and grafting in 1 year than prohibition did in all its years.

If the National Recovery Administration will last much longer you will have every small business wiped out, and you will just be wondering at the army of criminals it raised in so short a time.

I also know that the National Recovery Administration on account of a minimum wage has caused more unemployment of old men and old women and young men and girls who might not be very efficient. It has also caused a reduction in earnings for experienced and good employees, since the 11,000,000 people unemployed and employers can afford to hire the best type of help for minimum wages.

If the Senate would only adopt Senator Black's bill so that there would be a strict law that the maximum working hours should be 30 hours per week, we would be on the road to prosperity now, inasmuch as with the National Recovery Administration the working hours still average about 50 hours per week.

I would also suggest that they should eliminate for a year or two every woman or girl whose husband or father is earning more than $5,000 dollars per year.

Very truly yours,

AARON H. KALIS,
Jackson Heights, Long Island, N. Y.

BOSTON, MASS.,
March 23, 1935.

CHAIRMAN OF SENATE INVESTIGATING COMMITTEE OF
NATIONAL RECOVERY ADMINISTRATION:

We believe that 70 percent of the automobile dealers are violating the code with the result that those dealers trying to live up to the code are suffering materially. We also believe that, with the high prices set by pricing committees, makes the consumer pay much higher prices for a used car than their real value.

This in itself retards volume. Over 70 percent of the prices in Code Book are set by a small group of dealers and therefore makes our code a price fixing code.

THE HENLEY KIMBALL CO.

TOWNSEND SASH, DOOR & LUMBER CO.,
Lake Wales, Fla., March 30, 1935.

Hon. DUNCAN U. FLETCHER,
Washington, D. C.

MY DEAR SENATOR FLETCHER: This letter is written regarding lumber codes. We are both manufacturers and retailers.

In the manufacturing department of our business, we operate under the Lumber and Timber Products Code as administered by the Southern Pine Association.

We own six retail lumber yards and in our operation, we operate under division no. 4 of the Retail Lumber and Building Material Code Authority, Orlando, Fla.

The leaders in the Southern Pine Association are a high-class lot of men. They have worked conscientiously and very hard to cooperate with the National Recovery Administration, but the National Recovery Administration has made many promises about enforcement and cooperation that have never been kept, and now the *Belcher case* appeal will be dismissed at the request of the Department of Justice. In our sawmill operation, we have operated and we are operating now 100 percent on the Lumber and Timber Products Code, while all around us other mills are not and have not been operating under this code. They have not observed production control or the labor provisions of the code. They have broken everything about the Lumber and Timber Products Code, and those who have been trying to operate on the code have to compete with that class of operators. You can imagine the disadvantage. If the National Recovery Administration is not going to give us any cooperation (and they have failed to do so) this Lumber and Timber Products Code should be handed back to the National Recovery Administration with the invitation to jump in the Potomac with it.

The Retail Lumber and Building Material Code has had a similar experience with the Lumber and Timber Products Code, but the writer notes that code authority officials at Orlando are trying to "turn on the heat" now to try to save this Retail Lumber and Building Material Code. This code has been of very little benefit to our six lumber yards and we are paying considerable code fees each month. And in view of past experience with abilities of National Recovery Administration to enforce provisions of the code, it is the writer's opinion that this Retail Lumber and Building Material Code should also be thrown into the Potomac.

Of course, a lot of these salaried code authority fellows are more anxious to see some of these codes continued than the owners of businesses who are paying the code fees. This remark, however, does not apply to the Southern Pine Association.

If National Recovery Administration can give us codes that can be and will be enforced, we are willing to cooperate, and as stated before, we have cooperated and we are cooperating now. But it has cost us some money and the way the things have been handled has caused a lot of mental anguish.

I sincerely hope that your health is good and also hope that you will not try to work too hard as the hot weather comes on, and with very best wishes, I am,

Sincerely yours,

J. F. TOWNSEND, *President.*

EDELBLUTE MANUFACTURING CO.,
Reynoldsville, Pa., April 16, 1935.

Senator HARRISON,
Chairman of Finance Committee the United States Senate,
Washington, D. C.

DEAR SIR: We understand that the future of the National Recovery Act is in the hands of your committee for the present. If so, the following information is offered on that subject.

This business is a small manufacturing business engaged in the manufacture of iron and steel specialties for the engineering and industrial trades. When President Roosevelt put out his original agreement, we immediately subscribed to it. The provisions concerning minimum wages, maximum hours, and working conditions were no burden to us whatever, as we already paid more than the minimum. Neither has there been any production control of our products, nor has there been any price-fixing control on the selling prices of our products.

Where the code authorities of various industries have caught us very hard has been in the price-fixing policy of firms, from whom we purchase the major portion of our raw materials and semifinished materials. This has proven such a burden, that it is impossible to continue this business much longer. It is better to wind it up and go out of business, or else go bankrupt eventually.

As soon as the National Recovery Administration permitted the Sherman Act to be abrogated and allow the suppliers to combine for the purpose of price fixing, they put into effect such scales of prices that are nothing short of outrageous. This was not universal, for suppliers of certain standard steel forgings, steel chain, nuts and bolts and some other items either had moderate advances in price or else no advance at all.

Our largest expenditure is for steel and iron castings, and in the foundry industry we have found a very strong combination of all foundries to raise the prices beyond all reason. They state that they are compelled to do this by the code authority, but everyone knows that they themselves support and are the code authority. We will give you a few examples. There is one steel casting that we have used for 12 years. Over a 10-year period, from 1923 to 1933, we had this casting made at four different foundries and the average price over that 10-year period was 10½ cents per pound. The new price under the National Recovery Administration code had been 15.3 cents per pound, which is an increase of 45 percent. Another steel casting had been made for 7 years by three different foundries at an average price of 8½ cents per pound. The National Recovery Administration code price has been 13.1 cents, which is an increase of 54 percent. A malleable iron casting, which had been furnished over a 5-year period by two different foundries at an average price of 5½ cents per pound, now carries a price of 12½ cents per pound, which is an increase of 127 percent. One foundry told the writer that they would still be able to make this casting at a profit at the same old price, but were compelled to charge the new code price. Another malleable iron casting was furnished at an average price of 7 cents per pound over a 5-year period by three different foundries. The new price on this casting has been 11.9 cents, which is an increase of 70 percent. We can recite many more examples but we believe the above examples are sufficient. Their code authority will tell you that they do not fix prices, but that it is done by open price filing. Any foundry man is outlawed who dares to file prices lower than their code schedule.

A free and open market is the only American way of doing business. Price fixing and production control should be eliminated entirely. The Sherman antitrust laws should be returned and enforced. If not, we cannot continue operating this business at a steady loss any longer, and will be forced to shut up shop and quit. Business has been so harassed, regimented, and ruled by bureaucrats, that it has retarded recovery and will soon eliminate all business.

The quicker that the entire National Recovery Administration is buried out of existence, the quicker we will have real recovery. While you are at this burying business, you might include the "brain trusters", alphabetical bureaucrats, and similar crackpots and cankers who seek to destroy America. A year ago, the idea was prevalent that "the President could do no wrong". Not so now. He is the man who has broken most of his campaign pledges; debased our currency; violated the Constitution; caused and led us into these fantastic schemes which have practically all failed; and is now forcing a debt-ridden future from which chaos must result.

Very truly yours,

EDELBLUTE MANUFACTURING CO.
T. H. EDELBLUTE, *President.*

THE HENLEY KIMBALL CO.,
Boston, Mass., April 16, 1935

Hon. PAT HARRISON,
Senate Finance Committee,
Washington, D. C.

DEAR SENATOR HARRISON: I noticed in the Saturday edition of the Automotive Daily News that F. W. A. Vesper, president of the N. A. D. A., has written you a letter stating that "30,000 dealers in the United States were interested in continuing the automotive retail code."

I cannot imagine on what assumption Mr. Vesper takes this stand, as there has been no vote taken by the dealers authorizing such a statement and, therefore these must be his own personal views.

It is safe to say that in New England, at least over 70 percent of the dealers are off the code, and those that are on the code in many instances are only living up to it because they believe it is a Federal law and must be upheld.

We have lost money in the automobile business for the last 4 years, but have lost more money under the code than before the code was put into effect. I am certain that if your committee wish to make an analysis to see if the Automobile Retail Code was being lived up to, you would find that in almost every instance the dealer would make a direct violation in order to make a sale.

This code makes me think of the time when we had prohibition—no one was supposed to buy liquor from a bootlegger, but about everyone did.

I believe that if you were to insist today that a written vote be taken from all automobile dealers as to whether or not they would like to continue or discontinue the code, you would find the majority would rule very strongly in favor of discontinuance.

Very truly yours,

F. A. ORDWAY,
President and Treasurer.

THE NATIONAL RETAIL HARDWARE ASSOCIATION,
Indianapolis, Ind., April 16, 1935.

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: On April 12, 1935, the National Retail Code Authority, Inc., by a vote of 7½ to 1, passed and transmitted officially to your committee a resolution which stated:

"Be it resolved, That the National Retail Code Authority, Inc., the body recognized as truly representative of the retail trade 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 National Retail Hardware Association has the largest membership of any national association represented on this code authority. Its representative voted against passage of this resolution because its members are almost unanimously opposed to continuation under code rule, supplemented by the following reasons which we ask to have entered in the records of the hearings on the National Recovery Administration by the Finance Committee.

1. The resolution quoted implies that an overwhelming majority of members of the retail trade subject to this code favor its continuance for a further period of 2 years.

There are no factual data to support such a conclusion. It is estimated that approximately 300,000 retail establishments are subject to the retail code. A large majority of the firms or corporations operating these establishments are not members of the eight associations whose representatives on the code authority voted in favor of this resolution.

These nonmember retailers had no part in choosing these code authority members and have not delegated to them the right to speak for them in legislative or other matters.

The fact is that few, if any, of the eight associations whose representatives favored the resolution have even consulted all their own constituent members as to continuance of the retail code.

2. Such evidence as does exist as to the attitude of the retail trade at large toward the retail code gives reasonable grounds for concluding that the majority does not favor continuance of the retail code.

This is evidenced by the failure of retailers in many communities to organize local retail code authorities for the administration of the Retail Code, and to the inactivity of the majority which have organized, as shown in exhibit no. 4, submitted in connection with the testimony of Mr. Rivers Peterson before your committee on April 12, 1935.

3. The position of the National Retail Code Authority, Inc., has heretofore been that its function consisted solely of administering the retail code and that it was not privileged to act as a legislative body for the retail trade.

In adherence to this policy the National Retail Code Authority, Inc., in connection with a questionnaire mailed to all Local Retail Code Authorities in the fall of 1934, specifically ruled that this questionnaire should not question the members of these Local Retail Code Authorities as to their attitude toward continuance of the Retail Code beyond its present expiry date.

Yet, having given neither local code authorities nor all constituent members of trade associations the opportunity to express their opinions, the National Retail Code Authority, Inc., by the resolution mentioned, assumes the autocratic right to speak for these merchants.

It is the opinion of the National Retail Hardware Association that the resolution exceeds the powers of the National Retail Code Authority, Inc., is an unwarranted invasion of the rights of non member retailers, and that it should have no weight of evidence before your committee.

Respectfully submitted.

HERBERT P. SHEETS, *Managing Director.*

CHICAGO, ILL., *April 22, 1935.*

Thousands of our members report public cannot afford to buy homes at existing artificial code produced levels of constructions cost. Is there not some way we could get relief for home building now from these impossible burdens. There is good potential demand in many cities at present for homes but costs are 30 percent too high. Two thousand home builders of our association are ready to go ahead with thousands of homes as soon as we can be relieved of short-sighted and ignorant regulations. We ask for help now by excluding home building from all codes and hope your committee will give it.

H. U. NELSON,
Secretary National Association of Real Estate Boards.

VIS-O-TUBE CO.,
Chicago, Ill., March 23, 1935.

Senator PAT HARRISON,
Washington, D. C.

DEAR SIR: Permit us to register our opposition to the extension of the National Recovery Act. Its price fixing masquerading as codes of fair competition, is sponsored by the controlling firms, to the detriment of the smaller firms, thus giving them a monopoly of the business. We believe it should be abandoned and let business regain it's freedom from the National Recovery Act nightmare.

Child labor and maximum hours should be enforced by other Government agencies.

Very respectfully,

ARMIN REISS, *President.*

THE CRAFTSMAN PRINTING CO., INC.,
Cincinnati, March 26, 1935.

Hon. PAT HARRISON,
Chairman National Recovery Administration Investigating Committee,
Washington, D. C.

DEAR SENATOR HARRISON: I have been asked to write you a letter concerning the status of the National Recovery Act for the printing industry. Let me say that since our industry has the protection of the National Recovery Act prices have been worse off than without the National Recovery Act.

The printer has a hard time making a profit, because he has been made the banking tool for all the other allied industries—paper, ink, and plates. The printer must pay his bills on a set time limit, yet if he wants to stay in business he must extend credit to his customers. Few printers can borrow money from the bank, and in many cases, neither can his clients. The allied industries, upon whom the printer must depend, have all raised prices on their commodities, and the printer finds himself with less chance for making a legitimate profit. I am sure the income tax reports of the printers will bear me out in this statement.

I am speaking from the standpoint of the small printer, and for the benefit of the small printer.

Yours respectfully,

I. M. LAIBSON.

BEACON DEVICES, INC.,
North Tonawanda, N. Y., March 28, 1935.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We are in receipt of circular letter from the Carbon Dioxide Institute, Inc., requesting that we write you and express our opinions in regard to the National Recovery Act as to whether it should be continued or not and we wish to go on record as being utterly opposed to every phase of the National Recovery Act. We find from our personal experience that the National Recovery Act has greatly retarded our progress and from observation, we know that it has retarded the progress of other concerns with whom we come in contact. It is unfair to the workmen, both skilled and unskilled. It prevents both employee and employer from making the most of the opportunities that are before them and we firmly believe that it is the restriction of the National Recovery Act that is at fault, and should it be removed from industry, that rcecovery would be materially hastened.

We wish, therefore, to go on record as being absolutely opposed to the National Recovery Act in every detail.

Yours very truly,

C. R. PHILLIPS.

COLUMBUS, OHIO, *April 19, 1935.*

Senator PAT HARRISON,
Chairman Senate Finance Committee,
The Capitol, Washington, D. C.

I note that General Johnson has criticized the Pharis Tire & Rubber Co. and questioned my statements made last week to your committee. It is difficult to follow General Johnson's figurative language and his extravagant claims that are often purely imaginary. What his secret intentions were when he ordered price fixing for our rubber-tire industry is unimportant. I must judge from what he did and from the deadly effects produced thereby. He implies that the Pharis Co. was concerned only because of our sales to mass distributors and large retail outlets. The truth is that our weary fight was waged for the very life of our little retailers without whom we could not live. The Pharis has no company stores and no service stations and no great automobile companies to whom to sell millions of tires for original equipment and must preserve its little retailers or quit business. When General Johnson says that price fixing was intended to protect the little dealer he either accepts his ideas from the big manufacturers or wholly closes his eyes to the truth. This new argument fostered by Johnson and Richberg will not save price fixing, for the small dealer knows that it ultimately destroys him. Pharis does not sell to giant distributors like Sears, Roebuck and Montgomery Ward and Standard Oil, all of whom buy chiefly from the big manufacturers. Does not General Johnson know that Pharis fought a long time to defeat allocation and production control? Has he ever learned or stated the fact that the big manufacturers did not observe price fixing?

Does he now know that in Columbus, day after day, we checked and found that while the little fellow was adhering to the fixed prices the big fellows under the guise of competition had come down to the little fellow and thereby destroyed all differentials? Does he not know that as we warned his deputy administrator the minimum prices for the little fellow surely became the prices for the industry? Does he now know that the enforcement of price fixing degenerated into such lawless nonobservance and into such basic injustice to the little fellow that it was impossible to continue it? Has he never learned that the price wars of the old days were not caused by the little fellows but by the big manufacturers trying to take advantage of each other? General Johnson's bombastic attempt to assume all the sins and mistakes of the National Recovery Administration appears silly to those of us who were kept busy dodging his brickbats and his dead cats, when to doubt the divinity of his ideas or commands was to incur the wrath of his vocabulary. He fails to see that those things which he most praises as National Recovery Administration accomplishments could be quickly and simply written into laws by the Congress and enforced by one central commission, thus rescuing business from the terrible incubus of a multitude of codes with all their attendant manipulations, petty tyrannies, and high costs. When I receive the text of the general's address before your committee I shall write you more fully.

JAMES M. BUTLER,
For the Pharis Tire & Rubber Co. of Newark, Ohio

THE FLAT ROCK CANNING CO.,
Flat Rock, Ind., March 27, 1935.

Hon. SHERMAN MINTON,
United States Senator, Washington, D. C.

DEAR SENATOR: We notice that the President has requested Congress to pass a new National Recovery Act bill to take the place of the one expiring in June. We were promised by the Preisdent when this bill was passed that it was only an experiment and would be abandoned if it did not work. In our opinion it has been a total failure. We do not feel that it is necessary to go into any long argument, but will say this, that we do not care anything about the political part of it. We are not strongly partisans.

We feel sure that prosperity is being retarded and has been retarded by the executive part of this administration. To put it in plain, blunt language, we think the so-called "brain trust" should be fired out of Washington.

We are respectfully asking you to vote against any renewal of National Recovery Act.

Very truly yours,

E. C. NEWTON.

ARGUS MANUFACTURING CO.,
Chicago, Ill., April 6, 1935.

Hon. PAT HARRISON,
Senate Finance Committee, Washington, D. C.

SIR: We wish to take the liberty of presenting our views on Senate bill S. 2445, designed to reenact, amend, and extend the National Industrial Recovery Act.

We sincerely believe that the past history of the National Recovery Administration has conclusively proved that it failed of its purpose. Whether the National Recovery Administration has actually retarded business is a matter open to dispute, but the fact remains that it has not helped all business in general. This applies particularly to the small establishment which has been handicapped under the National Recovery Administration while the large industries have been benefited, possibly at the expense of the small industries which have been unable to adopt big-business methods without bankrupting themselves.

The proposed new act would be not only a continuance of practically all of the objectionable features of the present National Recovery Administration, but it has many additional provisions which closely approximate dictatorship over business, employer, and employee, with a consequent surrender of constitutional rights. It is our sincere belief that if business in general is permitted to take the initiative without any hindrance or guidance by governmental control, that industrial recovery will be effected more speedily, satisfactorily, and permanently.

For this reason we believe the present National Recovery Act should be allowed to expire on June 16, 1935, and the proposed new act should be voted out. We sincerely trust that our objection, together with thousands of others which you will no doubt receive, will have your consideration when this bill is brought up for a vote. Will you kindly favor us at your convenience with an expression of your views on this important subject?

Respectfully yours,

J. P. NIELSEN, *President.*

INTERNATIONAL TRADING CORPORATION,
Seattle, March 11, 1935.

The Hon. PAT HARRISON,
Senate Finance Committee, United States Senate,
Washington, D. C.

MY DEAR SIR: Inasmuch as you are in charge of the investigation of injustices against smaller industries in the National Industrial Recovery Administration and its codes, and the monopolistic tendencies under these codes, we are taking the liberty of writing you direct.

For the past 17 years, we have been importers of various hardwoods from all parts of the world. Woods such as teakwood, ironbark, Honduras mahogany, Spanish cedar, Cuban mahogany, lignum vitae logs, rosewood logs, etc. We are strictly importers, not wholesalers nor retailers, and sell to the wholesale yards, shipbuilding and dry-dock firms, and furniture manufacturers. Up to the present

time we have never imported Philippine hardwoods, but have recently completed a connection with one of the most reliable firms in Manila.

Wishing to comply in every way with the National Recovery Administration and its codes, we wrote to the Philippine Mahogany Manufacturers' Import Association, Inc., Los Angeles, the administrative agency of the Philippine mahogany subdivision of the Lumber and Timber Products Industry Code of Fair Competition, requesting information as to what it is necessary for us to do and what forms we must fill out in order to be able to obtain a permit and quota for the importation of Philippine hardwoods.

We received a reply giving us the names of four retail hardwood merchants in Seattle and Portland, and advising us to procure our requirements through one of these firms. The combined quotas of these four would be only a part of the amount we intend to import. They then curtly informed us that they will advise us in advance of the next allocation date, so that we may file our application.

For your information, we understand this administrative agency to be controlled by the three largest importers of Philippine mahogany, who direct the allotment or quota permit which each firm may import each 6 months, allotting to themselves whatever quantity they may desire.

It is our understanding that the recent decision of the United States Supreme Court, relative to the production of oil, was sufficiently broad to embrace many other commodities, including the importation of these Philippine hardwoods.

Be that as it may, it has been our belief that the object of the present administration is to stimulate, build up, and increase the volume of business in this country, as well as to make it profitable for the smaller firm to operate. We cannot believe that our Government, or any branch of it, if it had full knowledge of these actions, would condone the present method of restricting importation of Philippine mahogany into the United States, and the present methods of business employed by the Mahogany Association, Inc., another branch of the Lumber and Timber Products Code.

There never has been a question of destructive price cutting. There never has been a question of selling this lumber below the cost of production. It has always been a reasonably profitable business. There is no logical, moral, ethical, or legal reason why this lumber should not be imported into the United States just as freely as teakwood, ironbark, Spanish cedar, and other foreign hardwoods. The present method of operating is smothering and retarding business instead of stimulating and increasing it. And it is such abuses and disgraceful attempts on the part of the large interests and such men as Gen. Hugh S. Johnson to take advantage of the unfortunate financial situation of this country that has instigated the many complaints issued against the present code system. It is such abuses and methods as are employed by these interests that is making radicals, Communists, Bolshevists, and almost anarchists out of our good, solid, middle-class Republicans and Democrats.

It appears plain to us, as well as to many others in the industry, although naturally we do not have the direct proof, that the Mahogany Association, Inc., the administrative agency of the genuine manogany subdivision of the Lumber and Timber Code is, in reality, the little "Ethiopian concealed in the woodpile." For many years they have endeavored in every manner to prevent and limit the importation into this country of these Philippine hardwoods, and the so-called "Philippine mahogany." Now, working through other channels, they seem to find a very willing tool in the code system to assist them in their purpose.

We recently lost two Government contracts through the questionable methods employed by one of the larger firms in this industry, although we were the lowest bidder. The Mahogany Association, Inc., now openly writes and boasts of their being able to use our Government agencies as a means of forcing their wishes on those firms who in any way oppose them.

The writer travels extensively, but has yet to find in hotel lobbies, observation cars, smoking compartments or business offices, a well-posted, intelligent individual (aside from members of code authorities and officers of the large interests) who is in favor of the code system in its entirety.

Apologizing for this lengthy letter, which however we feel we should write you, and trusting that in your investigation you may be able to eliminate this disgraceful quota-permit system of the Philippine hardwoods, as well as the other bad features connected with the codes, if not entirely eliminate them, and wishing you the best of success in the investigation, we remain,

Respectfully yours,

G. W. NELSON.

CATERPILLAR TRACTOR CO.,
Peoria, Ill., March 25, 1935.

HON. PAT HARRISON,
Chairman Senate Finance Committee, Washington, D. C.

DEAR SIR: Your committee is now engaged in an investigation to determine what legislation, if any, should be recommended to the Congress to succeed the National Industrial Recovery Act, which expires by its terms on June 16, 1935. We assume, therefore, that your committee is interested in the experience of industry under the National Industrial Recovery Act and in its resulting opinions concerning successor legislation. Accordingly, in the hope that what we may say will assist you in reaching sound premises upon which to base your recommendations, we submit the following statement:

(1) We have been fortunate in that the bulk of our operations falls within the jurisdiction of but two codes. Under one of these codes we are required to file retail prices, with a 10-day waiting period; whereas under the other it is merely necessary to file prices to jobbers and dealers, which become effective immediately. In the former case there is extensive code administration and a large volume of price filings, characterized by bursts of filing activity whenever the slightest change is made in competitive prices, to the end that all competitive prices, cash discounts, terms, etc., tend to become identical to the smallest detail. There have been many complaints filed for failure to observe such price filings, since any price difference is seemingly regarded as inconsistent with and a threat to the undeclared purpose of the code, that purpose being to present a common and impregnable price front to the buyer. This end is regarded as so vital that serious and detailed restrictions have been imposed upon the leasing of new equipment and the trade-in of used equipment. As apparent weaknesses have developed in this armor, interpretations, explanations, and regulations have been aggressively sought to patch such weaknesses, the end of all such maneuvers being further rigidity and the preservation of the status quo. The primary complication in the accomplishment of these aims arises from the fact that whereas this code is a manufacturers' code, it has, by a peculiar device regarded as the heart of the code, attempted to control all sales of the products of the industry, not only by the manufacturers but by the hundreds of dealers throughout the country engaged in the retail sale of these products.

As a result, much valuable time is consumed by this company, and we assume by other manufacturers, in the instruction of our own organization and in answering the harassed inquiries of our dealers, to the end that these provisions may be more uniformly understood and observed and so that the resulting armor will remain impregnable. It is important to note that very few complaints of violations of labor provisions under this code have come to our attention, most code activity apparently being concentrated on the observance of these so-called "fair trade practice provisions", including open price filing.

(2) In the case of the other code, it is also significantly true, insofar as we know, that few, if any, violations of labor provisions have arisen; but since there is no open price filing of retail prices, there is no reason, or basis, for such all-consuming code activity. In fact, we have heard of no complaints pertaining to trade-practice provisions for a period of many months. Although temporarily it may be true that business for the manufacturers under the former code has been more profitable than under the latter, it is the more true that business under the latter is sounder, is more dynamic, and presents fewer obstacles to the satisfaction of the requirements of the buyer, and hence to its own natural evolution and progress.

(3) We have felt so strongly on this subject that we presented a statement before the National Industrial Recovery Board when it recently invited a discussion as to price fixing under the codes. We attach hereto a copy of that statement, which clearly presents our position on this important subject.

(4) The National Industrial Recovery Act was conceived about 2 years ago to stimulate reemployment and to stimulate business to reassume the risks which it necessarily has to assume and does freely assume under more normal conditions. The Congress wisely provided such encouragement by enacting the National Industrial Recovery Act, and even more wisely provided that such an act, being experimental in nature, should be given a limited life. Business responded wholeheartedly to that encouragement. Since then the patient has made progress, and it is now these same artificial stimulants, necessary in an emergency and given as an emergency treatment, which disturb confidence by hampering further sound progress, by eliminating desirable competition and by raising costs and prices. The Congress is again called upon to display its courage and its wisdom by removing these emergency treatments that not only have served their purpose

but that now threaten the confidence that they were designed to create under different conditions.

(5) That emergency treatment had to be national in scope. It was. Now we are faced with more individual problems, which are not national in scope and which should not be treated by national legislation. It is logical to expect and reasonable to predict that if certain portions of the National Industrial Recovery Act are regarded as desirable, such portions should be adopted in proper legislation by the various States. It is in the States that the power reposes to legislate concerning the relationships between industry and labor and not in the Congress. Furthermore, these State legislatures, because of their proximity to individual businesses, are in a better position to know and to appreciate how real is the progress that has been made by industry in their own States toward the realization of higher standards of living for labor. That progress which has evolved naturally and logically, company by company and industry by industry, is a sounder and surer progress than can be realized by legislation. As a matter of fact, most of the standards that can safely be adopted as a lowest common denominator by legislation are already far exceeded by most individual businesses.

(6) We have already on our statute books laws protecting industry against the truly unethical competitive practices, such as malicious lies as to competitors' products, misrepresentation as to one's own products, graft, and corruption of buyers, and consequently there exists no general need for additional legislation to protect industry against such tactics.

(7) We believe that 18 months of experience under the National Industrial Recovery Act furnishes ample proof that it has definitely delayed recovery through the imposition of higher costs than were necessary, or advisable, and the resulting temptation to industry to raise prices even higher than the increases in costs justified. The result has been higher prices at the wrong time, the introduction of an effective barrier to desirable increases in production, the increasing loss of foreign and domestic markets, and a definite trend toward a policy of scarcity, which can only mean permanently lower standards of living in these United States. There is a peculiar paradox in our attempt to recapture markets temporarily lost to us, in our ever-mounting relief rolls, and in the conflicting tendencies of the National Industrial Recovery Act to raise prices, and thus to limit our production, thereby frustrating our attempts to create employment and to regain these lost markets.

For these reasons, we urge your consideration of these basic factors and your study of the unfortunate tendencies which have been developing under the National Industrial Recovery Act. These tendencies should be stopped. The National Industrial Recovery Act has served its purpose and should properly be allowed to expire on June 16, 1935.

Very truly yours,

DONALD G. SHERWIN, *Vice President.*

STATEMENT OF D. G. SHERWIN, OF THE CATERPILLAR TRACTOR CO., ON OPEN PRICES, UNIFORM PRICES, AND PRICE FIXING

Mr. SHERWIN. Mr. Chairman and ladies and gentlemen. I would like to claim residence in Washington, D. C., but unfortunately I come from Peoria, Ill. It has been impossible for me to sit here for 3 days and not have a profound respect for the complex problem which has been presented to this Board. I am amazed at the confliction of evidence. One gentleman's evidence indicates that the presence of certain code provisions results in monopolies, ruthless price cutting, and all other evils; another gentleman's evidence will indicate that it is the absence of the code and those very provisions which creates the same result. Inevitably a profound doubt occurs in your mind as to whether any form of Federal legislation can possibly be the right answer, or can possibly afford the protection which has been asked for here.

My presentation is going to be very brief; I do not intend to confuse what has been said, but I think there is one point that should be considered in the deliberations of this Board when attempting to determine any price-protection policy.

We see nothing inherently wrong in the filing of prices for the protection of the public, to prevent unfair discrimination between purchasers, and as a declaration of price policy by the vendor when such price filing is not converted into price fixing by other supporting provisions. The practice of open pricing and of one pricing, if you please, is an old one followed to the advantage of all

concerned by many American businesses; but the advantages of this practice have been largely destroyed, in our opinion, by the practical operation of many of the existing codes of so-called "fair competition." Under these codes open prices soon become uniform prices, and uniform prices have a habit of degenerating into fixed prices.

Let us assume an industry with a dozen principal competitors. Invariably there is a leader and generally a recalcitrant. If the code is a tight one, the leader's prices are adopted by all. If he raises prices, all others raise their prices equally, regardless of location of plant, quality of product, or cost of production. On the other hand, if the recalcitrant "feels his oats" and cuts prices, and if he is a substantial factor in the industry, his cut is met by all others, regardless of the factors previously mentioned. It soon becomes apparent to leader and recalcitrant alike that at best they can only enjoy a very temporary advantage as far as prices are concerned and that they distrub not so much their competitors as their own customers. So, although exasperated for different reasons, they reluctantly decide to "play ball", and that industry is on the road to fixed prices. Unfortunately, because of this emphasis on prices, each member of the industry thereafter tends to become more and more interested in the maintenance of fixed prices, to the exclusion of other competitive factors. We are all interested in profits and the shortest route to them, and this price-maintenance route may look almost too good to be true. I am inclined to think it is just that.

It might be remarked at this point that codes are not responsible for such a situation, that it could and did develop before the advent of codes. That may be true to a degree and for a time, but the free and unhampered forces of competition, the element of quality, the reduction of costs, and many other natural factors soon remove the rigidity of such a situation under a noncode existence. Admittedly it is not open price filing alone which prevents this normal solution of a rigid situation, but it is the combination of open price filing and supporting provisions, present in some of our codes, which are conducive to the continuance and perpetuation of price fixing.

These supporting provisions are designed to prevent the use of natural or earned competitive advantages possessed by one or more competitors, but not by all. They operate to remove all competitive differences other than price differences. For example, they place obstacles in the way of proper credit granting of a nature which cannot be participated in by all. They prescribe terms and time of payment, limit leasing and trade-ins, and in various other ways prevent the use of those natural or earned advantages not possessed by all competitors. They are designed to preclude the use of various distributive advantages that may have been developed through much effort, at large expense and over long periods of time. Thus their purpose and application tend to prevent the use of natural or acquired advantages, to remove all of the obvious differences between competitors, and so to make them all as nearly alike as possible through this leveling process. The obvious effect of removing the natural play of these advantages is to focus attention on the one subject of prices; all of which have already become alike through open price filing. This is exactly what I understand regimentation to be. Furthermore, it is this same combination of price fixing and these leveling provisions that hamper and obstruct the struggling efforts of small business to become bigger by preventing it from using its natural advantages and thereby competing on more even terms with its larger competitors.

We have come quite a way on a strange road—a rather dangerous detour.

Now all this discussion as to the effects of codes upon industry may be interesting to us, but it is of lesser importance on our road to recovery than are the results on our customers—the buying public. It is the consumer who is being continuously disadvantaged by rigid price structures and the removal of the normal play of other competitive advantages. It is his actions that are restricted by this combination, and it is his purchasing power that is being cheated by the practical operation of this combination of open price filing and these leveling provisions, the sole combined purpose of which is to preserve the status quo. And this consumer is our customer. It requires little experience with codes and their operation to realize that there is no excuse or reason for this class of supporting unfair trade practice provision except to preserve this status quo and to make out of open price filing, fixed prices, thereby disadvantaging the consumer by preventing competitors from passing along to the public those natural advantages which they have earned or otherwise possess.

It should not be necessary among this body of men to call attention to the extremes that have been attempted to prevent the inevitable break-down of a system so unsound. True, money has been made by industry because of open price filing and these supporting trade practices, or any way during their existence.

It continues to be made, but at questionable cost to real progress. I take it to be obvious and a recognized fact that trade progress must logically come from the removal of all possible obstacles between the vendor and his customer. If the vendor is to progress he must be keenly perceptive of the needs, the wants and the wishes of his customer, and he must be able to make promptly available to him any advantages which the vendor has earned and may offer as the result of his resourcefulness in invention, better methods or reduced cost. I take it also that it is desirable to stimulate the new application of present products, the discovery of designing of new products, the adoption of better methods and the further reduction of costs, all to the end that the interest of the buyer will be quickened and that his dollar will go further than it has ever gone before. I find it difficult to believe that all this can be accomplished under any combination of fixed prices and supporting provisions which tend to remove all other competitive differences.

Does industry or any substantial part of it really believe that it can be permanently sheltered by a mother code, that its way can be continuously smoothed and its future assured by shackling the forces of competition—fair competition—which are the forces of progress under our system? Does it not also realize that when it receives and accepts such doubtful gifts of protection that it is at the same time relinquishing, in some measure, its own freedom of action? Of what avail, from a purely selfish standpoint, is the protection of the future, if that future must be lived under, or spent according to, the rules and regulations of a paternalistic government which we would be voluntarily creating by demanding such protection of it. Do not misunderstand my point. I am not arguing for ruthless or unfair competition. They should certainly be prevented if they can be without too great a surrender. I believe that business, to a greater or less extent, is affected with a public interest and that abuses by it should be the subject of regulation for the protection of all, but not regulation by such interested parties as ones' competitors who have but one purpose—the elimination of all competition—not merely unfair competition. You have an exceedingly difficult task in attempting to classify competition. I am amazed at the apparent extent of these petitions by American business to their government for protection against competition. How is the Government going to give that protection without jeopardizing economic balance and without some tampering with that most intricate of all mechanisms—the national price structure. Frankly, I find it difficult to agree that it is either practical or advisable to seek the protection of the Federal Government against the natural forces of fair albeit vigorous American competition. I fear the consequences if such protection could be given.

For these reasons, we are unalterably opposed to the combination of any form of code regulated price filing when coupled with supporting unfair trade practices which have for their combined purpose the fixing of uniform prices and the elimination of all other competitive advantages. There may be good reasons and justification for the retention of open price filing under certain circumstances and conditions if, but only if, these other levelling provisions are completely eliminated. The combination is badly mated so far as our industrial progress is concerned.

CLEVELAND BUFF & MANUFACTURING CO.,
Cleveland, Ohio, March 22, 1935.

Hon. PAT HARRISON,
Senate Office Building, Washington, D. C.

DEAR SIR: We are taking the liberty of writing to you to express our views regarding the operation of the National Recovery Act as we have found it in our line of business.

From our observations, the National Recovery Act has been taken advantage of by the large manufacturers to formulate a policy to their own best interests without regard or thought to bettering or helping conditions in general and in that way eventually helping to arrive at better business and ending the depression.

National Recovery Act has worked to a great disadvantage to small firms and has not in any way helped to overcome the depression or the effect of the depression.

The writer has attended all but the last three of the code meetings or association meetings of our line of business, and at the last one he attended he strongly objected to any further raise in prices, as there has been no increase in the cost of material, in fact in some cases costs were lower. However, at each meeting since then until the last meeting prices have been steadily advanced. In the case of

the last meeting, there was a reduction of 5 percent in one line of goods that we handle but this was offset at the same meeting by a further advance in other items which was not justified.

We are opposed to such methods and feel that the National Recovery Administration should not be allowed to continue to function except in such matters as pertaining to labor, wages, and working hours. We are strongly in favor of laws to regulate these.

It is our honest opinion that if the National Recovery Administration is allowed to expire it will be the means of bettering business conditions in every respect, and at the same time, the ultimate consumer will not be forced to pay prices out of line with what they should pay.

Thanking you, we remain

Yours truly,

CLEVELAND BUFF & MANUFACTURING CO.

THE CAMPBELL CHEMICAL CO.,
Oakland, Calif., February 11, 1935.

DEAR SENATOR NYE: We have received your telegram with reference to the National Recovery Act and addressed to the Comco Chemical Co. According to the papers our code has been made up but not yet put in effect. We small fry have not been favored with the code as finally formulated, nor have we during the year the code has been under discussion, received any information about it. That the authorities are aware of our existence, however, cannot be doubted as we have received a bill for code expenses.

The last draft seen by us was in one of the papers recently, providing for open prices, and a long rigmarole of fair-trade regulations, designed to leave us small fellows out on a long limb. Just to mention one thing, the cash discount is limited to 2 percent. We of limited capital simply cannot remain in business unless we can allow a larger cash discount. The whole set-up, it seems to us, is just a step toward price fixing, and when that step is taken we are out of it.

We urge, Senator, that it is impossible to make up a code of practice that is fair to both the big and the little fellows, and that the code for the future be limited to regulations to give labor just returns. Otherwise there should be free competition.

Very truly yours,

THE CAMPBELL CHEMICAL CO.,
C. SKATTEBOL.

EMPIRE BRICK CO.,
Columbus, Ga., February 10, 1935.

Hon. GERALD P. NYE,
United States Senator, Washington, D. C.

DEAR SIR: Replying to your wire of the 9th inst.

During the 3 depression years previous to the code we operated our plant about 7 months a year, and thought that was bad enough, but since the code we operated only 90 days the first year and then had stock enough on hand to last at least 4 months further.

We are not making complaint about the hours or wages, but the price-fixing feature has put us practically out of business.

Since this share-the-work plan has been adopted, we work about 50 men, only 1 white man, and it is costing us about $500 per month for the actual food they eat, and we do not know how they are living on this.

We are enclosing a copy of our Bulletin No. 4 dated February 21, 1934, which shows the price of brick $10.20 f. o. b. our plant, but on August 15 the price was advanced to $12.50 to the dealer, $13.50 to consumers.

If you will notice this bulletin you will find that it puts brick at more than 200 percent profit, which causes all the abuse.

The code price is $1 per thousand higher to the contractor than it is to the dealer. We have three local contractors, who oftentimes buy in quantities of over a million. Each of them did it last year. Yet we have one dealer, who has never handled but one car of brick and we had to sue him to get our money, yet he can buy brick $1 per thousand cheaper than the contractor.

The code also forbids brick being shipped on consignment, and states brick shall be standard size, and in figuring the freight all brick must be figured on 4½-pound.

The Eufaula (Ala.) Brick Co., who make a very poor brick and would not get any business if they got the full code price, sell brick as low as $7 per thousand and ship on consignment.

The Chattahoochee Brick Co., Atlanta, Ga., have sold several million oversize brick.

The Clay Products Exchange of this city shipped brick at weight of 4.18 pounds. They also sold brick at Albany, Ga., for a colored school direct, and then gave the five dealers credit on their books for one-fifth of the commission, and compelled them to buy brick from them to get this commission, which you see is nothing but a rebate.

Sylacauga (Ala.) Brick Co. sold some brick delivered on the job at $11.90.

Plainville Brick Co. sold brick at Albany, Ga., at $7 f. o. b. their plant. So did the Standard Brick Co. at Macon, Ga.

A little plant at Thomasville, Ga., has never had but one price and that is $7 f. o. b. plant.

Before the code a large percentage of our business was done in Florida, but since the code we get practically none as the three plants at Molina, Fla., who do business within the State of Florida, say they fear no punishment from the National Government as they do no interstate business. They sold one of our customers delivered on the job at $1 less than our f. o. b. plant price.

Another trick with all of them is to oversh[ip] a job, and then sell the overshipped portion at a discount, claiming that it would be ridiculous to return them to their plant.

Two of the largest brick plants in this section are in bankruptcy. Both went in before the code and both had large stocks on hand and are disposing of them in direct competition with us at from $5 to $7 per 1,000, and tile at one-half the code price. One job is in 50 yards of our office, that was delivered this last week.

There is a warehouse being built at Dadeville, Ala., and they were offered brick from Sylacauga at considerably lower price than the code specified, yet with this cut they say it was cheaper to build out of rock.

Some manufacturers sell face brick as common brick, while the others are so common that they would never get any consideration if they did not cut the price.

This city has a population of about 46,000, and there was only one small brick building—which only took one car of brick—erected last year, and these were bootlegged brick.

We believe if we could get the price fixing removed there would be the biggest building boom that we have ever seen in this section.

We have two customers who say they will buy a million each when the price gets right, and every old customer we had is a prospect. They are now buying from hand to mouth and most of them within 100 miles are sending trucks and only buy a truck load at the time.

The complaints mentioned above have been reported to the code authorities, and the only consolation we get is a pleasant reply.

Hoping to get the price-fixing feature removed, we are,

Yours truly,

EMPIRE BRICK CO.,
F. A. HEARD, *President.*

USED CAR STATISTICAL BUREAU, INC.,
Boston, Mass., February 21, 1935.

Hon. GERALD P. NYE,
Washington, D. C.

DEAR SENATOR NYE: We trust the enclosed copies of both our letter and original complaint sent you on February 27, 1934, will refresh your memory relative to our complaint filed with the National Recovery Administration.

We are taking this opportunity of writing you again in view of the forthcoming renewal of the National Recovery Administration codes with the thought in mind that you may care to use it as an example of what is happening to the "small business man."

For your information a copy of our complaint was read into the records of both the public meetings of February 27 and 28, 1934, under group 5 as well as the National Recovery Review Board meeting presided over by Clarence Darrow.

We are giving this information to you so that you may become acquainted with what we have done to seek relief. In spite of these public meetings, from the writer's personal observation while in Washington, it looks very much like

a losing battle unless we can be fortunate enough in having someone like yourself help us to obtain relief from this so-called "legalized-monopoly" code of the automobile retailing trade.

We know that some of your constituents have been similarly harmed and anything you can do to remedy the evils set forth in our complaint will be greatly appreciated by them as well as by us.

Respectfully yours,

GEO. H. COHAN, *President.*

SPECIALTY PAPER BAG CO., INC.,
New York City, February 18, 1935.

Hon. SENATOR NYE,
United States Senate, Washington, D. C.

DEAR SIR: A bill will come before the Congress this week prolonging the life of the National Recovery Act for 2 more years and we, the majority of the small-business men, are absolutely against the continuation or prolongation of the National Recovery Act.

With the possible exception of the minimum-wage and maximum-hour clause all other features of the National Recovery Act are objectionable and should be stricken out from any bill that may come before your honorable body. The reasons are many.

The way the laws of the National Recovery Act are being carried out will eventually crush and put out of existence the small-business man. Whether or not it was intended, we do not know—but perhaps not—but it crystalized to a monstrosity which threatens the very existence of all small-business men.

After all, the small-business man (meaning the small manufacturer or merchant) constitutes 97 percent of all business in this country and the laws made should please and be of benefit to this very big majority. But the 3 percent, or a negligent minority, rules and dominates the other 97 percent.

Now take our industry, the paper bag manufacturing industry, consisting of 45 manufacturers. We are being compelled to support two watchdogs, the code authority and the executive authority. The first-named with a secretary, assistant secretary, and four stenographers. The latter with a secretary, assistant secretary, and three stenographers. The code authority has expensive quarters at 369 Lexington Avenue and the other in spacious quarters at 11 West Forty-second Street.

Why we must have and support two organizations we do not know. We members, at least the majority, were never asked. Both do absolutely nothing for the benefit and welfare of its members except to send out bills every month for dues and other extras. These expenses amounted to $38,000 last year.

We (meaning again the majority in our industry) are so dominated, harrassed, and cajoled by a small minority (only about five manufacturers) that we are afraid to breathe. They threaten us by phone calls and letters not to do this, that, or the other thing.

Now we would not mind paying to both organizations the assessment if we would only derive some benefits, but just to feed 13 leeches who don't do anything for the majority of the members but do the bidding of the minority of the 5 members for fear of losing their easy jobs.

Here you have a picture which applies to every industry in this country. We can get along very nicely without the code and other set-ups which are called by everybody privileged and legalized racketeers. Code and other set-ups in the National Recovery Administration are nothing less than racketeers who should be put out of existence. The quicker the better.

We hope and trust that your honorable body, the United States Senate, will reject the continuance of the existing National Recovery Act or any other form of strangulation of business.

We look to you, Senator, as the defender of the small business man, for protection and to rule out forever the National Recovery Administration under which a system of rule by men instead of by law has been created, with the rulers bent solely on the oppression of weaker competitors. The big ones don't need—the small man must have protection.

Yours very respectfully,

MAX DEUTSCH, *President.*

LACO OIL BURNER CO.,
Griswold, Iowa, February 11, 1935.

Senator GERALD P. NYE,
Washington, D. C.

DEAR MR. NYE: In answer to your wire of February 9 in regard to my experience under the National Recovery Act. The National Recovery Act regulations have not been very encouraging. After going along with the National Recovery Act for a year, it seems that a great many manufacturers and dealers adhere to the code through greediness, thinking it would enable them to slip prices up on the other fellow without him finding it out.

Is there any question but what the antitrust law was a good law and helped the mass of business, especially the small manufacturers? The National Recovery Act and its codes are certainly undoing the antitrust law which took many years to get going. For instance, I have recently made inquiries for oil-burner ignition transformers. For your information, they cost $4.30 each when purchased by the thousand, delivered in Griswold, Iowa. Now every manufacturer that I wrote to had the same prices, regardless of where they were located or the efficiency of the factory. In Connecticut the freight rate is $2.85 per hundred or 40½ cents per transformer; in Iowa the freight rate is 38 cents per hundred or 5½ cents per transformer. Now anybody knows that it would not be possible for the cost price to be the same to every manufacturer especially when they take the freight rate into consideration. The whole thing is stimulating inefficiency.

Now the ignition-transformer condition also applies to every bit of material I purchase to go into the construction of oil burners, even the lumber for the boxes.

The code is creating a strong monopoly on every commodity that is manufactured or used by the public, creating thousands of additional small warehouses for distribution all over the United States, which is adding on to the cost of any article they distribute. This condition is growing under the National Recovery Act regulations.

The Laco Oil Burner Co. is one of the largest oil-burner factories. However, the oil-burner industry is a very small industry. We build nothing but oil burners. The business does not afford distributing houses, etc. When I refer to large manufacturers, I mean such as General Motors, General Electric, Westinghouse, Standard Oil, and such companies that manufacture a wide variety of commodities and they already maintain distributing branches and by adding oil burners to their line, merely means a very small addition to the present set-up, where the Laco Oil Burner Co. would be compelled to bear the entire burden of all the expense of the distributing branch. Take Chicago—the large companies maintain wonderful down-town offices for their entire lines, while with Laco, we could not possibly go against the expense of a down-town office, so we have to sell about a dozen or more small plumbing and oil-burner shops, scattered probably rurally over Chicago. Their expenses are less, consequently, we can undersell the large showrooms and still make the same profit. The code is doing all it can to close such competition, which would mean the closing up of all such factories as Laco.

Find enclosed a questionnaire that I received from the emergency committee of the oil-burner industry along with their explanations and instructions, and also enclosed an actual computed cost of the complete installation of an oil burner. It would seem as if what the oil-burner industry was trying to do was to eliminate all competition and throw the business into large expenses of operating showrooms of the bigger companies. Now I filled this report out and did not send it in as it wouldn't do any good, as so far most of the code administrators are chosen by the large companies and are for them, so I am only handing it on to you for your information. You can readily see that they are trying to squeeze out the fellows that are hurting the bigger oil-burner companies, by eliminating competition.

If they would go the other way and put the antitrust law into effect and allow the most fit man to survive, and put the price of oil burners down to $200 which could easily be done and still make a profit, it would certainly sell more oil burners and help to relieve the unemployment.

Hoping you will be able to wipe the National Recovery Administration and code regulations entirely out of all manufacturing industries. I remain,

Very truly yours,

L. A. COCKLIN.

Very conservative estimate of a profitable selling price and complete installation on a high-grade pressure atomizing type oil burner, completely installed with 275-gallon tank.

Burner	$80.00
Tank	18.00
Freight	5.00
Transfer of material	2.50
6 hours labor, mechanic, at $1.25	7.50
6 hours labor of help, at 60 cents	3.60
36 fire bricks, at 6 cents	2.16
Cement	1.00
Tubing and connectors	5.50
Wiring material for 6-voltage installation	3.00
1 installation inspection	3.00
2 service calls	7.00
Total, installation and burner price	138.26
10 percent overhead on installation	13.90
50 percent profit	76.80
Total, retail price	228.96

EMERGENCY COMMITTEE OF THE OIL BURNER INDUSTRY,
New York City.

GENTLEMEN: The undersigned submits the following answers to your questionnaire of recent date:

1. Do you believe this $259 price constitutes "willful destructive price cutting?"—A. No.
2. Do you believe that the present trend of the industry will create a monopoly of the oil-burner business by a few of the major oil companies?—A. It will not for reason in letter.
3. Do you believe a price of $259 for an oil burner installed with 275-gallon tank has created an "emergency" in the oil-burner industry.—A. No.
4. Do you believe it possible to conduct your business and employ labor at profitable wages if you have to meet this price?—A. Yes.
5. What was your lowest selling price for minimum 275-gallon tank installation in the year 1934?—A. $225.
6. What was your approximate net profit on this particular minimum installation?—A. $75.
7. How many years have you been engaged in the oil-burner business.—A. Nine.
8. Do you think emergency should be declared and a minimum selling price should be established.—A. No.
9. If answer is "yes" what do you believe is the minimum price at which a 275-gallon inside tank and burner installation should be sold to provide reasonable wages and small profit?—A. $200 to $250 depending on locations—and sell more, which means more employment.

Firm name: Laco Oil Burner Co. By: L. A. Cochlin. Title: Owner. City: Griswold. State: Iowa.

Q. Are you an oil-burner manufacturer, distributor, or dealer?—A. Manufacturer.

EMERGENCY COMMITTEE OF THE OIL BURNER INDUSTRY,
New York, N. Y., January 25, 1935.

To all retail outlets engaged in the sale of oil-burning equipment:

The sponsors of this letter, whose names appear, believe that the present ridiculously low price of $259 being quoted and the threatened price by the same company of $225 for the installation of oil-burning equipment constitutes:

1. Willful price cutting.
2. Creation of definitely monopolistic tendencies.
3. An emergency in the industry which should be recognized as such and acted upon by the National Recovery Administration.

In order to present the case to the Recovery Administration in Washington, it is obvious that the facts relative to the emergency must be submitted. We are enclosing herewith a simple questionnaire which will only take a few minutes of your time to fill out and which may be the means of furnishing sufficient data to cause action in Washington.

We have been assured by administration representatives that this method is our only recourse to check this destructive price cutting and that if an emergency is proved we can expect prompt action.

That the Recovery Administrator is empowered to act in this manner is outlined in memorandum 228, dated June 7, 1934, which reads as follows:

EXHIBIT B. COSTS AND PRICE CUTTING

Article II: "The following conditions may be deemed to require investigation to determine whether an emergency exists: (a) Impairment of employment or wage scales; (b) particularly high morfality of enterprise, especially small enterprises; or (c) panic in an industry or other special conditions thought by the Administrator to require stabilization by means of minimum price. When the administrator believes that the declaration of an emergency might be advisable, the matter will be referred to the Research and Planning Division, notice of such fact being sent to the Advisory Council."

Article IV: "If on the basis of this report the Administrator determines that an emergency should be declared, he will make such declaration and establish the minimum price effective under the circumstances. The declaration of an emergency will be accompanied by a statement of the facts upon which the declaration is based, and explanation of the plan which is being applied."

You can readily appreciate the fact that unless the industry generally responds to this questionnaire, our efforts to obtain relief cannot be successful.

Your contribution in the matter of fact finding and your opinion of the ultimate result of present price chaos may be a vital, determining factor.

Fill our the questionnaire attached right now and we pledge you every effort in our power to correct the present situation.

Very truly yours,

EMERGENCY COMMITTEE OF THE OIL BURNER INDUSTRY.

CHARLOTTE FROCKS, INC.,
Kansas City, Mo., February 11, 1935.

Hon. GERALD P. NYE,
United States Senate,
Senate Office Building, Washington, D. C.

DEAR SENATOR NYE: Inasmuch as the National Recovery Act is coming up for consideration by the present Congress, we desire to present to you the following facts in regard to the silk dress industry of Kansas City, Mo.

The Associated Silk Dress Manufacturers of Kansas City consists of three small manufacturers; one of whom has been in business for 15 years; one for 10 years, and one for 4 years. They are all managed by capable executives who have had experience of more than 25 years. They operate daylight plants with splendid sanitary conditions, far different than the average eastern plant.

These companies have never, at any time, been able to secure the slightest consideration, either from the code authority or from the administration for the necessary modifications of the code restrictions which will enable them to live.

They are all losing money on account of the wage classification in the code and in a few months will be definitely out of the picture.

The National Recovery Act, as written, furnishes the most facorable terms for large manufacturers, but is definitely chocking off all small manufacturers outside of the New York area.

The Code Authority of the Dress Industry consists of 14 members, 11 of whom are from New York City and 3 from the rest of the United States. Needless to say, the New York dominated code authority has no sympathy for the plight of the unfortunate small western manufacturers and apparently definitely wants them put out of business. They are well on their way to the consumation of their wishes.

The Administration, however, sympathetic they may be inclined toward the small manufacturers, does not dare to go against the New York dominated code authority in making such modifications of the classified wages which will enable the dress industry to survive in the outlying districts.

Here, in Kansas City, we have only semiskilled workers. We are forced to pay them a classified scale which they cannot earn, as the classified wages are based upon the production of the highly skilled Eastern worker.

Eastern plants are able to make large cuttings of one number, thereby saving both in cutting cost and operating cost many times the 30 percent differential which is allowed the Western worker. Western orders are very small and garments must be cut according to orders received.

In addition, Kansas City has never had any representation on the code authority, and all of its presentation must be made to a jury of its competitors whose mind is usually made up in advance.

We have many manufacturers of cotton wash dresses in Kansas City who make thousands of garments of the same type that are made in our plant, on the wash

dress classified wage scale, which is 33⅓ percent less than that of the silk dress scale.

When our Kansas City plants applied to the Administration for permission to obtain exactly the same exemption that the wash dress houses obtained from the Administration, they received a reply to the effect that the Administration officials who granted these exemptions were no longer with the Administration, consequently their application would have to be denied.

We enclose the official letter from the National Recovery Administration stating this fact.

Two months ago we were granted a hearing in Washington before the National Industrial Appeal Board, but unfortunately our finances were not such that we could afford to send a representative. We did, however, base our presentation through briefs.

It is needless for us to say that our antagonists, the code authority and the Administration officials, were there in full force, and of the various persons who appeared against us only one had ever seen a Kansas City dress plant, and this man was an official of the code authority who would not dare to make any presentation or plea in our favor.

We have a limited number of workers that can come close enough to the code that it would not hurt us to make up the difference, but they are so limited that we can not do enough volume of business to mak it pay and to put on more help would be ruinous on account of so many being unskilled, and having to make up the difference between what they would actually earn and what we are forced to pay.

There are hundreds of workers on relief that would be self-supporting but for the classified wage scales which have been forced upon industries such as ours. It is simply not practical.

The few compliance men in New York City will never be able to successfully police the code. There are hundreds of small manufacturers who are constantly moving about changing their names as well as their places of business, and it is no more possible to enforce this complicated code in New York City than it was the prohibition law. Consequently millions of garments are distributed throughout the United States at prices against which the carefully regulated manufacturing area outside of New York City has no chance to compete. Thus, instead of the code being a constructive agency it is a destructive agency for the entire area outside of New York City.

We have had experts go over our plants and can furnish you with affidavits to the effect that they are beautifully laid out and could easily continue to exist were it not for the unfair wage classifications which have been placed in the code for the benefit of the large New York manufacturers.

We would be very glad indeed to furnish you with any further information you might desire.

We have no objections to your giving any publicity you may see fit in regard to this matter, as we have nothing more to fear from the code authority, as we believe they have done us all the damage that they possibly could.

Thanking you for any consideration you may be able to give us, we are,

Very respectfully yours,

ASSOCIATED SILK DRESS MANUFACTURERS OF KANSAS CITY.
By MIKE FINN, *President*.

P. S.—For your information we are enclosing present wage schedule with classifications.

LOS ANGELES FRENCH BAKERS ASSOCIATION,
February 26, 1935.

Senator GERALD NYE,
Washington, D. C.

DEAR SENATOR NYE: In your efforts to investigate National Recovery Administration activities you have the wholehearted support of the independent bakers of this section. National Recovery Administration has developed into one of our major rackets.

I am enclosing to you notice of contribution for dues, payable to the Macaroni Code Authority; just one of thousands of other cases of a small merchant, who is struggling to pay his bills, being intimidated by petty dictators who invariably have been failures in their businesses. In this case, along with the notice, an

excerpt is enclosed to intimidate the payment of dues by citing a judgment of another code authority in another industry. Small bakers in this section have been prosecuted in local courts for the most trivial alleged violations, whereas large interstate corporations are allowed to continue violating, owing to the fact that they have ample funds to take care of any such prosecutions.

We are with you 100 percent in your efforts to eliminate this travesty on American justice.

Very truly yours,

P. A. LEBRUN.

MACARONI CODE AUTHORITY,
Chicago, Ill., January 23, 1935.

PEKING NOODLE CO.,
Los Angeles, Calif.

NOTICE OF CONTRIBUTION DUE THE MACARONI CODE AUTHORITY

1. The Administrator for Industrial Recovery has approved the plan for budget and equitable basis of contribution submitted by the Code Authority of the Macaroni Industry. Such approved basis of contribution and the pertinent code provisions are set forth on the reverse side of this notice. Copies of said budget are available at the office of the undersigned agency.

2. Upon such basis, there is now due and payable the following contribution:

On production for February through December 1934
Due and payable 15th of month following each production month

3. Your contribution is due and payable upon receipt of this notice. Your attention is called to the fact that failure to make payment thereof within 30 days renders you liable to appropriate legal proceedings.

4. Your attention is further called to the fact that you have the right to file a protest against the payment of such contribution with the undersigned agency or with the national code authority or with the contribution section of the Compliance Division, National Recovery Administration, Washington, D. C., at any time within 15 days from the receipt of this notice. Such protest may be on the ground that the basis of contribution as approved is unjust as applied to you, or is not being followed in your case, or that you have already contributed to the expenses of administration of another code, which other code embraces your principal line of business, and National Recovery Administration has not granted any order requiring your contribution to the expenses of administration of this code, or on any other valid ground. Any such protest filed by you must be accompanied by supporting facts.

M. J. DONNA, *Secretary-Treasurer.*

MACARONI CODE AUTHORITY,
Chicago, Ill., January 23, 1935.

To the MACARONI MANUFACTURING INDUSTRY: For your information and guidance, read the following excerpts from December 31, 1934, decision upholding obligation of members of an industry to "pay their fair and reasonable share of the cost of administering the code."

MUNICIPAL COURT OF THE CITY OF NEW YORK, BOROUGH MANHATTAN, NINTH DISTRICT

HENRY G. SCHLESINGER, AS CHAIRMAN, AND SAMUEL MITTELMAN, AS TREASURER, OF THE CODE AUTHORITY BOARD OF THE FUR DRESSING AND DYEING INDUSTRY, AN UNINCORPORATED ASSOCIATION, PLAINTIFF

vs.

KOFSKY-MOOS, INC., A DOMESTIC CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK, DEFENDANT

Index no. 35915/1934

Complaint.—That defendant failed to pay his assessments, denies any liability therefor, and contests the right of plaintiff to levy or impose an assessment, etc. etc.

Facts determined.—That the plaintiff is a duly authorized body empowered to administer the code; that the code was properly amended giving plaintiff right

to incur reasonable obligations in administering the code; that an itemized budget had been submitted and approved by the Administrator; that members of the industry were assessed on an equitable basis for payment of such obligations and that "after such budget and basis of assessment have been approved by the Administrator, to determine and collect assessments and, if necessary, to institute legal proceedings in its own name", etc.

Decision.—That the defendant was a member of the industry and, whether assenting to the code or not, was in a position to benefit and therefore obligated to pay his assessments thereunder; that "the right of the code authority to levy and collect assessments must be recognized as a legal right duly conferred"; that "the obligation to pay this assessment is imposed upon the defendant"; and that "the plaintiff is entitled to summary judgment in the amount determined on the prior assessments of damages as agreed on."

Copies of this agreement are obtainable from the court. Attention of delinquent macaroni-noodle manufacturers is particularly called to this important decision.

M. J. DONNA, *Secretary-Treasurer.*

THE CHAMBER OF COMMERCE OF KANSAS CITY,
Kansas City, Mo., February 22, 1935.

HON. GERALD P. NYE,
Washington, D. C.

DEAR SENATOR NYE: We wish to call your attention to the first annual report of the Code Authority of the Millinery Industry, which indicates quite clearly how unfair this code and the manner in which it is administered is to markets outside of New York.

While we do not have similar reports from other branches of the needle trades industry, our experience in dealing with them leads us to believe that the same situation would exist in the administration of all such codes.

We wish to first call your attention to the personnel of the members of the Millinery Code Authority, shown on page 2 of the report, which indicates quite clearly complete domination by New York interests. The explanatory notes following also indicate that outside markets are given very little consideration.

Mr. Max Meyer, chairman of the executive committee, makes the statement on page 12 that there are approximately 1,400 millinery manufacturers in the country doing approximately $100,000,000 of business. The tabulation on page 27 indicates the location of these plants, and shows the exact total 1,353.

On page 15, it is shown that during this year the code authority collected $576,628.27 for the administration of the code—practically all of which they report as being spent, which is shown in the balance sheet on pages 18 and 19. This amounts to more than one-half of 1 percent of the total business done by the industry, and seems to be quite an exorbitant expense for administering one code.

In setting up statistics for the various areas, the country has been divided into eight sections, as indicated on page 21, although these sections do not correspond with the areas provided for in the code. Apparently, this division has been made for the purpose of making a better showing, than would occur if the code areas were used.

It will be noted from the following tabulation taken from the report, that all of the areas indicated show increases in wages.

	Wage increase (percent)	Employment (percent)
		Increase
Area no. 1 (New York)	17.70	12.29
		Decrease
Area no. 2 (Kansas City)	29.60	3.78
Area no. 3 (Chicago)	16.30	2.04
Area no. 4 (Connecticut, etc.)	13.90	11.46
Area no. 5 (Birmingham, etc.)	21.10	15.79
Area no. 6 (Pacific coast)	8.20	11.40
Area no. 7 (Baltimore, etc.)	2.20	7.45
Area no. 8 (Detroit, etc.)	4.90	24.70

It occurs to us that this is the most conclusive proof that the Millinery Manufacturers Code has worked to the detriment of all markets excepting Greater New York.

We also wish to call attention to the fact that the wage increase in the Kansas City area is greater than in any other area.

On page 28 of the report, it shows a mortality of 281 firms out of a total of 1,353 during the year, which does not speak very well for the operation of this code.

On page 46, under the caption "A carping critic bucks the code from its very inception." From our dealings with the code authorities and their special committees, we feel sure that this is directed against the Kansas City milliners, who have persistently objected to this New York dominated code authority and committees working under them.

Our largest millinery manufacturer reports that in 1933 he had a deficit of $300, as compared with a deficit of $10,000 in 1934 operating under the code.

We also wish to call attention to the remarks on page 47. The center paragraph, wherein the bold statement is made that if any legal proceedings are brought against the code authorities, or the validity of the code, such firms or markets no longer have standing with the code authority, which seems to us to be rather a high-handed arbitrary position for them to take.

We do not have additional copies of this report to furnish you, but they are, no doubt, available in Washington. If not, they can be secured by addressing the Code Authority of the Millinery Industry, 469 Fifth Avenue, New York City.

As previously stated, we have had up many cases for the needle trades in Kansas City regarding their codes with the code authorities and administration officials in Washington. In all such cases the story has been the same. We have expressed to them, on many occasions, our belief that through the codes New York interests are attempting to put all outside markets out of business. From many remarks we have heard in conversation with these officials and other contacts, we are sure that our conclusions are correct, and we believe that this report of the millinery manufacturing industry fully confirms our belief.

While the situation with regard to the needle trades is probably the most outstanding, this same situation has prevailed in other lines of industry.

We have been accused, on account of our activities, of opposing the entire National Recovery Act program. This is not true, as for a time at the beginning of the National Recovery Act, the job of getting it under way in Kansas City was turned over to this organization. Committees of the most prominent business men were appointed, spending practically all of their time, and using the entire staff of this organization in getting the National Recovery Act under way. We have, since its inception, maintained a National Recovery Act bureau for the pupose of guiding both members and nonmembers in the adjustment of their business under the National Recovery Act. This has cost a considerable sum of money, and long hours of labor by many of our most prominent citizens, for which the administration paid not 1 cent, and this service gratus might be compared with the cost of $576,628.27 used in 1 year only for the maintenance of this one millinery code authority, who attempts to criticize us for our labors.

We have gone to some length in outlining our position in this matter, not only on account of this report, but on account of the activities of other code authorities detrimental to the business interests of Kansas City, and I am sure that you will readily understand that there can be but two results if this thing is continued as in the past: Our firms are going out of business, or declare themselves in open defiance—neither of which they want to do.

Your cooperation for a fair deal in these matters is earnestly solicited, and we hope that the Congress will in rewriting the National Industrial Recovery Act give consideration to the entire country, and see to it that it will not be possible for one small section of the United States to dominate the business of the entire country.

Yours very truly,

J. E. BURKE, *Trade Commissioner.*

ERNEST L. RHODES CO., INC.,
Atlanta, Ga., February 15, 1935.

Senator NYE,
Washington, D. C.

MY DEAR SENATOR: I have read most interestingly your different talks upon the codes and the administration of same.

Perhaps to assist you a little in your fight upon the very large tax that is being made upon the manufacturing industry, which I think is unreasonable and might say the worst grafting that I know of, I herewith attach you the estimated expense of the Millinery Code for 5½ months, and they put the burden upon the manufacturers.

If you will notice here that for hats that are manufactured and sold for $7.50 per dozen or less, the little labels, of which I attach you one, is charged at $3.50. From $7.50 to $48 are sold us at $5, and hats above $48 we are charged $20 a thousand, and as you will see the cost for this label is $1.05 per thousand.

And if you will notice on salaries the chairman, Mr. Max Myers is allowed at the rate of $20,000 per year; the secretary $10,000; the auditor $10,000, and so on. And you see they have a budget set-up of $261,000 for the first 5½ months of the year.

I personally feel that the codes should be simplified and should be under not over 20 general codes, and I believe there has been about 550 codes so far passed, and out of the 550, 500 of them have had from 1 to 12 amendments tacked on to them.

I believe that the National Recovery Act would be a good thing with a limit of 40 hours on time, and a minimum of wages, and the Government to handle it the same as they do their income tax, and license firms to do business, and then appeal to the general public only to buy merchandise containing the labels or stamps. You see from this Millinery Code the number of people that the industry has to support.

And well has Mr. Sturtz, secretary of the Eastern Millinery Association of New York, said in an interview that appeared in Women's Wear that New York City has had the poorest January business in 20 years, and without the burden could be lifted that there would be a few legitimate manufacturers left.

Wishing you great success in your fight for the people, I am

Yours very truly,

ERNEST L. RHODES, *President.*

CAMEO AMUSEMENT CO.,
Jersey City, N. J., February 16, 1935.

Hon. GERALD P. NYE,
Senate Office Building, Washington, D. C.

DEAR MR. SENATOR: I can state without reservation that the National Recovery Act Motion Picture Code has definitely increased the burdens of the individual independent theater owner and has operated to extend the monopolistic grip in this business.

The Motion Picture Code is a vertical code running all the way from the producer in Hollywood through the distributing system located in the 32 exchange centers in the United States, and reaching down to the smallest theater in the smallest town in the country. The code is administered by a code authority consisting of 6 executives of motion-picture companies, members of the Hays Association; 1 producer, not a member of the Hays Association; 2 representatives of exhibitor trade associations, both of which accept affiliated theaters (controlled by producer members of the Hays Association) as members in the exhibitor association, and 1 representative of the independent exhibitor.

It can readily be seen that the independent exhibitor is outvoted 9 to 1 in the code authority. This unequal division and control of the business leaks down into the local boards that have been given power of life and death over every theater in the country, inasmuch as they control the time when a theater can show pictures, and in instances where the affiliated chain theater gobbles up all the copyrighted motion-picture films, one of these boards is given the right to say whether or not the independent shall receive any product.

It might be in point to mention that within the past month the Department of Justice secured indictments in the Federal court in St. Louis against two of the men specifically named as members of the code authority (Messrs. Harry Warner and George Schaefer) and three of the companies (Paramount, Warners' and RKO). It is against such a set-up that we have to struggle.

In my own particular instance; I own a theater that is larger than the competing affiliated chain theater, but nevertheless I must wait a considerable length of time to play the pictures that I lease, and in addition I have no freedom in competing for the leasing of such product. Even though I am willing and able to pay the price for the pictures, I must wait until the chain makes its choice and then I get the leavings. I own the theater property and have been in some way connected with the motion-picture business for the past 18 years.

I can safely say that never in my experience have conditions been as bad as they now are under the operations of the Motion Picture Code. To adequately give you the entire viewpoint of the Motion Picture Code, it would be necessary to write a book; however, it should be stated that the code has worked out in practice as definitely hindering all freedom of the independent exhibitor, and the few clauses designed for our benefit have been definitely nullified by the defiance of the producer-distributors in control of the code authority, and the entire administration of the code.

It must be remembered that these same men created the conditions against which exhibitors, public groups of citizens, and the Government itself, have complained in the past but now they have been able to wrap the sanctity of National Recovery Act around them and administer the code that was designed to restrain their rapacious appetites.

You may count upon me to give you such further information as you desire, and as soon as I have a reply I will call the attention of my associates to this situation so that they will forward to you additional information.

Respectfully yours,

BENJ. BERKOWITZ, *President.*

AUTOMOTIVE SERVICE BUREAU,
Baltimore, Md., February 21, 1935.

Senator GERALD P. NYE,
Senate Office Building, Washington, D. C.

DEAR SIR: We have noted in recent newspaper articles that Senator McCarran and yourself have introduced a resolution to investigate objectionable practices in the operation of the National Recovery Act.

By reason of the monopolistic and oppressive tendencies of the Motor Vehicle Retailing Code our operations have been impaired to a dangerous degree threatening our very existence.

We have tried every means possible except court procedure to secure redress but without result. We thought at one time that we saw light when our case was considered by the Darrow Board but this board was disbanded just as we might expect relief.

We are not alone in our predicament, since there were about 14 organizations such as ours when the code went into effect and now most of them have been forced out of business and no longer exist.

If our case is of interest to you or if you can present the facts to the proper sources whereby we may secure the necessary relief to keep us in business, we should greatly appreciate the opportunity to submit our evidence to you.

We have been actively in business since 1914 and feel that our interests should be protected by the Government—not the reverse. The writer would be willing to come to Washington any time at your convenience if you consider that there is any chance of securing any measure of redress.

Thanking you in advance for your kind attention, I am

Very truly yours,

NORTON L. DODS,
Associate Director.

CURTIS MANUFACTURING CO.,
St. Louis, Mo., February 26, 1935.

Hon. GERALD P. NYE,
Senate Office Building, Washington, D. C.

HONORABLE SIR: We have a matter to suggest which we believe merits your consideration.

Our company is a small one and is complying in every way with three codes under the National Industrial Recovery Act, the three codes covering approximately 96 percent of our total business. The remaining 4 percent of our business conceivably falls under four, or maybe five, additional codes. In addition, numerous code authorities are attempting to say that portions of our business fall under their codes.

Public utterances by Government officials are to the effect that small concerns should not be oppressed by the National Recovery Act. Nevertheless nothing particularly has been done to help small concerns and here is a case where we are being harassed and coerced into complying with an unreasonable number of

codes, when we are in every reasonable way complying with the National Recovery Act.

If the National Recovery Act is extended for 2 years, could not a provision be put into the act limiting the number of codes under which a small concern should be required to work?

Could not the provisions specifically state that no concern whose annual sales are under $5,000,000 can be compelled to comply with more than three codes if (a) the codes under which it is complying cover substantially all of its business (say over 85 percent of its business); and (b) if it applies to all of its employees the labor provisions of the codes under which it is working.

It is our feeling that a provision of this sort in the National Industrial Recovery Act would materially assist small concerns. It is our belief that the large companies in this country, through the prestige they have with code authorities, are doing everything that they can to harass their small competitors.

Yours very truly,

WALTER C. HECKER, *President.*

MONUMENTAL SALES & MANUFACTURING CO.,
St. Cloud, Minn., February 22, 1935.

Senator NYE,
Washington, D. C.

DEAR SENATOR: I notice by the papers that the President has recommended a continuance of the National Recovery Act for 2 more years with such changes as may be necessary to eliminate impractical or detrimental parts. I understand that you are on a committee to investigate the National Recovery Administration and I am taking the liberty of writing you about this matter, as it involves a law that I, as well as most all other business men, have been greatly concerned with during its effective period.

I am sure that a careful study of this law will disclose very definitely that first of all it has not either stimulated business or created additional employment, which I believe were the two principle motives for the enactment of the law in the first place. Secondly, it will be discovered that the law has definitely permitted and, in fact, created tremendous monopolies that have in a great many instances forced the smaller or weaker concerns out of business and in countless other instances have been so oppressive that progress has been absolutely impossible.

I can cite instances in our own industry where that section of the industry which has succeeded in gaining control of the code making and which has set itself up as code authority have imposed such malicious and vicious rules that many of their competitors have been forced out of business and unemployment has resulted simply because these selfish interests were concerned only with benefiting themselves and eliminating competition and thereby creating a monopoly for themselves greatly to the detriment and handicap, and, in fact, in many cases to the complete elimination of other sections of the industry.

It is also obviously impossible to impose regulations upon industry that will apply with equal justice to all members of an industry in all parts of the country. This is especially true in a country as large as ours where working conditions, economic conditions and climatic conditions differ very widely. I am fully aware that in some codes attempts have been made to establish different rules for different sections of the country, as for instance in our code a much lower minimum wage is stipulated for the Southern States than for the Northern States. Such differentiations in rules are, in many cases, justified but too often they are simply based upon or determined by that section which has, through political maneuverings, been able to exert the greatest influence or bring to bear the greatest pressure for their own particular benefit and as a result unbearable situations have been created for certain parts of the industry while other parts have gained extreme selfish benefits.

In theory it sounds very well to say "Let industry govern itself", and on this principle permit industry to elect members from their own particular industry to the offices of code authority and regional committees, etc., but in practice, due to selfishness, avarice, and greed, nothing has ever been done that has created greater injustice and greater inequality in the operation and enforcement of codes than this very thing. These men elected to code authority and regional committees being vitally interested in the interpretation and adjudication of their code are not above creating every obstacle and detrimental ruling and interpretation for their competitiors that will, on the other hand, greatly benefit themselves. Impartiality is absolutely impossible. In many cases these so-called "code

authorities" have obtained their positions by malicious and unscrupulous political maneuverings in their industry.

The expense of codes is a tremendous burden to industry. We find men in our industry who, in their private business, barely ever made more than a living, now drawing $40 per day and extravagant expense allowances. Others again drawing $15 per day and extravagant expense allowances. Industry being required to support this enormously burdensome structure, when nothing but handicap results from its operation.

Through the so-called "self-governing of industry" it has been possible for the larger and more powerful unit of industry, and also in many cases through combination of cliques in the industry too, by political maneuverings within the industry, appropriate to themselves all the power of code making and code regulations and through this same power to oppress and discriminate against their competitors and as stated above, in many instances, completely crowd out of business the smaller or weaker competitors and creating tremendous handicaps on those who have thus far been able to hang on. Therefore, if any part of the National Recovery Act is to continue it should be so changed that not only the act itself, but codes would be administered by absolutely disinterested personnel. It should be administered by people who have absolutely no interest in the industry, but who would be sympathetically cooperative with the industry for the greatest good of all concerned impartially. The great trouble, however, is to find such people as it seems that very few are beyond being influenced to the point of discriminating against certain sections and in favor of other sections, according to whichever section or part of the industry are able to bring to bear the greater influence.

I do not wish to be understood to say that there are not some good features in the National Industrial Recovery Act. I believe that child labor should be abolished and I believe very few have any objection to that, as it is quite overwhelmingly approved and I certainly believe in it.

I further believe that due to the greatly increased capacity of industry by reason of improved machinery maximum hours should be established in each industry according to the peculiar conditions and circumstances of each particular industry. In this matter such things as whether a particular industry is highly seasonal or is an industry that has a steady flow of business throughout all the seasons of the years should be considered. In that connection, for instance, a seasonal industry may find itself completely closed down during a certain part of the year while during the peak of the season when the heaviest demand is made it would be necessary for them to run all the hours possible. In such a case I believe labor would be benefited by being permitted to work a full 6-day week during the peak season. Therefore, such adjustments should be allowed in each particular industry.

I also believe that minimum wages should be established so as to prevent inconsiderate and unscrupulous employers from taking undue advantage of their employees. I believe, however, in the matter of maximum hours and minimum wages common sense should be used so as not to let labor agitators impose conditions that would be a severe detriment not only to employers but to employees as well and which would result in lowering of standards of living, etc.

As conditions change hours and wages could be adjusted. While I believe that a 48-hour week generally speaking, is all that is proper and reasonable at the present time it is entirely possible that the time may come reasonably soon when a shorter work week would be justified.

It is, therefore, my opinion that with the exception of these main features, namely child labor, maximum hours, and minimum wages, the National Recovery Act should not be continued. Such a thing as fair ethics sounds very well but when the ethics are established only by a few selfish interests or individuals in an industry for their own benefits and to the great detriment of all others it does not become a code of fair ethics, but a code of unfair ethics. I am 100 percent in favor of high principles and honest and fair dealings in business but I believe in equality and fairness to all.

I must apologize for this long letter, but this is a matter of such tremendously vital importance to the industry and progress of our country that I feel very careful study and detailed consideration of all the factors involved is not only justified but is exceedingly important. Thanking you very kindly for your careful consideration of this important law, I am

Yours very truly,

A. C. CARLSON, *President.*

TARR & MCCOMB OIL CO., LTD.,
Los Angeles, Calif., February 15, 1935.

Hon. GERALD P. NYE,
Senate Building, Washington, D. C.

DEAR SENATOR NYE: Please, by all means, oppose continuation of the National Recovery Act and codes which in my opinion impossibly preventing real recovery, now further from realization than when conceived. By reason of its enormous cost and smothering effect, no business effort not bolstered by Government spending has much chance. We believe basic recovery must be built upon plentiful crops and other products; and not by increasing, but decreasing the cost of necessities of our peoples.

Our business, which is production and marketing of petroleum and products, is badly handicapped despite abundant potential production which is curtailed and obstructed by every unnatural and unlawful manner by agencies claimed acting under curtailment orders from Washington. Certain interests continue drilling wells with large production, while smaller producers, not members of pools or cliques, are hampered and persecuted. Big companies give ample evidence that they cannot meet normal competition without Government assistance handicapping and obstructing independents. This may be due to lack of management, or unwise investment still capitalized which the public should be be obliged to carry.

If the law of supply and demand is let have normal play, recovery will come, but what enormous, unnecessary cost has preceded it.

Yours very truly,

N. W. TARR, *President.*

CLEVELAND, *March 9, 1935.*

Senator GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SENATOR NYE: Realizing your interest in, and opposition to, the National Recovery Act and the Codes that have been promulgated thereunder, insofar as they have injuriously affected the consumer and the smaller business enterprises, I am taking the liberty of writing to you regarding a code with which I have nad considerable personal experience. I do this in the hope that it may be of benefit and assistance to you in your fight.

The code to which I have reference is the Code of Fair Competition for the Paint, Varnish, and Lacquer Manufacturing Industry as approved by President Roosevelt on October 31, 1933.

As counsel for several paint-manufacturing firms in Cleveland, I appeared before a committee of deputy administrators at which time there were also present representatives of the largest manufacturers. I pointed out to the representatives of the various boards who comprised the committee, the provisions of this code that would work injury both to the consumer and to the smaller members of the industry. At the conclusion of the hearing, the member of the Consumers Advisory Board, and the Labor Advisory Board, apparently realizing the injustice that the provisions of the code would work, openly objected to the provisions that had been pointed out as being harmful, but the influences at work apparently overrode these objections and the code was submitted to the President without any amendments or changes and with the recommendation of the Administrator.

I am enclosing a copy of this code and shall point out to you the provisions thereof to which I refer.

Article XVI limits the terms that may be extended to customers to 60 days. Some of the firms which I represent have for many years sold certain of their products to farmers and to firms and individuals in rural communities who are very largely dependent upon farmers. Their products have been sold to this class of customers in the spring when they are needed most. Terms of 4 months or even longer have been extended so as to permit farmers and those in rural communities to pay when crops were harvested and realized on. With the restrictions in force by reason of the code, it is now impossible to sell the industry's products on the terms that have been customary and which are essential both to the manufacturer catering to this trade and to the consumer. There are many of the products of this industry which should be applied early in the season in order to preserve the roofs and the buildings on farms, but the application of these products must now be postponed until such time as the consumer can pay for the same within 60 days. The hardships and inconvenience which result from this provision of the code are apparent.

There is a firm which I represent which for years have been selling certain of its products on "4 months trial". The efficacy and value of this particular class of products cannot be determined or judged until several months have elapsed and in order to assure the user of their value and usefulness, this plan of selling has been adopted. Under it the user was not required to pay for the product until he was absolutely satisfied. The Recovery Board of the National Recovery Administration ruled that the sale was complete when the shipment was made and that the 4 months trial was, in effect, the granting of 4 months terms, and was, therefore, in violation of the code. This also results in injury to the consumer and certainly works a great hardship on the smaller manufacturer. The difficulty of competing with the larger manufacturers in this and other industries is becoming increasingly greater because of the tremendous sums of money that are being spent in advertising by large aggregations of capital. Unless some means may be used of partially overcoming the effect of expensive advertising, it is almost impossible to compete with large firms. That is why it is necessary for the smaller firms to sell on approval or on trial, and this period of approval or trial must be sufficiently long to assure the user of the efficacy and value of the products.

Article XVIII of the code prohibits the giving of definite time guarantees on the life and service of the products of the industry. This is but another method and scheme to eliminate the competition of the nonadvertising and smaller manufacturer. As between two products, one an advertised product and the other a nonadvertised product, the consumer will almost invariably turn to the advertised product. And who manufactures the advertised product? The answer is obvious. It is always the largest manufacturers or members of the industry.

Unless the smaller member of the industry can overcome the effect of the advertising by selling his goods on approval or by giving definite guarantees, he is practically eliminated from the arena of competition. Under this code and the obstacles that are placed against the smaller man or the newcomer, it would be impossible to survive and during this struggle to eliminate this smaller competitor, the consumer is being ground to pieces. When the competition of the smaller members of the industry has been entirely eliminated, the consumer will be ground even more finely.

This is but an outline of the evils of this particular code. To point out all of the evils of the subtle provisions which are not apparent on their face, would make this letter much too long. I hope that it will interest you sufficiently so that you will use it, and if I can further aid you, either personally or by letter, feel free to call on me.

Very truly yours,

SAMUEL DOERFLER.

P. S.—I am sending a similar letter to Senator Borah, who is with you in this fight.

RICHLAND COUNTY OIL CO.,
Wampeton, N. Dak., February 28, 1935.

Hon. GERALD P. NYE,
United States Senate,
Washington, D. C.

DEAR MR. NYE: I notice by the press reports that you are making some investigation of the effect of the National Recovery Act on the small business man. On the theory that your investigations also cover the Petroleum Code activities, it occurred to me that some specific information with reference to how the Petroleum Code works out in actual business might be useful to you.

Today the normal service-station prices of gasoline at this point are 16½ and 17½, depending upon the grade. The material that sells at the service station for 16½ costs us not less than 3¼ at the refinery, plus 4 cents freight, plus 4 cents State and Federal tax, or a total of 11¼ cents. We must give the farmer a discount of 2 cents per gallon, and it actually costs us 2 cents per gallon to deliver into the country. And I might point out that 2 cents per gallon for delivery is recognized by the major companies as being entirely in line. From the foregoing figures, you will observe that the dealer is limited to a gross profit of 1¼ cents. Out of this comes the normal shrinkage of 2 percent.

Furthermore, the Petroleum Code has actually destroyed what is known as the "oil man's pump accounts." By that I mean, where we deliver gasoline to a reseller, we are forced by major competition to give such reseller a discount of 3½ cents at the time of delivery. Add the 2 cents delivery charge to this, and we

have 5½ cents or the total gross profit eaten up. It strikes us particularly hard, because of the fact that we are a cooperative organization and must pay equal dividends to all patrons. Thus, we not only do not make anything on pump accounts, but actually suffer a loss to the extent of the amount of our dividend. Last year we had only three pump accounts, and paid them a total dividend of approximately $500. This was a total loss to us.

It seems to me there is something wrong with this set-up somewhere, as it is impossible for a dealer to do business on a gross profit of about a cent a gallon, on country business, and no profit on pump business.

As to the service-station business, the margin is a little better, as we are not subject to the 2 cents discount that the farmer gets. In fact, were it not for our service-station business since the advent of the code, we would have been put out of business.

As you of course know, there is no price fixing at the refineries, although it is generally understood—probably a gentlemen's agreement—all a dealer can expect is not to exceed a 5½ gross margin. At least, all late dealers contracts provide protection to the jobber on a 5½-cent marginal basis.

While the codes were set up presumably to protect the little fellow in business, it seems clear to me that in the oil industry, at least, the little fellows are actually being driven out of business. To illustrate—only yesterday we had an opportunity to take on a pump account, but in view of the figures hereinbefore set forth, we could not do so without suffering a direct loss.

I happen to be a member of the North Dakota State Petroleum Code Committee. I have attended nearly all their meetings. And it is my observation that the major companies, predominate not only the State committee, but the National Planning and Coordinating Committee. And that thought is sustained by the fact that in actual practice, the code is causing the small independent and cooperative oil company irreparable injury.

I am simply passing these facts on to you as a matter of information with the hope that they will be useful to you in stamping out this damnable situation that exists with relation to the oil business.

With kind regards, I am,

Yours very truly,

W. L. DIVET, *Secretary.*

SINGMASTER & BREYER,
New York, February 15, 1935.

Senator GERALD P. NYE,
Senate Office Building, Washington, D. C.

DEAR SIR: The New York Hearld Tribune this morning in its article concerning a possible Senate inquiry on the extension of National Recovery Administration quotes as one of the charges against National Recovery Administration in the Nye-McCarran resolution: "That in some industries the code authorities are dominated by certain elements of the industry, and are using their powers for the oppression of other elements, and 'to accomplish the centralization of industry.'"

In this connection you may perhaps be interested in the enclosed letter which we sent to the Consumers' Advisory Board last week. There are other factors besides National Recovery Administration which are tending to concentrate the paint business of the country in a few hands. Some of these are discussed in the enclosed reprint.

It is our belief that National Recovery Administration should be so revised that it is a positive influence against the present tendency toward concentration instead of being an added force driving small business out. There is no question that in the paint industry at the present time National Recovery Administration is helping the big vertical combination and hurting the independent.

Yours very truly,

JOHN P. HUBBELL.

WOLFE ENGINEERING CORPORATION,
Harrisburg, Pa., March 7, 1935.

Senator GERALD P. NYE,
Washington, D. C.

DEAR SENATOR NYE: Being a small business concern and dropping to practically a one-man organization since 1929, and from $110,000 to $10,000 yearly

business, from 50 employees to 6, we naturally are gravely concerned about the operation and requirements of the National Recovery Administration.

We note you are about to make an investigation, and frankly speaking, we are about at the end of the rope. If we stop we will have approximately 1,800 users who will be dependent upon competitors for service and repair parts. Due to our special design, repair parts cannot be furnished by competitors; also, our employees, with their dependents, numbering about 12, will simply be on relief.

The correspondence we have had from the code authorities is of such volume that it will require a special attorney and accountant to answer, keep track of, and make out the numerous reports requested. To be exact, we have now a volume of standard letter size, when compressed, about 2 inches thick, and we are being hounded almost daily for different reports, dues, etc.

We realize they can only put us out of business, which in turn will create just that much more relief and unemployment, and with all the numerous taxes on practically everything we eat and wear, and the cost of code administration, simply makes our position unbearable.

We are enclosing copy of letter received from the code authorities and our reply, and we hope in your investigation you will find some way to relieve the little business man.

The minimum code wage for mechanics in our class of work is 40 cents per hour. Our lowest rate is 60 cents per hour; in fact, this is the lowest we have paid during the depression. Our hours are within the code due to the fact we have very little work.

Our future will depend upon your cooperation and decision, and we hope it will be considerate and the end of this crazy experimenting which is only making conditions more uncertain and confusing.

Yours truly,

H. W. WOLFE, *Manager.*

MARCH 4, 1935.

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C.

GENTLEMEN: In further reference to your letter of February 21, we feel that by complying with your request relative to payment of cost of code administration for our business is unjust and unconstitutional, and a detriment to small business in every respect.

Our feelings are the National Recovery Act has turned out to have just the opposite effect originally intended. Labor provisions have proven unenforceable and the new privileges given to large corporations have facilitated monopoly and profiteering, making the rich richer and the poor poorer.

By complying we feel we are only helping an unjust cause and therefore is our reason for not going along, unless we are absolutely forced. By protesting it will give us an opportunity to express our reasons to the public, our friends, associates, Senators, and Congressmen, and so forth, which we feel is our only hope of a square deal.

Yours truly,

H. W. WOLFE, *President.*

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., February 21, 1935.

WOLFE ENGINEERING CO.,
Harrisburg, Pa.

GENTLEMEN: The Code Authority for the Refrigerating Machinery Industry, 915 Southern Building, Washington, D. C., reports that you have not paid your share of the cost of code administration of the Refrigerating Machinery Code, as provided in the budget affecting that industry. You were sent a notice of this obligation more than 30 days ago; you were given an opportunity to protest if you thought the contribution was unfair or unjustified, and you received notice from the Administration that the code authority may, if necessary, under the code, institute legal proceedings to obtain equitable contributions from all establishments.

Action in your case was withheld for more than 30 days by the code authority and the Administration, in the belief that you would send your contribution to the code authority.

We must advise that if by March 4, 1935, you have not paid your equitable share toward the administration of the code, as duly levied by your code authority, or unless you have made satisfactory arrangements with your code authority

for such payment, the Administration will forthwith remove your "Blue Eagle", and certify to your code authority and to agencies disbursing Federal funds, that you are not in compliance with the code for your industry, and will, if necessary, authorize the code authority to institute appropriate civil proceedings.

Very truly yours,

COMPLIANCE DIVISION,
By W. M. GALVIN.

FIEDLER'S GROCERY,
Marion, Iowa, February 21, 1935.

Senator GERALD NYE,
Washington, D. C.

DEAR SIR: I understand that you are on the committee to investigate the National Recovery Administration. I am going to tell you just how it has affected me in my business. I wrote in to the National Recovery Administration on November 19 and asked for an exemption in regard to hours. They wrote to me and sent me a questionnaire to fill out. I did this and then waited for a long time and finally they sent me a certificate and other papers and seals affixed to it and signed by three or four officials denying me the exemption, but without giving me any reason for doing so.

Before the National Recovery Act went into effect I was paying my clerks the following wages: 1 was getting eighteen and 2 were getting nineteen dollars per week. I kept up these wages when I really should have lowered them, but they were working 64 hours per week. When the National Recovery Act went into effect, I was not allowed to lower the wages and could only work my employees 48 hours. Because of the high scale of wages I was paying I could not afford to hire any more help. This meant that I had to take all the extra burden on my own shoulders and work day and night to get the work done. If I had been paying the minimum wage, then I could have hired one or two extra clerks for the same money I was already paying. When I wrote the Recovery Board I asked if I could work my clerks extra time for the extra money I was paying over the minimum wage. This is what they refused.

There are other groceries right here in Marion that are not making any attempt to live up to the code. Some are paying the same wages that I am, but are working their help 64 hours or more a week. Others are paying seven or eight dollars a week and working them as many hours as they see fit to do, and no effort is made to check up on any of them and enforce the code. But when you try to get an exemption in the proper way you get back a lot of seals signed by four or five officials getting a fat salary and doing nothing.

On February 7 I wrote the Recovery Board again and asked for permission to lower the salaries of my clerks, so that I could afford to hire some extra help. My clerks are heads of families, and I am sure they would prefer to work longer hours for the pay I am giving them, but if I am not allowed to work them longer hours I'll either have to cut their wages or let them go entirely and get help at the minimum wage scale, some one who doesn't have a family to support. I would dislike doing this, but this is what the National Recovery Administration is forcing me to do. What hurts me the worst is that the public doesn't think the National Recovery Administration is in force any more. All the newspapers say it is as dead as a "Dodo" bird, but it seems to be alive as far as I am concerned.

I have always paid good wages and was considerate with my employees, but I do think the administration is going too far in forcing a man to do something he cannot do. Of course if the idea is to put more heads of families on relief and hire cheap help in their place, I guess it will work. The way the National Recovery Act is written I think it is the most unfair thing that has ever come up for the small business man.

I realize that you are a busy man, but on the other hand it means a lot to me as to whether I shall be able to continue in business if the code is written in the same way as it was. I am merely bringing this before you so that you will see the small business man's point of view a little better.

Thanking you, I am

Yours truly,

PAUL J. FIEDLER.

PASADENA, CALIF., *January 18, 1935.*

Sen. GERALD PRENTICE NYE,
Washington, D. C.

DEAR SIR: We, the roofing contractors of California, are having one awful time doing business under the code; because men who do not care how they get their business are the ones that make the code only a racket, to bleed the public with set prices beyond the means of the taxpayer to pay. And the power given them to administrate the code, they use this to squeeze out their weaker competitors.

I have a complete line of information on Roofing Code, also Ice Code, as administrated to the detriment of small dealers.

He has to charge the same price at cash and carry ice as delivered at the door. That means a loss of his business. Enclosed find letters and a local newspaper clipping.

Over 50 percent of roofing contractors received these letters, and I am asking you to give me information if the Code Administrator has a right to assess us without permission of the House of Representatives. Please send me a copy of bylaws of House of Representatives or statute covering the questions as to code assessments by return mail.

If there is any information you would like concerning these questions, I would be glad to send them to you.

Respectfully,

ALL WEATHER ROOF CO.

DAVID C. LEVENSON,
Los Angeles, February 7, 1935.

ALL WEATHER ROOFING CO.,
Pasadena, Calif.

GENTLEMEN: The national code authority of the roofing and sheet metal contracting division of the construction industry, through Mr. D. A. Jackson, its duly authorized representative for the eleventh zone, has consulted me with reference to your liability for code assessment of which you have heretofore had due notice.

I have advised that you are legally liable for this assessment, and in my opinion the same can be collected.

As you know, these assessments are levied uniformly upon all firms in the industry and the proceeds are to be apportioned between the national and local code agencies to enable the proper organization and machinery to function for the equal benefit of all. A number of firms have already paid, and it is only fair that all others should likewise, since desired results can be obtained only through the support and cooperation of all. By voluntary payments, the full amount of your contribution can be devoted to constructive purposes, whereas your liability will be increased and the benefits to you will be diminished by the costs which will be entailed by court action.

With these considerations in mind, I am writing this to advise you of my contemplated action and to notify you that unless your assessment to your local board office is paid, or arrangements are made with me within 10 days from the date hereof, I am authorized to institute appropriate action to enforce collection against all who are in default by reason of nonpayment and failure to give notice of such facts as excuse such default.

Yours very truly,

DAVID C. LEVENSON.

[Excerpt from Jan. 3, 1935, New York Tribune—Code assesments upheld—Industry has authority to tax members, Justice rules]

The first legal opinion upholding the right of code authorities to collect assessments from members of the industry they represent to defray expenses was handed down in the ninth municipal court yesterday by Justice Charles E. McMahon, who granted a motion for a readjustment requiring Kossky-Moos, Inc., of 140 West Thirtieth Street to pay assessments levied by the Fur Dressing and Dyeing Industry Code Authority.

Justice McMahon said the power of the President to make rules and regulations to make the recovery movement successful included the right to require contri-

butions from industry to defray expenses. He also upheld the constitutionality of the National Industrial Recovery Act, the State recovery act, and the Fur Dressing and Dyeing Code.

BRIGHT & SON,
Leechburg, Pa., February 22, 1935.

Senator NYE,
Washington, D. C.

DEAR SENATOR: We have read in the daily papers that you have been in touch with certain retailers in order to get their reaction to the reaction to the National Recovery Act. We have, too, been interested in the way it has affected our business. We do a very nice retail business for a small town, in normal times, approximately $65,000 a year, and we are well able to handle case quantities from factories, and before National Recovery Administration came on the scene we did much of our buying direct from factories. When the code for the variety retail business was being arranged, many chain-store representatives, and one from the largest wholesaler, namely, Butler Bros., of New York, with others, helped to form our code, and these men took great care that they got certain advantages that are withheld from the small independent retailer. Butler Bros. especially was interested in keeping us from buying from the factories, as their business is to cater to merchants of our class, while they didn't sell to the chains, and we feel that they conspired with the representatives of the chains to hold one particular advantage from the independent. We refer to buying direct from factories. While the chains are retailers as we are, and should not enjoy advantages we cannot enjoy under the code, they buy direct from factories at prices equal to those given to wholesalers, while the same factories in some instances refuse to sell us the same merchandise, even though we offer to send check with order, offering as an excuse the code. They claim that under that code the National Recovery Administration doesn't allow them to sell direct to the independent retailer at the same prices as are given to wholesalers, or even at a small advance, yet that same code permits them to sell to the retail chains.

If this is helping the small business man, then we have the wrong slant on our business—and we have been in the variety business for 30 years, and have made a success of it up until the depression, and then we just kept going, as did many of the chains. Since the National Recovery Administration came with its assumed help to the little fellow, we have been unable to make any profits through our inability to meet chain-store competition, for those items they buy from factories at wholesale prices are sold for 10 cents while we must lose money when we meet that type of competition—for we must sell at the same price or go out of business—as we are compelled to pay from 15 to 20 percent more for the same item from some wholesaler. Prior to the National Recovery Administration we were able to buy from factories at approximately the same prices as the chains, although their quantity buying gave them a slight advantage to which they are entitled.

We claim that a retailer is a retailer whether he be a member of a chain organization or not, and if the chains get a price from a certain source, then the small man should be allowed the same privilege.

You have probably heard the same complaint from other merchants but this will add force.

Sincerely yours,

W. BRIGHT.

THE FINCH ENGRAVING CO.,
Boston, Mass., February 25, 1935.

Senator NYE, *Washington, D. C.*

MY DEAR SENATOR: When the Code for the Steel and Copper Engraving and Die Stamping Industry was first proposed, I protested same as being unnecessary and likely to be a burden to a trade already greatly depleted in volume.

A few connected with the Engravers National Association, which was practically dead, sponsored this code, although they did not represent 10 percent of the entire trade. Events have proved as I anticipated, these promoters being the only ones deriving any benefit from this code, as the enclosed budget will show.

The majority of the engravers of Boston have sent a petition of protest against this code and assessment. This sentiment is echoed in every city in the State in the steel and copper engraving trades. I have had little satisfaction from the deputy administrator in connection with this protest. He apparently takes the

matter up with Mr. Theo. Isert of New York, the manager of the national code who discounts our protests.

The last communication received from the deputy administrator stated we had received the same data and assistance as our fellow members. The only data we received was a request for the amount of business we were transacting, for assessment purposes; also some prints of engravings to give prices on, in which no practical good could be forthcoming other than this, a continual dunning to pay one-half percent on our business turnover for assessment.

So far as assistance is concerned, I have challenged the manager of the code, also the administrator, to show us one iota of assistance. This code has rendered none since its inception.

This code has been working—it is supposed—for over 10 months, yet not one new, concrete, or practical suggestion in the interests of the trade has been made. Their energies seem to be centered solely in endeavors to collect assessments, while they have spent money extravagantly on items such as expensive cost systems, salaries, office, and other unnecessary expenses, for their own personal benefits, expecting same to be paid by a trade that is absolutely impoverished and whose volume of business during the past few years has been greatly reduced through competitive processes.

Our trade is not a necessity, and if every steel and copper engraving house in the country were closed, the public would feel no inconvenience, there are so many processes to take its place.

We have been perfectly agreeable to fall in with the principle of the National Recovery Act, such as minimum hours and fair wages to minors, etc., but this can be carried out effectively without the extravagant expense of a separate code.

My impressions of our great President's idea of the National Recovery Act were that it was to help industries, not to burden them, as this code is doing in our business, and if same were felt undesirable to the majority of the particular trade, then it should not be thrust on them.

Recognizing your good and powerful influence, also your desire to protect the smaller trades in the plight in which ours finds itself, I am appealing to your good judgment to assist us.

Yours very truly,

HENRY FINCH.

CITY OF MINNEAPOLIS,
OFFICE OF THE PURCHASING AGENT,
February 26, 1935.

Senator GERALD P. NYE,
Washington, D. C.

DEAR SENATOR NYE: I have had considerable trouble with some code authorities recently and have also had complaints filed against me for violation.

You will notice by the attached excerpts from the weekly letter sent out by the Minneapolis Typothetae that a man who purchases material below cost, even though he is unaware of the cost thereof, is rated as a "fence," which, it goes on to state, is worse than a thief. I, as well as other buyers, of course, take great exception to being rated as a thief.

The complaint mentioned above sets forth the fact that I have failed to put up the required one-tenth of 1 percent of the total cost of the project involved, which, according to the attached letter sent out by Paul V. Betters, executive director of the United States Conference of Mayors, seems to carry the information that municipalities are not subject to the registration fee mentioned in the complaint.

Hoping this will be of some benefit to you, I remain

Very truly yours,

F. S. GRAM.

MINNEAPOLIS TYPOTHETAE (FROM SECRETARY'S WEEKLY LETTER, DEC. 1, 1934)

You'd not be a "fence?" Certainly not, for you would know that the goods were stolen. Furthermore, if you should weaken to the temptation, you would make yourself a criminal. Now, the law that puts the "fence" as well as the thief behind the bars is no stronger than the statute that prohibits selling below cost. Hence the one that knowingly buys printing below cost of production puts himself on the same plane as the "fence" who contributes to the thieving industry by providing an outlet for stolen goods. Herein is a suggestion for the printing

salesman. When the buyer says, "Your price is too high", direct his attention to the second page of the Price Determination Schedule, the little black book, third paragraph, second page—

"No establishment shall sell or offer to sell any product listed in the Price Determination Schedule issued by the National Graphic Arts Coordinating Committee of the Graphic Arts Code attached hereto and made a part hereof at a price less than 10 percent below the price for such product contained in said Price Determination Schedule."

If the estimate runs $500 be sure and have the cost certified by the Typothetae cost-auditing department. In either case you will be in position to assert positively that your price is right, based upon legal costs. The one that buys printing below the legal cost thereof does a greater wrong to society than the "fence" who forms a channel through which can flow the product of the thief. The latter is generally regarded as low-down and despicable, whereas the act of the former for long has been condoned as being smart and no worse than sharp practice. Times, however, have changed. We now know that a sale below cost affects adversely in degree both the buyer and the seller, their employees, and generally all business, industry, and the public at large. It should be condemned by every printer for it is the worst bane of his industry. Furthermore, he should file complaints at this office for all such acts.

CODE OF FAIR COMPETITION FOR THE GRAPHIC ARTS INDUSTRIES

"No establishment shall sell or offer to sell any product listed in the Price Determination Schedule issued by the National Graphic Arts Coordinating Committee of the Graphic Arts Code attached hereto and made a part hereof at a price less than 10 percent below the price for such product contained in said Price Determination Schedule.

"*Provided*, That this prohibition shall not apply to any single order exceeding $500 in amount, nor to any combined order exceeding $5,000 in amount, nor to any order actually contracted for and exceeding $5,000 in amount per year.

"*Provided further*, That an establishment with total press equipment consisting of not more than three platen presses, upon application and proper showing to its national code authority and approval of such application by its national code authority, may be authorized to sell or offer to sell any such products which it manufactures on such equipment at a price not less than 20 percent below the prices contained in the said Price Determination Schedule;

"*Provided further*, That an establishment which uses a method of cost finding prescribed by it national code authority in accordance with the provisions of section 26 of the Graphic Arts Code, or, if such a method has not been prescribed, an adequate cost-finding system and can thereby determine its costs for such products as lower by more than 10 percent than those listed in the Price Determination Schedule, may sell such products at not less than the cost so determined upon submitting to its national code authority satisfactory proof of the accuracy of such costs."

These four clauses comprise all of this part of the code.

MINNEAPOLIS, MINN., *February 22, 1935*.

Senator GERALD P. NYE,
The Senate, Washington, D. C.

DEAR SIR: I note that the Senate has authorized an investigation of the National Recovery Administration and also that the Administration has recommended to Congress that the National Recovery Act be extended another 2 years with the promise of "added protection to the small business man."

As a tile contractor and a member of the Tile Contracting Code Authority for the State of North Dakota and parts of Minnesota, South Dakota, and Wisconsin, I wish to protest against continuation of the National Recovery Administration in the tile industry.

I wish to state absolutely and without hesitation that I consider the National Recovery Administration in the tile industry has been nothing but a legal set-up to force small dealers, such as myself, out of business.

There are two codes which govern the tile contractor, the Tile Manufacturers Code under which he buys, and the Tile Contractors Code under which he is supposed to operate. Both of these codes have been arranged and are functioning for the benefit of the larger concerns who are, of course, in charge of the code activities.

There are many questions I would like to ask those who champion continuation of the two codes above mentioned but I will confine myself to two.

(1) At least 95 percent of the business obtained by most tile contractors is directly competitive. Assuming that a tile contractor does not have the "merchant tile dealer" classification as set up by the tile manufacturers and which allows the contractor an additional 15-percent discount on purchases. How can this tile contractor lawfully make his bid as low as his competitor who has the 15-percent additional discount? Provided that neither contractor violate the Tile Contracting Code.

(2) Assuming that the tile contractor is an employer of labor (over one-half of the tile contractors in the Twin Cities are mechanics who install their own work). What method of the National Recovery Administration has been, or can be, employed that will force a man doing his own work to abide by the labor scale and provisions so that the employer of labor will have an equal chance? This question is of vital importance to the small dealer but is not of great interest to the large dealer because the mechanic in business for himself seldom bids on the larger jobs.

Since the inception of the National Recovery Administration and the codes covering the tile industry conditions have not improved for the small dealer but have become impossible for him to continue in business and to abide by the codes.

There has been but one provision of the code which has been enforced. That requiring payment of 1 percent of the bid price to the code authorities at Washington. Their entire attention seems to have been focused on this one code requirement.

Yours very truly,

HERBERT J. POWELL.

NORTHERN JOBBING CO., INC.,
St. Paul, Minn., February 22, 1935.

Senator GERALD P. NYE,
United States Senate Chambers,
Washington, D. C.

DEAR SENATOR NYE: There is a matter that is just brought to my attention by my partner, Mr. Harry Lang, of H. Lang & Co., River Falls, Wis. The facts surrounding this case are so pitiful and so unbusinesslike that I feel it is information you should have in hand because you can certainly lick anyone with these unbusinesslike methods which codes are forcing down the throats of small industries.

For instance, in our factory we have a special pocket-pressing machine for making round pockets for our overalls, which machine must run more than capacity possibly 16 extra hours per week to prepare pockets that other girls may have work without interruption.

We are fully complying with the 36-hours, and the proper hourly pay, but the code authority refuses to allow us to even employ one who does not have any work at all for, say 16 hours a week, to run this machine a little extra time than it would be run by a 36-hour-week employee. They write me back and ask me when I am going to buy another machine.

It is so ridiculous to presume that a small factory like ours has so much money that (of course we haven't) because of Government dictation or because of code dictation we can have a thousand dollars to invest in another machine which we only need a little production from part time.

On the other hand, if we did not have another machine, it would mean that there would be 16 to 20 people sent home several times during the week because the pocket machine cannot keep up with requirements of the other machines in the factory. We haven't any volume that will justify the running of the one machine we have, and we certainly know without anyone telling us that we cannot afford to invest a thousand dollars in another machine. Why shouldn't we run the machine we have a little extra time, with a man that doesn't have any work from day to day— a man who wants a job?

These things are ridiculous to try to force on a free American citizen, especially when this one particular unit of our factory has a $72,000 pay roll in a town where there are no other factories— a town with a population of twenty-three hundred people.

I will tell you, Senator, you can do the job that we manufacturers in the Northwest need done for them, and you can rest assured that anyone I send your

way with information, and any information I might give you, is 100 percent correct.

Wishing you continued success, will close by saying that I am interested in the newspaper articles that I see from time to time which brings forth your activity.

If you need any correspondence pertaining to this matter, Mr. Harry Lang will be glad to furnish you with the original letters from the code authority.

You probably know that I was an alternate on the Cotton Garment Code Authority, and I resigned because I did not believe in their principles, but I did not give them any statement as to why I resigned.

Yours very truly,

G. H. NORRIS.

BRASELTON BROS., INC.,
Braselton, Ga., February 18, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SENATOR NYE: We notice in the papers that you are after them in Washington about the National Recovery Act. You are exactly right and we hope you will keep pushing the matter. The large manufacturers are pooling up together and are hurting all the small manufacturers and retail merchants. It is already costing the consumers a good deal more money.

We have been in business here for the past 47 years, but we have never seen trusts forming so fast as they have been for the past few months. There is no honesty about the matter, for the large manufacturers will give free goods and slide about, and are making the small merchant bear the burden. We would be mighty glad to see the National Recovery Act done away with entirely, and feel it would help recovery get started immediately. It took years to get the Sherman Antitrust Law passed and the National Recovery Act is trying to do away with it entirely. We feel sure 90 percent of the retail merchants in the United States and the consumers of the Nation are behind you.

Trusting you will do all you can and with best wishes, we are,

Yours very truly,

BRASELTON BROS., INC.

LOUIS HOFFMAN,
New York, February 16, 1935.

Senator GERALD P. NYE,
Washington, D. C.

MY DEAR SENATOR: I read in the New York Times of February 15 that you are urging an exhaustive inquiry into various alleged powers under the National Recovery Act. I want to call to your attention a particular misuse of power conferred by one of the codes, especially because it involves the crushing by the large companies in the business of the smaller and potentially freely competing business men in that industry.

The Code for the Builders Supplies Trade Industry was adopted several months after the enactment of the National Industrial Recovery Act. That code as approved by the President made various provisions for the organization of the industry under the code, for wage and labor changes and guarantees, and concluded with provisions forbidding the sale of products under cost. Subsequent to the enactment of the code, General Johnson, issued certain change orders in which he provided for a minimum mark-up measured by a percentage of the cost to the seller. This minimum make-up was to represent the overhead of the seller. It was perfectly clear, therefore, what the powers of the code authority were with respect to prices. No person who sold under his cost plus a percentage of mark-up based upon his cost was guilty of a violation of the code.

Despite this fact and the obvious clarity of the legislation and orders, the code authority of the industry, which as you know had been tainted and threatened with monopoly, has now become a happy hunting ground for the large companies. Using the code as an instrument they proceeded to establish minimum prices in the industry and compel everyone to abide by their prices. Theoretically they were determining certain costs. Actually we did not know how these so-called "costs" were determined, but we were certain that the costs were not based on the prices which we had to pay for materials.

Other companies which I represent were engaged in bidding for public contracts at the time. They complied with the code by measuring their prices by their costs plus a mark-up. Solely aside from the code provisions they made quite a luxurious profit. In most instances this profit was in the neighborhood of 35 percent. When, however, these bids despite the size of the profit, were lower than the fixed minimum prices, the code authority came into court to secure injunctions against my companies and sent letters to the commissioner of purchase of the city of New York requesting that the names of my companies be put on blacklists and that the individuals who operated the companies should be ineligible for any city contracts. Because of their exalted position as lords of the industry, they caused us to lose contract after contract. In the injunction action which they brought, they did not succeed. The court, realizing after reading the unequivocal words of the codes and orders, that the injunction action had been brought wholly without authority and that this was an attempt to create a monopoly.

More than that, it was necessary for us to write to General Johnson himself in order to obtain relief from the measures of the code authority. After having mislead the compliance officer in this district for some time, he having come into the picture as an uninitiate in the trade, he finally realized the wrong which he had perpetrated and we have letters from him pointing out the obvious illegal arrogance of powers to the code authority. For all of this we have the evidence in writing and we have witnesses who are willing to testify before any committee to which this question may be referred.

Nor do I wish to leave the impression with you that since we have exploded the information that prices may be fixed, the question is dead. The code authority is still operating new methods which I am quite certain have the object of obtaining the monopoly through devious efforts which they could not maintain in the high handed manner which I have described. For instance there is a letter of February 7, 1935, sent to the chairman of the code authority in this region, of this industry, asking that they vote for the representative of certain associations in the business to permit this representative to dictate the conditions under which the industry should operate. You know, of course, who shall dictate to the representative what he shall in turn dictate to the industry. While the vile plan back of this delegation of authority has not yet been expounded, I feel quite sure that it is another attempt to do what has been done before. I believe you will find here one of the most flagrant cases of the dominating larger companies' attempt to suppress and destroy all competition and using the National Recovery Act as a vehicle for their suppression.

I should appreciate an ackowledgement of this letter with any view of yours as to what action you might take.

Respectfully yours,

LOUIS HOFFMAN.

FRIEDMAN-HARRY MARKS CLOTHING CO., INC.
Richmond, Va., February 14, 1935.

HON. GERALD P. NYE,
Washington, D. C.

DEAR SENATOR NYE: Your telegram concerning our experiences under the National Recovery Act comes at a time when pending amendments to the Men's Clothing Code, under which we operate, puts us on the defensive in a battle for our very existence.

When the National Recovery Administration was originally incorporated, we heartily subscribed to its aims and purposes. Now, after 17 months of operating under the Men's Clothing Code, we find that the abuses enforced overbalance any possible benefit to the industry or country. We find that strenuous efforts are always being exerted to use the Men's Clothing Code as a means of furthering selfish interests.

The clothing manufacturers have always been divided in two groups—those operating in regular established clothing centers, which are controlled by the Amalgamated Clothing Worker's Union, and those operating in smaller decentralized communities and without jurisdiction of the Amalgamated Union. This firm is one of the latter group.

Because we have succeeded in establishing our business away from the regular markets, we have incurred the envy of clothing manufacturers in the central areas, and the enmity of the Amalgamated Union, whose control and influence we elude.

As a result of this condition, both of these organizations, under the guise of helping labor, have been exerting powerful influence in devising ways and means of hampering us and manufacturers like us.

We employ 750 people and at present operate under a code requiring minimum wages of 40 cents, 75 cents, and $1 per hour. Those in the two latter groups are a small percentage of the total.

A Southern differential in the code places the minima in the South at 37 cents, 67½ cents, and 90 cents, respectively.

Virginia, however, is placed in the North in this code. This, in spite of all geographic, historic, and economic factors. Richmond, the city in which we manufacture, the rebel capital of the Confederacy, is conveniently assigned a place in the North.

Denying Virginia a Southern differential is open discrimination against those firms manufacturing men's clothing in this State.

In the city of Richmond today the average minimum hourly wage of the largest industries working under codes, including the cigarette code, is 33 cents per hour. The minima range between 25 and 40 cents per hour.

Just now, the centralized manufacturing and union groups are pressing for an amendment to increase the minimum hourly wage of the 40-cent group in our code to classifications ranging from 40 to 75 cents per hour.

These increases would not effect labor in the clothing centers, but rather organizations like ours.

Obviously, the object of the proposed amendment is to equalize labor costs in the various markets, but deliberately ignore the handicaps and disadvantages under which we labor as a result of manufacturing in a decentralized market.

We have such facts to contend with as being obliged to train all the help we employ, whereas in clothing centers there is always a reserve of experienced help from which to draw.

Help employed by us after they are thoroughly experienced do not attain an average of 65 percent of the productive efficiency of the thoroughly trained help in the regular labor markets.

We are obliged to invest more than twice as much for machinery for the same production as is produced by the experienced workers in the labor markets.

In clothing centers different types of work are distributed in factories which specialize in making the particular kinds of work, whereas we are compelled to make everything from a linen suit to an overcoat in the same plant.

Manufacturers in clothing centers again have the advantage of closing down at off-season periods because they are in a position to concentrate their production in shorter periods of time, having the reserve of skilled labor available to them at all times. In our case it is imperative that we keep our plants going practically all year around in order to keep our organization intact.

Transportation is another item of large proportion with which we have to contend as a result of our being away from the regular buying and selling areas. Every piece of raw material that goes into the making up of the suit of clothes involves a transportation expense that is unknown to manufacturers in the regular markets.

These facts are deliberately ignored in considering this matter of equalizing costs in the clothing industry, and with the hostile elements, which were instrumental in drawing the proposed amendment, still exerting their influence, there is very small likelihood of our getting justice through our own efforts.

If successful, the vicious influences that are instrumental in bringing about this proposed amendment will succeed in disrupting a group of clothing manufacturers which will react severely, not alone upon them, but the people whom they employ and the communities in which they live.

This, Senator Nye, is a brief explanation of conditions as they exist right now in the clothing industry. We would be grateful for some relief from the controlling influences responsible for it.

Respectfully yours,

MORTON MARKS, *President.*

MODEL LAUNDRY CO.,
St. Louis, Mo., February 11, 1935.

Hon. Senator GERALD P. NYE,
Washington, D. C.

DEAR SIR: Referring to your telegram of February 9, 1935, regarding the code and the National Recovery Act.

Our business has suffered more during the last 14 months than it has during the last 20 years. The employees are more discontent with the National Recovery Act and more dissatisfied than they have ever been before. We employed more

people at a living wage before the National Recovery Act became effective than we do now and all our employees were better satisfied and worked better. We had a drivers' strike last November and one this December and it is still in progress and not settled. The laundry prices are lower today than they have been for the last 25 years. The supplies in all lines that we use have increased in price from 40 to 60 percent and the wages as you know have increased.

The code was a complete flop in our business and did not help us any and on account of the depression and unemployment the people cannot send out their laundry and if they do they cannot pay for same. We came to the conclusion if they could not send us their laundry at a low price and could not pay for same, they surely could not send us laundry and pay for same at a higher price. My opinion is that if we had continued without the National Recovery Act and without the code, let business men run their own business we would have been able to employ more men and women at living wages than we are able to do now, and the dollar would go farther than it does now for all of us. I recently was forced to place a mortgage on my building and ground for $5,000 in order that I would have money to pay the bills then due and keep our credit in good standing. I dare say if this keeps up we will be forced to close our business as we cannot continue to borrow money to pay bills and salaries.

Respectfully,

WM. R. LAGEMAN.

STEWART DRY CLEANING CO., INC.,
Roanoke, Va., February 14, 1935.

Senator GERALD P. NYE,
Washington, D. C.

DEAR SIR: I was informed by Mr. Phillip Jakra, of this city, that you had wired him to know what we thought of the National Recovery Act continuing through a longer period of time.

As a small business man in this community, with cleaning business, which I have been 30 years establishing, with a capital of about $25,000, I want to say that I, and practically all other small cleaners of this community whom I have talked with, are absolutely opposed to an extension of the National Recovery Act. I feel that it has cost me thousands of dollars to live up to the code which I signed in the beginning, and if I had had any idea that it was going to be any more than a temporary measure, as the letters from Uncle Sam said it would be, I would never have signed the first code. I do not feel that the hour and wage provisions have been enforced in our community, and I feel that many cleaners have been able to undersell me on dry cleaning because of the fact that they are not trying to live up to these provisions in the code, while I am. I feel also that the laundries wage code in our section of 14 cents minimum an hour, and the cleaners minimum of 27 cents per hour, are enabling the laundries to undersell us, for the truth about dry cleaning is, that 75 percent of it has to be steam cleaned, and can be done by laundry help, therefore giving laundries an undue advantage over the dry cleaners, on account of the difference in the wage scale. Every laundry in this country takes in dry cleaning.

Before the National Recovery Act, I was able to pay my employees good wages, and to make a profit, besides my salary, which was ample to take care of my wife and four children, but now, under the National Recovery Act, I have myself been working practically night and day and am hardly able to make ends meet. I consider that this is due to the fact that I am being undersold by the laundries, who not only have to pay about half the scale of wages that I have to pay according to my code, and by chiselers, who are not observing either hours or wages.

To my honest opinion, you will do the middleman a great service if you can help keep the Government from extending the National Recovery Act.

Yours truly,

W. A. STEWART, *President.*

THE FERRO CONCRETE CONSTRUCTION CO.,
Cincinnati, February 25, 1935.

Senator GERALD P. NYE,
Washington, D. C.

MY DEAR SENATOR: The news bulletin of the Cincinnati Chamber of Commerce says you have requested opinions from various people in regard to the benefits of the National Recovery Act.

We are general contractors and come under the Building Code. We have no objections either to the minimum wage or to the maximum hours as they really do not affect this industry. What we do object to is the so-called "control of bidding methods" and putting it on a moral ground.

In our experience in the building industry it has not worked at all. The only thing it has done is to make contractors attempt rather underhand methods. In our opinion, any attempt to control competition and methods of bidding in an industry that is made up of thousands of different people is beyond the dreams of possibility. The expenses of enforcement would be tremendous and, even if you were able to do it, we cannot see the advantage. The attempt to control this feature is merely an incentive to dishonesty.

To our mind, to continue the National Recovery Act in any of its branches with the exception of those that apply to hours and minimum wages, plus the industries that are affected by natural resources, is a great menace to the country.

Very truly yours,

TYLOR FIELD, *President.*

THE SLATER CO.,
Pontiac, Mich., February 26, 1935.

Senator NYE,
Senator of North Dakota, Washington, D. C.

DEAR SENATOR NYE: Regarding the codes and small business.

The National Recovery Act in many respects is commendable.

Not sufficiently restrictive in authority conferred upon code enacting agencies.

"Code authority" is interpreted to be "legislative authority" by the code writers who have prescribed fines, imprisonment, business suicide, and about everything short of capital punishment for violation of codes that, in instances, violate about every right that is presumably reserved to the individual by the constitution.

The "silk stocking" crowd, maintained by big business, have kindly volunteered to participate with the "brain trusters" in writing 2,000 or 3,000 codes for which we, the "little fellows", should and would extend a vote of thanks, excepting that they picked all the feathers out of those "blue eagles" before they handed them to us.

That eagle they gave us is an awful hungry bird, and between feeding the eagle with our assessments and complying with the working conditions necessary to keep him, we are about starved out.

Big business went to Washington and wrote a code for the lumber business and assumed the role of the fox that is well illustrated by an old fable: "The fox invited the stork to dinner, and being disposed to divert himself at the expense of his guest, provided nothing for the entertainment but soup, in a wide, shallow dish. This himself could lap up with a great deal of ease; but the stork, who could but just dip in the point of his bill, was not a bit the better all the while."—*Aesop.*

They, the manufacturers, builded a code, in many lines, with quantity differentials very favorable to the large purchasers in the matter of price.

They increased minimum quantity shipments to a point where the small dealer is unable to finance his purchases, or if financially able must grossly overstock to secure manufacturer to dealer supplies.

They builded a big house around all of us and left a lot of secret doors where they could get out if threatened with penalties.

The "big mills" for interior finish and millwork write a code, full of "funny" regulations and quantity differentials.

Then they make you a detailed price list, that looks like a gift from Santa Claus and say, "Sign it", or we will take that "hungry eagle" and then you can't get any Government business—you sign!

When there is any worthwhile jobs big businesses chisel the price and take the job. They can afford to take the chance of fines or imprisonment that the little fellow dare not take. The little fellow has no money to defend himself in Federal courts against Government-paid attorneys.

Hundreds of codes are cut to pieces but the big fellows are not in jail.

Price fixing, in the "retail lumber business" for the little fellow, is: Starvation if he "gets in", and suicide if he "stays out."

In precode years the small dealer held some advantages that permitted him to hold a comfortable position in the market: (*a*) the proprietor holding a combined position of buyer, salesman, telephone operator, order clerk, and bookkeeper, (*b*) a yard man, (*c*) a trucker.

Neither of the latter worked very hard, and in many cases, were old men, contented with a year around job at a very nominal rate.

With this very small overhead the little fellow could sell a little lower when necessary and thereby secure business notwithstanding delays in the delivery of some items, occasioned on account of his limited stock.

The codes have pushed upward his overhead costs to a par with the large dealer and by reason of his small volume, perhaps higher.

The large dealer has the advantage of: (*a*) ample stocks from which immediate delivery may be made, (*b*) a well organized selling organization, and (*c*) when "price fixing" schedules prevail he has absolute protection against competition from the small dealer.

The National Recovery Administration and codes protected "labor" by minimum-wage schedules.

The National Recovery Administration should protect the "little fellow" to such extent as will permit him to employ the usual number of persons and earn sufficient to pay the advanced rates as provided by the act and in addition thereto at least the salary of an executive for his own services.

To this end the National Recovery Act should be amended to include the following:

Provided, That every person, firm, or coporation employing two or more persons shall have the unrestricted privilege of taking business to the extent of $1,500 per calendar month at any price not below the invoice cost of the material delivered at his yard or warehouse; and, it shall be unlawful to write and adopt or agree to any code and/or price-fixing agreement in any business that will in any manner restrict or penalize such employer from selling or taking business below any price list, or minimum price list, that may be adopted, to the extent of $1,500 per calendar month.

The foregoing is suggested as a pay-roll protection differential, something in the nature of a "stand-by charge" and reckoned as follows: In the retail lumber industry the overhead cost of handling and delivery has been determined to be 20 percent from which may be deducted 3 percent for maintenance of equipment leaving 17 percent as net handling cost.

Open sales of $1,500 would thereby yield	$270

That may be allocated to handling charge protecting the following pay roll.

Executive, 4 weeks, at $35	140
1 yardman, 4 weeks, at $15	60
1 driver, 4 weeks, at $15	60
Total	260

The writer has had considerable experience in connection with several codes in lines allied with construction business, but will not prolong the discussion.

Trusting that I may be of service, I am,

Respectfully yours,

O. A. SLATER.

INDEPENDENT CITIZENS LEAGUE, INC.,
Norfolk, Va., February 14, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SENATOR NYE: Your telegram of the 9th instant was duly received and valued for the opportunity it presents to in some measure cooperate with your efforts, which at all times have been in sympathy with the objectives of the small, independent business interests it is my pleasure to represent in this metropolitan area, consisting of approximately over 2,500 establishments of local trade and industrial enterprise.

Replying, please permit me to say, as regards my constituency reaction to the codes and related agencies of the National Recovery Administration that a more savage, competitive policy practiced with growing oppression against the average or small business establishment by large corporate interests has been made possible under the National Recovery Administration and its codes, and has proven a discouraging experience toward promoting recovery, is the expressed opinion along all lines of average industry in this trading area.

This has been more definitely brought about through sacrifices made through wage-and-hour code requirements without due protection being given through fair practice regulations which would have enabled the small business men to have realized a margin of profit that would have covered at least his overhead, if not a living profit.

In no instance have the businesses and industries of which I have personal knowledge been benefited by codes and administration of codes by national code authorities.

That codes in all lines of industry and trade have been written, as you must be aware, by and for the benefit of big business, and for the perpetuation of which large corporate interests are now applying high-powered political pressure and unlimited finances, is the proven opinion of industry and commerce in the Norfolk metropolitan area, according to a survey made by the writer during the past 6 months.

If private business were now allowed to operate under private privilege, through complete abandonment of codes and the enforcement of antitrust laws and the Clayton Act, the small business interests, which have been the hope and strength of economic America, would not only revive, but would project the shortest road toward national recovery.

This would also create an absorption of an increasing unemployment, effect larger pay rolls, and more economic security and purchasing power than the present universal system of cheating, and chiseling in code compliance could ever possibly accomplish.

With an increase in profits made by big business the past year, and a decrease in money made by the average or small business man, it is indicative in itself that codes and their administration have benefited only big business.

Incidentally, but relevant to the condition in which the small, independent business interests under code requirements and administration of the National Recovery Administration find themselves today, may I add, in conclusion, that with two-thirds of 1 percent of the people owning today 67 percent of all the money in the banks of the country, according to a report of the Federal Deposit Insurance Corporation of the United States, corporate ownership of this wealth have so locked in a vise the control of credit that the small business man has been crushed to the point of credit starvation and business extinction—economically murdered by the National Recovery Administration and its codes.

I trust the above reply to your telegram may contribute toward serving our mutual interests. And if there is any way at any time I may serve you further I shall await with pleasure your valued commands.

And believe me, with assurances of continued high esteem and regard, to be,

Cordially yours,

W. L. Bailie.

H. G. Fischer & Co., Inc.,
Chicago, February 13, 1935.

Hon. Gerald P. Nye,
United States Senate, Washington, D. C.

Honorable Sir: In reply to your night letter of the 9th, we wired you as per enclosed confirmation and herewith submit some of the abuses which are still manifest in connection with codes in our industry. For your further guidance a copy of our letter of February 1, 1934, is also enclosed herewith.

First of all, we can see no reason whatever for there being 2 X-ray codes, 1 for the dental manufacturer and 1 for the manufacturer of physicians' X-ray apparatus. If it is justifiable for the dental manufacturers to have a separate code for the few, then by all means the great number of manufacturers of physicians' X-ray apparatus are entitled to a separate code.

Secondly, we can see no possibility of any justifiable code being worked out in the X-ray industry when controlled by the National Electrical Manufacturers Association due to the immensity of the National Electrical Manufacturers Association, which attempts to cover all electrical manufacturers. This association, in our experience and opinion, is practically controlled by the General Electric Co. and Westinghouse Electric & Manufacturing Co., by means of the influence and votes controlled by them on account of their large number of subsidiary and affiliate companies, who in turn contribute such a large proportion of the financial support of the National Electrical Manufacturers Association. The tremendous cost of membership in the National Electrical Manufacturers Association is prohibitive.

May we also point out that in a recent meeting of the electromedical industry at Cincinnati one of the chief discussions was the encouragement of upward revised identical prices on Government quotations. In fact, the attempt is being made to secure uniform prices on all Government, State, and municipal business, which if carried out to the letter would make absolutely unnecessary the calling for bids by Government, State, or municipal institutions. Recent uniform quotations of various materials called for on Government requisitions have pointed out the ridiculousness of such a situation and the unfairness to the purchaser.

At the same meeting the patent situation was reviewed and openly stirred up, discussions leading to the possibility of oppressing the smaller manufacturers.

Our experience thus far has confirmed our previous objections, that these codes do tend to suppress and eliminate small manufacturers, and do not represent the best interests of the greater number of manufacturers in this industry. Price and term fixing, price filing and maintenance are unfair to the purchaser and places the small manufacturer at the mercy of those planning to eliminate them.

The whole attempt in the writing of this code is so selfish, so useless to the small manufacturer, coupled with the fact that the purchaser seemingly is left out in the utter cold, is unjustifiable and we do not favor its adoption.

We have always been, and still are, in favor of the wage and hour provisions of the President's basic code, and we unhesitatingly recommend that this portion of the code be enforced.

Very truly yours,

H. G. FISCHER, *President.*

STREATOR DAILY TIMES-PRESS,
Streator, Ill., February 19, 1935.

Hon. GERALD P. NYE,
United States Senator, Washington, D. C.

SENATOR NYE: As you are making an investigation of the National Recovery Administration enclosed find an editorial on a factory condition in Streator.

This factory was originally owned by Montgomery Ward Co. When the panic came on they decided to quit the factory and buy clothing in the open market. The plant originally cost $20,000. Rather than have the plant closed, the local citizens raised $10,000; bought the plant and the management was given to Mr. Bodenstein, the former manager of the Montgomery plant.

He has kept the plant running during the panic. He signed the code. The plant paid out $100,000 a year in wages. During this period stockholders got nothing and part of the time the manager could not earn his salary and remitted part of it.

Sometime ago he says, bookkeepers from the code authorities in New York City went through his books and on their return sent him a notice he was violating the code law on wages and assessed him $7,000, giving him notice to appear before them in New York. As he did not appear he has received notice from Washington taking away the National Recovery Administration Eagle.

He says he thought he was living up to the code, and when the men were here going through the books they said nothing to him or gave him a chance to analyze errors if made. He also says the code is not clear on wages to be paid in some departments.

As you will see by the enclosed editorial, the code fixed wages the same in the small city as the big city, which we think is a mistake. Whether that was done by the large manufacturers aided by the Sidney Hilman unions, who seem to resent the factories in the smaller cities, we are not in a position to say, but before the code was formed the Hilman crowd showed resentment against small-town factories.

At one time the plant was entered at night by strangers and acid thrown on the goods.

As we see it here the National Recovery Administration organized with good intentions, is destined to build up the city plants at the expense or loss of the smaller towns. Plant facilities are better in a large city than in the smaller ones, and on city wages for the small town the city will in time get the factories.

Don't you think our big cities with their poverty, crime, and corruption are big enough now, and that the smaller cities should have a chance to survive?

Mr. Bodenstein says if the action is enforced, the $7,000 cannot be paid and he will be put out of business.

Respectfully,

FRED LEROY, *Editor.*

THE AMSLER-MORTON CO.,
Pittsburgh, Pa., March 8, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SIR: We subscribe emphatically to the efforts of those attempting to curb the insane policies of the administration which smother competition, ambition, progress and the former freedom of American citizens to act, think, and plan as individuals.

We protest violently against the monopolistic practices of allocation of business and the complete elimination of further competition in the glass container industry.

This industry has enjoyed the most profitable period in its history during the era following repeal, and its members have conspired through the "good agencies" of Code 36 improperly named "A Code of Fair Competition" to exclude any new competition, the very lifeblood of progress and commerce. See article VII thereof.

A certain group zealously plotting to acquire control of the industry had the means "laid in their lap" by National Recovery Act.

Your complainant has vigorously maintained and voiced a militant attitude to conditions developing in the industry due to patents and then Code 36. The net result was a collection of propaganda, intimidation, and finally several lawsuits designed to "break" us, in the words of the spokesman of our antagonist.

We want these restrictions lifted. This industry would retain this asinine protection to serve its selfish ends while people starve. People who have ability and energy are not going to submit to being throttled forever, while others make millions.

This code was written by individuals selected by the strongest in the industry. Without more knowledge by those who are supposed to control the codes, they now destroy the very ideals which formulate their general plan by writing a self-serving ticket, covertly managed and easily evading the inexperienced investigator.

If we are to enter Utopia with an ideal plan let us make an equitable one, which deals out justice, opportunity, and freedom to all.

If we have exhausted our industrial possibilities and must develop this country in some other way to employ its citizens, we should not destroy those who have contributed to its development by any law which is drafted by a few to throttle the right of all to a final struggle in that field to live; or to seek other more fertile fields of endeavor.

Since the National Recovery Act our domestic business has shrunken to about 20 percent of its former volume in the time of greatest prosperity in our field. This is the direct result of a large number of mergers, patent monopolies and the final killing blow—no competition under code 36.

We enclose herewith a reprint from a New York newspaper; letters of Latchford Glass Co. to General Johnson, also H. L. Dixon Co. and others.

Yours very truly,

W. A. MORTON, *President.*

NEWTON GLOVE MANUFACTURING CO.,
Newton, N. C., February 16, 1935.

Senator GERALD P. NYE,
Washington, D. C.

DEAR SENATOR: I have copy of letter that was mailed to you on February 12 by the Enoch Manufacturing Co., Mount Sterling, Ky., manufacturers of cheap cotton-cloth and cheap knit-cloth gloves and cheap dress gloves. I wish to add a few facts not outlined by Mr. Enoch.

We manufacture the same styles as he does, namely, the cheap cotton-cloth and knit-cloth work gloves, retailing at 8 to 15 cents a pair. We are in a code with about 75 manufacturers employing from eight to ten thousand; total of annual sales for 1934, eighteen and a half million dollars. About 80 percent of this is manufactured by three large companies who are the code authority. The larger companies in addition to making the cheap numbers like we manufacture make or manufacture high-priced lines of gloves that are half leather and half cotton materials that retail from 50 cents to $2 a pair, and they recently got through a uniform piecework rate for the entire industry approved at Washington. Under this piecework rate they pay the same wages to their operators that make high-priced gloves as they do to the operators that make the cheap numbers. Well,

the trouble is, about 25 small factories in the Northern and Middle Western States as well as 6 or 8 in the Southern States only make the cheap cotton-cloth and knit-cloth gloves. It looks like the big companies who get a good price for their products and who make most of the best quality high-priced lines are willing to pay wages that are manifestly too high on the plain cheap gloves in order to eliminate or financially embarrass we manufacturers who make only the cheap numbers. Perhaps they are willing to do this for several years thinking that will be enough time to eliminate or cripple us. Possibly they should pay slightly higher wages on their high-priced numbers and not such high wages on their cheap numbers.

This scheme was put through by the shrewd leaders of the large factories in the North knowing that it would ruin not only the small factories in the South but also numerous factories in the Northern and Middle Western States and their other competitors. They hid themselves behind a mask while getting this crooked work done by claiming they would allow a differential of $1 a week on the wages for factories in small towns in the North as well as in the entire South. That way they fooled for a while their smaller competitors in the North and Middle Western States, and then they got through this crooked uniform piecework rate proposition which wiped out the small differential in the South and which will handicap to a great extent the small manufacturers in the entire United States.

This is not a North-South fight, but it hits us harder, perhaps, because we have to ship our merchandise a long ways to the markets which are principally in the Northern and Middle Western States, and near these markets the large factories are located.

Our selling costs are about 5 percent on our net sales, because we have to send our salesmen a long way from here to get orders while the big factories sold over 10 million dollars of the total sales of 18 million was sold in a few States in the North.

A big protest has been made against these uniform piecework rates by manufacturers in Northern and Middle Western States as it is very plain fact that the large factories they are trying to eliminate or handicap to a dangerous extent the smaller competitor, and so far the large manufacturers have succeeded in having things their way. The code authority in our association was not elected by an industry vote but by a committee vote.

We cannot pay these uniform piecework rates and compete with the larger manufacturers because our freight costs are about three times what theirs are and our selling costs 4 to 5 percent where their selling costs is 1 percent.

We are in favor of the National Recovery Administration to the extent of regulation of maximum hours, minimum wages, and fair rates above the minimum, but we think that at least 95 percent of the National Recovery Administration should be done away with June 16, as it is very expensive on us manufacturers to have to support a code authority with all their paid officials and assistants and numerous other expenses that we are assessed for to carry on the code authority and numerous other legal and other expenses of the National Recovery Administration.

The large factories prospered before the National Recovery Administration; the smaller manufacturer did not wipe them out then. They grew large and powerful financially before the depression and came through the depression much better than the small manufacturers. They can still make progress because they have national lines that they can sell at a high price, but we smaller manufacturers positively cannot pay the same wages on our cheap gloves that retail from 8 to 15 cents a pair, as they pay for high-class quality gloves that retail at 50 cents to $3 a pair. The big factories are willing to pay very high wages for their cheap gloves in order to play havoc with the smaller manufacturer.

Yours truly,

NEWTON GLOVE MANUFACTURING CO.,
H. M. YOUNT.

THE ENOCH MANUFACTURING CO.,
Mount Sterling, Ky., February 18, 1935.

Senator GERALD P. NYE,
Washington, D. C.

MY DEAR SENATOR: Glad to have your telegram and the opportunity of reporting our experience with the National Recovery Administration to some address in Washington who will not simply refer it to our Deputy Administrator.

Abuses corrected? My, oh, my! They are aggravated more all the time. The administration has gradually turned our industry over to the large northern manufacturers who naturally run it to suit themselves. On December 5 they sent out notices of a piecework rate—same for Detroit, Toledo, Kansas City, Indianapolis as any small town in the South. A large poster was mailed to us to hang up inside the factory—well, this is about equivalent to posting a sheriff's sale notice on the outside. Our code authority of 5 members have 3 on it representing 65 percent of the production of the entire industry of 72 firms. In the committee election of December it was declared that Washington would object if less than 50 percent of the production was represented by the code members of five. Self-management of industry naturally is a racket, the large companies dominate and direct the small ones—their officers have the leisure to go down to Washington every few weeks and put through whatever they want. The piecework system was inspired inside our industry by large city factories clearly seeing that they would reduce their own costs of manufacturing in comparison with those in small towns and especially in the South. Now they use our commissioner, whose wages we must contribute to, as a tool to do their bidding, as the large glove factory syndicates North put up most of the money for his hire.

We are plagued every week to sign an affidavit that we have received the poster of piecework rates, but have not as yet signed it. They only apply to two-thirds of the labor; the rest of the labor is accomplished in large factories, mostly by machinery; in the small factories by labor. If we used the piecework rates, our total labor item would be more than theirs. As it is, we are paying more for the complete product. One of the code authority members just have a news story to the Daily News Record, stating the $1 differential for the South had been abolished. This is quite true if we adopt the piecework rates for sewing. In our December meeting at Chicago it was found the lowest prices on gloves were made by factories in Brooklyn, Toledo, and Detroit. They try to sell us gloves.

Do you think we established this factory in 1908, down South, making a product which must be shipped North, without the idea of saving somewhat on labor? We have high freight rates in and out. Our poor service makes it impossible to get quite as much for our product as the northern factories. Our employees walk across the street in their aprons ready to work and devote just 8 hours a day to their work. In the cities north, they must pay carfare, dress for the street, ride 30 to 45 minutes, and then get into work clothing. They devote at least 9½ hours to their job, and return at night to a home costing three times the rental as in a small town here in the South. Do you think Mr. Vincent, our Deputy Administrator, considers the difference between "money" wages and "real" wages? No, indeed. Further, he states that low wages were not a geographical matter. The leveling of "money" wages ruins small towns and especially in the South, distant from the centers of consumption. The South holds a minority position in the national codes in the needle trades and the North is forcing them out of business. Mr. Vincent before he was with the National Recovery Administration was a lawyer from Denver and know nothing except the coal business. Now he is dictator of many needle trades, listening to the large operators who have the time to go down to Washington every few weeks and urge him to effect changes they want. The original code has been nullified by the amendments. They want to place us in the same class as moonshiners. Our Congressmen smile and say the Government is prosecuting no one, but that is a mistake. The tycoons in each industry wish to outlaw all the small competitors. In our industry the standard of living has fallen in the northern large localities, where the same money wages are paid as in small places and in the South. They gang with union labor and Mr. Hilquit to put in effect piecework rates—anything to enlarge their share of the business of the industry. Mr. Darrow was very much right when he declared competitive industry is by its nature ruthless and savage. A competitor will do anything except assassinate another to get some of his customers. The large syndicates formerly bought out weak and small competitors; now they are following an easier course, using the National Recovery Act for the purpose.

I believe in a few simple things—minimum wages for the 40 hours and honest differentials for the week, Government control instead of having our large competitors drive us. Industrial selfcontrol is destructive to all small units, especially those located far from the centers of population. It is purely confiscation of property. Most of the plants South make cheap gloves, and about all the same type. On a long run of one style an operative can make more money with the same piecework rate as used in the North, where a larger variety are made and the operatives must change all the time to other types of gloves. We do not care whether it is $2.40 minimum a day or $5.40, just so we have something

left to pay high freight rates and the shading in prices we must make to sell our product. A factory located in Toledo, Detroit, Chicago can get more money for their product than a factory at a distance.

Surely glad someone is coming to our rescue. Thanks for wiring. In 1928–29 our differentials were 25 percent less for North small towns, 33 percent less than northern cities.

Very truly yours,

THE ENOCH MANUFACTURING CO.,
W. M. ENOCH.

THE DANIEL R. ELLINGER CO.,
Grand Rapids, Mich., February 26, 1935.

Senator GERALD NYE,
United States Senate, Washington, D. C.

HONORABLE SIR: We are pleased to see that you are to investigate the National Recovery Administration and some, at least, of the nearly 600 vicious codes which have been cooked up by individuals rather than our law-making division, Congress. These individuals have always reminded me of the three witches in Hamlet who babbled "double, double, toil and trouble" for they certainly have doubled the toil and trouble for us small business men.

Of course these codes were just "pie" for the trade associations as they allowed their membership to be increased and boosted prices for all members. As an example of price fixing, today we are paying $1.53 per thousand for a no. 6¾ envelop which 9 months ago, before the envelop manufacturers' code went into effect, cost us only $0.66 per thousand. Now, I do not think the employees of this envelop manufacturer got the difference in this raise in prices, namely, a boost of 132 percent in their wages. The envelops are the same, the service is the same, the terms of sale are the same; but we are paying the same price for 1,000 envelops today as we could buy about 2,300 for 9 months ago.

We feel fully in accord with Mr. Robert Irwin of this city on his fight against price fixing and I have personally discussed the complaint brought against me by the local code administrator on this point. The attached copy of a letter to Mr. Payson Irwin of the National Recovery Administration mentions this point. To this letter I never received a reply. Perhaps I may, to my sorrow, as they have a way of punishing small business men who speak their minds.

Hugh Johnson said in the Saturday Evening Post of February 23, that "the greatest danger in National Recovery Act is that several aspects of it are easily turned into rackets." I made this point to Clarence Darrow's C. A. B. about a year ago. And it has been proven right, even here in the "hill country."

How is it possible for an envelop manufacturer in Atlanta, Ga., to quote same prices and terms (prepaid freight) as the envelop manufacturer in Kalamazoo, the former being 807 miles from Grand Rapids and the latter 50 miles from Grand Rapids? Either one is getting too much, or the other not enough.

We have never signed the Graphic Arts Industry Code and we never intend to, as we consider it un-American, a racket, and unfair to the small printer.

We have lost several accounts because of the National Recovery Administration and the methods of the local code administrator:

1. A manufacturer of shoes in Rockford, Mich., who requires all contractors to sign code compliance because he, the shoe manufacturer, has a Government contract demanding such a signature to code compliance.
2. County of Kent business.
3. City of Grand Rapids business.
4. Kent County Welfare Relief Association business.

To show you how these code administrators work: I sent a certified public accountant over to the local code administrator's office to get data, advice, and suggestions as to how he (the accountant) should work for us. This accountant was then hired by the local code administrator and the former then evidenced no desire to work for us, probably because he could make more money at the other job. You can see how our desire to cooperate was destroyed by the subtle machinations of this code administrator.

The four leading paper jobbers of this city are members of the local Graphic Arts Association and contribute $300 a year each to it; and what they get in return I have never been able to find out. Of course, all the small printers are on the C. O. D. list with these jobbers. And, after the bank holiday was put into effect here, one of these jobbers had the effrontery to add a surcharge of 50 cents to each paper order under $10, even when I went in with cash and carried out the paper on my back. What, may I ask, does this smack of?

We subscribe to the old-fashioned theory that hard work and our natural resources are the primary causes for the prosperity that has been ours in the past.

I will be glad to hear from you at any time.

Sincerely,

DANIEL R. ELLINGER.

FEBRUARY 11, 1935.

Mr. PAYSON IRWIN,
Deputy Administrator, National Recovery Administration,
Washington, D. C.

DEAR SIR: Inasmuch as you seem to be the most fair on the matters of the Code of the Commercial Relief Printing Industry, I am addressing this letter to you, particularly as I am a small printer

You have been in correspondence with Mr. B. D. Coats, another small printer of this city, and I want to add my complaint to that of Mr. Coat's. I am sure that I could get others should I so desire.

On April 18, 1934, I petitioned the National Recovery Administration through my congressman, Mr. Carl Mapes, asking for exemption and variation under the above-mentioned code. Not having any word from this petition for almost 2 months, I wrote Mr. Mapes asking what disposition had been made of this petition. On July 21, over 3 months after this petition was filed, I received word from Mr. Mapes that said petition was refused favorable action on recommendation of our local code authority. Now I never had any notice or any opportunity to have a hearing on such a petition from any source.

Again, at the instigation of the local code administrator a field adjuster from the Detroit National Recovery Administration office called suddenly at my office and in an unfriendly manner demanded that I turn over to him my books.

Again, after my wife was forced to leave her home and children to solicit printing for me, she learned of a systematic whispering campaign against us. She called the local code administrator and was advised that we (she and I) were "outlaws" but all would be forgiven if we were to join the Grand Rapids Graphic Arts Association, made up principally of larger printers.

Again, the local code administrator says I must pay an apprentice, just out of high school and working for me at his first job, the rate of 82 cents an hour top, whereas I pay him 35 cents an hour. He sets type, operates a jobber, hand-fed press. This is contrary to our understanding of your letter of November 27, 1934, as printed in the Typothetae Bulletin of December 15, 1934.

Again, a complaint was made against me that I was selling at less than Black Book costs and this sale being made to Kent County in which I reside. I was advised by Mr. Robert Irwin not to reply to this complaint as it had no basis in fact, but I appeared before a board of complaint comprising many unfriendly competitors. At that time I was not advised by the local code authority that by reason of the President's Executive Order No. 6757 of June 29, 1934, I was allowed to sell at 15 percent off code price lists to a public authority such as Kent County. Neither was I told that I could sell at a price that showed a profit to me. All these things I was forced to find out for myself afterwards.

Again, I have been threatened directly and indirectly by the local code authority and of all complaints turned in here, mine has been the only one which has been publicly stated as being turned over to the National Recovery Administration for legal action.

Again, there has been much talk about patriotism in supporting the codes but I will stack my 2 years' voluntary World War record (9 months overseas) up against the local code administrators.

Again, a group of small printers organized under the name of the Commercial Printers' Club about 10 months ago. At that time a petition for a hearing was sent to the local code administrator by this club but nothing further was heard from it.

Again, there has been considerable loose talk by the code administrator such as calling us by inference "5-year-old children, cutthroat men, safe blowers, Jesse Jameses." The local code administrator told me personally that he was going to "club noncompliers into line." Also, he stated without solicitation or aggravation that "I have instructed my members to underquote you to prevent you from getting the business." He told Mr. Coats that local code administration facts were "none of his damn business."

Again, price reporting is said to be handled unfairly. This complaint was made by Mr. Linscott of the Linscott Printing Co. of this city.

Again, the code administrator here placed his representatives in the meetings of the Commercial Printers' Club to dissipate the efforts of this club to get a

fair hearing. Last year the Graphic Arts Association of Western Michigan elected one of our leaders as treasurer of their organization, an office which he has never filled according to their constitution.

Again, assessments have been lowered to $12 per $1,000 mechanical pay roll but none of our members recall having gotten this notice. Certainly, this fact was not disputed at our last meeting by the local code administrators, representatives.

Again, a weekly yellow sheet is circularized among all printers whether they wanted it or not by the Graphic Arts Association of Grand Rapids. However, it serves as a mouthpiece for the local code administrators and carries by implication threats, intimidation, and coercion.

Again, the local code administrator holds three jobs: Secretary to Lions Club, code administrator, secretary to Grand Rapids Graphic Arts Association, and draws an income from each. Yet a few weeks ago he publicly stated that he had "not found time to organize" the trade plants (type composition) under their code here.

According to the National Industrial Recovery Act rules of January 15, 1935, we believe that this local code authority has violated rules 2 and 5.

We have taken up some of these matters with our representatives in Congress, Senator Vandenberg and Representative Mapes, but while assuring us of their sympathy they state there is nothing they can do about this.

Naturally, we small printers do not want to cause the Government undue expense and trouble, but we feel that we are entitled to fair treatment, something which we are doubtful of under the present local code administrator.

Sincerely yours,

THE D. R. ELLINGER CO.,
DANIEL R. ELLINGER,
Grand Rapids, Mich.

PINE HOSIERY MILLS, INC.,
Star, N. C., February 16, 1935.

Senator NYE,
Washington, D. C.

DEAR SENATOR: We are writing you in regard to our little hosiery mill, located in the village of Star, N. C., and will thank you to read this letter carefully and give same your serious consideration.

A small mill was organized here about 4 or 5 years ago, and was doing fairly well up until the year 1933, at which time it was thrown into bankruptcy, and was run under receivership from August 1933 until January 1, 1934, at which time a new company was organized, and has been operating under the name of Pine Hosiery Mills, Inc., since that time.

This is a small town with about 400 population. This little mill is owned locally and we have been trying to give employment to all the people we possibly could. We have several employees whom we have taken off the relief work and are now making a good living and are well satisfied with the pay they are receiving.

The point we are trying to bring out is this: If we are forced to comply with the drastic rules of the Hosiery Code Authority, we will be forced out of business. Our knitting department is only 24 by 65 feet and we only have a production of around 2,500 dozen pairs per week. We employ on an average of 60 employees, both men and women, and all have signed a petition that they are well satisfied with the pay they are receiving for their work. We only make two types of men's hosiery, whereas the larger mills are making several types and make anywhere from 5,000 to 10,000 per day where we only make about 2,500 dozen per week. The injustice of the whole thing is this: The larger mills have so many styles, which they are making, and on which they are making a handsome profit, where the little mill has only two styles and no chance in the world to even break even. You, of course, understand that the larger mills are the ones who made this code, or rather the ones who sat at the board when this code was drawn up. As yet, we have failed to see where an officer of any small mill was allowed to have anything to say about the code in any way. In our opinion, it is just a question of the large mills freezing the small mill out.

If we are compelled to comply with the code, it would run our prices up so high that we would be compelled to close our doors, as it would be impossible to get the price we would have to get for our goods.

We have been running three shifts from the time this mill was reorganized in order to give from 10 to 15 more people employment. The only department in

which we have been running 3 shifts is the knitting room, and if we are forced to cut the third shift out, we will be forced to let from 10 to 15 employees go, as it takes the 3 shifts in knitting in order to give the loopers and finishing room help 1 shift. If we are forced to let these people go, it will cause a very great hardship as most of them have families, and feel that half loaf is better than no loaf at all.

The code authorities have been after us ever since we started operating this little mill, but our attorney has given us instructions to go ahead, as he did not think the code constitutional and would not hold up.

It seems to us that a mill, situated in a small village as ours, would be a Godsend to a community, if let alone, but under the existing conditions, we do not know just where we stand, and we want to ask that you give this serious consideration and will more than appreciate any help that you may give us.

We are cited to appear in Greensboro on February 27 for trial or hearing, to show cause why we should not cut down to two shifts.

We want to ask your cooperation in this matter, and feel that if we had more men in the Senate like you and Senator McCarran that this thing would soon die.

Thanking you in advance for anything you may be able to do, we are,

Respectfully,

T. J. ELLIS.

H. R. GEER OIL CO.,
Grand Rapids, Mich., February 15, 1935.

Senator GERALD P. NYE,
Washington, D. C.

HONORABLE SIR: The writer noticed the enclosed clipping in our local paper last night, and would like to ask your assistance and advice regarding the ice business which we own and operate in addition to the oil business as indicated by our letterhead.

In the ice business, we operate both retail and wholesale departments enjoying 2,500 to 3,000 tons business per year.

We buy our supply from the manufacturer, and last year under code ruling, were forced to buy of a large local competitor at an exorbitant figure, leaving us little or not profit.

The condition is as follows: We own our storage and have been in the ice business 4 years. Our real estate includes a warehouse building into which we wish to install ice-making machinery purchased recently to enable us to meet this competitive condition.

As we have complied with all code regulations and conditions, we have been asked by Mr. Daly of the National Recovery Administration at Washington to submit application for a certificate of authority permitting us to make the installation. We have likewise complied to it just recently. We are further advised by Mr. Daly that they expect to grant us a hearing at their convenience at some convenient city.

Our time is rather limited as we expect the ice season will start on or about April 1, and therefore must of necessity have prompt action; it is our further contention that we be granted a permit (if one is necessary) without a lot of hearings and other red tape so that we may enjoy equal privileges now granted only to the large integrated companies.

Can you assist us? Thanking you in advance for your cooperation, I am

Yours very truly,

H. R. GEER.

STOWERS LUMBER & MANUFACTURING CO.,
Harriman, Tenn., February 19, 1935.

Hon. Senator NYE,
Washington, D. C.

DEAR SIR: I am very much pleased to note from the press that you are interested in making a thorough investigation of the National Recovery Administration before any further legislation is enacted.

It is our opinion that the National Recovery Act has been a detriment to business rather than a help; however, had it been enacted merely as a measure to raise the wage level of the country it would have undoubtedly been a great benefit as a temporary measure.

We feel that if there is any further legislation enacted it should deal only with wages and all the matter of production control, price fixing, etc., should be left out. In fact the National Recovery Act today is so intricate that no one knows just what there is to it, and under the Lumber Code alone there have been hundreds of thousands of new laws made and there is such a maze of regulations that no business man can run his business and keep up with the various regulations.

We might state that there are 10 code authorities who are trying to collect dues off this company and who claim that this company should pay tribute to their code.

We believe that the codes should be very greatly simplified if continued at all and there should be no high-salaried code officials but that part of the code that is reenacted should be administered by the Government.

Hoping that you will be able to get somewhere in your investigation, we remain,

Yours very truly,

A. B. STOWERS.

VIRGINIA LIME SALES CO.,
York, Pa., February 11, 1935.

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

DEAR SENATOR NYE: We have for acknowledgement your valued telegram of February 9, in reference to our experience under the National Recovery Administration and the Lime Code. We are pleased to advise in answer to your inquiry that in our opinion the abuses in the lime industry are greater under the National Recovery Administration than they ever were before.

It is, we believe, quite generally conceded that the uniform-wage provisions of this code are a step forward and a great improvement over other conditions. The price fixing and other features of the code have led to great abuses and been exceedingly hard on the small manufacturer. We are the direct sales representative of six small lime plants in Virginia. At the time of the adoption of the Lime Code every one of these plants was reasonably busy. Since that time conditions have grown steadily worse until at the present time none of these plants are operating above 33⅓-percent capacity.

As nearly as we can determine the actual situation, practically all the lime business is going to the larger companies who dominate the Lime Code Authority in Washington. There is absolutely no check on the larger producers, but they keep a very close check on the smaller producers and endeavor by threats and intimidation to hold them strictly to the provisions of the code, while the larger producers do as they please and consequently secure almost all of the business there is in sight. Twice during the past year one of our companies has had a very desirable piece of business. Each time the Lime Code Authority called for specific information as to shipments, price, etc. On both occasions within 30 days after the information was furnished to the code authority, our company lost the business. Since this has happened not only once but twice, we certainly feel that it is fair to presume that furnishing information to the Lime Code Authority will result in the loss of business by the small lime companies.

It is our opinion and observation that all of the codes of which we have any knowledge are purely and simply for the benefit of the large units in any industry, that they are unquestionably fostering monopoly and working great hardship and injury to the small manufacturer.

We wish to thank you for writing us in this matter and if we can be of any further assistance to you in this connection or furnish you with any additional information, please do not hesitate to call upon us.

Yours very truly,

V. M. FREY, *Sales Manager.*

HOHENWALD, TENN., *February 20, 1935.*

Senator GERALD P. NYE,
Senate Office Building, Washington, D. C.

DEAR SENATOR: I am writing you in regard to the National Recovery Act.

Last year the Hardwood Lumber Association, through the help of some of my competitors, had an investigation as to my selling lumber too cheap and my wage scale and hours. They had a bunch of men here 2 solid weeks, with my pay rolls in their possession, as I willingly turned them over to them, when they first

came, since I had been complying with the National Recovery Act in regard to wages and hours. After 2 weeks' work investigating, and having over 100 men who had worked for me, before them, they dropped getting any bill after I had signed the code, but had me arrested for working my men too many hours before I had signed and not paying the 24-cent minimum wage. When I had signed the code, the code man, himself, voluntarily told me that what I had done up till then would not count if I complied with the code from then on, and he made this remark before several witnesses. I signed the code in October, after it went into effect in August.

I am still complying with the code, paying the 24-cent wage and working 40 hours per week, but I am the only man running mills that I can find that is doing anything at all in the way of complying. The great big mill man might be able, and I think can work and make money with the National Recovery Act, but take a little mill man like me and the others not complying with it, just sooner or later is going to ruin me. Will I have to go on and pay these wages, or should I do like the rest of them, pay what the local neighborhood pays and run the risk of being arrested again? Up till now, since the National Recovery Act has gone into effect, it has certainly been a big burden on me, instead of a help.

Hoping to hear from you, I am,

Yours very truly,

W. P. GROVER.

(The following analysis of favorable and unfavorable correspondence, resolutions, etc., concerning the National Recovery Administration, National Industrial Recovery Act, or the codes of fair competition, received by the National Recovery Administration and furnished to the Committee on Finance, was ordered placed in the record:)

ANALYSIS OF FAVORABLE AND UNFAVORABLE CORRESPONDENCE, RESOLUTIONS, ETC., CONCERNING THE NATIONAL RECOVERY ADMINISTRATION, NATIONAL INDUSTRIAL RECOVERY ACT, OR THE CODES OF FAIR COMPETITION

The following is a tabular analysis, according to code divisions, of 5,411 communications, resolutions, etc., found in the files of the National Recovery Administration. These expressions of opinion were received by the National Recovery Administration during the period from January 1, 1934, to and including April 24, 1935. The total correspondence received by the Administration during this period approximated 995,141 letters. In view of the fact that the volume of mail received was so great and that a large portion of it has been addressed to, and kept in the files of, individuals connected with National Recovery Administration, it is obvious that a comprehensive collection and analysis of all the mail within the classification herein discussed cannot practicably be made. However, in this survey, no available letters of general comment on the National Recovery Administration, National Industrial Recovery Act, or any specific code were excluded whether favorable or unfavorable in content. The results of the survey are set forth in the following tables:

Tabulation of statements concerning National Recovery Administration, according to industry code divisions

	Favorable	Unfavorable
Basic materials	458	166
Chemical	241	44
Construction	269	18
Distribution	1,877	416
Equipment	169	11
Food	192	14
Graphic arts	270	14
Manufacturing	189	30
Public agencies	66	
Textile	282	22
Nonindustry (not elsewhere classified)	636	27
Total	4,649	762
All manufacturers and individuals	2,668	414
All code authorities, associations, and others	1,981	348

Tabulation of statements concerning National Recovery Administration, according to industry code divisions—Continued

	Favorable	Unfavorable
BASIC MATERIALS DIVISION		
Manufacturers and individuals	399	161
Code authorities	25	2
Trade associations	27	3
Trade unions	6	
Resolutions	1	
Total	458	166
CHEMICAL DIVISION		
Manufacturers and individuals	156	29
Code authorities	22	
Trade associations	12	
Trade unions	1	
Resolutions and petitions	50	14
Miscellaneous		1
Total	241	44
CONSTRUCTION DIVISION		
Manufacturers and individuals	105	16
Code authorities	30	
Trade associations	41	2
Trade unions	4	
Miscellaneous (from report presented to Senate Finance Committee by Mr. G. Stewart, Martin Paints and Decorators Association):		
Concerns	12	
Code authorities and associates	71	
Total	269	18
DISTRIBUTION		
Individuals	684	111
Associations	369	5
Code authorities	58	
Trade unions	5	
Miscellaneous groups	26	
Resolutions	7	
Retail drug industry	66	
Retail jewelry industry (inspired complaints)	17	34
Merchant tailor industry		25
Tobacco industry (requests for code)	75	
Tobacco Industry Trade Association	26	
Retail trade (probably results of questionnaire)	38	
Laundry industry	94	3
Laundry associations	3	
Hotel industry (concerted protests directed more against unfavorable provisions of code)	2	182
Hotel associations	12	17
Barber industry (group expressions in request for code)	105	15
Barber associations	69	1
Barber unions	28	
Resolutions from barbers	1	
Cleaners and dyers (concerted appeal for retention of code)	201	3
Petition (cleaners and dyers)	1	
Total	1,877	416
EQUIPMENT DIVISION		
Manufacturers and individuals	140	7
Code authorities	11	
Trade associations	15	4
Resolutions	3	
Total	169	11
FOOD DIVISION		
Manufacturers and individuals	136	13
Code authorities	8	
Trade associations	6	1
Trade unions	2	
Miscellaneous		
Ice industry (copies of letter received by the Senate)	30	
Ice industry trade associations	10	
Total	192	14

Tabulation of statements concerning National Recovery Administration, according to industry code divisions—Continued

	Favorable	Unfavorable
GRAPHIC ARTS DIVISION		
Manufacturers and individuals	141	8
Code authorities	6	2
Trade associations (appeal to retain code)	123	3
Trade union		1
Total	270	14
MANUFACTURING DIVISION		
Manufacturers and individuals	149	27
Code authorities	34	3
Trade associations	6	
Total	189	30
PUBLIC AGENCIES DIVISION		
Consumers and individuals	60	
Code authorities	2	
Trade associations	4	
Total	66	
TEXTILE DIVISION		
Manufacturers and individuals	167	20
Code authorities	36	
Trade associations	25	1
Trade unions	14	1
Institutions	1	
Resolutions	1	
Miscellaneous cotton garment industry (appeal for code)	38	
Knitted outerwear industry (approximate percent) results of questionnaire	75	
Total	282	22
NONINDUSTRY (NOT ELSEWHERE CLASSIFIED)		
Individuals	531	22
Purchasing agents	3	
Consumers councils	5	4
Labor unions	21	
Miscellaneous groups	76	1
Resolutions (Council of Trade Association Executives) West coast (per cent)	95	
Total	636	27

(The following excerpts from the report of the National Recovery Administration on the operation of the basing point system in the iron and steel industry was ordered printed in the record:)

EXCERPTS FROM REPORT OF THE NATIONAL RECOVERY ADMINISTRATION ON THE OPERATION OF THE BASING POINT SYSTEM IN THE IRON AND STEEL INDUSTRY WHICH WAS SUBMITTED TO THE PRESIDENT PURSUANT TO THE EXECUTIVE ORDER OF MARCH 30, 1934

II. Guiding Principles

(1) General theory of costs, prices, and limitations of competition under National Recovery Administration

It will be assumed that the labor provisions of the National Industrial Recovery Act, involving increased costs for industry, were passed with the hope that industry might in most cases temporarily absorb them, and later get back the greater part of them from the effects of increased sales and increased output. As to prices, it was hoped that in most cases they would not have to be increased except as reviving demand made such increases natural and possible without stopping the expansion of sales and output. Monetary measures, being coupled with measures for placing more purchasing power in the hands of those most likely to use it promptly, might in combination be expected to furnish the basis of expanding demand in which price increases of this natural and harmless sort might take place.

Price increases imposed upon a market which did not first show an expanding tendency, would naturally tend to restrict sales and output, and were not desired.

Nevertheless, it was recognized that in particular industries these favorable conditions might not be present and some increases in prices might still be necessary to enable the industry to bear its increased costs. Thus provisions for price protection were placed in many codes. The most positive and definitely non-competitive ones, such as the fixing of minimum prices, prohibition of sales below cost and measures for the direct restriction of output, have not commended themselves, and our present national policy is seen to be moving away from such measures. There remain measures which retain open markets and freedom rather than control in determination of amounts to be produced, but which develop and strengthen the concept of "fair competition" in a way calculated to reduce the danger of demoralizing competition of the cut-throat type and to bring about a kind of market in which, whether the increased costs due to the labor provisions of the National Industrial Recovery Act are fully recouped or not, they are much less likely to result in disaster to some hard-pressed industry owing to its inability to do anything toward recouping them.

Such measures are restrictions of competition, but not necessarily of any useful form of it; and they are not in and of themselves monopolistic. Competition is inherently a restricted, not an unrestricted rivalry. These present restrictions represent the latest and most tentative instances in a long line of restrictions, starting perhaps with the laws of property and contract themselves and going on with the law of unfair competition in its more familiar forms. Such regulations often start with private practices, either good practices which approve themselves and work their way into the legal system, or bad practices which arouse resistance and plea for protection on the part of the injured parties, which may take the question into the field of law in a different way.

The codification of the basing point system under the Steel Code is a measure difficult to classify. Originating with private business, the basing point system has acquired a peculiarly ambiguous status in that in its earlier "Pittsburgh-plus" form it has figured as an abuse to be prevented, while in its present form it has been recognized as part of a code of fair competition to be publicly sanctioned and enforced. This fact leads point to the question of the justification of the practice and (what may be a separate question) of its recognition as part of a publicly sanctioned code.

V. Conclusions as to the More General Problems of the Basing Point System

(1) The objection that the basing-point system is noncompetitive because the only competitive price structure is a uniform mill-base price or a uniform free-on-board mill price.

This means that competition naturally results in uniform mill-base prices or uniform free-on-board mill prices and in no other system; and particularly that habitual or systematic freight absorption is a discrimination such as results from monopoly rather than from competition, especially where it results in a mill charging higher prices to its nearby customers than it does to those who are farther from it, but nearer the basing point.

The question at issue is: What is the kind of price structure which genuine competition tends to produce? And on this question the conclusions set forth in the preceding paragraph are unqualifiedly wrong. So far as this paragraph expresses the reasoning which has been followed by some critics of the basing-point system, we dissent from it absolutely. This does not necessarily mean that we dissent from all of the conclusions which may have been reached by these critics as to the general justifiability of the basing-point system, but it does mean that we consider that the question should be argued on other grounds than this one.

Competition alone, completely uncontrolled, would not produce an orderly basing-point price system, because it would not produce any orderly system on one uniform plan. But neither would it, in an industry of this type, produce an unqualified uniform mill-base price system, or a uniform free-on-board mill-price system, and it would naturally produce freight absorptions or discriminations such as constitute the most characteristic feature of the basing-point system, though not in anything like such systematic form.

We are considering this question, it must be rememberd, with respect to the steel business, and the steel business has particular characteristics which affect the answer. In the first place, it produces on the whole standardised products in which competition centers more closely in price than in general manufacturing.

In some of the products there is so little in the way of quality differentials that a very slight difference in price is absolutely decisive as to sales, while in others difference in quality may permit a small price differential, but no more. Generally speaking, steel is not, for example, like automobiles or cigars.

Secondly, a large part of the costs of production is constant irrespective of the volume of production, with the result that additional sales do not occasion any added costs of the constant variety, and are worth making at less than the figure representing average unit cost including the constant elements. These constant costs must be covered out of total sales, but there is no particular quota of them which has to be covered from any particular sale. In short, it is possible for different sales to bring in different and discriminatory net yields without necessarily implying that one is correct and the other incorrect.

Thirdly, the industry includes localities where several competitors are grouped, and others at which there is only one producer. In the latter case, the only kind of competition met is competition at a distance, while in the former case, both nearby and distant competition may be met. For example, the Pittsburgh switching area contains a number of different producers who compete not only with each other, but also with producers located at Birmingham, Chicago, and other places.

Fourthly, this competition at a distance is the kind in which, in order to reach out a little farther and acquire some additional business, a producer will be willing to accept on this additional business a lower net yield than the minimum which he must receive on the average from his whole business; provided, he is not in some way required to extend this low net yield to his entire output if he accepts it on any business at all. The reasons for this have been discussed under "Guiding principles" (II, 3 above, pp. 38ff).

Fifthly, freight rates are substantial, relative to prices, with the result that a difference in freight rates, if the customer has to pay them, is just as decisive as a difference in prices in determining which producer will get an order. And at the same time the freight rates between different producing centers are considerably less than the margin of difference in net yields which a company may voluntarily accept on different units of business in the attempt to cover its constant costs as best it can. In other words, the freight rates are not more than producers of this character are willing to absorb in order to sell more goods by extending their marketing areas; and they must be absorbed if a producer is to extend his marketing area toward the location of a competing producer and into the area where that competitor is now selling unless he voluntarily reduces his prices on nearby sales to less than existing competition forces him to accept.

In an industry marked by these characteristics, discrimination and freight absorption are natural results of bona fide competition. They result because competition acts with different force in different parts of the market. The conclusion that a producer accepts a lower net yield on a part of his sales only because he has raised the net yield on the rest of his business to a monopolistic level, is unwarranted. It may, of course, be true in a given case. But the mere existence of discrimination does not prove it. The discrepancy is quite adequately explained by the difference between competition for added business at the fringe of one's market, and competition affecting one's main output over the principal part of his market area.

The theory that genuine competition tends toward a uniform mill-base or free-on-board mill price, and is inconsistent with any discriminatory price structure, appears to be logical for competition which fulfills two conditions. The first is that all the competitors who have any effect on the price structure are located at the same shipping point. And the second is that the producers have no problems of constant costs, but operate under such simple cost conditions that the minimum price at which it pays a producer to take, for example, a single large additional order, is the same as the minimum price which he must receive, on the average, from his entire output, in order to make it worth while continuing in production. In other words, this theory is logical merely for types of business in which there is no natural advantage to be gained by "dumping" or by absorbing freight in order to make distant sales. Whether there are any large-scale manufacturing industries to which such a theory fully applies is an interesting question; but it certainly does not apply to the type of manufacturing represented by the steel industry.

The moment we have to deal with an industry in which there are large elements of constant costs to be met, there is a motive to discrimination, and the effect of shipping goods to many different consuming points; widely scattered over a large market area, gives opportunity for it. In such a case, even if all the competitors

in the country were located at the same identical shipping point, there would be some possibility of their absorbing freight to some extent, in order to reach the more distant markets without charging a price so high as to cripple the possible volume of sales and force too many consumers to use some substitute material.

But the main cause of wide-spread and systematic discrimination comes from the fact that the price structure is governed, not only by competition of producers at the same shipping point, but by competition from producers located at varying distances, up to several hundred miles or even more. Where this happens, there is no natural necessity that price should rise precisely with the cost of transportation from the mill producing the goods, because that mill may not be the one whose cost of production plus transportation governs the price. The theory that tends to nondiscriminatory prices is applicable to a simpler kind of market than the one which exists for steel in the United States.

If the competitors are close together and differences of freight are slight, they will naturally tend to equalize price to purchasers and absorb differences in freights, thus accepting slightly different net yields from different parts of the market, but not departing very greatly from a uniform yield. But where competition effective enough to influence price structures comes from producers at a considerable distance from each other, competing possibly over several hundred miles of intermediate territory, then the principle of uniform net yields is radically altered.

There is a more inclusive principle, covering the tendency towards uniform net yields in a simple market, and toward discrimination and freight absorption in a more complex market. This inclusive principle is that one competitor's price to customers is governed or limited by the price charged to these same customers by the rival whose price the first competitor has to meet if he is to sell goods to these particular customers. If the rival's price includes the rival's freight costs, then the price which the first competitor has to make includes his rival's freight charges rather than his own. If his own freight costs happen to be lower, and if he gives the customer the benefit, he is giving the customer a lower price than competition forces him to give. In other words, he is following some sort of a noncompetitive principle rather than a competitive one.

A series of invasions and retaliations such as would be likely to result from genuinely unchecked and uncontrolled competition, would naturally result in wiping out all system and order from the price structure and bring about a condition of wide-spread and completely unsystematic discrimination. If we added one more disturbing element, in the shape of secrecy in the cutting of prices, the normal result would be not any orderly market system, but complete chaos.

Looking over the various orderly systems of pricing it appears that none of them are strictly competitive in the sense of the condition which would naturally result from unrestricted competition, without collusion, restraint or control of any sort. Neither free-on-board mill selling nor the uniform mill-net price are competitive in this sense because the isolated seller accepts lower net yields on sales to his nearby customers than the competition he actually experiences compels him to accept, while the seller located at a competitive center foregoes opportunities to make additional sales which would net him less than his average yield, but more than the additional cost of the additional business.

Even the system of mill-net prices with freedom to discriminate in good faith to meet competition would involve a restriction on freedom of competition, since the seller would forego chances to make additional sales by discriminating within the area in which his own mill-base forms the governing price, while outside this area he limits his discriminations to meeting the prices based on other points of origin without cutting below them. This last limitation is a highly salutary one, since without it the kind of extreme low-yield price-cutting which producers are willing to initiate when it is confined to the fringes of their market areas would be continually breaking down the price-level in the areas where the producers in those areas are securing the higher and more normal competitive yields on which they rely to make up their overhead costs. This would provoke retaliations, which would tend to spread until the entire market would be reduced to a condition of destructive cutthroat competition. Hence some restraint is needed. There may also still be need for it as there was a generation ago, to prevent more sinister campaigns of local price-cutting directed by large concerns against particular independents. But salutary as this restraint may be, it is a restraint on perfect freedom of competition.

Lastly, the basing-point system is not strictly competitive for the same reason as the modified form of mill-base system, though such a system with an adequate number of basing-points comes nearer on the whole than any of the others

to the system likely to result from the natural action of competitive forces under the conditions prevailing in this type of industry.

This, however, while of some academic interest, is beside the point from the standpoint of the proper policy to follow. If none of the desirable systems are strictly competitive, and if some form of orderly restraint is necessary to keep competition within useful bounds and channels and to prevent it from degenerating into chaotic and destructive rivalry, then the question becomes, not what system naturally results from unrestricted competition, nor what system comes nearest to this result, but what system, acting as a framework within and subject to which competition is to go on, will tend to a type of competition bringing about on the whole the most useful result. And the standard of usefulness is that the system should give the consumers the benefit of the lowest and most equitable scheme of prices which the industry can, in the long run, afford to give them and still remain itself in a sound and healthy condition. But before taking up this question, which is involved in the third general criticism of the basing-point system, it is necessary to deal with the second, which challenges the existence of any sort of competition under this system.

V. (2) The Objection that the Basing-Point System Is Used as a Means to Facilitate Price Agreements

The basing-point system clearly facilitates the use of the open-price system of price quoting. This system is openly defended as a means of putting competition on a basis which will yield higher prices than would result without it. According to the advocates of the system, this does not mean monopoly prices, but normal competitive prices which can be steadily maintained and will not naturally tend to degenerate into cutthroat competition as discriminatory price-cutting without system or order is prone to do, especially if discriminatory prices are secret. Such a condition cannot last, but leads to informal agreements which in turn cannot last, and thus the natural result is an unhealthy alternation between profiterring and destructive warfare. An open-price system could be carried out under any kind of orderly price structure, or even a disorderly one; but it has its fullest effect if each producer knows the delivered prices he has to meet at each purchasing point.

The basing-point system serves this end particularly well by furnishing a relatively simple formula by which these delivered prices can be calculated. The system tends to restrain cutthroat competition both by informing each producer precisely what prices he has to meet at each consuming point, and by causing changes in prices by any producer to apply to his whole business in his own basing-point area, with the result that he is practically forced to figure on a price which will cover total costs and not disregard his overhead costs as he is likely to do if figuring a special price for a limited area. So far as it acts only in this way, the system is not monopolistic, though it avowedly tends to higher prices than would result without it.

It is also true that there may be no guaranty of stopping at a precise half-way point between the cutthroat competition it is desired to avoid, which drives prices below a normal and desirable competitive level, and a condition of partially effective competition (such as economists have not yet adequately studied), which may tend toward prices that are above a normal and desirable competitive level. Hence the operation of such a system needs to be closely watched.

But the present question is whether the situation goes beyond this, to actual agreement on prices, and whether the basing-point system is such an important and essential means to this result that it should be abolished or changed, in the interest of bringing price agreements to an end, and restoring competition in prices (the industry being admittedly competitive in selling effort and service). Briefly summed up, the answer is, that producers exchange views of prices and can probably not be prevented from doing so; that something approaching agreement or understanding sometimes results from these exchanges, but by no means always; that there is evidence of a considerable degree of independent action in price changes; that so far as understandings may exist, the basing-point system facilitates them, but is not of sufficiently decisive importance in that respect so that the success or failure of efforts to reach price understandings hinges on whether the basing-point system is or is not in force.

If producers want to reach understandings as to prices, they will not be prevented from doing so by abolishing the price-system which they now find convenient for the purpose. They would learn to bring about the same result with any other system, so long as it is an open and orderly one, and any other kind would be hard to defend. The abolishing of the basing-point system would

temporarily make such understandings more difficult to reach and make effective, but by itself would, in all probability, have no lasting effect in preventing them.

Evidence of the presence or absence of understandings as to prices is naturally one of the most difficult things to obtain. Indications may be drawn from a number of observable factors. The level of net earnings may be high enough to indicate monopolistic control or it may not. Prices may move simultaneously for all producers in a market area and thus afford evidence of concerted action; or certain dominant producers may take the lead in price movements and thus afford evidence of "price leadership". The general trend of steel prices may be compared with the trends of prices in general in order to see whether it shows any signs of either pegging or an upward tendency relative to other commodities of a comparable sort; or the history of price change may be examined in detail to see what sort of underlying motives and conditions it seems to suggest. In the present inquiry, some examination has been made of all these varieties of evidence, without clearly establishing the existence of unqualified competition and certainly not the existence of unqualified monopoly.

As for the level of net earnings, there is hardly any need to cite detailed figures to show that net earnings in the steel industry are far too near the vanishing point at present to afford any evidence of monopoly profits. The figures of earnings presented in appendix A of this report are sufficiently conclusive on that score; 1933 shows some improvement over 1932 and the first half of 1934 showed some further improvement, which will presumably not be maintened in the second half. The industry as a whole showed a deficit through 1931, 1932, and 1933. In 1929, the industry's best year since the War, net income was $362,000,000 (compiled from Standard Trade and Securities of May 4, 1934, by G. C. Gamble, Division of Research and Planning, N. R. A., May 8, 1934). These earnings were to be compared with total assets in the general neighborhood of $4,500,000,000, indicating a return of about 8 percent in this uniquely prosperous year. The average for the 4 years 1927 to 1930 was about $231,000,000, or less than 5 percent on actual investment. Thus there are not only no monopoly profits at the present time, but no sustained profits of a clearly monopolistic character during the more recent years of prosperity, which might serve as off-sets to the losses of the past 4 years.

Movements of prices which have taken place since the establishment of the code have been examined for a number of significant products. (Exemplary data are contained in appendix B.) The results indicate that prices sometimes move quite simultaneously over widely separated basing points while sometimes the previous relationship is not restored for at least a few days. This applies to reductions in price as well as increases. While there is a general tendency for a cut in price to be promptly followed by all other producers at the same basing point, with the result that the reductions all go into effect on the same day, there are cases where there have been delays of a number of days, or even weeks, in meeting a change in the price.

In one case we have been informed that an increase in the price was contrary to the judgment of a number of large producers, but that when the increase was made they felt it incumbent on them to fall in line, though one producer declined to do so. This represents a noncompetitive standard of behavior which nevertheless operates within pretty narrow limits in its power to control prices. There seems to be no invariable rule as to what companies take the lead. Cases systematically canvassed show too few price changes to afford an adequate basis for generalizing, but general observation indicates that certain producers more or less habitually take the lead in certain products and other producers in other products. There is no consistent price leader for the entire industry.

As for the general trend of prices, it is shown in the accompanying charts, compared with the trends for other commodities. It appears that over a term of 33 years, steel prices have declined relatively to all prices. While the same could be said of metals and metal products generally, it is still significant that there have been periods of long continued gradual decline, from 1900 to 1914 and from 1923 to 1929. This behavior is certainly not unmistakably monopolistic. All these examinations of evidence are instructive, but fall short of proving a conclusive case for or against the existence of monopolistic control. They afford no reason for modifying the general conclusions already expressed.

VI. Recommendations

(1) We have seen that not all the criticisms of the basing point system are justified in the terms in which they are made. But we have seen that it does not tend to as serviceable a form of competition as a system in which there is

more incentive for a producer to lower his base price as a means of extending his sales area, rather than doing this by merely absorbing freights and discriminating. We have seen that there are wastes of competitive cross hauling, which must ultimately be charged to the consumers, and that certain purchasers are burdened with artificial freights. Piece-meal change will not avoid the existing hostility which, whether fully justified or not, is attached to the principle of artificial freights which characterizes the basing point system. This hostility may be avoided if such changes as are made are parts of a comprehensive program having as its goal the establishment of a system based upon a different principle.

(2) We have seen that a change to free-on-board mill selling would be too uncertain and disturbing in its effects to be seriously considered at this time, or at any time without exhaustive preliminary inquiries. We have seen that a mill-base system will not remedy the principal objections mentioned above unless it is combined with the abolition of freight absorptions (which is inadvisable) or their limitation. And we have seen that neither of these things can, in all probability, be accomplished by Federal compulsion, but only by such cooperative effort as can go on under the code form of organization. We have also seen that a mill-base for every single mill would add unnecessary complications and yield no substantial advantage as compared to a group mill-base system. We have seen that the principle of actual rather than artificial freight is sound and desirable, but not necessarily to the extent of requiring the removal of the minutest discrepancies between them, but only discrepancies which are sufficiently substantial to be an important and characteristic feature of the system. It is sufficient if the characteristic features of the system is the basing of prices on approximate actual freights, disregarding minor differences. A system of this character is better described as a group mill-base system than as a modified basing point system.

VI. (3) It is therefore recommended: That the principle of the group mill-base be embodied in any revised code of fair competition for the industry which may be approved by the President; together with provisions for the application of the principle as rapidly as is consistent with a due regard for the interests affected.

With a view both to limiting the wastes of competitive cross-hauling and reinforcing the effect of the group mill-base system and as a means of strengthening the effect of competition on prices, it is further recommended:

That in any revised code a provision be embodied limiting freight absorptions, for which the following might serve as a basis for discussion.

In section 3 of schedule E, the following sentence provides for selling on "foreign basing points":

"The published base price of each such member for any product (except standard T-rails of more than 60 pounds per yard and angle bars and rail joints therefor) for any basing point for such product other than that or those shown in the list of base prices so filed by such member shall be deemed to be the lowest base price for such product at such other basing point which shall be shown in the list of base prices filed by any other member of the Code and then in effect."

To this sentence should be added:

"Provided, the delivered price to the destination in question, based on such other basing point, is not less than the delivered price at which such member could sell to such destination from the base for which such member files and based on the price which he has there filed, by more than 25 cents per hundred pounds or $5 per ton."

(4) If, prior to the adoption of such revised code, evidence should come to light indicating that it would be impossible to secure the acceptance of such a program under the code, and to make reasonably rapid progress toward it, consideration should be given to the alternative possibility of abandoning the price features of the code entirely. But if there appears a reasonable prospect of acceptance and satisfactory progress toward the goal designated, these features of the code should be retained as affording a better means of transforming the basing point system into a sound and satisfactory one than by allowing this system to revert to the status existing prior to the adoption of the code.

(5) In the meantime, efforts will be continued to deal with specific complaints and abuses and to gather additional data bearing on the operation of this present system, espetially on the wastes of competitive cross hauling.

(The following statement subsequently submitted by Mr. Francis M. Curlee, counsel, Industrial Recovery Association of Clothing Manufacturers, and the Curlee Clothing Co., St. Louis, Mo., was ordered printed in the record.)

SUPPLEMENTARY STATEMENT SUBMITTED BY FRANCIS M. CURLEE

The testimony of Mr. Merle D. Vincent given before the committee on March 27 and 28 is so replete with errors that this supplemental statement seems required. The multitudinous errors of Mr. Vincent are explainable only on the ground that the facts related by him were chiefly not within his own knowledge and that his sources of information were evidently unreliable.

It is not intended in this statement to direct attention to all of the errors in Mr. Vincent's testimony. Many of them are argumentative and inferential, many of them would require elaborate statistical exposition, and others are so involved in obscurity as to require extended statements of fact. It is intended here to call attention, briefly, to a few of the more glaring errors.

Unless otherwise indicated, the page references herein are to the printed report of the hearings.

(All italics ours.)

GREENSPOON CLOTHING CO.

Mr. Vincent says (p. 563):

"The little St. Louis case, Greenspoon, to which Colonel Curlee referred, a deficit of $35.06 which he said went before the II (b) committee. That was not a II (b) case. It was a charge of failure to pay the minimum rate. Colonel Curlee, personally, appeared before the II (d) committee and asked it to hear that case. Assuming that it was a II (d) case, it heard it. *Upon being advised by the staff that it was a minimum wage case*, it discontinued consideration of it, and the man himself was not called to New York, but the code authority representative waited upon him at his place of business in St. Louis."

(In the record a part of this statement is attributed to Senator King. That was obviously a stenographic error as it is all a part of Mr. Vincent's statement.)

A field auditor for the Clothing Code Authority made an examination of the Greenspoon firm in St. Louis. The auditor made his report, from which the following is quoted:

"A detailed audit was made for the period of September 11, 1933, to August 14, 1934, *and it was found that minimum wage scales were scrupulously observed.*"

The issues arose over the application of that portion of article IV of the code reading as follows:

"It is intended that employees' wages shall not be reduced by reason of the reduction of the prescribed number of hours of employment."

The provision has been another prolific source of contention and confusion, thought not as baffling as article II (b).

The facts stated in Statement of Industrial Recovery Association of Clothing Manufacturers (the Green Book, pp. 43–44) are stated with absolute accuracy.

This was an appeal by the Greenspoon Co. to the II (d) committee, which entertained jurisdiction and heard the evidence in New York City on December 13, 1934, *with the thorough understanding that it was not a minimum wage case but one involving article IV.* The opening statement of Mr. Horowitz, associate counsel for the Men's Clothing Code Authority (not Mr. Herwitz, comptroller) as shown by the stenographic transcript, was as follows:

"This is a hearing in the case of the Greenspoon Clothing Co., Inc., St. Louis, Mo., on the charge of violation of article IV of the Men's Clothing Code, in the sum of $35.06, from a period beginning with the week ending November 29, 1933, through the week ending August 17, 1934."

The case was heard and taken under advisement by the II (d) committee.

It is true that Mr. Greenspoon was not present at the hearing. It is also true that Mr. Greenspoon's attorney and Mr. Sparks of the accounting firm of Ernst and Ernst were present, as shown by the record. At the time the Green Book was prepared (Jan. 30, 1933) the II (d) committee still had the case under advisement. On January 28, having heard nothing from the committee, Mr. Greenspoon inquired as to the status of his case. On February 18, 1935, Mr. Herwitz, comptroller, wrote him that the case was inadvertently submitted to the II (d) committee and had been referred to the Enforcement Division, and concluded with a demand for remittance of $35.06 within 10 days.

Mr. Morris Greenberg, executive director of the Men's Clothing Code Authority, wrote a letter dated April 2, 1935, concluding as follows:

"Since the firm has not sent in a check in this amount, we have in the last few days referred the case to our legal department for certification."

The latest communication is a letter to Mr. Greenspoon dated April 15, 1935, signed by Herbert Ferster, assistant counsel for the Men's Clothing Code Authority, reading as follows:

"The Enforcement Division has referred your case to the legal department for their action

"Please be advised that unless we receive your check in the sum of $35.06, for violation of article IV of the Men's Clothing Code, by April 22, 1935, we shall have no alternative but to transmit your case to the regional compliance director in Chicago, Ill., without further notice to you."

Apparently Mr. Greenspoon will have opportunity to battle over the $35.06 in another forum, and perhaps several others. It is a certainty that he will have no chance to recover the $507 overpaid to his remaining employees, and indeed he has no desire to recover it.

THE HERWITZ FORMULA

"Senator KING. Did you follow and did your predecessor follow the so-called "Herwitz formula" in determining the question of the wages, and so forth?

"Mr. VINCENT. *Senator, there is no Herwitz formula except in the fertile mind of my good friend, Colonel Curlee.* The only formula used is the formula found in the interpretation made by the code authority. * * * (p. 536)."

In the hearing of the Curlee Clothing Co.'s Mayfield case before the II (d) committee on December 13, 1934, the following question was asked of Mr. Riesenfeld, chairman of the committee:

"Q. *You are acquainted with the Herwitz formula* as it was disclosed in the hearing of July 19, are you not?—A. I would say that in a general way I am familiar with it.

"Q. And *the Herwitz formula is still the guide and chart of the Clothing Code Authority*?—A. I will let Mr. Mayo answer that. Is it?

"Mr. MAYO. Yes; it is.

"Mr. RIESENFELD. All right."

(NOTE.—Mr. Mayo is assistant to Mr. Herwitz.)

An official document headed "Minutes of Meeting of Regional Compliance Council Held March 29, 1935", begins as follows:

"SERIAL NO. 224, CONTROL R4-407, STANDARD TAILORING CO., COLUMBUS, *Ga.*

"Alleged violation of articles II and IV, of the Men's Clothing Industry Code, with reference to hours of labor and minimum wages paid employees.

"*Appearances:* For respondent: Simon Schwab, Robert Arnold, attorney, A. R. Boutin, and Henry Hunt; *for code authority: H. K. Herwitz;* for amalgamated Clothing Workers: Edward L. Johnson."

From that document the following paragraphs are quoted:

"The council inquired very fully into the methods used by the code authority *and had what was known as the 'Herwitz formula' explained to them again.*"

* * * * * * *

"This further hearing again established the fact that the main contention of the respondent was that the periods selected for reconstruction purposes were not representative and that the definition arrived at as between the lower paid class and the higher paid class was entirely great. *The respondent also again attacked the 'Herwitz formula'* and contended that it was not official and should not be used."

The Herwitz formula has a national reputation and is known (but not understood) wherever men's clothing is fabricated.

THE ISSUES BETWEEN THE TWO ASSOCIATIONS

"Senator KING. The minority submitted a code which was considered by Mr. Rogers at the same time that the other code was submitted?

"Mr. VINCENT. Yes, they did.

"Senator KING. And then after the code submitted by the majority was accepted by Mr. Rogers, the minority continued negotiating with the so-called 'majority', the Amalgamated group, to see if they could not harmonize any differences that existed?

"Mr. VINCENT. Yes, I think you will be interested in the reason why they could not harmonize.

"There were two issues upon which they split. One was the question of the so-called '2 (b) provision' of the code. *The other was because of the insistence of the Industrial Recovery Association of writing in a qualification of section 7 (a) of*

the National Industrial Recovery Act by providing that employers and employees might contract collectively or individually as they might determine. The majority group would not accept that limitation. Neither would they accept the suggestions of the minority group respecting 2 (b), and I think perhaps I ought to give you such information as I have concerning that much-criticized provision." (P. 533.)

Again Mr. Vincent has fallen into error from relying upon undependable sources for his information.

Shortly before the final breach between the two groups, and while efforts were in progress to reconcile their differences, the Industrial Recovery Association of Clothing Manufacturers made to the U. S. A. Association a proposal in writing for a merger of the two associations, and a proposal in writing to reconcile the differences between the two associations in their proposed codes. These two documents are set forth in full in exhibits 5 and 6 in the Green Book (pp. 105–109). It is true that the Industrial Recovery Association in its original code had proposed matter to be added to section 7 (a), as was proposed in many other codes and was permitted in some. It is not true that that was one of the irreconcilable issues. The reference to that issue in the proposal of the Industrial Recovery Association (Green Book, exhibit 6, p. 107) is brief and is in the following language:

"ART. IV, SEC. 4. COLLECTIVE ACTIVITIES.—*The sentences added to the mandatory language of section 7a may be deleted* on the ground that they are merely interpretative of the plain meaning of section 7a, and are, therefore, unnecessary."

the irreconcilable issues on which the two associations split were the incorporation in the code of vague and indefinite provisions not susceptible of rational interpretation or of uniform application and at the same time granting wide and arbitrary powers of the code authority. All other issues were reconcilable. (See Green Book, p. 6.)

Dr. Lindsay Rogers, Deputy Administrator in charge, in his report approving the code, said:

"* * * *The Industrial Recovery Association withdrew its proposed addition to section VII (a), but on wages above the minimum and on administrative machinery its representatives were adamant.*"

This report of Dr. Rogers is appended to the official published copy of the code

LABELS

"Mr. VINCENT. I should like to turn just for a moment, Senator King, to the reference that Colonel Curlee made to the use of labels as an instrument of boycott. In a brief filed by the Industrial Recovery Association of Clothing Manufacturers—that is Colonel Curlee's organization—with Dr. Lindsay Rogers, then the Deputy Administrator for the Men's Clothing Industry, Colonel Curlee's association makes this statement respecting the use of labels. This was prior, you understand, to the adoption of the code and during the code hearings.

"'Section IV of the U. S. A. Code provides further that manufacturers shall be required to affix to each garment a label indicating that such garment was manufactured in compliance with the provisions of the Clothing Industry Code. It is contemplated that all clothing manufacturers will subscribe voluntarily to the code, or that the administrative agency will enforce such provisions in the event of noncompliance. We do not object, however, to any reasonable requirement for additional labeling of garments, provided that such labeling as is required is not excessive in cost in relation to the low priced garments fabricated by manufacturers in group B.'

"Those groups were divided into A and B for convenience in reference.

"I desire to leave that with the committee to show that Colonel Curlee and his organization endorsed and approved the adoption of labels as a means of identifying garments made in compliance with the provisions of the code, and specifically for the purpose of asking compliance. That was his position at that time." (P. 564.)

That was during the formative period of the code when the Industrial Recovery Association was making efforts to reconcile the issues between the two associations. *The label racket as a disguised licensing system had not then been devised.* No one had yet suggested that the use of labels be made mandatory and at the same time issued and sold or withheld at the will of the code authority and the Administrator, or that retailers be prohibited from selling garments not bearing a label. That interesting device was to come later in the form of an amendment to the code proposed by the U. S. A. Association. Exhibit 6, Green Book, page

107, is the full text of the proposal made by the Industrial Recovery Association to reconcile differences in the proposed codes. It contains the following, on page 108:

"U. S. A. CODE, ART. IV. LABELS.—As originally proposed, this article is not objectionable. A suggestion may be offered that the legend proposed for the label is unnecessarily long.

"AMENDMENT TO THE FOREGOING ARTICLE.—*The administrative agency should not be invested with any discretionary power to issue or withhold the right to use labels while the obligation of the manufacturer to affix labels is made mandatory. This gives to the administrative agency the power of life and death over any institution.*"

THE SHELBYVILLE (KY.) CASE

"Senator KING (interposing). Were the workers demanding payment or were they satisfied to continue work because of the immaturity of the industry and the fact that they had no work?

"Mr. VINCENT. *Senator, we have nothing but the representation that Colonel Curlee made on that,* and that has not come personally to my attention. I cannot answer it." (P. 539.)

If Mr. Vincent had been provided with the record of the hearing in the *Shelbyville case* (Lee, McClain & Scalzo, Inc.), he would have read the following statement by Mr. R. F. Matthews, mayor of Shelbyville, Ky.:

"I want to call your attention again to the fact that the exemption has been sought by the employees themselves, *and somewhere in the record you will find a petition from the employees.*"

and the reply by Assistant Deputy Beecroft, presiding at the hearing:

"*We have that record.*" (Hearing on application for exemption by Lee, McClain & Scalzo Co., Inc., stenographic report of Ward & Paul, official reporters, vol I, p. 27.)

In the brief filed by Mayor Matthews appears the following:

"In addition to all of this, *the employees of the company,* without discussing the matter with the officials of the company, and acting solely with the Chamber of Commerce, *have unanimously petitioned that the company be allowed* this exemption. * * * (Id. p. 47.)

There are numerous other similar statements in the record.

Mr. Vincent is also in error in stating that he granted the exemption in the *Shelbyville case* exactly as requested.

"Mr. VINCENT. Mr. Matthews, the mayor of Shelbyville, to whom Colonel Curlee referred, made the appeal for that plant, *and the Shelbyville plant was given the exemption exactly as Mr. Matthews requested it,* for a period of 12 weeks." (P. 539.)

The company began operations January 1, 1934 (Lee, McClain & Scalzo, Inc. record, p. 42). It requested exemption for 9 months.

"* * * All the company is asking is that it be permitted to pay the 70 percent, or $10.08, to August 1, 1934; then 80 percent to September 1, 1934; then 90 percent to September 15, 1934; and that, beginning with October 1, 1934, it pay the full minimum of $14.40." (Mr. Matthews' brief, id. p. 47.)

The following appears from the stenographic transcript of Associated Shorthand Reporters, of the hearing on men's clothing industry, proposed amendment to the code of fair competition, February 2, 1935, vol. 2, p. 421, Mayor Mathews speaking and Mr. Vincent presiding:

"Deputy VINCENT. Just to make the record clear, I believe your adjustment for that plant was made out of consideration for your statement *that if up to April 1* the period were treated as a beginner or apprentice period, thereafter you could make the minimum?

"Mr. MATTHEWS. No, sir. Mr. Chairman, if you will examine the record itself while this other gentleman was in charge of the hearing, you will find a statement made there *'If it was granted to October 1' and that was the contention made, and you will find that the record will bear me out.*"

A brief history of the *Lee, McClain & Scalzo case* appears in the Green Book, pages 66–69.

STABILIZATION

On page 548 *et seq.*, Mr. Vincent gives his views on the duty of the Government to stabilize competitive conditions among the various parts of the country by the adjustment of comparative costs.

"Senator KING. Perhaps I ought not to ask for your personal opinion. Do you think that it is to the advantage nationally to freeze in one or two or four or five big cities, this industry, or any other important industry, and to adopt policies, governmental or otherwise, that would tend to prevent decentralization and the diffusion of our industrial activities to other countries? (Note—Evidently this is a typographical error in the use of the word "countries" for "communities". Foreign commerce was not the subject of discussion.)

"Mr. VINCENT. Certainly not, but I think expansion ought to be under normal processes, and that *established business concerns ought to be protected in such comparative costs, for instance, as will safeguard them.*" (P. 548.)

New York City has been well safeguarded and has been more than stabilized under the National Recovery Administration. From the best figures obtainable it appears that New York City and tributary area in 1932 produced approximately 32 percent of the total volume of men's clothing and in 1934 approximately 38 percent; or a neat gain of 19 percent. In other words, in the latter year New York gained to the extent of 6 percent of the total business and the rest of the country lost 6 percent of the total business.

The source is monthly releases issued by the Department of Commerce, Bureau of the Census, entitled "Men's and Boys' Clothing Cut." In the year 1932 figures given are for men's suits. For 1934 figures given are for men's suits wholly or partly of wool. We do not know whether there was a change in classification in this respect or merely in nomenclature. In any event this difference, if any, would not materially affect the proportions. The figures given are for all firms reporting. In the former year there were 775 reporting firms, and in the latter year there were 1,093 reporting firms with naturally a larger volume of business. This also should not materially affect the proportions. These differences in classification and in the number of firms reporting indicate the infirmaties inherent in the statistical method in the absence of exact and complete data. It seems certain, however, that New York has enjoyed a substantial gain at the expense of the remainder of the country. The years 1932 and 1934 are selected for the reason that the former is the latest full pre-code calendar year and the latter is the earliest full post-code calendar year.

If stabilization by artificial means is attempted it is perfectly apparent that an exact balance cannot be maintained. The hinterland has reason to fear that any errors in the exact balance of the adjustment will not be made in favor of the hinterland.

THE CURLEE CASE

The following is quoted from the testimony of Mr. Vincent (p. 536):

"It is quite true, as Colonel Curlee stated, that the code authority billed the Curlee Clothing Co., St. Louis Plant, for approximately $10,000 deficiency of wages.

"Senator LA FOLLETTE. Did that evaporate as, Colonel Curlee said?

"Mr. VINCENT. It did not, Senator. It became a very substantial substance to the workers of that plant.

"The code authority also billed the Curlee Co., Mayfield, Ky., plant for $17,000.

"The code authority computed and determined that it would require an advance of 18 percent in the piecework rates above the minimum to put the Curlees into compliance. The Curlee plant, as a matter of fact, made an advance of 20 percent, 2 percent in excess of what the code authority found would be necessary to put in it compliance. *Then Colonel Curlee, acting for his company, appeared in person before the II (d) committee of the code and presented a case, the 'equities of it', as the code termed it, and the 'Equity committee', and as he also termed it, for the purpose of showing that the 20 percent advance which they had made and which brought them in compliance was such compliance with the code as justified the dismissal of the bills*, and the II (d) committee agreed with him and dismissed the bills and accepted that company's 20 percent advance as compliance.

"Senator KING. Was that retroactive?

"Mr. VINCENT. It was not, Senator.

"Senator KING. Dealing in future?

"Mr. VINCENT. I say it was not. May I recall that? I am not able to say definitely whether that was made retroactive or not. I do not believe it was."

This extraordinary statement can be attributed only to the fact that Mr. Vincent was not a member of the II (d) committee, that he did not read the transcript of the record in the case, that the matter never came before him, and that his sources of information were not trustworthy.

The last advance (20 percent) was made April 23, 1934. It was *not* retroactive, did not *purport* to be retroactive and no one ever expressed a doubt in that respect

until Mr. Vincent's testimony. It was *not* made by any agreement with the code authority and was *never* designed to extinguish or abate any alleged claims for preesixting deficiencies. The alleged deficiency of $10,731.96 covered a period of 12 weeks ending February 16, 1934. The increase was effected more than 2 months later. The claim for $10,731.96 completely evaporated, as stated in the Green Book.

The 20-percent increase was applicable to all manufacturing employees and was not limited to the beneficiaries of article II (b). It applied to employees earning $30 per week or more (exempted by the code from the benefits of art. II (b)), to off-pressers earning a minimum of 75 cents per hour under the code, and to cutters, earning a minimum of $1 per hour under the code, and to the "lowest paid substantial classes."

Mr. Herwitz and a member of his staff later appeared and made an audit for 21 weeks ending April 20, 1934 (including the 12 weeks hereinbefore mentioned), which showed an alleged deficiency of $19,019.54. This alleged deficiency all accrued prior to the 20-percent increase under discussion. *It all entirely evaporated exactly as stated in the Green Book.*

The statement that I offered this increase as an "equity" to extinguish any alleged prior deficiencies is a brand new conception. I do not know who originated it, but it is perfectly apparent that Mr. Vincent, who was not a participant in the hearing, has been misinformed. There is not a hint in the record of the hearing, or in the correspondence, of any such defense. The issues raised and discussed in the hearing, and the exhibits offered, concern matters prior to the 20-percent increase and no others.

The hearing was held on July 19, 1934, and concerned nothing but the issues involved prior to the 20-percent increase. At the conclusion of the hearing we asked for a speedy decision. Mr. Risenfeld, presiding, stated that we might expect a decision in 5 or 6 days. Mr. Bell, then executive director of the Men's Clothing Code Authority, remarked that it would probably take several days longer. Some 3 weeks later (Aug. 7, 1934) we wrote to Mr. Bell that we were placed at a serious disadvantage by the delay in deciding our case. Among other things, we said:

"It is our firm conviction that we have not violated the code in any respect, and that we are entitled of right to an early vindication. This is a case in which justice delayed is justice denied."

We have not complied with the particular version of the Herwitz formula applied to our case, have never complied with it, have never claimed that we complied with it, and have no intention of complying with it.

On June 11, 1934, Mr. Bell, then executive director, wrote the company enclosing an exhibit showing further increases in piecework rates required after the April increase of 20 percent. This showed 72 operations with further increases required by the Herwitz formula, ranging from 1 to 14½ percent, none of which have been put into effect.

On August 10, 1934, we wrote:

"In view of the vast and destructive powers reposing in the code authority which are not subject to judicial control, we are unable to plan for the future in advance of a decision by the code authority. I trust this explains to you the relevancy of the two paragraphs mentioned.

"I respectfully urge that the code authority make a decision not later than next Thursday. On that date exactly 4 weeks will have elapsed since our hearing and during all of that time we have been awaiting your decision in order that we might plan our business policies."

After the claim on the St. Louis plant had completely evaporated the company received a bill for alleged deficiencies in the Mayfield plant of $17,721.55 for 35 weeks ending July 20, 1934. This covered approximately 5 months before and 3 months after the April increase. There were a large number of alleged hourly deficiencies in payments after the April increase. *This claim completely evaporated, as stated in the Green Book, Mr. Vincent's informant to the contrary notwithstanding.*

At no time was any claim made of any "equity" arising from overpayments made after the April increase to extinguish underpayments made before the increase.

On September 27, 1934, Mr. Bell, executive director, sent to the company a schedule of further increases in piecework rates required after the April increase. These covered numerous operations and ranged from less than 1-percent to 39-percent increase.

If, after the April increase, the Herwitz formula still required numerous upward revisions in piece rates, how could it have been argued to the code authority that overpayments occasioned by the April increase constituted an offset for underpayments prior thereto? The code authority apparently did reach some such fantastic conclusion on its own initiative and without any suggestions from us, and in spite of the fact that we repeatedly asserted that we had complied with the code at all times, that we had not complied with the Herwitz formula, and did not intend to do so.

THE INTERPRETATIONS

"Mr. VINCENT. * * * I think his (Colonel Curlee's) statement was that his organization knew nothing of the interpretation issued by the code authority until January 8, 1934, and I desire to give you for this record, if you desire it, a letter dated September 20, 1933, written by the Industrial Recovery Association, Mr. W. E. Popkin, executive director, to Mr. Drechsler, then and now the general counsel for the Men's Clothing Code Authority.

"* * * On September 27, Mr. Drechsler wrote to Mr. Popkin enclosing the code authority's interpretation, so it was in the hands of that association as early as September 27, 1933 (p. 534)."

That statement is exactly consistent with the statement in the Green Book, but is misleading for its incompleteness. The first interpretation of article II (b) was interpretation 6, dated September 26, 1933. This interpretation was not the basis for the famous Herwitz formula, which was to come later. The following is quoted from the Green Book, page 16:

"It may be noted here that, although interpretation 6 purports to have been approved on September 26, 1933, it was not made known to the trade until the code authority mailed out interpretations 1 to 18, inclusive, in January 1934. *The diligence of the executive director of the Industrial Recovery Association disclosed the existence of this interpretation some time in the fall of 1933 and the members of this association were informed by him.* So far as we know, those manufacturers who were not members of any association were not informed of it until January 1934."

Interpretation 11 with its appended illustration was the first one to define the "lowest paid substantial classes" as the 20 percent of employees receiving the lowest compensation regardless of class. This is the mysterious interpretation which purports to have been approved on November 8, 1933, was mailed to some members of the industry (but not all) in January 1934 and was effective November 20, 1933. The official interpretation 11 on file in the Code Record Section of the National Recovery Administration (now bearing a new number) purports to have been approved by Administrator Rosenblatt *on June 7, 1934* (Green Book, pp. 16–18).

This interpretation 11 was a drastic change from preexisting rules and interpretations and is the supposed basis of the Herwitz formula though affording, by its terms and provisions, no justification for the Herwitz methods.

THE GOODALL CO.

"Mr. VINCENT. Not using the word 'textile', 36 hours applies throughout the men's clothing industry, yes, excepting, Senator, for a limited period there were exemptions granted. One of those exemptions was to the Goodall Co.'s Knoxville, Tennessee, plant.

"Senator KING. And to another of the Goodall plants, was it not?

"Mr. VINCENT. No. *Colonel Curlee's statement that by some understanding the Lorain, Ohio, and the other plants also had a 40-hour week, was quite mistaken"* (p. 537).

In the hearing of the Curlee case before the II (d) committee in New York on July 19, 1934, the testimony showed that the Goodall Co. was operating its plant in Knoxville, Tenn., 40 hours pursuant to an order of the Deputy Administrator. The testimony further showed that the Goodall Co. had applied for a 40-hour privilege as to its other plants and that the application was still pending and had not been acted upon; that pending action the Goodall Co. was then and had been operating its Lorain, Ohio, plant 40 hours.

The code authority complained and was informed by the Administrator that the matter was pending before the National Recovery Administration and the code authority could do nothing. Quoting from the stenographic transcript:

"Colonel CURLEE. Putting it succinctly and finally, The Ward dereliction rested in the lap of the Administrator and not the code authority? (Note.—Mr. Ward is president of the Goodall Co.)

"Mr. HERWITZ. Yes.

"Colonel CURLEE. Did you have written advice from the Administrator that the Goodall matter was in his hands and not in yours?

"Mr. BELL. Yes.

"Colonel CURLEE. Would you mind putting those letters in the record, because I am interested in them.

"Mr. BELL. I have no particular objection. I am just wondering again if it comes within the counsel's ruling as to whether we should take up specific cases of another firm.

* * * * * * *

"Colonel CURLEE. I am going to request you, Mr. Bell, to put those letters in the record, and just leave it as a request.

"Mr. BELL. If counsel approves that it is proper to put them in——

"Colonel CURLEE. I will just leave it with you."

The letters have never been put in the record. The reason for the dilatoriness of the administrator and the authority by which the Goodall Co. operated 40 hours in Lorain, Ohio, pending action its application have never been explained.

The foregoing testimony was given on July 19, 1934 at the hearing of the Curlee Clothing Co.'s case before the II (d) committee in New York. On December 13, 1934, the testimony disclosed that the matter was still in status quo. As far as I have been able to ascertain, the matter is still in status quo.

HOMEWORKERS

"Senator COUZENS. Have you any statistics as to the number of homeworkers in this industry at the time the code was started? Do you know how many there were?

"Mr. VINCENT. I can only speak from memory. I have been told it was about 20 percent.

"Senator COUZENS. Do I understand that that 20 percent has been entirely eliminted?

"Mr. VINCENT. Yes.

"Senator COUZENS: *And that these homeworkers are now working in the industry, do you know?*

"Mr. VINCENT. That is true" (p. 546).

The effective date of the code was September 11, 1933. The code prohibited homework after 3 months from the effective date. Employers in the congested markets, where homework was prevalent, in the attempt to adjust themselves to this prohibition, found it necessary to employ learners to do the work that was formerly done by homeworkers. The code granted no indulgence in the matter of learners. The code authority proposed and procured an amendment to the code approved December 15, 1933, in the following language:

"For a period of three (3) months after December 11, 1933, any employer affected by article III of the Code *may engage learners to supplant home workers,* who shall be paid not less than seventy percent (70%) of the minimum wage provided in the code; provided, that no employee shall be classified as a learner for longer than the first eight (8) weeks of his employment in the industry, and, provided further, that if any learner working on a piecework operation, earns more, he shall receive what he earns."

If experienced workers had been transferred from the home to the factory, learners would not have been needed. This amendment shows that to a large extent home workers were left at home unemployed and were supplanted by beginners.

It is interesting here to note that the Industrial Recovery Association in its proposed code had requested tolerance for learners and had shown the propriety of it in the hinterland. It is also interesting to note that when the tolerance was finally granted it was limited to the congested markets, where home work had been prevalent. Thus there was a tolerance for necessary learners in New York City but none in Streator, Ill. (See Green Book, p. 10.)

ARTICLE II (B)

Mr. Vincent, commenting on the famous article II (b), testified: "There is nothing mysterious or complicated about it" (p. 533). He affirmed its utter simplicity in several other places, but nowhere attempted to explain it. Indeed, no witness made the attempt. We are not wanting, however, in expert testimony. We offer Mr. Herwitz himself from the stenographic report of the hearing of the Curlee case before the II (d) Committee on July 19, 1934.

"Col. CURLEE. Look over this illustration and see if this is not your formula as applied to the Curlee Clothing Co. (showing to Mr. Herwitz). The legend at the top explains what those symbols are 'a', 'b', 'c', and 'y.' Here is the way you arrive at your differential. When you get through, you have 'y', which is the required new earnings per our for the higher paid class.

"Mr. HERWITZ. I don't quite get this figure here [indicating]. I don't know that figure.

"Col. CURLEE. To simplify that for you, I have translated that into the Curlee Clothing Co. figures right below it so as to make it concrete instead of abstract. 'c' is the old hours per week. If that was 44, then 'c' minus 36 equals 8, and you multiply 2½ by 8, and you have 20, and adding that to 100, you have 120 percent to compensate for hours.

"Mr. HERWITZ. We have the full-time weekly earnings in July. Then we determine what the hourly rate was. Then we added the II (b) differential per hour and calculated it by dividing the full-time weekly differential by 44, and we added to that 20 percent of the July earnings to compensate for hours, and arrived at a figure of what hourly rate would be required to comply with II (b). Then we took the ratio of the hourly rate as thus computed and determined what piecework rate increases would be required. Then we deducted from the piecework rate required an index of the piecework increase that had been made and determined the amount of deficiency and the percent in terms of the July 1933, earnings. Having determined the amount per hour deficiency, we multiplied the amount of hourly deficiency by the number of hours, work from the week ending December 1, 1933, to the week ending April 20, 1934, by each individual worker, and determined the amount of deficiency for each said worker."

It may be remarked that this is only one of several variations of the Herwitz formula.

One among many startling results of the Herwitz formula is found in the cases of shop no. 6 and shop no. 7 on adjoining floors in the same plant of the Curlee Clothing Co. in St. Louis, performing identical operations on identical fabrics, selling at the same price and in which the employees were compensated at the same piecework rates. These were coat shops. The application of the Herwitz formula resulted in two entirely different sets of piecework rates for the two shops and the code authority formally demanded the application of these different rates. This was not the result of any errors of computation but was the logical fruit of the application to both shops of the same variation of the Herwitz formula.

A like result was reached in the case of shop no. 2 and shop no. 3 on adjoining floors in another plant of the Curlee Clothing Co. in St. Louis. These were pants shops.

Needless to say, we have made no attempt to conform to this weird formula but continue to pay identical piecework rates for identical operations.

For anyone who has the patience to attempt the study, we refer to the chapters on the Herwitz formula, Green Book, pages 19–27. For practical application to realities of the Herwitz formula we refer to the Green Book, pages 46–48, 51–52, and 56–58.

THE UNIFORMITY OF THE HERWITZ FORMULA

"Senator KING. Then I suppose there were some differences of interpretation of the Herwitz formula, were there not?

"Mr. VINCENT. *In no single instance.*

"Senator KING. No differences of interpretation?

"Mr. VINCENT. *In no single instance.*

"Senator KING. Were different interpretations promulgated by the code authority?

"Mr. VINCENT. *In no instance*" (p. 563).

In the case of the Curlee Clothing Co. alone there were three separate and distinct variations of the Herwitz formula. In the Greenspoon case the computation was based upon actual post-code earnings. In the Curlee case all varieties of the formula absolutely ignored actual post-code earnings, and were based upon a theoretical post-code earning evolved from a computation of alleged pre-code earnings. The code authority refused even to consider actual post-code earnings. In other cases there were different variations in application. The detailed statement recently filed with this committee by Mr. Elmer Scheuer of the Bloch Co. is illuminating in this respect. The basis of post-code actual earnings (as in the Greenspoon case) was applied in numerous other cases. The two methods produce radically different results. As applied to a given situation one method

might result in a claim running into the tens of thousands of dollars, where the application of the other method would result in no claim at all. In applying any of the several methods the claims against accused persons were so vague and uncertain that they varied upward and downward by large sums of money, as shown in the schedules on pages 33 and 34 of the Green Book. Those schedules are merely examples. They are typical of the greater number, if not all, of the claims that have been presented.

The following testimony of Mr. Herwitz is quoted from the stenographic report of the hearing of the Curlee case on July 19, 1934, at the office of the Men's Clothing Code Authority in New York City before the II (d) committee. Mr. Riesenfeld presiding:

"The CHAIRMAN (Mr. Riesenfeld, interrogating Mr. Herwitz). I think the thing to answer that, Colonel, is a plain question, and that is this: Is this method that you applied in the Curlee case any different than the method you have applied in all other cases?

"Mr. HERWITZ. *There have been some cases where other methods have been applied, as I mentioned this morning.*"

THE CODE AUTHORITY

"The CHAIRMAN. Mr. Vincent, I think the committee would like to get your reaction as to the testimony of Mr. Curlee with reference to this representation of five upon the part of one of the organizations interested in the men's clothing manufacturing, and this other organization that had a committee of 10, and that one organization selected the representatives upon the other organization to serve in the administration of the code" (p. 531).

That seems a direct question requiring a direct answer. It was not addressed to the question of motives or benevolent intentions but seems to be directed to the question of one organization selecting the representatives from the other organization. The answer to that question (p. 532) was lengthy but not responsive. At the conclusion of the purported answer the chairman asked:

"What is your reaction as to the propriety of *one of those organizations in the administration of the code dictating the representatives from the other organization in the administration of the code*?" (p. 532).

There were many more questions and answers, but the direct questions of the chairman concerning the selection by one association of the representatives of the other was never answered. There was, however, a digression by mention of a letter from Mr. Mark Cresap, chairman of the code authority, president of the U. S. A. Association, and president of Hart, Shaffner & Marx.

Mr. Vincent supplemented his testimony by putting into the record several prepared statements. Among them we find this (p. 587):

"Senator Clark, on page 1065, asks the following question: 'Was there any suggestion ever made to your association to pick out five men to go on the code authority?' Mr. Curlee: 'No, sir.'

"At this point, I wish to file for the record a letter dated August 18, 1933, on the letterhead of the U. S. A. Association, sent by Mr. Mark W. Cresap, president of the association, to all the members of the Industrial Recovery Association, at that time 111 firms. This letter was a request to members of the Industrial Recovery Association to nominate men to represent them on the code authority."

The letter just mentioned was not, however, incorporated in the record. Whether or not by design of Mr. Vincent, the effect of this statement is probably to create the belief that the Industrial Recovery Association was invited in this letter to name its own five men. I have, therefore, taken the pains to procure a copy of that letter, which is as follows, in full:

"DEAR SIRS: The clothing industry is preparing to put its house in order. Its code is in the hands of the Administrator, and in a day or two will be presented by him to the President for his approval. When the code is approved it will become the law of the industry.

"My associates and I have given all we had to make the provisions of the code truly fitting to the needs of every section of the country where clothing is manufactured. I make sincere acknowledgment to Mr. S. H. Curlee and his associates of the many valuable contributions made by them toward the framing of the code.

"While much has been accomplished, the work of organizing the code authority to accommodate itself to the needs of the industry and the requirements of the code is ahead of us. This is not a one-man job, and the work of future planning ought not and will not be confined to any section or sections of the country. Manufacturers operating in the various markets, no matter what their mer-

chandising or labor philosophy may be, are invited to participate in the work of the code authority.

"Membership on the code authority is limited to fifteen manufacturers. These men should possess the character and ability to inspire the confidence of the entire industry. It is my ambition to obtain the service of such men, and make the code authority truly representative of the entire clothing industry. I earnestly ask that *you suggest to me* the name of *an outstanding manufacturer* whose ability and service on the code authority would make the desired contributions.

"*It is my intention to complete the personnel of the code authority within a few days.* May I ask therefore that you reply to this letter as speedily as possible."

It is perfectly clear from this letter that it was merely a request to "suggest to me the name of an outstanding manufacturer" and that the ultimate selection remained where the code placed it, in the hands of the U. S. A. Association. This is not left to inference but is expressly stated by Mr. Cresap in the following sentence of the last paragraph:

"It is my intention to complete the personnel of the code authority within a few days."

The letter does not even contain a commitment that the U. S. A. Association would select five men or any other number of men from the other association. The statement was made by Mr. Vincent that as many as five were invited. I have no reason to question the accuracy of that statement. These invitations, however, were extended and refused in succession and do not show that as many as five were evere desired.

The industrial members of the code authority (i. e., excluding labor members and the administration member) at this time consist of the following 12 persons, all operating manufacturing establishments affiliated with the Amalgamated Union:

Victor S. Riesenfeld, Cohen Goldman & Co., New York.
Raymond H. Reiss, International Tailoring Co., New York City.
Charles D. Jaffee, Jaffee Cohen & Lang, New York City.
Rudolph Greef, general manager, Greater Clothing Contractors Association, New York City.
Max L. Holtz, Louis Holtz & Sons, Inc., Rochester, N. Y.
Frank P. Zurn, Alco Zander Co., Philadelphia, Pa.
Benjamin J. Lebow, Lebow Bros., Baltimore, Md.
Maurice Gordon, Trimcunt Clothing Co., Inc., Boston, Mass.
Mark W. Cresap, Hart Schaffner & Marx, Chicago, Ill.
Bertram J. Kahn, B. Kuppenheimer Co., Inc., Chicago, Ill.
Louis A. Hirsch, Hirsch Weintraub & Co., Philadelphia, Pa.
Sol Heuman, Keller Heuman Thompson Co., Inc., Rochester, N. Y.

In addition to those 12 members it contains 3 others:

Elmer L. Ward, a member of the U. S. A. Association and a member of the executive committee thereof, president of the Goodall Co., New York, operating open shops, and being the only open-shop manufacturer in the United States who is a member of the U. S. A. Association, and being the beneficiary of special exemptions from the provisions of the code.

Frank C. Lewman, Richman Bros., Cleveland, Ohio, an open-shop manufacturer, not a member of any association.

George Henry, H. A. Seinsheimer Co., Cincinnati, Ohio, operating open shops and being a member of the Industrial Recovery Association.

Mr. Henry is the only person who could be claimed to be representative of the Industrial Recovery Association. With the greatest respect for Mr. Henry's abilities, I feel sure that he would state that he is impotent and helpless as a member of that body. If they had offered this association the selection of five members and the five had served, they would be equally impotent and helpless. The aggressive functioning and the vast powers of the code authority are committed to committees and well-paid executives.

There is no doubt that invitations were extended to members of our association, I so stated in my testimony.

I repeat, as I stated in answer to the question of Senator Clark, that no suggestion was ever made to our association to pick out five men to serve on the code authority.

CODE AMENDMENTS PROPOSED BY INDUSTRIAL RECOVERY ASSOCIATION

On page 566 Mr. Vincent puts into the record, and comments upon, certain amendments to the code proposed prior to the February 2 hearing by the Industrial Recovery Association. These proposed amendments are set forth in full as an exhibit in the Green Book (p. 102).

The proposed amendments speak for themselves. The only question is one of interpretation. Mr. Vincent is under the misapprehension that "the matter of the code authority's information as to whether there had been compliance or noncompliance would rest upon the certificate of the member."

If Mr. Vincent had read the amendments carefully he would not have so misinterpreted them. The information which forms a basis of the numerous and shifting claims under article II (b) is obtained by the traveling inquisitors and examiners of the code authority. The proposed amendments do not abate or impair the powers of search and seizure now possessed, excepting to limit the scope of the inquiry. I quote from the proposed amendments (Green Book, p. 102):

"Third. That those provisions of article XIII dealing with the authority and power of the code authority to examine books and records of employers be limited to an inquiry as to wages, hours, and amount of production."

Those are the only proper subjects of inquiry, though the examiners are not so limited under the existing practices of the code authority. It is the custom of the code authority's inquisitors to investigate and report upon labor affiliation, production costs, selling prices, the names and addresses of customers, and other subjects in nowise authorized by the terms of the code.

While on the subject of our proposed amendments, attention may also be directed to the following:

"Fourth. That the provisions of article XIII providing for the confidential nature of data filed by employers or obtained by the code authority be amended so as to make all such data available to any employer in the industry."

This was not a new demand but we had long and urgently petitioned for this reform. It is a singular commentary that the group which so exalts itself should be the group committed to secrecy, while those who are charged with being cheats, chiselers, and sweatshop operators constitute the group which has consistently urged full publicity. Can this be attributable to a reluctance to disclose the sweatshop operations in the four big markets?

TRENDS OF EMPLOYMENT UNDER THE NATIONAL RECOVERY ADMINISTRATION AS SHOWN BY OFFICIAL SOURCES

Without attempting the impossible task of interpretation or analysis, I give in the following table some figures, derived from high authority, on trends of employment in the men's clothing industry.

Date	Number of employees	Authority	Source [1]
1932	92,000	Mr. Hillman	Page 329.
March 1933	109,000	Mr. Vincent	Page 588.
Do	111,700	Mr. Richberg	Page 80.
August 1933	150,000	Dr. Rogers	Report of Dr. Lindsay Rogers accompanying Men's Clothing Code, p. 9 of official original edition, approved Aug. 26, 1933.
September 1933	132,600	Mr. Richberg	Page 80.
March 1934	140,000	Mr. Vincent	Page 588.
July 1934	92,126	Dr. Lubin	Data supplied by Bureau of Labor Statistics identified by Mr. Vincent, p. 583.
August 1934	125,000	Mr. Herwitz	Stenographic report by Associated Shorthand Reporters of hearing before National Recovery Administration on Proposed Amendments to the Code of Fair Competition for the Men's Clothing Industry, Feb. 2, 1935, vol. 1, p. 214.
Do	105,828	Dr. Lubin	Data supplied by Bureau of Labor Statistics identified by Mr. Vincent, p. 583.
September 1934	109,999	do	Do.
October 1934	106,356	do	Do.
November 1934	86,552	do	Do.
December 1934	116,900	Mr. Richberg	Page 80.
January 1935	124,109	do	Do.

[1] Unless otherwise indicated references are to the printed record of the current hearings before this committee.

These figures are not all that are available. On the other hand, they are not selected by me. They are merely those that were in my possession and easily available. Assuming that they are all correct they show a remarkable degree of increase in employment from a figure of 92,000 in 1932 to 150,000 in August

1933, all before the code became effective. If a part of this be attributable to the stimulation induced by the prospect of the code, it is interesting to note the increase from 92,000 in 1932 to 109,000 (or 111,700) in March 1933.

It is also interesting to observe that an employment of 150,000 in August 1933 declined to 105,828 in August 1934. There are two figures for August 1934. Perhaps the better figure is 125,000.

In September 1933 the employment was 132,600 and in September 1934 had declined to 109,999. August and September are the only 2 months for which we have directly comparable figures for the years 1933 and 1934.

The decline from the pre-code year 1932 of 92,000 to November 1934 of 86,552 is interesting. It is also worthy of note that the all-time high was 150,000 in August 1933, just before the code was approved.

These figures are all from high authority, but I do not wish to be understood as taking them too seriously. The force of the comparisons I have indicated are somewhat impaired by other figures shown in the table.

This admonishes us of the hazard of relying too much on selected data. Anyone making a proper selection from the figures shown in the table could prove almost any thesis.

THE STATISTICAL SMEAR

A great deal has been said about a great mass of carefully selected and utterly unreliable statistics. Anyone of any acquaintance with the statistical method knows its fallibility, and the differing conclusions which may be honestly reached by persons of different viewpoint, handling the same mass of statistical data.

The code authority has in its possession complete weekly data for the full calendar year 1934, obtained from reports by all manufacturers in the industry, and showing amount of production, number of employees, hourly wages paid, and man-hours employed. All of this data was requested by our association in the form of consolidated and classified statistics. Instead of that the code authority and the Administrator have submitted in the Clothing Code hearing beginning on February 2, and at the hearings before this committee, a mass of data best suited for the purpose of proving their contentions, limited to the period from July to approximately December 1. No statistical table submitted covers that whole period or any substantial part of it. Certain tables cover certain brief portions and other tables cover different and differing brief portions. For example, table 4 covers only the week ending August 15, 1934, or nearest week to it. Why this particular week was selected is nowhere indicated.

Table 15, on which most emphasis is laid, is apparently based upon and derived from the second column of table 4, but table 15 does not itself state the period covered. Why was this particular week selected? Why does table 15 not disclose the week selected? Why was this data limited to 1 week when the figures for a whole year were easily available? To one not in the confidence of the code authority or the Administrator, and not having access to the data, the answer is difficult but not impossible. A little research may disclose it. A publication of the Bureau of Labor Statistics, entitled "Trend of Employment" and published monthly, shows, month by month, from March 1934 through January 1935, among other things, the average hourly wage in the men's clothing industry. These average hourly earnings range from a low of 52 cents in May to a high (excluding August) of 61.7 cents in September and the same in December. August stands out well above the next highest at 68.6 cents.

Another reason is possibly offered by the following evidence: The Department of Commerce, Bureau of the Census, publishes a release every 4 weeks entitled "Men's and Boys' Clothing, Cut." This shows the number of garments cut in all of the principal markets and in the rest of the country. If the total number of suits wholly or partly of wool cut during the period from December 31, 1933, to January 26, 1935 (approximately the calendar year 1934), in the four great markets of Chicago, Rochester, New York, and Philadelphia be divided by the number of weeks in that period the average weekly production will be found for those four markets. During the week ending August 18, 1934, the number of suits wholly or partly of wool cut in those four markets was approximately 19 percent above the average for the year. The same process shows that the number of suits wholly or partly of wool cut in the rest of the country during the week ending August 18, 1934, was approximately 1 percent above the average weekly production of the rest of the country.

The same sources reveal, without doubt, that the seasonal fluctuation is greater in the four large markets, Chicago, Rochester, New York, and Philadelphia than in the remainder of the country.

Mr. Vincent testifies (p. 584) concerning table 15. This is the table covering 1 week of peak production in the congested markets, mentioned above, though the table itself nowhere discloses the period covered by it. Mr. Vincent's statement reads:

"Table 15—Average hourly rates paid to manufacturing employees—50 largest establishments—shows:

"(1) The 10 firms paying the lowest average hourly wages ranging from 42.4 cents per hour to 49.7 cents per hour, or approximately 45 cents per hour, are all members of the Industrial Recovery Association.

"(2) From the same table, the 10 firms paying the highest average hourly earnings, ranging from 74.3 cents per hour to 86.5 cents per hour, with an average of 79 cents per hour, are all members of the U. S. A. Association with one exception, which excepted firm is an independent, nonunion firm and a member of neither association."

With all respect we must submit that the table itself does not show those facts. Mr. Vincent must have obtained the information from extraneous sources. There is too much anonymity about this, as about many other things, to make it convincing. This is especially unconvincing in view of Mr. Vincent's lack of information as to the members of the Industrial Recovery Association, although a list of the members was furnished to him in connection with the code hearings beginning on February 1.

This lack of information is shown on page 559, wherein Mr. Vincent, in another connection, lists seven firms as members of this association which are not members and which are not listed on the lists furnished him.

In view of the carefully guarded anonymity of this so-called "evidence", it cannot be learned by those not in the confidence of the code authority and the Administrator, but it would be interesting to know, whether or not the Knoxville plant of the Goodall Co. is included in those figures, and if not why not. Perhaps Mr. Vincent has mistaken this company for a member of our association, but the fact is that it is a member of the U. S. A. Association, its president is a member of the code authority, it is the recipient of special exemptions at the hands of the Administrator, and it has now pending an application for leave to pay less than the code scale of wages.

As illustrative of the advantage to be enjoyed from the opportunity carefully to select one's own statistical material for one's own purposes, I direct attention to table 3, Frequency Table Showing Distribution by Market Areas According to Average Hourly Wage Paid to All Employees (Excluding Office). This table shows that in New York there are 27 firms with an average wage of less than 45 cents per hour. It is a certainty that none of these are members of the Industrial Recovery Association. Also, it may be noted that St. Louis is the only market shown with no institution with an average wage less than 45 cents per hour. If these were the only figures shown they would indicate that St. Louis is the highest wage market in the country. Such a conclusion would be unjustified, not because of the inaccuracy, but because of the insufficiency of the data. It may be remarked that when table 3 was furnished us in advance of the February hearings, it had been spoliated by the erasure of all of the figures on the table concerning St. Louis and Buffalo. The unspoliated table, however, was introduced in evidence by the code authority at the hearings.

If complete data for a whole calendar year were available to all persons of conflicting interests, it is certain that different selections of figures would be made and different inferences would be drawn from complete analyses. I respectfully and earnestly submit that where data are carefully selected by one interested group, selected as to numbers included, selected as to brief periods included, with various tables applicable to differing brief periods, and such data are presented under the veil of anonymity, they are not entitled to the slightest respectful attention.

Respectfully submitted.

FRANCIS M. CURLEE.

(The following statement subsequently submitted by Mr. M. D. Vincent, Acting Division Administrator, National Recovery Administration, relating to supplementary statement submitted by Mr. Francis M. Curlee, was ordered printed in the record:)

NATIONAL RECOVERY ADMINISTRATION,
Washington, D. C., April 22, 1935.

COMMITTEE ON FINANCE,
United States Senate.
(Acting under S. Res. No. 79.)

COMMENT OF M. D. VINCENT ON STATEMENT OF FRANCIS M. CURLEE, FILED WITH THE COMMITTEE AT THE CLOSE OF HEARING OF OTHER TESTIMONY

Colonel Curlee's filed statement above mentioned is confined to an examination and criticism of what he characterizes as "errors of fact" in my testimony before the committee March 27 and 28, 1935.

Page references used herein are to the numbered pages of Colonel Curlee's statement.

(Pp. 2, 3, 4)

Greenspoon Clothing Co., St. Louis, Mo.—I stated this was an article II (b) case. Colonel Curlee states that the issue arose over the application of that portion of article IV of the code, reading as follows:

"It is intended that employees' wages shall not be reduced by reason of the reduction of the prescribed number of hours of employment."

The real issue was whether this was one of the article II (b) cases, which were the subject of Colonel Curlee's critical attack.

It was not a II (b) case. The provision of article IV, quoted by Colonel Curlee, applies to both minimum rates and rates above the minimum. My statement needs no correction. It was not a II (b) case. It was heard by the II (b) committee under the mistake that it was a II (b) case. Colonel Curlee appeared in person, representing the respondent. His client did not appear. After the hearing, consideration of the case by the II (b) committee was discontinued upon the advice of counsel for the code authority that it was not a II (b) case.

One of Colonel Curlee's explanatory comments was that "this provision has been another prolific source of contention and confusion though not as baffling as article II (b)." Further comment seems unnecessary.

(Pp. 5 and 6)

The Herwitz formula.—My statement that there was no Herwitz formula is quoted for purposes of challenge of its accuracy. Mr. Riesenfeld and Mr. Mayo are quoted in statements in which they refer to the Herwitz formula. The formula used in all II (b) cases is contained in the interpretations of article II (b). The fact that this formula, which was given to the industry as a sample method of computation, was subsequently referred to as the Herwitz formula in nowise affects its real origin. It was a code authority formula and my description of it was entirely accurate.

Colonel Curlee again repeats his frequently made charge that this formula is not understood although it has a reputation throughout the industry. It is perhaps sufficient to say that 3,400 or 3,500 members of the industry have not questioned it and that it is assailed for ambiguity by the Industrial Recovery Association, representing less than 70 members of the industry, and after that association itself had made a clear explanation of article II (b) and its meaning, which agreed with the code authority's interpretation.

(Pp. 6, 7, and 8)

Issues between the two associations.—Colonel Curlee quotes me correctly as saying "there were two issues upon which they split. One was the question of the so-called 'II (b) provision' of the code; the other was because of the insistence of the Industrial Recovery Association in writing in a qualification of section 7-a of the National Industrial Recovery Act by providing that employers and employees might contract collectively or individually as they might determine. The majority group would not accept that limitation. Neither would they accept the suggestions of the minority group respecting II (b), and I think, perhaps, I ought to give you such information as I have concerning that much

criticized provision." He then quotes the report of Dr. Lindsay Rogers, the Deputy Administrator who conducted the code hearings, as follows:

"The Industrial Recovery Association withdrew its proposed addition to section 7-a but on wages above the minimum and on administrative machinery its representatives were adamant."

Preceding the above quotation, Deputy Administrator Lindsay Rogers' report contains the following:

"A fundamental difference in the points of view of the two associations appeared in respect of section VII (a). The code submitted by the Clothing Manufacturers Association did no more than quote the mandatory provisions of the National Industrial Recovery Act. On the other hand, the Industrial Recovery Association proposed the addition to section VII (a) of the following language: 'Employees not members of a labor union shall be free from interference, restraint or coercion by any labor union, its members, or agents. Employers and employees may bargain individually or collectively as may be mutually satisfactory to them.' The fact that this code sought in effect to interpret and possibly amend an act of Congress discloses the principal reason why two codes were presented by the two associations in the men's clothing industry. One association—the Clothing Manufacturers Association—is composed largely of union manufacturers. The Industrial Recovery Association is composed of nonunion manufacturers. * * *."

It is true that subject to the code hearings negotiations occurred looking toward their merging into one. These negotiations failed, but during the negotiations the modification of VII (a) was withdrawn, as Deputy Administrator Rogers stated.

My statement before the committee was not inaccurate, but to be fully informative it should have contained the further statement by Deputy Administrator Rogers which Colonel Curlee quoted.

(Pp. 8, 9, 10)

Labels.—Nothing in Colonel Curlee's criticism challenges the accuracy of my statement to the committee that his association approved a provision for labels and that his association's label proposal contained the statement that "or that the administrative agency will enforce such provisions in the event of noncompliance." His explanation of his association's change of front on the label question is that "the label racket as a disguised licensing system had not then been devised." For Colonel Curlee to characterize the use of the label as a "racket" is indeed an ironic spectacle.

The label issue defined in the most simple terms is a controversy between some 3,500 industry members who are voluntarily attempting to maintain a decent and economically sound wage structure and a small group of about 60 members who declare that they have a moral right to pay wages as low as they desire. They challenge the constitutionality of the National Recovery Act, the legality of the code and its wage provisions.

It is appropriate at this point in my comment on Colonel Curlee's statement to say that he and his associates deny in their attitude and action any responsibility as members of industry for assistant other members of the industry and the Government in attempting to stabilize markets and to safeguard workers in this and other industries from the consequences of continued unregulated and destructive business practices. Their chief desire seems to be to return to "the good old rule", the simple plan—that he shall take who has the power, and he shall keep who can. Under this rule, public and private security had reached a low ebb when the present administration set up the National Recovery Administration and other Governmental agencies as first steps toward safeguarding both industry and workers who are dependent upon industrial-wage incomes.

The Shelbyville, Ky, case.—Colonel Curlee quotes me as saying that "the Shelbyville plant was given an exemption exactly as Mr. Matthews requested it, for a period of 12 weeks." I was in error in stating that Mr. Matthews requested only a 12-week exemption. While the plant was given a 12-week exemption, the application was, in fact, for a longer period.

The issue made, however, was not an issue of time but arose out of the charge that small plants were oppressed and were not given consideration.

On the subject of the Shelbyville plant, Colonel Curlee also makes the point that the employees petitioned for the exemption and quotes me as saying that this fact "has not come personally to my attention." This employees' petition for an exemption for their employer, was, in fact, a matter of record in a hearing conducted by Assistant Deputy Administrator Beecroft. That part of the

record had not been called to my attention. The whole point, however, seems to be one of special pleading designed to offer emphasis and incidental fact in a discussion of a major issue involving a vital industrial policy of an industry and involving the security of investments of several thousand industry members and many thousands of workers. If one were to pause to seriously discuss this point it would be merely to observe that when employees petition the Government to permit their employer to reduce their wages, the voice of the petitioners may sound like the voice of Jacob—but the hand that traced the petition feels much like the hand of Esau.

(Pp. 11, 12, and 13)

Stabilization.—On this subject Colonel Curlee quotes me in answer to a question by Senator King, as follows: "Certainly not; but I think expansion ought to be under normal processes and that established business concerns ought to be protected in such comparative costs, for instance, as will safeguard them." He then states that New York City has been well safeguarded. That city, he states, has gained 6 percent in volume of business in 1934 over 1932, whereas, he further states, "The rest of the country lost 6 percent of the total business." It is enough to say of this statement that Colonel Curlee relies upon the reports of only 775 firms who reported in 1932, and the reports of 1,093 firms who reported in 1934. Considering that there are 3,500 or 3,600 members of the industry, it is obvious that these reports are an insufficient base for the conclusions of Colonel Curlee.

It is also to be observed that no data are given showing how much the city of New York had lost in business by the depression of 1932, or whether New York and other sections of the industry had suffered the same drop in volume by 1932, or whether there was any uniformity in the decline in business between the several sections of the industry.

Such a conclusion is manifestly lacking in authoritativeness if tested only by Colonel Curlee's figures.

(Pp. 13, 14, 15, 16, and 17)

The Curlee case.—Colonel Curlee devotes much space in an effort to show that the 20-percent advance which his company made in wage rates in April 1934 was not the basis for the code authority's acceptance of such advance as substantial compliance with article II (b) of the code. It will be remembered that the code authority had previously rendered statements to the Curlee Co. for deficiencies claimed to be due on account of noncompliance with article II (b). It is quite true, as Colonel Curlee states, that subsequently, and before the controversy was composed between the code authority and the Curlee Co., the code authority had continued to claim a deficiency to be due. As Colonel Curlee himself states, the deficiency claimed was for a period ending April 20, 1934. In his statement he says: "This alleged deficiency all accrued prior to the 20-percent increase under discussion. It will entirely evaporate, exactly as stated in the green book." My point was that it did not evaporate, but eventually represented a very substantial and material thing to the Curlee Co. employees in the 20-percent advance in wage rates which was made, and that the code authority accepted such advance finally, following a hearing in July 1934, as a substantial compliance with article II (b).

While Colonel Curlee does not concede the fact as stated in my testimony, he does say in the statement under comment, on page 17, that "The code authority apparently did reach some such fantastic conclusion on its own initiative and without any suggestions from us, and in spite of the fact that we repeatedly asserted that we had complied with the code at all times and that we had not complied with the Herwitz formula and did not intend to do so."

It does not appear, therefore, that the fact as stated to the committee is challenged, but that the code authority made its decision out of considerations which the colonel characterizes as "fantastic."

Again we find, as in other instances, the colonel leaving the battle front of major issues to engage in a combat over minor and inconsequential facts.

(Pp. 18, 19)

Interpretations.—It will be recalled that article II (b) of the code was not to become effective until November 20, 1933.

Colonel Curlee has repeatedly stated that the Industry knew nothing of the code authority's interpretation of that provision until January 8, 1934.

I placed in the record correspondence showing that Mr. Drechsler, of the code authority, in the letter of September 27 sent the interpretation to Mr. Popkin of the Industrial Recovery Association. Receipt of that latter was acknowledged. Moreover, I placed in the record for the Senate committee Mr. Popkin's letter of November 15 in which he explained to the members of the association the meaning of artile II (b) in a manner which corresponds in all substantial particulars with the interpretation made by the code authority. There is also before the committee the subsequent interpretation which contained the formula for computing the differentials to be maintained between the lowest-paid classes and the higher-paid classes.

Moreover, as the records of the committee show, these interpretations were published in the Daily News Record which circulates throughout the industry, in its issues of November 11 and 13.

It is idle for Colonel Curlee by circuitous argument to attempt to show that his association and its members did not have full knowledge of these interpretations. In an effort, however, to create the impression that his contention is accurate, he points out in his statement that these interpretations were not approved by the National Recovery Administration until June 7, 1934. He did not explain, however, as I believe he should, that when these interpretations were made by the code authority no procedure had been adopted by the National Recovery Administration requiring that code authority interpretations should be submitted for approval. Subsequently, in May, such a procedure was adopted. Following the adoption of this procedure, the code authority submitted all the interpretations it had previously made, including its interpretations of article II (b), and thereupon, June 7, 1934, these interpretations were approved. The interpretations by the code authority were in reality nothing more than explanations, such as Colonel Curlee's association itself made to its own members.

Such are the last-hour efforts to divert attention from major issues by argumentative gymnastics, which might be more fittingly staged in a justice-of-the-peace court.

(Pp. 19, 20, and 21)

The Goodall Co.—My statements respecting the exemptions applied for by this company stand exactly as I made them. It was granted an exemption for its Knoxville (Tenn.) plant from a 36-hour to a 40-hour week to place it on a competitive basis comparable to its competitors' in that area. It was not granted an exemption for its Lorain and Cleveland (Ohio) plants nor for its Sanford (Maine) plant. It did, however, operate these plants on a 40-hour week. The company was notified by the code authority that it had no exemption for these three northern plants. It continued, however, to operate on a 40-hour basis. The code authority filed a noncompliance charge against it. That charge was certified to the Compliance Division of the National Recovery Administration. This case was heard in March, preceding the time I testified before the committee, and at that time was still pending, and is now pending before the Compliance Division of the National Recovery Administration for final decision.

(Pp. 21–22)

Homeworkers.—Colonel Curlee's criticism under this head is that the code granted no exemption for learners or beginners; that thereafter an amendment was proposed and adopted, by which beginners might be employed for a period of 3 months after December 11, 1933, and be classified as beginners for a period of 8 weeks. This, he said, indicates that homeworkers were not transferred from the home to the factory by the prohibition of homework. He also complains that those who had not previously employed homeworkers were not granted this 3 months' indulgence. The fact is that homeworkers were employed in several parts of the country and by members of both associations, one of which Colonel Curlee represents. It is also a fact that a number of members of the industry did not employ homeworkers. The principal fact is that after the 3 months' period mentioned, homework in this industry was abolished. While it is doubtless true, as Colonel Curlee suggests, that not all homeworkers were transferred to the factory, it is a fact that many of them were, and that at this time homework, with its degrading consequences is happily a matter of history.

I must take occasion before concluding on this subject, however, to say that large numbers of members of this industry were members of the U. S. A. Association and did not, previous to the code, employ home workers, and that many of them paid higher wages before the code than are now paid by some of the members

whom Colonel Curlee represents. Furthermore, these members now pay much higher wages—a fact that is the real cause of the assault by Colonel Curlee and his association upon the National Industrial Recovery Act, the National Recovery Act, and the Men's Clothing Code.

(Pp. 22, 23, and 24)

ARTICLE II (b). This section of Colonel Curlee's statement is devoted to an effort to show the ambiguity of article II (b). To make this showing, Colonel Curlee quotes from the record in the hearing of the II (b) case a question which he proposed to Mr. Herwitz. I believe it is a sufficient comment to suggest a reading of Colonel Curlee's question and Mr. Herwitz' answer. Colonel Curlee's question is not an imperfect picture of confusion. Mr. Herwitz' answer, defining his method of calculation, appears to me to be a very simple and understandable statement. I will leave the question and answer to speak for themselves.

(Pp. 25 and 26)

The uniformity of the Herwitz formula.—Colonel Curlee quotes from the record of a II (b) committee hearing for the purpose of showing a statement by Mr. Herwitz that "there have been some cases where other methods have been applied as I mentioned this morning." An examination of these cases and the record of their hearings will show that there was no departure from the code authority formula when pay-roll records were available to which to apply it. In some instances, however, pay rolls had been destroyed. In other instances, time records had not been kept. In such instances it became necessary for the code authority to follow a method of taking pay-roll records which might be treated as sufficiently comparable to be used as a basis for computation, and to determine, in other instances, an estimated work time from subsequently kept time records. These exceptional instances were not created by the code authority but were cases in which the code authority had an obligation to ascertain liabilities from the only sources available. Necessarily, methods varied to suit the necessities of each case.

(Pp. 26, 27, 28, 29, 30)

The code authority.—Colonel Curlee repeats his charge that the code authority is not representative and that his association was not invited to name members to the code authority. I believe the committee's record is fairly complete on this subject. It appeared to me, listening to Colonel Curlee testify, that he sought to leave the impression that the members of his association were not consulted, in the sense that they were not individually given an opportunity either to become members of the code authority or to nominate members. To correct this impression I placed before the committee evidence for the purpose of showing that each member of his association was invited to nominate a code authority member; that several nominations were made; that five of such nominees were selected and requested to accept membership; and that in several instances, including the instance of Colonel Curlee himself—or his brother, I am not certain which—the invitations were declined. Notwithstanding such declarations it appears that several open-shop code Authority members were chosen.

Whether the method of selection provided for in the code is the most representative or not is a question which is open at all times for the industry to consider and, if it deems advisable, to revise subject to the approval of the National Recovery Administration.

Concluding on this subject, Colonel Curlee states that an individual member such as Mr. Henry who may disagree with the policies of the majority is impotent and helpless as a member of that body. It is equally true that minorities on corporation boards of directors and minorities in Congress are impotent to control the action of a majority. In government this is democracy; in business it is a necessary result of representative action.

(Pp. 31-32)

Code amendments—Proposed by Industrial Recovery Association.—My comment on the Code Amendments proposed by Colonel Curlee's association is criticized. I stated, "The matter of the code authority's information as to whether there had been compliance or noncompliance would rest upon the certificate of the member." (If the amendments were adopted.) I have no reason to change that statement. If the amendments were adopted Industry members would not be required to

report individual pay-roll records. It is quite true that these records could be examined by the Code Authority, but that would involve the regular examination by the code authority, by inspectors, of the pay-roll records of 3,500 or 3,600 members. This would require such an army of inspectors that Colonel Curlee himself would characteristize it as unjustifiable expense, to say nothing of its impracticability as compared with the practicability of requiring pay-roll reports by members.

There is, however, no occasion for supposing that the committee will be misinformed on this subject, for I submitted for the record the amendments exactly as Colonel Curlee's association proposed them.

(Pp. 33–34, and 35)

Trends of employment that the National Recovery Administration has shown by official sources.—Under this heading Mr. Hillman, Mr. Richberg, Dr. Rogers, Dr. Lubin, Mr. Herwitz and myself are quoted for the purpose of showing discrepancies between the employment data submitted by us. Colonel Curlee states he does not take these figures too seriously. There are but two points worth taking time and space for comment.

Dr. Rogers is quoted as giving the employees in the industry in August 1933 as 150,000. It is but fair to quote all of Dr. Rogers' statement on this subject. He does say that the industry is "employing 150,000 workers", but he immediately continues without a break to say, in the same paragraph, that "By reason of a decreased production in recent years and a high degree of seasonality of operations the industry has been faced by a serious unemployment problem." I think it is but fair to interpret Dr. Rogers' language as meaning that there were 150,000 employees in the industry at the time he wrote, but his specific finding of a decreased production in recent years and that the industry is faced by a "serious unemployment problem", indicates that he did not intend to leave the impression that the 150,000 were all employed at that time.

Respecting the differences between the employment data submitted by the several witnesses mentioned, I will suggest that the committee use the data supplied by the Bureau of Labor Statistics or the Bureau of the Census, which are probably as authentic as may be derived from any source.

(Pp. 35, 36, 37, 38, 39, 40)

The statistical smear.—The above subheading is Colonel Curlee's characterization of the wage data supplied by the code authority for the use of his Association at the hearings on proposed wage amendments held February 1, 2, and 4, 1935. These data are a part of the committee's record. Their authenticity and sufficiency can be easily determined by the committee's staff. I am entirely willing to submit their value for the purposes for which they were compiled to the analysis and judgment of competent experts.

Respectfully submitted.

M. D. VINCENT,
Acting Division Administrator.

CODE RESTRICTIONS UPON INSTALLATION OF NEW MACHINERY OR UPON OTHER EXTENSION OF INDUSTRY CAPACITY

RESEARCH AND PLANNING DIVISION,
POST CODE ANALYSIS UNIT,
July 16, 1934.

CODE PROVISIONS AFFECTING CAPITAL INVESTMENT IN INDUSTRY

(New plant and machinery installation—460 approved codes)

Some form of provision dealing with restrictions upon installation of new machinery or other extension of industry capacity is found in 44 of the first 460 approved codes, and 1 of 70 supplemental codes.

These provisions fall into the following four principal classes:

1. Direct prohibition upon extension of capacity.
2. Requiring of authorization for such extension.
3. Recommendations for such authorization to be made by the code authority.
4. Limitation by agreement.

1. *Direct prohibition.*—One code. 11. Iron and steel, "until the code is amended to permit."

2. *Authorization required.*—Twenty-two codes.

1. Cotton textile
6. Lace manufacturing
28. Transit
36. Glass container
43. Ice
54. Throwing
66. Motor bus
92. Floor and wall clay tile
111. Air transport
123. Structural clay
146. Excelsior
148. Pyrotechnics
168. Refractories
172. Rayon and silk dyeing
206. Feldspar
215. American glassware
269. Carbon black
302. Beeswax and candle
303. Cordage and twine
364. Clay drain tile
389. Clay and shale roofing tile
84. Supplement 7, tool and implement

(For nature of authorization required, see list of text provisions in the second section of this report.)

3. *Recommendation by code authority.*—(For limitation by requiring authorization for new extensions of capacity).—Seventeen codes.

16. Hosiery
27. Textile bag
67. Fertilizer
82. Steel castings
99. Asphalt shingle
109. Crushed stone
113. Limestone
118. Cotton garment
120. Paper and pulp
149. Machined waste
156. Rubber manufacturing (2 divisions)
174. Rubber tire manufacturing
190. Paper stationery
237. Alloy casting
245. Corrugated shipping container
309. Solid braided cord
311. Ready-mixed concrete

4. *Limitation by agreement* (permissive).—Two codes.

147. Motor-vehicle storage and parking.
311. Ready-mixed concrete.

5. *Other provisions,* (authorization not specifically required).—128. Cement—where new construction, etc., is proposed, Cement Institute to study the situation, and may petition the President to prohibit the action.

419. Soft Lime Rock: Member to report proposed extension, or moving, of capacity to code authority, which may make such recommendations to President as it sees fit.

6. *Exceptions, for modernization, etc.*—The following are permitted exceptions to the machinery limitation provisions:

1. Cotton textile: Replacement of similar number of units, or to bring existing machinery into balance.

6. Lace manufacturing: Replacement of similar number of existing machines, or parts.

16. Hosiery: Replacement of existing equipment of equal capacity, or to balance existing equipment.

36. Glass container: Replacement of similar capacity.

92. Floor and wall clay tile: Modernization or replacement of existing capacity.

109. Crushed stone: Improvement of efficiency, or adoption of methods designed to lower costs.

123. Structural clay: Improvement of efficiency or products, adopting machinery or methods to lower cost, or resuming operation of any plant owned prior to October 1, 1931.

128. Cement: Modernization of existing plants, or improvement of quality of product and/or operating efficiency.

146. Excelsior: Replacement of machinery of equal capacity, or transfer between manufacturers of machinery in use prior to effective date of code, where such transfer does not create additional productive capacity in the industry.

168. Refractories: Replacing existing capacity or machinery with modern equipment which does not increase member's capacity, or purchase of existing capacity.

172. Rayon and silk dyeing: Installation of velvet processing machinery during the calendar year 1934.

206. Feldspar: Replacement of similar worn out or obsolete equipment.

215. American glassware: Replacement of worn-out or obsolete equipment with equipment of identical or less capacity; execution of bona fide prior contract.

302. Candle and beeswax: Replacement of machinery of equal capacity existing on effective date of code, or transfer of machinery which was in use prior to effective date, and which does not serve to increase industry capacity.
303. Cordage and twine: Replacement of machinery of equal or less productive capacity existing on effective date of code, or transfer from a manufacturer to a subsidiary manufacturer.
309. Solid braided cord: Replacement of similar number of existing machines, or to bring existing machinery into balance.
311. Ready mixed concrete: Interchange of equipment among members within a marketing area; improving efficiency of plant or equipment through installing new machinery; or adopting such methods as will lower production costs.
364. Clay drain tile: Modernization or replacement of existing capacity.
389. Clay and shale roofing tile: Modernization or replacement of existing equipment.

7. *Registration of machinery.*—The following are codes containing provisions as to the registration of productive machinery, or other capacity.

(*a*) Registration required:

1. Cotton textile
6. Lace manufacturing
27. Textile bag
36. Glass container
54. Throwing
66. Motor bus
92. Floor and wall clay tile
111. Air transport
146. Excelsior
172. Rayon and silk dyeing
188. Velvet
206. Feldspar
215. American glassware
245. Corrugated shipping container
389. Clay and shale roofing tile

(*b*) Recommendations for registration:

16. Hosiery
113. Limestone
149. Machined waste
309. Solid braided cord

8. *Miscellaneous provisions.*—The following are other points with respect to capacity which are touched upon in the provisions of certain of the codes.
10. Petroleum: "Wild-catting" not prohibited, but shipment from a new field or pool not developed in accordance with a plan approved by the President is unfair competition.
16. Hosiery: Recommendations to include plans for acquisition and disposal of surplus used equipment, or the scrapping of fully depreciated obsolete equipment, as an aid to maintaining proper balance between productive capacity and expectable demand.
43. Ice: Special minimum price provisions for certain plants which were not in operation on September 8, 1933.
54. Throwing: Each member of industry to report monthly the extent to which any installation of additional productive machinery is for replacement of similar units.
128. Cement: The board to study permanent excess of capacity in any area, and may submit to Administrator plans for closing down or amortization of the less economical plants.
172. Rayon and silk dyeing: Each concern to report monthly to the institute the installation of additional productive machinery (new or second-hand) and extent to which such installation is for replacement of similar productive machinery and an explanation of the same, all duly certified.
188. Velvet: Each member to file monthly inventory, with code authority, of all additional productive machinery installed, purchased, or under contract, whether for replacement, expansion, or otherwise, and specifying which is for replacement and which for expansion.
245. Corrugated shipping container: Each member to report immediately to code authority any productive equipment disposed of, or new equipment acquired.

(See following pages for text passages of capacity limitation provisions, listed in numerical order of approval of the codes.)

II. Code Provisions Dealing with Industry Capacity

(New plant and machinery installation)

1. *Cotton textiles.*—Except for replacement of a similar number of units of productive machinery, or to bring the operation of existing machinery into balance, persons engaged or engaging in the textile industry shall be required

to secure certificates of permission from the administrator prior to installation of additional machinery (Recommendation of Cotton Textile Industry Committee, approved by the administrator, Oct. 18, 1933). Present machinery to be registered. (See also Code, VI. 3; also amendment 1, I, b, and VI, 3, h.)

6. *Lace manufacturing.*—Every person engaged in the industry shall furnish the code authority within 10 days after the effective date of this article a certificate listing and registering all his productive machinery, with sufficient information and description to make possible the positive identification of such machinery at all times. Prior to the installation of additional productive machinery by persons engaged or engaging in the industry, except for the replacement of a similar number of existing machines or parts of productive machinery to be used for replacement or maintenance of existing machinery, such persons shall make application to the administrator and secure a certificate from the administrator that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act (amendment 1, art. XII, secs. 1 and 2).

10. *Petroleum industry.*—New capacity.—Wild catting shall not be prohibited because the future maintenance of the petroleum supply depends on new discoveries and new pools, but the shipment of petroleum or the products thereof in or affecting interstate commerce, which was produced in a new field or pool which is not developed in accordance with a plan approved by the President, is unfair competition and in violation of this code. For the purpose of this code new field or pool is one discovered after date of approval of this code and in which 10 producing wells have been completed (art. III, sec. 7).

11. *Iron and steel industry.*—It is the consensus of opinion in the industry that, until such time as the demand for its products cannot adequately be met by the fullest possible use of existing capacities for producing pig iron and steel ingots, such capacities should not be increased. Accordingly, unless and until the code shall have been amended as hereinafter provided so as to permit it, none of the members of the code shall initiate the construction of any new blast furnace or open hearth or Bessemer steel capacity. The President may, however, suspend the operation of the provisions of this section (art. V, sec. 2).

16. *Hosiery industry.*—Recommendations to be made (*a*) for the requirement by the Administrator of registration by persons engaged in the hosiery industry of their productive equipment, (*b*) for the requirement by the Administrator that prior to the installation of additional productive equipment (except for the replacement of existing equipment of equal capacity or to establish balance in existing equipment) by persons engaged or engaging in the hosiery industry, such persons shall secure certificates that such installation will be in accord with the objectives of the act.

Recommendations for the acquisition and disposal of surplus used equipment, or the scrapping of fully depreciated obsolete equipment, and as an aid to maintaining proper balance between productive capacity and expectable demand. (Art. IX, 3 and 4.)

27. *Textile bag industry.*—The control committee may recommend that the Administrator of the National Industrial Recovery Act require registration by persons engaged in the textile-bag industry of their productive machinery. The committee may also recommend that no installation of additional productive machinery, except for replacement of a similar number of existing machines, be permitted by anyone, unless the Administrator shall find that the installation of such additional machinery will tend to effect the policy of the National Industrial Recovery Act and shall give his approval thereto. (Registration required by order of Dec. 22, 1933.) (Art. VI, c.)

28. *Transit industry.*—No new bus route or bus line or extensions to existing bus routes or lines shall be established in interstate commerce without also complying with the licensing and rate provisions of any code of fair competition adopted for the motor-bus industry, relating thereto (art. II, a).

36. *Glass container industry.*—The present capacity of the industry is far in excess of present or prospective needs. Therefore, each member of the industry shall register with the association the melting area in square feet of its present tank or furnace equipment. Prior to the installation of new melting areas or the enlargement of present melting areas by any member of the industry, or persons engaging in the production of bottles or jars, except for the replacement of similar tank or furnace melting areas, such members or persons shall report to the code authority, and the code authority shall make such recommendations to the Administrator as may seem necessary to effectuate the policy of the National Industrial Recovery Act (art. VII).

43. *Ice industry.*—If at any time an individual, firm, corporation, or partnership, or other form of enterprise, desires to establish additional ice production, storage, or tonnage in any given territory, said party must first establish to the satisfaction of the Administrator that public necessity and convenience require such additional ice-making capacity, storage, or production. The ice manufactured from any plant that was not in actual operation on September 8, 1933, shall not be sold to any purchaser for a period of 12 months from the date subsequent to September 8, 1933, upon which the operation of such plant may be initiated or resumed, 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 September 8, 1933; or

(*c*) Plants that were owned or whose output was controlled by companies or operations that were on September 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 September 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 (art. XI).

54. *Throwing industry.*—Recommendations that each employer who may wish to purchase or build throwing machinery, and any individuals of corporations desiring to establish plants of throwing machinery, may do so only after having procured from the administration permission for such purchase or erection or for such establishment of plants; and the Code Administration Committee is hereby empowered to act as the agent of the Administration to receive applications for such permissions and to recommend the granting or withholding of same; and it shall be the duty of the code administration committee in such proceeding to furnish the National Recovery Administration with a full and duly authenticated statement of the facts upon which its recommendation is based (amendment 2). Recommendation of code administration for registration of all productive machinery in place on January 1, 1934, and certification by Administrator for installation of additional machinery after that date, approved by order of December 27, 1933. All persons engaged in the industry to file a monthly report specifying extent to which any installation of additional productive machinery is for replacement of similar units.

(See Administration order 54–3, Dec. 27, 1933.)

66. *Motor bus industry.*—Each passenger motor carrier shall within 30 days after the approval of this code register its operations by filing a statement with the Motor Bus Code Authority setting forth the routes over which it is operating.

Passenger motor carriers establishing any new motor-bus operation or extending any motor-bus operation after the date of the approval of their code shall secure therefore a certificate of convenience and necessity, or permit, from each and every State in which such operation is conducted, authorized intrastate transportation along route or routes of such new operation, or extension of existing operation. Such new route, or extension of existing route, shall be registered by submitting and filing with the Motor Bus Code Authority within 15 days after the institution of service thereon the following:

(1) A description of such route or routes.

(2) A certified copy of a certificate of convenience and necessity, or permit, issued by the State or States as herein provided.

Evidence of compliance with such other conditions as the administrator shall upon recommendation of the Motor Bus Code Authority establish. The administrator, on his own initiative or on the recommendation of the code authority, may grant exemptions as to the requirements for the submission of a certificate of convenience and necessity, or permit, in any State in which such certificate or permit is not required, or in any case in which the refusal of any such certificate or permit by any State has been clearly unreasonable and worked undue hardship (art. VII, 1, (a), (b), (1), (2), (3), (c)).

67. *Fertilizer industry.*—Should it at any time appear that the policy of title I of the National Industrial Recovery Act will not be effectuated in the industry because of overproduction, the fertilizer recovery committee may submit to the Administrator recommendations for amendments to this code or for such other action as may be appropriate (art. V).

82. *Steel casting industry.*—The board of directors shall make a careful study of the question of limitation of steel foundry melting capacity and shall submit

to the Administrator for his approval such plan or plans as are deemed necessary, and which will further effectuate the policies of the National Industrial Recovery Act (art. VII, sec. 4).

92. *Floor and wall clay tile manufacturing industry.*—The present kiln capacity of the industry shall be registered by members of the industry with the code authority. The intention to install additional kiln capacity, excepting, however, modernization or replacement of existing capacity, either by members of the industry or by those intending to engage in the industry, shall be reported to the code authority. The code authority shall make such recommendations with respect thereto to the Administrator as it may deem desirable to effectuate the policy of the act (art. VI, 7).

99. *Asphalt shingle and roofing manufacturing industry.*—The code authority shall make a study of conditions in the industry and may thereafter, from time to time, make such recommendations to the Administrator as it deems desirable to further the policies of the act with respect to, but without limitation: Uniform cost accounting; limitation of production; limitation of new equipment (art. VI, 2, o).

109. *Crushed stone, sand and gravel, and slag industry.*—To promote the fullest possible utilization of the present productive capacity of the industries governed by this code, to curb uneconomic overproduction in the various regions herein established, and otherwise to effectuate the purposes of the act there shall be elected in each State, as hereinafter provided, a standing committee which shall survey its State to ascertain the available sources of supply of the products of these industries within the State, the capacity of existing production facilities and the relation between existing capacity and the actual and potential demand in such State. This committee shall be known as the State committee and shall consist of 3 stationary-plant producers and 3 portable-plant producers, together with 1 additional member who shall be elected by these 6 and may be chosen from outside the industries. The six representative members of the committee shall be registered producers as defined in article II of this code and shall be elected at the time of the election of the regional committee of the region in which the State is located. Members of a State committee shall serve for 1 year from the effective date or until their successors are elected for a like term. The representatives of the stationary-plant producers shall be elected by a majority of the registered stationary-plant producers voting and the representatives of the portable plant producers shall be elected by a majority of the registered portable-plant producers voting. The survey and findings reported by each of those committees shall be filed with the appropriate regional committee, which shall transmit a copy thereof to the code authority and to the administrator.

If in the judgment of such a State committee, its survey and findings warrant such action, it may, after due notice and hearing, determine and define the areas, if any, within its State in which an ample supply of the products of the industries governed by this code is economically available from existing production facilities. The minutes of such hearing, together with the findings of the State committee and a map showing accurately the boundaries of such areas, shall be filed by each State committee with the appropriate regional committee, which shall transmit a copy thereof to the code authority and the administrator and, moreoever, a copy of the map, together with summary of committee's findings, shall be mailed to each registered producer within the region and to all governmental authorities who may properly be interested therein. The administrator shall review said data and examine said map, and if he shall find that in the area or areas shown on such map an ample supply of the products of the industries governed by the code is in fact economically available from existing production facilities, such area or areas shall be established as "permissive areas" and subject to the provisions contained in the remaining paragraphs of this section.

If any State committee so recommended, the regional committee shall require, subject to review and disapproval by the Administrator, that before a new plant is installed or the producing capacity of an existing plant increased within any permissive area, notice of such intent shall be filed with the regional committee of the region in which such action is contemplated. Upon receipt of such notice the regional committee shall refer it to the State committee or committees in which such permissive area may be located, who shall collect promptly and with diligence full information concerning existing production capacity in that area. If, in the judgment of the State committee, these data disclose that such new capacity will not tend to defect the purposes of the act as herein set forth, the regional committee within 15 days after the receipt of such notice shall grant permission for the proposed increase in capacity. If, however, in the judgment

of the State committee these data disclose that within the said area an ample supply of the products of the industries governed by this code is economically available and that such proposed increase in capacity does tend to defeat the purposes of the act by further increasing overproduction or otherwise, it shall be the duty of the regional committee within 15 days after the receipt of such notice to recommend to the code authority that permission to increase the production capacity in that area be denied. The decision of the code authority shall be final except as it may be modified or revised by the Administrator.

The Administrator upon notice to the code authority or the regional committee directly involved may at any time suspend the provisions of paragraph (c) of this section.

Neither the provisions of this section nor any recommendation adopted by the Administrator pursuant thereto shall be construed as preventing any producer from improving the efficiency of his plant through the installation of new equipment or adopting any methods designed to lower production costs.

The provisions of this section shall remain in effect for a period of 1 year after the effective date and thereafter until production in the industries governed by this code shall reach 70 percent of the available production capacity (art. VII, sec. 5).

111. *Air transport industry.*—Within 60 days from the date of approval of this code with respect to existing routes, and within 30 days after the establishment of any extension of an existing route, and prior to the establishment of any new route or service, each member of the industry shall file with the code authority the following:

A certified copy of a letter or certificate of authority to operate, issued by the United States Department of Commerce permitting service over such route or extension thereof (art. VII, 1). (See also p. 19.)

113. *Limestone industry.*—Recommendations for the requirement by the Administrator of registration by members of the industry of their productive machinery.

Recommendations for the requirement by the Administrator that prior to the installation of additional productive machinery by persons engaged or engaging in the limestone industry, except for the replacement of obsolete or retired machinery, such persons shall secure certificates that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of the emergency.

For the granting or withholding by the Administrator of such certificates as so required by him (art. VI, 1, 2, 3).

118. *Cotton garment industry.*—To investigate and report to the Administrator with such recommendations as may be deemed necessary, looking to the control in this industry of undue expansion of productive machinery capacity (art. IX, 6).

120. *Paper and pulp industry.*—Recommendations for restrictions on the creation of new facilities for the manufacture of any product of the industry or on the acquisition by any member of new equipment for such manufacture, and on the shifting of equipment from the manufacture of one kind or type of such product to another kind or type thereof (art. IX, 5, (c)).

123. *Structural clay products.*—Prior to the increasing of existing production capacity in the industry by starting the operating of existing plants within any branch of the industry that have been shut down continuously for a period of 3 years or more prior to the effective date of this code, or starting the operation of plants not heretofore in operation within any branch of the industry, a certificate must be procured by the owner thereof from the branch committee of such branch of the industry, subject to review by the code authority or the Administrator, certifying that the operation of such plant is consistent with the policy of the act. In case of a denial by a branch committee of the certificate mentioned herein, or refusal to decide within 60 days such owner may appeal to the code authority or the administrator for a final decision. Nothing herein, however, shall restrain any member of the industry from improving the efficiency of his plant or adopting methods or machinery to lower production costs or improve products or from resuming operation of any plant owned by him prior to October 1, 1931 (art. VII).

128. *Cement industry.*—Prior to the construction or operation of a new plant, or the increase in the productive capacity of an existing one, or the movement of all or part of such a plant from one place to another, The Cement Institute, on receipt of such information, shall promptly collect complete information concerning existing productive capacity in the area in which the proposed new plant is to be located, together with data concerning consumption of cement in that

area. If these data disclose that such new plant will result in further increasing the problem of over-production or over-capacity in such area, The Cement Institute may petition the President to prohibit the construction, or operation, of the proposed new plant, or the increase in manufacturing capacities of such existing plants. The provisions hereof shall not be construed to prevent the modernization of existing plants to improve quality of product and/or operating efficiency.

The Board may study the problem of permanent excess of productive capacity in any area and may from time to time prepare and submit to the Administrator for consideration plans for the closing down or amortization of the less economical plants (art. VII).

146. *Excelsior and excelsior products.*—Based on conditions in the industry in this period of emergency and to effectuate the operation of the provisions of this code and the policy of the National Industrial Recovery Act, the following regulations are established:

All persons engaged in this industry shall register their productive machinery with the code authority within 15 days after the effective date of the code and in such form as may be specified by the code authority.

No person engaged in this industry or for the purpose of engaging in this industry shall purchase, manufacture, lease or otherwise obtain or use productive machinery not owned, leased or otherwise held by such person prior to the effective date of this code, except by securing a certificate of public convenience and necessity from the Administrator that the obtaining, manufacturing, or use of such additional productive machinery is consistent with effectuating the policy of the National Industrial Recovery Act; but nothing contained herein shall be construed to prevent the replacement by a member of the industry of productive machinery of equal productive capacities existing on the effective date of this code or the transfer of productive machinery from one manufacturer to another person, provided same was in use prior to the effective date of this code, and provided further that such transfer does not have the effect of creating additional productive machinery within the industry. The provisions of this article shall cease to be effective on the expiration of 6 months from the effective date of this code. Provided, however, that prior to that time the code authority may submit to the Administrator its recommendation that said period be extended, based on such information as may be required, and if the Administrator finds upon such information and facts that a further extension of this period is consistent with and further effectuates the policy of the National Industrial Recovery Act he may declare the provisions of this article to be operative for such longer period and under such conditions as may be necessary to fully effectuate the policy last herein mentioned (art. X, 1, 2, 3). (See also p. 19.)

147. *Motor-vehicle storage and parking.*—Any group of members of the trade may agree that they shall not participate in the providing of additional storage or parking facilities for public use through the construction of new buildings, the conversion of buildings not now used as public storage or parking garages, or the opening up of vacant land of any description to be used as parking lots and/or stations, except where needed. The terms of any such agreement shall be subject to the approval of the Administrator. Each such agreement shall provide, among other things, that any dispute between the parties to such agreement as to whether expansion is justified by need for new facilities shall be submitted to the Administrator, whose determination shall be final. It is, of course, understood that any such agreement shall be binding only on the parties thereto (art. VIII).

148. *Pyrotechnic manufacturing.*—Commercial and display fireworks divisions. In view of the surplus of production facilities in these divisions, before any additions to or expansions of present manufacturing plants or equipment shall be made or any new manufacturing plant shall be constructed, application shall be made to the Administrator, who shall take such action after notice and hearing as may seem necessary to effectuate the policy of the act.

Fusee division: Until, in the opinion of the Administrator, the demand for the products of the industry from the railroads of the United States cannot adequately be met by the use of existing production facilities, no additions to, or expansion of, present manufacturing plant or equipment shall be made and no new manufacturing plant shall be constructed unless the Administrator, after notice and hearing, shall find that public necessity and convenience require same (art. VIII, 1, 2).

149. *Machined waste manufacturing.*—Recommendations (a) for the requirement by the Administrator of registration by persons engaged in the machined waste manufacturing industry of all productive machinery, (b) for the require-

ment by the Administrator that prior to the installation of additional productive machinery by persons engaged or engaging in this industry (except for the replacement of machinery of equal capacity or to establish balance in existing machinery) such persons shall secure certificates that such installation shall be consistent with effectuating the policy of the National Industrial Recovery Act during the period of emergency, and (c) for the granting or withholding by the Administrator of such certificates as so required by him. Recommendations for a plan to prevent demoralization in the industry whenever operations are below 35 percent of registered capacity and after approval by members of the industry representing 80 percent of the volume of production (art. VI, (1) (2)).

156. *Rubber manufacturing.*—

Rubber footwear division: The divisional authority may proceed with a survey of the productive capacity of the division and submit recommendations to the Administrator concerning the desirability of limiting the expansion of the productive capacity of the industry (art. VIII).

Mechanical rubber goods division: The divisional authority shall make such studies of the productive capacity of the division as may be desirable from time to time and make recommendations as to its findings to the Administrator (art. VI).

168. *Refractories industry.*—Whereas it is the consensus of opinion in the industry that until such time as a demand for its products cannot adequately be met by the fullest possible use of existing capacities for producing fire clay or silica brick and special shapes, such capacities shall not be increased and no new capacities shall be added. Capacity in this industry shall be defined as those kilns and furnaces existing as of the effective date of this code and as customarily used for burning refractories, whether periodic or tunnel kilns and/or furnaces, and owned by persons, partnerships, or corporations who, as of the effective date of this code, were definitely established as manufacturers of refractories or as refractories producers. Accordingly no member of the industry and/or no person engaged in the industry shall initiate the construction of any new units or increase his capacity of fire clay and silica brick or special shape production unless and until he shall have secured from the Emergency National Committee consent to such increase, as being consistent with effectuating the policy of the act during the period of the emergency. The Emergency National Committee shall promptly notify the Administrator of any application for any such consent and the Administrator may review, disapprove, or modify the action of the Emergency National Committee upon such application and/or at any time may suspend the operation of this article IX to effectuate the purposes or policy of the act.

Nothing in the above shall be interpreted to prevent any member of the code from replacing present capacity or existing machinery for the production of fire clay or silica brick and special shapes with new and modern capacity or equipment so long as the total existing capacities, as defined above in this article of that member are not increased. The purchase by any one of existing capacity as defined above shall not be interpreted as adding to existing capacity (art. IX).

172. *Rayon and silk dyeing and printing industry.*—Each concern shall register with the code authority an inventory of its productive machinery as defined in the code in place as of December 1, 1933, or then under contract but not installed, such inventory to be duly certified to as to its completeness and correctness.

On and after January 1, 1934, each concern shall file a report monthly with the Institute, setting forth any installation of additional productive machinery (new or second-hand) as defined in this code installed by it, and specifying the extent to which such installation is for the replacement of similar productive machinery and an explanation of the same, all duly certified.

After the effective date hereof, each concern, prior to the installation of productive machinery as defined in this code not theretofore contracted for, except for such replacement, shall file application with the Institute for transmission through the code authority to the Administrator, stating the circumstances of and the reasons for such installation and shall secure a certificate from the Administrator that such installation will be consistent with effectuating the policy of title I of the act during the period of the emergency.

The code authority shall examine into such application for such certificate and the facts as to the circumstances of and the reasons for such proposed installation and shall transmit to the Administrator such application with any statement submitted by the applicant, together with its report of such examination of the facts and with its recommendation as to the granting or withholding by the Administrator of such certificate to such applicant. Action by the Administrator inconsistent with such recommendation shall be taken only after notice to the code authority.

Nothing in sections 3 and 4 of this article shall apply to velvet processing machinery during the calendar year 1934, and thereafter the code authority may make such sections applicable only after due notice to all concerns affected. All reports called for by this article shall be deemed confidential and shall not be disclosed except as part of general statistics for the industry or a general part thereof or, when necessary, in connection with an application under section 3, hereof, except by order of the Administrator (art. XI).

174. *Rubber tire manufacturing industry.*—The code authority shall proceed with a survey of the productive capacity of the industry, and submit recommendations to the Administrator not later than March 1, 1934, concerning the desirability of limiting the creation of additional productive capacity in the industry (art. XI, sec. 4).

188. *Velvet industry.*—Within 10 days after the effective date of this code, members of the industry shall file with the code authority a complete inventory of productive machinery actually installed or then under contract.

On and after January 1, 1934, members of the industry shall file with the code authority a monthly inventory of all additional productive machinery installed, purchased, or under contract, whether for replacement, expansion or otherwise, and specifying which of said machines are for replacement and which are for expansion (art. VIII, 2, 3).

190. *Paper stationery and tablet manufacturing.*—Recommendations for restrictions on the creation of new facilities for the manufacture of any product of the industry or on the acquisition by any member of new equipment for such manufacture (art. VIII, 1 (b)).

206. *Feldspar industry.*—The present capacity of the industry is far in excess of the present or prospective needs. Therefore each member of the industry shall register with the association the grinding capacity of its present grinding equipment. Prior to the installation of any new grinding equipment by persons engaged or engaging in the feldspar industry, except for the replacement of similar worn-out or obsolete grinding equipment, such persons shall report to the code authority. The code authority shall make such recommendations to the Administrator as may seem necessary to effectuate the policy of the National Industrial Recovery Act (art. VI, K).

215. *American glassware industry.*—Members of the industry within 15 days after the effective date of this code shall register with the code authority their present melting capacity of continuous tank equipment and tonnage capacity of furnaces and day tanks. No person, partnership, association, corporation, or other form of enterprise engaged in the industry or for the purpose of engaging in the industry shall install any new or additional melting capacity, in whole or in part, after the effective date of this code, until it has been established to the satisfaction of the Administrator, upon application, that such new or additional installations will not be in contravention of the purposes and intent of the act; provided, however, that nothing in this section shall be interpreted to prevent the consummation of any contract bona fidely executed prior to the approval of this code or the replacement of obsolete or worn-out equipment with equipment of identical, or less, melting capacity. The code authority shall make recommendations to the Administrator regarding the granting or withholding of such certificates (art. IX).

237. *Alloy casting.*—The code authority shall make a careful study of the question of limitation of alloy melting capacity and shall submit to the Administrator for his approval such plan or plans as are deemed necessary and which will further effectuate the policies of the National Industrial Recovery Act (art. V, sec. 9).

245. *Corrugated and solid fiber shipping container.*—Each member shall, within 30 days after the effective date of this code, file with the code authority a list of all his productive equipment used in this industry and immediately on disposing of any of such equipment or on acquiring any new prductive equipment for use in this industry shall report the same to the code authority.

The code authority shall make such reports to the Administrator as he may from time to time require.

Recommendations for the registration of productive equipment and regulation of the installation of new productive equipment (art. VIII, 3, 4, and art. IX (f)).

269. *Carbon black manufacturing.*—The present capacity of carbon black factories of the United States, as a whole, is in excess of present or any prospective needs. Therefore, any material increase in the plant capacity of the industry shall be made only after approval of such increase by the code authority, whose decision shall be subject to the approval of the Administrator; provided, however, that such approval shall not be construed to supersede or modify in any way State

statutes or regulations. The production of carbon black by any authorized new factory capacity for the first 6 months that it shall be in operation shall not be subject to the provisions of the first section of this article (art. IV, sec. 2).

302. *Beeswax bleachers and refiners industry.*—Productive capacity: Based on conditions in these industries and in this period of emergency and to effectuate the operation and provisions and policy of the National Industrial Recovery Act, the following regulations are established: No person engaged in these industries or for the purpose of engaging in these industries shall purchase, manufacture, lease or otherwise obtain or use productive machinery not owned, leased, or otherwise held by such person prior to the effective date of this code, except by applying to the code authority and obtaining permission of the Administrator upon his finding that the granting of such permission is consistent with effectuating the policy of the National Industrial Recovery Act; but nothing contained herein shall be construed to prevent the replacement by a member of these industries of productive machinery of equal productive capacity existing on the effective date of this code or the transfer of productive machinery from one manufacturer to another person provided same was in use prior to the effective date of this code, and provided further that such transfer does not have the effect of creating additional productive machinery within the industries. No member of the candle manufacturing industry shall engage in the manufacture in any of the three recognized fields of production, namely, fancy candles, church candles, including votive lights, or common and household candles if he has not engaged in that field at some time during the period of two years immediately prior to the effective date of this code, except by applying to the code authority and obtaining permission of the Administrator upon his finding that the granting of such permission is consistent with effectuating the policy of the National Industrial Recovery Act.

The provisions of this article shall cease to be effective on the expiration of one year from the effective date of this code, provided, however, that prior to that time the code authority may submit to the Administrator its recommendation that said period be extended, based on such information as may be required and if the Administrator finds upon such information and facts that a further extension of this period is consistent with and further effectuates the policy of the National Industrial Recovery Act, he may declare the provisions of this article to be operative for such longer period and under such conditions as he may find necessary to further effectuate the policy last herein mentioned (art. VIII, 1, 2, 3).

303. *Cordage and twine industry.*—Productive machinery: Temporarily and until further order of the Administrator, no manufacturer engaged in the cordage and twine industry, and no person, partnership or corporation, for the purpose of engaging in the cordage and twine industry, shall purchase, manufacture, lease or otherwise obtain or use, productive machinery not owned, leased or otherwise held prior to the effective date of this code, except by securing a certificate from the Administrator, upon application through the code authority, certifying that the obtaining, manufacturing, or use of such additional productive machinery is consistent with effectuating the policy of the National Industrial Recovery Act; nothing herein shall be construed as preventing the replacement of productive machinery, of equal or less productive capacity, existing on the effective date of this code or the transfer of productive machinery from one manufacturer to a subsidiary manufacturer (art. IX, 1).

309. *Solid braided cord industry.*—Recommendations (1) for the requirement by the Administrator of registration by persons engaged in the solid braided cord industry of their productive machinery, (2) for the requirement by the Administrator that prior to the installation of additional productive machinery by persons engaged or engaging in the solid braided cord industry, except for the replacement of a similar number of existing solid braiding machines or to bring the operation of existing productive machinery into balance, such persons shall secure certificates through the code authority that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of the emergency, and (3) for the granting or withholding by the Administrator of such certificates if so required by him (art. IX, 6, a).

311. *Ready-mixed concrete industry.*—Production capacity and new production: To promote the fullest possible utilization of the present productive capacity of the ready-mixed-concrete manufacturing industry, and to effectuate the other purposes of the act, the code authority shall be charged with the duty of conducting a survey for the purpose of developing information concerning existing productive capacity and current and potential demands for the products of this industry in each marketing area, and from time to time shall make recommendations to the Administrator for the establishment of such regulations as

may be necessary to avoid the aggravation of the condition of overcapacity which may exist in any marketing area. Any group of members of the industry may agree not to be a party to any action which will increase the productive capacity within any marketing area. All such agreements shall be reviewed by the code authority and shall not become effective until approved by it. Such agreements may be canceled by the code authority or by the Administrator, whenever either of them may determine that such agreements do not effectuate the purposes of this code and of the act. Any party to such agreements may withdraw therefrom on written notice to the other parties to the agreement at their last known addresses, and to the code authority.

The provisions of this section shall not be construed as limiting in any way the interchange of equipment among members of the industry within a marketing area, or as preventing any member of the industry from improving the efficiency of his plant or equipment through the installation of new machinery, or adopting such methods as will lower production costs (art. VII, sec. 4, a, b).

364. *Clay drain tile manufacturing industry.*—Production: The present kiln capacity of the industry shall be registered by the members of the industry with the code authority. The intention of persons engaged or engaging in the industry to install additional kiln capacity, excepting, however, modernization or replacement of existing capacity, or to devote to the manufacture of drain tile, kilns not used for such purpose during the 4-year period ending February 1, 1934, shall be reported to the code authority. The code authority shall make such recommendations with respect thereto to the Administrator as it may deem desirable to effectuate the policy of the act (art. VII, 3).

389. *Clay and shale roofing tile industry.*—Production: The present kiln capacity of the industry shall be registered by the members of the industry with the code authority. The intention of persons engaged or intending to engage in the industry to install additional kiln capacity, excepting, however, modernization or replacement of existing capacity, or to devote to the manufacture of clay and shale roofing tile kilns not used for such purpose during the three year period ending February 1, 1934, shall be reported to the code authority. The code authority shall make such recommendations with respect thereto to the Administrator as it may deem desirable to effectuate the policy of the act (art. X).

419. *Soft lime rock industry.*—The code authority may obtain information from all members of the industry to enable it to ascertain the existing and potential productive capacity of the industry. Any member of the industry shall inform the code authority of his intention to install additional plant capacity or to move an existing plant from one producing area to another. Such member shall, upon request, be entitled to obtain from the code authority the available information mentioned in the first sentence of this section. The code authority may also make such recommendations to the Administrator as it may deem fit for the purposes of effectuating the policies of the act or for administering the provisions of this code (art. X).

SUPPLEMENTS

84. *Tool and implement manufacturing industry* (supplement no. 7). Increased facilities to be reported: The present capacity of the industry is far in excess of present or prospective needs. Therefore, after the effective date of this supplementary code no present member of the industry shall initiate construction of or install any additional producing equipment or dies for the manufacture of lines which he is not selling or manufacturing or of which he has not already initiated the manufacture at the time of the approval of this supplementary code without first reporting to the supplementary code authority and to the Administrator the need for additional productive capacity and his ability to supply it economically.

If in the future any other individual, firm, corporation, partnership, or other form of enterprise desires to establish additional capacities, production, equipment, or dies for tools and implements as covered by this supplementary code, he or it also shall first report to the supplementary code authority and the Administrator the same information required in the preceding paragraph.

In both cases the supplementary code authority shall report the facts to the Administrator and state whether in its judgment in the present emergency public necessity and convenience requires such additional capacity.

146. *Excelsior.*—Administrative order no. 146 7, July 2, 1934, grants extension to August 17, 1934, of this control of production clause (due to expire 6 months from effective date of code, Dec. 17, 1933), upon condition that the code authority submit monthly data covering quantity and dollar value of all sales and the utilization of productive equipment. Order subject to revocation upon 10 days notice.

111. *Air transport.*—In addition to the conditions with respect to establishing of new routes or services given on page 8 of this report, the following is also provided: Filing of

2. Such information in respect to routes, schedules, tariffs, working conditions, and other matters pertinent to the purpose of this code as the code authority, with the approval of the Administrator, may from time to time prescribe in order to inform the President as to the observance of this code.

3. Evidence of compliance with such standards and conditions of operation, other than those required by the Department of Commerce, as the Administrator, upon the recommendation of the code authority, after such notice and hearing as he shall prescribe, may approve as reasonable and in the interests of fair competition (art. VII).

RESEARCH AND PLANNING DIVISION,
POST CODE ANALYSIS UNIT,
December 8, 1934.

CODE PROVISIONS AFFECTING CAPITAL INVESTMENT IN INDUSTRY

(New plant and machinery installation Codes 461 531 and 100 supplements)

This report deals with code provisions embodying some form of restriction upon extension of productive capacity, as found in approved codes nos. 401–531, and 100 supplemental codes, and 530 amendments.

It supplements report no. 46-A, which reported similar provisions found in the first 400 codes and 70 supplements.

The capacity control provisions fall into two general classes, (1) those which specifically require authorization for any increases in existing capacity, and (2) those providing for the making of recommendations that such authorization be required.

Of the codes covered by this report the following two provide for requiring authorization for additional capacity: Silk Textile Code, No. 48, amendment 1, and Refrigerated Warehousing Code, no. 409.

The following three codes provide for recommendation of such authorization: Textile Processing, no. 235, amendment 3; Alloys Industry, no. 515; and China Clay Producing, no. 520.

(See p. 4 for additional recommendation provisions. See also p. 6 for references to administrative orders affecting the capacity control provisions, including orders putting into effect recommendation provisions contained in the Throwing and the Crushed Stone Industry Codes.)

409. *Refrigerated warehousing.*—Based on conditions in this industry and in this period of emergency and to effectuate the operation, provisions, and policy of the National Industrial Recovery Act, the following regulations are established:

No person engaged in this industry or for the purpose of engaging in this industry shall purchase, construct, lease, or otherwise obtain or use storage capacity not owned, leased, or otherwise held by such person prior to the effective date of this code, except by applying to the Administrator through the code authority and obtaining permission of the Administrator upon his finding that the granting of such permission is consistent with and tends to effectuate the policy of the National Industrial Recovery Act; but nothing contained herein shall be construed to prevent the replacement by a member of this industry of storage capacity of equal capacity existing on the effective date of this code or the transfer of storage capacity from one member to another person, provided same was in use prior to the effective date of this code; and provided further, that such transfer does not have the effect of creating additional storage capacity within the industry.

The provisions of this article shall cease to be effective on the expiration of 6 months from the effective date of this code; provided, however, that prior to that time the code authority may submit to the Administrator its recommendation that said period be extended, based on such information as may be required; and if the Administrator finds upon such information and facts that a further extension of this period is consistent with and tends further to effectuate the policy of the National Industrial Recovery Act, he may declare the provisions of this article to be operative for such longer period and under such conditions as he may find necessary further to effectuate the policy last herein mentioned (art. VIII).

515. *Alloys industry.*—In the event that the code authority shall determine that then-existing capacities and capacities then under construction for the production of products of the industry are in excess of the capacities required to meet the demand for such products, and the Administrator shall approve such determination upon the recommendation of the code authority, then such capacities shall not be increased (except for the supplying of foreign demand) until such time as the code authority and the Administrator, or the Administrator acting on his own behalf, shall determine that the demand for such products cannot be met by the fullest possible use of such capacities.

This provision, however, shall not apply in the production of calcium molybdate or ferromolybdenum, or other molybdenum products in which molybdenum represents the chief constituent of economic value, or ferrophosphorus when such ferrophosphorus is incidentally and necessarily produced as a byproduct in the manufacture of phosphorus or phosphoric acid (art. VIII).

520. *China clay producing.*—In the event that the code authority shall determine that then-existing capacities and capacities then under construction for the products of the industry are in excess of the capacities required to meet the demand for such products, and the Administrator shall approve such determination upon the recommendation of the code authority, then such capacities shall not be increased (except for the supplying of foreign demand) until such time as the code authority and the Administrator, or the Administrator acting on his own behalf, shall determine that the demand for such products cannot be met by the fullest possible use of such capacities (art. VIII).

AMENDMENTS

48. *Amendment 1, silk textile.*—Article VIII is hereby amended by the addition of a new section, no. 10, to read as follows:

Every employer shall register with the code authority, on its request, an inventory of his production machinery in operation, in place, in storage, or under contract, in such form as to detail and certification as may be required by said committee.

Two weeks after the effective date of this amendment, no employer now engaged in the industry shall install or operate any productive machinery not operated in the industry, or in operating condition at that time, except for the replacement of productive machinery of substantially the same capacity, without first securing from the Administrator a certificate that such installation will be consistent with effectuating the policy of the Industrial Recovery Act, and no application shall be made or granted for any such certificate without first submitting it to the code authority for its recommendation.

Nothing contained in this paragraph shall be construed to prevent the sale of existing machinery heretofore in operation by one employer to another, all such sales to be reported to the code authority.

235. *Amendment 3, textile processing.*—1. Within 90 days from the effective date, each member of the industry shall file with such agency as the code authority may designate complete inventory of its productive machinery and equipment in place or otherwise, owned or on order as of April 1, 1934, or thereafter installed, in such form as the code authority may determine and only certified to as to its completeness and correctness Productive machinery and equipment for this purpose shall be defined by each division; and when approved by the code authority, said definitions of productive machinery or equipment for the respective divisions shall be transmitted to each member of the respective divisions to facilitate proper compliance with this provision.

Any changes in inventory filed shall be duly reported and certified within 30 days of such change.

2. Any division in the industry may recommend to the code authority a plan for restricting or prohibiting the installation of productive machinery or equipment. After approval of said plan by a majority of such division, in accordance with the requirements of the Administrator, the code authority shall submit said plan to the Administrator. If the Administrator, after investigation and such notice and hearing as he may require, shall find both (1) that an emergency has arisen within the division adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the act; and (2) that the proposed plan for restricting or prohibiting the installation of productive machinery and equipment is necessary to mitigate the conditions constituting such emergency and to effectuate the purposes of the act, he may approve said plan. Such a plan may include

limitations on the replacement of productive machinery where the new machinery will have greater productive capacity than the machinery replaced, and may include recommendations regarding the disposal of old machinery. After such a plan has been approved, no member of such division shall install productive machinery or equipment, except in accordance with the requirements thereof (art. VII).

ADDENDA

The following are recommendation provisions not included in the prior report:

166. *Wax paper.*—The code authority may from time to time present to the Administrator recommendations based on conditions in the industry which will tend to effectuate the operation of this code and the policy of the act, and in particular along the following lines:

(*a*) For the establishment of rules of fair-trade practice for the industry and for the codification of its trade customs and the enforcement thereof.

(*b*) For restrictions on the creation of new facilities for the manufacture of any product of the industry or on the acquisition by any member of new equipment for such manufacture.

Such recommendations, when approved by the Administrator, shall have the same force and effect as the provisions of this code (art. VIII).

188. *Velvet industry.*—It is contemplated that pursuant to section 3 of this article the code authority may submit a recommendation that prior to the installation of additional productive machinery (excluding replacement of velvet looms by looms of the same width) a certificate shall be secured from the Administrator that such installation shall be consistent with effectuating the policy of the National Industrial Recovery Act during the period of the emergency, provided that due notice of hearing on such application be given the code authority with full right to be heard (art. VI, 4).

287. *Graphic arts industries.*—Appendix of industry no. A–4, book manufacturing: The provisions of this appendix are applicable only to industry no. A–4. Administrative provisions: The National Code Authority may make a survey of the equipment and productive capacity of each establishment operating under the provisions of this code. In determining the total productive capacity of each such establishment, all mechanical equipment which may be already installed and available for service on the effective date of this code (or under purchase contract on that date) shall be included and all such equipment registered with the National Code Authority; thereafter all proposed replacements and purchases of new equipment shall be registered with the National Code Authority prior to purchase. After such survey of productive capacity and registration of equipment, it shall be the duty of the National Code Authority to advise members of the industry contemplating the purchase of additional equipment, if in its opinion such purchase would have a harmful effect upon existing conditions of employment or if such purchase would contribute to overequipment in the industry.

The National Code Authority may arrange for the scrapping or other disposal of equipment displaced by new equipment, in cooperation with the establishment disposing of it and/or the manufacturer or dealer receiving it (appendix A–4 (*d*) (*e*) (*f*)).

388. *Sandstone industry.*—The code authority is directed to cooperate with the Administrator as a planning and fair-practice agency for the sandstone industry. The code authority may from time to time present to the Administrator recommendations based on conditions in the industry as they may develop from time to time which will tend to effectuate the operations of the provisions of this code and the policy of the act and in particular along the following lines:

Recommendations that the Administrator require registration by members of the industry of their productive machinery.

Recommendations that the Administrator require that prior to the installation of additional productive machinery, such persons shall secure certificates that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of emergency (art. VI, 2).

417. *Batting and padding.*—Within 30 days after the effective date each member of the batting and padding industry shall register with the code authority all Garnett machines, cards, or stuffing machines used for the manufacture of batting and padding for resale, existing in his factory, or factories, or on order with manufacturers, or in process of being manufactured on January 1, 1934 (art. VII).

324. Textile Print Roller Engraving (amendment 2): Article X—Limitation and restriction of plant equipment (stayed by Executive order).

Recommendations (1) for the requirement of registration by persons engaged in the industry of their productive machinery, which is defined to mean and include pantagraph machines, engraving machines, and any other machine which in itself produces a finished product; (2) for the requirement that prior to the installation of additional productive machinery by persons engaged or engaging in the industry, except for the replacement of a similar number of existing machines, or to bring the operation of existing productive machinery into balance, such persons shall secure certificates that such installation will be consistent with effectuating the policy of the National Industrial Recovery Act during the period of emergency; and (3) for the granting or withholding by the administrator of such certificates if so required by him, may be made by the code authority and upon approval by him such recommendations shall become effective and binding upon every member of the industry.

The Administrator, however, shall not consider recommendations (1 to 3) herein provided unless the joint industrial relations board, created by article VI of this code, shall have first given its approval for the necessity thereof.

ADMINISTRATIVE ORDERS AFFECTING MACHINERY PROVISIONS

1. Cotton textile

Administrative order 1-93, October 12, 1934: Amending order no. 1-53 and delegating certain powers to plant extension subcommittee for the finishing branch of industry. Administrative order 1-94, October 19, 1934: Certifying proposed installation by Southern Weaving Co., Greenville, S. C., of additional productive machinery.

6. Lace manufacturing

Administrative order 6-9, August 30, 1934: Interpretating article XII, paragraph 2 (installation of additional productive machinery to replace existing machinery. Administrative order 6-16, November 22, 1934: Certifying proposed installation by August Graere, Philadelphia, Pa., of additional productive machinery.

43. Ice manufacturing

Administrative order 43-23, August 18, 1934: Denying application for permission to erect and operate a 50-ton ice plant. Administrative order 43-24, August 21, 1934: Ordering that article XI of code (requiring certification for additional capacity) be continued in full force and effect. Administrative order 28, August 28, 1934: Denying application for permission to erect and operate a 282-ton ice-manufacturing plant. Administrative order 29, August 28, 1934: Denying application for permission to erect and operate a 250-ton ice-manufacturing plant. Administrative order 32, September 14, 1934: Denying application for permission to erect and operate a 5-ton ice plant. Administrative order 35, September 20, 1934: Denying application for permission to erect and operate a 50-ton plant. Administrative order 36, September 20, 1934: Denying application for permission to erect and operate additional ice production in plant. Administrative order 37, September 21, 1934: Denying application for permission to erect and operate a 10-ton ice-manufacturing plant. Administrative order 42, October 23, 1934: Granting application to erect and operate an ice-manufacturing plant of capacity not to exceed 5 tons daily.

Administration Order 43, October 24, 1934: Granting application to increase ice-production capacity and storage space. Administration Order 44, October 29, 1934: Approving application for permission to install a compressor in plant, to increase ice-manufacturing capacity. Administration Order 46, October 29, 1934: Approving application to rebuild and increase capacity of ice storage. Administration Order 47, October 31, 1934: Granting permission to erect and operate an ice-manufacturing plant of 25 tons daily capacity. Administration Order 48, November 2, 1934: Granting application to increase ice production capacity and to erect an ice warehouse to replace one of smaller capacity. Administration Order 51, November 29, 1934: Approving application to erect and operate a 30-ton ice manufacturing plant. Administration Order 52, November 19, 1934: Approving application to erect and operate a 15-ton ice-manufacturing plant. Administration Order 53, November 19, 1934: Approving application to erect and operate a 4½-ton ice-manufacturing plant. Administration Order 54, November 22, 1934; Approving application to erect and operate a 10-ton ice-manufacturing plant. Administration Order 55, November 22, 1934: Approving application to erect and operate a 20-ton ice-manufacturing plant.

54 Throwing

Administration Order 3, December 27, 1933: Approving recommendation providing for registration of machinery and obtaining of certificate from Administrator prior to installation of additional machinery. Order 54–18: Certifying proposed installation of additional machinery.

109. Crushed Stone

Administration Order 15, May 16, 1934: Approving the establishing of permissive areas in the State of California for period of 90 days. Administration Order 21, June 13, 1934: Modifying Order No. 109 15 approving establishing of permissive area in the State of California. Administration Order 29, July 14, 1934: Approving the establishing of permissive areas in the State of Missouri for a period of 90 days. Administration Order 31, July 27, 1934: Modifying schedule A attached to Order 109–15. Administration Order 39, September 14, 1934: Continuing until December 31, 1934, "permissive areas" in the State of California, established by Order 109–15. Administration Order 41, September 27, 1934: Approving establishment of the State of Connecticut as "permissive areas." Administration Order 47, October 15, 1934: Extending for a period of 120 days, permissive areas in the State of Colorado. Administration Order 54, November 19, 1934: Approving establishment of permissive areas in the State of Ohio.

146. Excelsior and products

Administration Order 13, September 19, 1934: Denying petition for extension of provisions of article X. (Registration of productive machinery, and certification of new installations.)

36. Glass container

Order 36–8, April 30, 1934: Denying recommendation of Code Authority for restriction upon installation by National Glass Co. St. Paul, Minn.

215. American glassware

Order 215–3: Approving application of Lancaster Lens Co., Lancaster Ohio, for permission to install new capacity.

RESEARCH AND PLANNING DIVISION,
POST CODE ANALYSIS UNIT,
November 27, 1934.

PRODUCTION ALLOCATION AND CONTROL PROVISIONS

(529 codes—172 supplements)

This report deals with the provisions for production allocation and control as found in the first 529 codes and 172 supplemental codes.

The following 13 codes were found to contain some form of provision dealing with production allocation and control. The codes are: (9) Lumber and timber; (10) petroleum; (11) iron and steel; (36) glass container; (128) cement; (149) machined waste; (202) carpet and rug; (245) corrugated solid fiber shipping container; (269) carbon black; (302) candle manufacturing; (308) supplement 3, California sardine; (308) supplement 4, Atlantic mackerel; (401) copper.

The following five codes have specific provisions concerning the allocation and control of production: (9) Lumber and timber; (10) petroleum; (36) glass container; (308) supplement 4, Atlantic mackerel; (401) copper industry.

The following five codes have permissive provisions allowing or authorizing the code authority to recommend or establish allocation and control provisions subject in all cases to the approval of the Administrator: (11) Iron and steel; (149) machined waste; (128) cement; (245) corrugated and solid fiber shipping container; (308) supplement 3, California sardine.

Two codes—202, carpet and rug, and 269, carbon black—provide for limitation of production on an inventory basis.

One code—302, candle manufacturing—prohibits manufacture of specified products by members of the industry who have not been producers of such products for 2 years prior to the effective date of the code, except by permission of the Administrator.

(For text of the above code provisions see following pages of this report.)

In addition to the foregoing, various codes provide in more or less general terms that the code authority shall give consideration to the problem of balancing production and consumption of industry products (p. 22).

(For provisions affecting production through limitation of machine and plant operation, see Rept. No. 45–B.)

(For provisions limiting increases in industrial capacity, see Rept. 46–B.)

CODE PROVISIONS RELATING TO PRODUCTION, ALLOCATION, AND CONTROL

9. Lumber and Timber Products

(*a*) To effectuate the declared purposes of this code in respect of maintaining a reasonable balance between the production and the consumption of lumber and timber products and to assure adequate supplies thereof, the authority shall determine, and from time to time revise, not less frequently than each 3 months, except as hereinafter otherwise provided estimates of expected consumption, including exports of lumber and timber products of each division and subdivision; and based thereon it is empowered to establish and from time to time revise, production quotas for any division or subdivision of the lumber and timber products industries. Allotments within each division and subdivision, for the persons therein, shall be made, subject to the supervision of the authority, by the agencies designated by it. Said quotas as between such divisions or subdivisions shall be in proportion to the shipments of the products of each during a representative recent past period to be determined by the authority; but the authority may modify said proportions if warranted by evidence. In case of divisions or subdivisions, the raw material of which is imported, the quotas and allotments may be in terms of imports, so far as may be consistent with the provisions of section 7 (a) of the National Industrial Recovery Act.

(*b*) Each person in operation shall be entitled to an allotment. Each person known to any division or subdivision agency to be in operation shall be registered by such agency immediately and shall be assigned an allotment. The agency shall also immediately give public notice reasonably adapted to reach all persons operating or desiring to operate, stating the date on which the allotments will be determined; and any person desiring to operate who shall give the agency written notice of such desire 10 days before the allotment date, supported by acceptable evidence of ability to operate, shall be registered by the agency and assigned an allotment. Any person so registered shall be deemed an "eligible person" for the purposes of this article.

(*c*) The allotment for each eligible person shall be determined from time to time for a specified period not exceeding 3 months and, except as may be permitted under the provisions of section (*d*) hereof, shall be as follows:

(1) That proportion of a specified percentage determined as provided in sections (*d*) and (*e*) of this article, of the division or subdivision quota which his greatest average hourly production in the hours operated during any 3 calendar years since December 31, 1924, is of the aggregate of such hourly production of all eligible persons within the division or subdivision.

(2) That proportion of a specified percentage, determined as provided in sections (*d*) and (*e*) of this article, of the division or subdivision quota which his greatest average yearly production for any 3 calendar years since December 31, 1924, is of the aggregate of such yearly production of all eligible persons within the division or subdivision. In the application of this subsection, shipments may be used in lieu of production at the option of a division or subdivision.

(3) That proportion of a specified percentage, determined as provided in sections (*d*) and (*e*) of this article, of the division or subdivision quota which the greatest average number of his employees during any 3 calendar years since December 31, 1924, is of the aggregate of such number of employees of all eligible persons within the division or subdivision.

(4) That proportion of not to exceed 10 percent of the division or subdivision quota which the amount of taxes paid by him, except Federal taxes, taxes on ore, coal, petroleum, ships, retail yards, and timber not set apart for the operation, during the next preceding calendar year is of the total amount of such taxes paid by all eligible persons within the division or subdivision.

(5) That proportion of not to exceed 15 percent of the division or subdivision quota which the quantity of reserve standing timber allocated to his operations within said division or subdivision, and at the time the allotment is made, owned by him in fee or under contract, is of the total quantity of such reserve standing timber owned in fee or under contract by all eligible persons within the division or subdivision.

(6) In any division or subdivision where the divisional or subdivisional administrative agency shall, by two-thirds majority vote, so request the authority, may, if it shall determine that it is impractical otherwise to administer production control within said division or subdivision, authorize the allotment of production therein in terms of allowable hours of operation. (Amendment 11 adds sec. 6 above.)

(*d*) (1) Exceptions to or changes in any allotment thus established shall be made only for special, accidental, or extraordinary circumstance or, in any division or subdivision, for other factors peculiar to a limited group of operations. Exception may be made only on application to the designated division or subdivision agency by an eligible person who must submit evidence in support of his application, and the exception may be granted only upon a published finding and statement of reasons therefor.

(2) A person conducting seasonal operations as defined in article VI (*a*) (2) (D) hereof shall be entitled, on application to his division or subdivision agency, to produce during his period of operation not only amounts allotted to him during his period of operation but also amounts allotted to him under section (*c*) hereof since the termination of his previous operating period.

(3) In the case of any person (*a*) who produced during less than 3 calendar years since December 31, 1924, and before December 31, 1930, or (*b*) who is entitled to an allotment for operation of new additional, or restored facilities, which were not in operation for such 3 calendar years, or (*c*) for whom for any other reason such 3 calendar years are not reasonably representative of his present circumstances, his average hourly production, his average yearly production, and his average number of employees shall be determined by the division or subdivision agency on an equivalent basis by comparison with substantially equal facilities already established and in like regions or conditions.

(4) On application of a division or subdivision, the authority may authorize the allotment of production therein on any one or more of the bases provided in subsections (1), (2), and (3), or section (*c*) hereof in such relative proportions as the authority may approve; and including or not the bases, or either of them, provided in subsections (4) and (5) of said section (*c*).

(*e*) In the absence of an approved application from any division or subdivision for the assignment of allotments under the provisions of subsection (4) of section (*d*) hereof, the authority may direct that allotments within said division or subdivision be assigned in accordance with the provisions of section (*c*) in the following relative proportions:

Subsection (1), hourly production, 40 percent; subsection (2), yearly production or shipments, 30 percent; subsection (3), number of employees, 15 percent; subsection (4), taxes paid, 5 percent; subsection (5), standing timber, 10 percent; unless the division or subdivision shall elect to accept the average relative proportions of the divisions or subdivisions whose allotments have been theretofore approved.

(*f*) The basis for determination of division and subdivision quotas and of individual allotments and any revisions thereof, all quotas, all allotments, and all appeals therefrom and all decisios or appeals shall be published.

(*g*) Allotments from two or more divisions or subdivisions to the same person shall be separate and distinct and shall not be interchangeable. (Allotments shall not be cumulative except as authorized in specific cases under section (*d*) (1) of this article, or in cases of seasonal operations of a division or subdivision under section (*d*) (2) of this article, and shall not be transferable except as between operations under the same ownership within the same division or subdivision.) Deleted. "Allotments shall not be cumulative except as authorized in specific cases under section (*d*) (1) of this article, or in cases of seasonal operations of a division or subdivision under section (*d*) (2) of this article, and shall not be transferable except that upon application, the administrative agency of a division or subdivision, if it shall find that the nontransferability of an allotment causes or will cause an undue hardship in any particular case, and if it shall find, further, that the limitations hereinafter set forth upon the exercise of its authority do not exist, may authorize, under such equitable conditions and limitation as it shall determine, the transfer of allotments between operations under the same owner-

ship within the same division or subdivision, provided that such authorization shall not become effective for a period of 15 days after the date thereof, and provided, further, that such authorization, together with the findings of fact of said agency shall be transmitted on the date thereof to the authority and the National Recovery Administration, and provided further, that such authorization shall be subject to appeal by any interested party as provided in article XVII hereof. No division or subdivision agency shall authorize the transfer of any allotment: (1) From a mill or factory acquired after the effective date hereof until such mill shall have been operated in good faith for six consecutive months by the new owner; (2) from one mill to another unless the species ordinarily produced by both are substantially the same; or (3) from any mill, the greater part of whose product may, under the provisions of article IX, section (*a*), subsection 2 of this code, be sold at prices less than the approved reasonable costs for the division or subdivision, except from a mill of the same class." (Amendment 23 in quotes above.)

(*h*) Wherever in the case of any eligible person it shall be necessary, in order to accept and execute orders for export, to have an addition to his regular allotment, provision for such necessary excess shall be made by the division or subdivision agency, provided that any excess above his allotment shall be deducted from his subsequent allotment or allotments.

(*i*) The authority may modify, or cause to be modified, production quotas and allotments determined hereunder, and the bases therefor, in such manner and to such extent as may be necessary to effectuate the provisions of the code in respect of the conservation and sustained production of forest resources. Such modification shall not be made effective prior to the next succeeding allotment date.

(*j*) The basis of allotments as provided in sections (*c*), (*d*), and (*e*) hereof is tentative and is subject to revision. When in the judgment of the authority revision of the bases of allotments is desirable, whether by changing the proportions of the factors in determining allotments enumerated in section (*c*), subsections 1, 2, 3, 4, and 5, of this article, in accordance with the procedure established in sections (*d*) and (*e*) hereof, or by the addition of other factors, consideration shall be given to the inclusion of practicable and equitable measures, subject to the approval of the President for increasing allotments of persons whose costs are below the weighted average defined in section (*a*) of article IX.

(*k*) The authority, as promptly as practicable after its action pursuant to article X hereof, shall submit for the approval of the President appropriate changes in the bases of allotments. (See (*k*) below.)

(*l*) Except as otherwise provided in section (*h*) of this article, no person shall produce or manufacture lumber or timber products in excess of his allotment. If any person shall exceed his allotment the division or subdivision agency shall diminish the subsequent allotment or allotments of the offender in an amount equal to such excess.

(*m*) The authority shall issue interpretations and shall promulgate rules and regulations necessary for the enforcement of this article, to prevent evasion and secure equitable application thereof, and assign quotas to each division and subdivision which shall become effective on the dates specified by the authority. Each division and subdivision shall assign allotments to all eligible persons, effective on the dates specified by the authority.

Interim article.—Pending the effective date of placing article VIII or any part thereof in execution in any division or subdivision, the authority may authorize the designated agency of such division or subdivision to assign to eligible persons production allotments in hours of allowable operation.

(*k*) Pursuant to the foregoing each eligible person who makes application to be recognized as securing his raw material supply from forest lands under his ownership or control which are managed on a sustained yield basis, and who secures from his division or subdivision agency established or designated as provided in section 1 of schedule C a certificate showing that he is in good faith conducting his operation upon such basis, shall have his production allotments, as determined without the benefit of this paragraph, increased by 10 percent. If only part of his raw material supply comes from such sustained yield operation, his increased allotment shall be that proportion of 10 percent which the volume of his raw material coming from such sustained yield operation is of his total volume. Sustained yield forest management is defined in section 2 (*g*) of schedule C. The additional production allotments provided for in this paragraph shall come from the total national production quota. (Amendment 5, amending sec. (*k*) by addition.)

4 MAHOGANY SUBDIVISION

Control of production (imports) (Art. VIII).—Quotas of imports of production established for the mahogany subdivision, and allotments thereof to eligible persons therein, in the discretion of its administrative agency and with the approval of the Lumber Code Authority, may be for periods greater than 3 months and may be based on shipments, provided that no such person shall be precluded thereby from imports or production sufficient to maintain at the end of any allotment period an inventory of logs and lumber equal in footage to the volume of his shipments during the preceding calendar year.

5. PHILIPPINE MAHOGANY SUBDIVISION (AMENDMENT 8)

(*a*) The executive committee of the Philippine mahogany subdivision is empowered, with the approval of the authority and within the limits of the total subdivision quota, to assign a maximum import allotment to each eligible person registered with the Philippine mahogany subdivision and subject to its jurisdiction. The subdivision quota and individual allotments shall be made for periods of 6 months and as provided in this article.

(*b*) Any person complying with the labor and other provisions of this code applicable to this subdivision, who brings Philippine mahogany or Philippine hardwood into the United States from the Philippine Islands in quantities sufficient to amount to wholesale distribution for resale to wholesalers, retailers, or industrials as defined in this code, shall be deemed an eligible person for purposes of allotment.

(*c*) Any eligible person may obtain an allotment by making application to the said executive committee designating the Philippine mill or mills from which he has arranged to obtain his supplies. The allotment to said eligible person shall be determined by the following formula:

$$\frac{\text{Milling capacity}}{\text{Total capacity}} = 60 \text{ percent of subdivision quota}$$

Plus

$$\frac{\text{Mill shipments to United States}}{\text{Total shipments to United States}} = 40 \text{ percent of subdivision quota}$$

DEFINITION OF TERMS

"Mill capacity" means the actual capacity at the time of the application for allotment of the Philippine mill or mills designated by an eligible person.

"Total capacity" means the actual total capacity of all Philippine mills designated by eligible persons.

"Mill shipments to United States" mean the average yearly shipment to the United States from the Philippine mill or mills designated by eligible person, calculated upon any 3 calendar years since 1924.

"Total shipments to United States" mean the average yearly shipments to the United States from all mills in the Philippine Islands, calculated on calendar years since 1924.

In respect to mills which have not been in operation for as much as 3 calendar years since 1924, the "mill shipments to the United States" shall be the yearly average of actual shipments.

In the case of logging operations in which the logs were sold and shipped as logs and not manufactured into lumber or timber products by the logger the actual production of such logs during calendar year shall be considered the "mill capacity" of such operator.

(*d*) If two eligible persons designate the same mill as their source of supply the total shipments to the United States therefrom shall not exceed the amount determined by the application of the formula prescribed in this article and the said person shall divide the said total in such proportions as they are able to effect purchases from such mill.

(*e*) If any eligible person to whom an allotment has been made advises the subdivision agency that he will not use all or part of his allotment within the allotment period, or if in 3 months after the date of the allotment any such person fails to use a substitute portion of his allotment and fails to show to the satisfaction of the executive committee that he has ordered shipment of a substantial portion of his allotment the said committee may, after public hearing on

all the facts and circumstances and subject to the supervision of the authority, reduce the allotment of such person for the balance of the existing quota period by such amount as may be fair and equitable in order to save to the subdivision as a whole the privilege of bringing into the United States the whole of the subdivision quota. In the event of such reduction of allotment the amount thereof shall be divided among other eligible persons in proportion to their existing allotments upon application to the said executive committee.

(*f*) In determining compliance with individual allotments, date of loading on shipboard in the Philippine Islands for shipment to the United States shall be deemed arrival of shipment in the United States.

(*g*) No person subject to the jurisdiction of this subdivision shall import products without an import allotment, or in excess of such allotment, as herein provided.

7. NORTHERN HARDWOOD SUBDIVISION

Control of production.—Quotas of production established for the northern hardwood subdivision and allotments thereof to eligible persons therein in the discretion of the administrative agency and with the approval of the Lumber Code Authority, may be for periods greater than 3 months.

9. NORTHEASTERN HARDWOOD SUBDIVISION

Control of production.—Quotas of production established for the northeastern hardwood subdivision and allotments thereof to eligible persons therein, in the discretion of the administrative agency and with the approval of the Lumber Code Authority, may be for periods greater than 3 months.

10. NORTHERN HEMLOCK DIVISION

Control of production.—Quotas of production established for the northern hemlock division and allotments thereof to eligible persons therein, in the discretion of the administrative agency and with the approval of the Lumber Code Authority, may be for periods greater than 3 months.

13. NORTHEASTERN SOFTWOOD DIVISION

Control of production.—Quota of production established for the northeastern softwood division and allotments thereof to eligible persons therein, in the discretion of the administrative agency and with the approval of the Lumber Code Authority, may be for periods greater than 3 months (schedule A).

10. PETROLEUM INDUSTRY

3. PRODUCTION

(Article III, as amended Apr. 24, 1934)

Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon section 4 of this article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this section and/or section 3 of article III of this code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and

recommend them to the State regulatory body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made with a State any production by any person, as person is defined in article I, section 2 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code. (See also sec. 5.)

7. As to new capacity, "wild-catting" is specifically not prohibited, but shipments from new pools not developed in accordance with a plan approved by the President is unfair competition (art. III).

Article IV, refining (as amended Apr. 24, 1934).—1. To achieve greater accuracy in balancing production and consumption of gasoline and to prevent the injurious effect on interstate commerce of an unbalanced accumulation of inventories of gasoline in any part of the country or of surplus production and consequent distribution of gasoline in excess of market requirements, a Federal agency designated by the President shall divide the country into refining districts and shall (after consultation with the planning and coordination committee and such other sources of information as it may deem necessary) determine from time to time: (1) The proper inventories of gasoline for the country as a whole and (2) the production of gasoline in the country as a whole necessary to meet the demand therefor, with due regard to normal and seasonal fluctuation in refining operations.

The determinations so made shall constitute the operating schedule for the refining industry in the country as a whole, and same shall be published for at least 20 days before the effective date thereof.

2. The planning and coordination committee shall appoint a national coordinator of refining operations, subject to the approval of the President, and may appoint a district allocator for each district. District allocators shall cooperate with the regional refinery committees and other committees or agencies designated by the planning and coordiation committee in making effective the provisions of this article. The planning and coordination committee shall appoint, subject to the approval of the President, a board of review consisting of not to exceed 10 in number, for the purpose of reviewing the findings and allocations of district allocators, the agencies established by the refinery district committees (where no allocator is appointed), and the national coordinator.

3. The national coordinator and the district allocators (or the proper agency estabhshed by the refinery district committee where no allocator is appointed), in joint session, subject to the approval of the planning and coordination committee, shall determine from time to time

(1) The proper inventories of gasoline for each district and

(2) The production of gasoline in each district necessary to meet the demand therefor, with due regard to normal and seasonal fluctuation in refining operations.

The determinations so made shall constitute the operating schedule for the refining industry in each district and same shall be published for at least 15 days before the effective date thereof.

(3) Within the limits of the operating schedule for the refining industry in each district as thus determined, an agency designated by the planning and coordination committee and the district allocator (when one is appointed) in joint session, shall establish fair and reasonable quotas for each refinery operating in the district. In the event of disagreement between a district allocator and the agency designated above or in the event of the failure of such agency to act, the district allocator shall establish such quotas subject to appeal as herein provided.

In making such allocations the agency and/or district allocator (when one is appointed) shall take into consideration relevant features of operating and marketing conditions under rules and regulations prescribed by the planning and coordination committee and approved by the Administrator. Every effort shall be made to avoid inequities which may exist in the availability of supplies of crude oil to refiners necessary to maintain either the proper ratio between inventories and gasoline and sales thereof and/or the production of gasoline authorized in the manner set forth above. No withdrawals of crude oil from storage by or in behalf of any refiner operating only in a single district shall be authorized under the terms of article III, section 2, hereof, and/or rules or regulations issued thereunder, unless the application has been referred for advice to said agency and district allocator (when one is appointed) concerned.

4. The national coordinator of refining operations in the case of refiners operating refineries and/or who are maintaining gasoline inventories in more than one refining district shall adjust such operations and inventories in order that district allocations may be adjusted in such manner as equitably to meet the consolidated requirements of such refiners.

The national coordinator and the district allocators (or the agency established by the refinery district committee where no district allocator is appointed) shall meet at such times and places as may be necessary to provide the necessary coordination between districts and uniform application in each district of the rules and regulations provided thereunder. Each district allocator (or the agency established by the refinery district committee where no district allocator is appointed) shall furnish to the national coordinator a complete statement of the allocation made to each refinery in the district and shall furnish such regular reports as may be required by the national coordinator for the proper performance of his duties.

No withdrawals of crude oil from storage by or on behalf of refiners operating refineries, and/or maintaining crude oil inventories in more than one refining district, shall be authorized under the terms of article III, section 2 hereof, and/or rule and regulation issued thereunder, unless the application has been referred for advice to the national coordinator.

5. Any person may appeal from any recommendation, allocation, or decision of the district allocator, agency designated by the planning and coordination committee, agency established by the refinery district committee, or the national coordinator to the board of reivew provided for above, and the decision of the said board of review shall be final, subject to the right of the planning and coordination committee to review such decision upon appeal, which committee's action, either in respect to the exercise of such right or in respect to the determintation made if such right be exercised, shall be subject to the approval of the Administrator.

6. In order that the provisions of this article may not operate in such manner as to discriminate against small refining enterprises and in order to assist in orderly liquidation of excessive gasoline inventories, the palnning and coordination committee may, with the approval of the President, authorize suitable arrangements for the purchase of gasoline from nonintegrated and/or semi-integrated refiners and the resale of same through orderly channels.

7. Upon a determination by the planning and coordination committee that an excessive supply of gasoline or an unbalanced accumulation of inventories of gasoline exists in any district, which excessive supply and/or excessive accumulation of inventories injuriously affect interestate and foreign commerce and is such that any remedy must incidentally apply in like manner to intra-State commerce, the planning and coordination committee may establish fair and reasonable quotas in commerce for gasoline to be moved from all or any of the refineries or other sources of supply in the district. Such quotas shall be in accord with such rules and regulations as are promulgated by the planning and coordination committee.

While such quotas are in effect, no person shall place in commerce or receive in commerce (interstate, intrastate or foreign) by sale, exchange, consignment, or otherwise, any gasoline in excess of the quota prescribed. Before establishing quotas for gasoline the planning and coordination committee shall hold or cause to be held, hearings with respect to the establishment of such qoutas and to such other matters as in the opinion of the committee may be proper, after such reasonable public notice as may be prescribed; Provided, however, that in any emergency as determined to exist by the committee, quotas may be established for a temporary period not to exceed 1 calendar month without previous notice or hearing, but in such event, the committee in the next subsequent period, shall adjust quotas so allocated upon the basis of due notice and hearing hereinabove prescribed so as to prevent any inequitable allocation. Any person, natural or artificial, aggrieved by any quota, shall have a right to appeal to the Administrator.

This section is to be construed and may be enforced without reference to the other provisions of this article.

8. The planning and coordination committee may make such rules and regulations, authorize such committees, and require such reports as it may deem necessary to accomplish the purpose of this article.

9. The word "gasoline" as used herein shall be held to include such products as may be determined from time to time by the planning and coordination committee.

10. In case of any appeal, the appellant shall abide by all the provisions of this article and the rules and regulations issued thereunder pending the decision of such appeal, but in case the contentions of the appellant are upheld in whole or in part, an order shall be issued which shall be retroactive to the effective date of the order appealed from.

11. Failure on the part of any person to observe or comply with any provisions of this article or any valid order, rule, or regulation hereunder, shall constitute a violation of the code.

11. IRON AND STEEL (ART. V, 1)

It is the consensus of opinion in the industry that it is not necessary, in order to effectuate the policy of title I of the National Industrial Recovery Act, to make any specific provision in the code for controlling or regulating the volume of production in the industry or for allocating production or sales among its members. It is believed that the elimination of unfair practices in the industry will automatically eliminate any overproduction therein and any alleged inequities in the distribution of production and sales among its members. Adequate provision shall be made under the code for the collection of statistics regarding production and of other data from which it may be determined from time to time whether overproduction in the industry exists and whether in the circumstances any restriction of production is necessary in order to effectuate the policy of title I. The board of directors shall furnish to the Administrator summaries or compilations of such statistics and other data in reasonable detail. Should it at any time in the circumstances as they shall then exist appear to the board of directors that the policy of such title I will not be effectuated in the industry because of the fact that though the code production therein is not controlled and regulated, then the board of directors is hereby empowered, subject to the approval of the President after such conference with or hearing of interested persons as he may prescribe, to make, modify, or rescind such rules and regulations for the purpose of controlling and regulating production in the industry, including the fixing of such liquidated damages for violations of such rules and regulations, as such board shall deem to be necessary or proper in order to effectuate the policy of such title I. All such rules and regulations from time to time so made and in effect shall be binding upon each member of the code to which notice thereof shall have been given. (For prohibition upon new construction, see sec. 2.)

36. GLASS CONTAINER: (SCHEDULE A)

(*a*) It becomes necessary to conduct the industry in an orderly way and to maintain competitive conditions in order that the provisions and intent of the National Industrial Recovery Act may be effectuated. Therefore, so long as the industry is operating below 70 percent of yearly registered capacity for such period as the administrator may approve, the principle of sharing available business equitably among the members of the industry shall be recognized, not to restrict production but to maintain a reasonable balance between production and consumption of glass containers and to assure adequate supplies thereof.

(*b*) When the industry is operating at 70 percent of average yearly registered capacity for such period as is approved by the Administrator, the principle of sharing available busines sshall be reconsidered by the industry and its recommendation transmitted to the Administrator for his approval.

(*c*) If at any time a majority of the industry as defined in section 10, article II, shall vote against the principle of sharing available business equitably among the members of the industry, this code shall be amended as the members of the industry may determine and as the Administrator may approve.

(*d*) To make this principle effective, the code authority shall formulate a plan for equitable allocation of production to each member in the industry or who may hereafter enter the industry and shall submit such plan to the administrator for his approval. Such plan shall give due consideration to productive capacity and past performance and shall recognize the greater difficulties to be met by the smaller producers in the industry in operating on a curtailed basis, and such other factors as the administrator may direct. After the Administrator has approved such plan, the code authority shall from time to time, but not less frequently than each 6 months, prepare an estimate of expected consumption of glass containers. Upon the basis of such estimate the code authority shall make equitable allocations to each member in the industry in accordance with the plan so approved. Each member of the industry shall be entitled to be registered by the code authority and shall be assigned an allotment. The code authority shall take such steps as may be reasonably adapted to give notice to all persons operating that such allocation will be made. After such allotments have been assigned, no person shall produce glass containers in excess of his allotment.

(*e*) The code authority shall issue interpretations and promulgate rules and regulations necessary for the enforcement of this schedule A, to prevent evasion, and to secure the equitable application thereof.

(*f*) The code authority shall so administer the provisions of this schedule A as to prevent loss of export business to the glass-container industry as the result of the operation of this schedule A.

(*g*) Any member of this industry unable for any reason to accept his allotment under this schedule A shall file his reasons therefor with the code authority, who shall immediately organize a board of arbitration composed of 1 member appointed by the code authority, 1 member representing the complainant member of the industry, and 1 member selected by 2 members so appointed. If the two members so appointed are unable to agree upon the selection of the third member, the Administrator shall appoint a disinterested third member. The decision of this arbitration board may be appealed as the Administrator, in accordance with law, may prescribe.

128. Cement Industry (Art. VI)

Plan for sharing available business (Note: No extension of the time limit below has been recorded).—1. The board is hereby authorized to formulate a plan or plans, within 30 days after the effective date of this code, unless such time shall be extended by the Administrator, for the equitable allocation of available business among all members of the industry or among members of the industry operating in one or more districts, and for the control of cement inventory and to submit the same either to a meeting of all members of the industry or to meetings of members in the districts affected, as the board may determine, for approval, modification or rejection. Each member of the industry shall be entitled to receive notice of any such plan and to participate in any meeting or meetings of all members of the industry or of members in the district in which such member operates and, further, shall have the right to appear before the board at any meeting at which any such plan is being considered for the purpose of presenting any facts or arguments relative thereto.

When any such plan shall have been formulated by the Board, the code authority shall present the same to the Administrator for consideration and the code authority shall represent the industry and the Board in conference with the Administrator with respect to any such plan; provided, however, that as regards any such plan the code authority shall have only such power to bind the industry or any subdivision thereof as shall have been conferred upon it by majority vote of the industry or of any subdivision thereof, and each member shall have the right to present his objections, if any, to the Administrator. The code authority shall collect and present to the Administrator such data and statistics as may be required in connection with any such plan together with a statement of the names of those members of the industry that approve and of those that disapprove such plan in whole or in part.

2. Any such plan shall be based on the following principles:

(*a*) It shall be fair and its benefits shall be equitably apportioned to all plants.

(*b*) It shall give due consideration to all pertinent factors including demonstrated productive capacity based on the clinker and/or cement production performance of nonobsolete plants and equipment.

(*c*) It shall in no way reduce the total production of all plants below what is necessary amply to supply demand.

(*d*) It shall not promote monopoly or monopolistic practices or oppress small enterprises.

(For restrictions upon new capacity, see art. VII.)

149. Machined Waste Manufacturing

Includes among powers of the code authority the following: (2) Recommendations for a plan to prevent demoralization in the industry whenever operations are below 35 percent of registered capacity and after approval by members of the industry representing 80 percent of the volume of production. (In addition to machinery limitations.) (Art. VI, 2 (a, 2).)

202. Carpet and Rug Manufacturing (Art. VII)

2. Control of production: The finished goods inventory of square yards of merchandise wherever located, owned by any member of the industry shall not exceed one-third of his sales in square yards for the immediately preceding 12 months. A member whose inventory shall at the end of any month exceed the aforementioned allowed figure shall be allowed a period of 120 days in which to restore the balance between his inventory and sales before curtailing production.

Should any person or company enter the industry as a manufacturer or withdraw his lines from the market for a period of not less than 3 months the above provisions shall be suspended for the period of 12 months; during this 12 months such person or company may carry an inventory of finished merchandise not to exceed that which is allowed to members of the industry of commensurate capacity under the provisions of this code.

(For members of the industry producing wool sales yarn there is a similar provision, except that inventories are limited to one-sixth of the individual's sales in pounds in the preceding 12 months (art. IX).

245. CORRUGATED AND SOLID FIBER SHIPPING CONTAINER (ART. VII)

With the approval of the code authority, members of the industry may join in a voluntary agreement for the sharing of their business on such basis as they may determine, provided, however, that any member becoming a party to such an agreement may withdraw therefrom at any time without penalty, and provided further that no such agreement shall contain any provision relative to price fixing. The code authority shall file with the Administrator a copy of every such agreement (sec 1).

The Administrator may at any time declare the foregoing section void and of no effect (sec. 2).

269. CARBON BLACK MANUFACTURING (ART. IV)

Each member of the industry shall, insofar as is possible without infringing obligations existing on November 28, 1933, for the purchase of gas, so regulate his current production of all ordinary grades of carbon black as to prevent the same from exceeding its current deliveries. In case at the end of any period of 6 calendar months the quantity of carbon black held in storage by any member shall have increased (except through purchase of black or unavoidable purchase of gas) such member shall reduce its storage by the same amount during the next 6 calendar months, and failure to do so shall be deemed an unfair method of competition within the meaning of the act. Provided, however, that in case any member is prevented from regulating its production to the full extent required herein by reason of such existing obligations for the purchase of gas, and this results in an unavoidable increase in his inventory, the other members shall not be compelled to restrict their inventories below a percentage of increase equal to that of such member.

Also provides for limitation upon new capacity (sec. 2, art. IV), and it is further provided: The production of carbon black by any authorized new factory capacity for the first 6 months that it shall be in operation shall not be subject to the provisions of the first section of this article.

302. CANDLE MANUFACTURING AND BEESWAX BLEACHERS AND REFINERS INDUSTRY (ART. VIII)

2. No member of the candle manufacturing industry shall engage in the manufacture in any of the three recognized fields of production, namely, fancy candles, church candles including votivelights, or common and household candles if he has not engaged in that field at some time during the period of 2 years immediately prior to the effective date of this code, except by applying to the code authority and obtaining permission of the Administrator upon his finding that the granting of such permission is consistent with effectuating the policy of National Industrial Recovery Act. (For new capacity limitation, see sec. 1.)

3. Such provisions to cease being effective after 1 year from effective date of code, provided, however, that prior to that time the code authority may submit to the Administrator its recommendation that said period be extended, based on such information as may be required and if the Administrator finds upon such information and facts that a further extension of this period is consistent with and further effectuates the policy of the National Industrial Recovery Act, he may declare the provisions of this article to be operative for such longer period and under such conditions as he may find necessary to further effectuate the policy last herein mentioned.

308. SUPPLEMENT 4 ATLANTIC MACKEREL FISHING (VIII, TITLE C, 1)

(c) In order to conserve natural resources by the elimination of conditions leading to gluts in the mackerel market and consequent wastage through dumping of mackerel at sea, and by the development of the maximum usable yield com-

patible with future productivity through prevention of the take of small mackerel during those portions of the season when larger sizes are available to supply the demand for mackerel, and to rehabilitate the mackerel fishery by maintaining a reasonable balance between the production of mackerel and the consumption of mackerel, and by assuring minimum prices for mackerel not below the cost of production:

(1) The executive committee, with the approval of the Administrator, from time to time may estimate consumer demand for mackerel. When any such estimate shall have been approved by the Administrator, the same shall be deemed to be the net reasonable market demand for mackerel; and therefrom the executive committee, with the approval of the Administrator, may determine (according to the run of the fish and other conditions in the ocean) whether the exploitation of the mackerel fishery should be unrestricted, or whether a total or partial limitation on the take of small mackerel by purse-seine boats should be effected.

(*a*) Any determination by the executive committee pursuant to the provisions of subdivision (1) of this paragraph shall be revised from time to time to conform with the net reasonable market demand for mackerel as found as aforesaid, and all estimates and determinations by the executive committee pursuant to the provisions of said subdivision shall be subject to the approval of the Administrator, and shall be based upon a published finding and statement of the reasons therefor. Any limitation on the take of small mackerel shall accord due consideration to the effect of such limitation on the cost of production of mackerel larger in size.

(3) In estimating consumer demand for mackerel, due account shall be taken of probable withdrawals from storage of frozen and salt mackerel, of anticipated imports of frozen and salt mackerel, and of production and consumption of groundfish.

(*d*) In the event that any determination of the executive committee pursuant to the provisions of paragraph (*c*) of this section fails to effectuate the conservation and/or rehabilitation policies hereinbefore stated, the executive committee, upon due showing to the Administrator and with his approval, may determine from the net reasonable market demand for mackerel found as aforesaid the poundage of mackerel, with reasonable tolerances, that may be landed from any trip by purse-seine boats engaged in the mackerel fishery. In allocating trip poundage quotas to such boats due consideration shall be given to boat tonnage and crew size.

(*e*) In the event that any determination of the executive committee pursuant to the provisions of paragraphs (*c*) and (*d*) of this section fail to effectuate the conservation and/or rehabilitation policies hereinbefore stated, the executive committee may, with the approval of the administration member or members of the executive committee and subject to the review of the Administrator, limit the exploitation of the mackerel fishery by purse-seine boats engaged in the mackerel fishery to a portion of the fleet at one time and to other portions of the fleet at other times. Any exploitation schedule promulgated by the executive committee in this connection shall be equitable to all boats so engaged, and to their crews; and any determination by the executive committee pursuant to the provisions of this paragraph shall be communicated forthwith to the Administrator.

(See (*f*), as to pooling agreements.)

See also Administrative Order 308–D4, June 11, 1934, limiting landing of mackerel in accordance with above for purpose of maintaining mackerel supply at approximately 700,000 pounds a week, the estimated consumer demand.

(Provides that purse seine boats of 20 gross tons or less may land no more than 5,000 pounds plus 1,000 pounds for each crew member, including captain; larger boats may land same poundage, plus 50 pounds for each gross ton over 20.)

See also Administrative Order D–5, July 14, 1934, limiting landing of mackerel in accordance with above provisions, for purpose of maintaining mackerel supply at approximately 1,100,000 pounds per week, the estimated consumer demand.

See also Administrative Order D–7, August 6, 1934, limiting landing of mackerel in accordance with above provisions, for purpose of maintaining mackerel supply at approximately 200,000 pounds per week, the estimated consumer demand.

See also Administrative Order D–9, October 26, 1934, rescinding curtailment of production of mackerel under article VIII, title C, section 2 of code.

308. Supplement 3 California Sardine Processing

Title C, executive committee, powers and duties: (*c*) To investigate and report to the Administrator not later than June 1, 1934, on the feasability of effectuating by voluntary agreement between members of the California sardine processing

industry under title I, section 4 (a) of the act, or otherwise: (1) Conservation and sustained production of the natural supply of sardines in the waters off California.

401. Copper (Executive Order Approving Code)

6. Sales plan, quotas and allocation: (1) From and after the effective date of this code all sales of copper by those governed by this code shall be made in conformity with the provisions of this article VII.

The Administrator upon his own initiative, or the code authority with the approval of the Administrator, may establish rules and regulations to effectuate the purposes of the sales plan. Until the establishment of such rules and regulations by the code authority the sales clearing agent shall set up rules and regulations which in his judgment are designed to carry out the spirit and intent and general purposes of the sales plan, subject to the review and disapproval of the Administrator. The purpose of this sales plan is to provide insofar as possible a first place in sales for current production and then to provide for a fair and equitable sale of stocks.

(2) Until such time as the code authority may determine that such member has failed to comply with the provisions of this code and such determination has been approved for the purpose by the Administrator, the monthly sales quota for each primary producer of the industry listed below and the relative annual productive capacities of such members, arrived at solely for the purpose of establishing sales quotas, shall be as follows:

	Tons per annum	Monthly sales quotas
		Percent
Kennecott Copper Corporation	366,500	1.67
Anaconda Copper Mining Co	225,000	1.67
Phelps Dodge Corporation	168,000	1.67
United Verde Copper Co	68,000	1.90
Calumet & Hecla Consolidated Copper Co	50,000	2.20
Miami Copper Co	36,000	2.30
Magna Copper Co	25,000	2.50
United Verde Extension Mining Co	24,000	2.50
Consolidated Coppermines Co	21,000	2.70
Copper Range Co	17,500	3.00

(3) In addition to the sales quotas provided above an aggregate sales quota of 9,500 tons per month shall be allocated as individual sales quotas among the producers of secondary copper by some equitable method agreed upon by such producers and approved by the code authority. In the event the producers of secondary copper are unable to agree then such allocation shall be made by the Administrator.

(4) Any producer who shall assent to the code and/or sales plan who is entitled to, but has not received, a sales quota may apply for a sales quota. If, however, the product of such producer is treated by a custom smelter or refiner such custom smelter or refiner may, if the producer shall fail to apply for a quota, make application in its name but for the account of such producer. During the first sales period each producer of custom and byproduct copper shall have a quota equal to 50 percent of the copper produced and treated at the treatment plant. The allocation of such quota in the amount of 50 percent of the production treated during such first sales period shall not serve as a precedent or in any way be controlling in the determination of the sales quota applied for by any such producer for the period subsequent to said first sales period.

(5) The code authority shall have no power to decrease sales quotas established pursuant to subsections (2) and (3), of this section 6, save upon unanimous vote of the code authority and the consent of the party or parties whose quotas are to be thereby decreased. But the code authority upon a two-thirds vote of its membership and with the approval of the Administrator, may increase any such sales quota. In the event the sales quotas of primary producers are generally increased they shall be increased ratably to the end that the increase for each individual producer will be such as to arrive simultaneously at a sales quota equal to 50 percent of their respective capacities; and further in the event of any increase in quotas of primary producers proportionate increases shall be made in the sales quotas of secondary producers as shall be justified by the then existing conditions.

Nothing contained herein, however, shall be construed so as to limit the right of the Administrator at any time after proper notice and giving all parties an opportunity to be heard, to make such change as he may deem necessary in the sales quotas, or sales plan provided for herein.

(6) Until a change is approved by the Administrator and the code authority, or by the Administrator alone, the aggregate sales quotas given pursuant to subsection (2) and subsection (4) of this section 6 shall not exceed 20,500 tons per month.

(7) Allocations of sales must be accepted by those holding sales quotas provided they have copper available for delivery within the delivery period covered by such allocation, except as provided in subsection (14) hereof. A member unable to accept a sales allocation shall have no right subsequently to make up the deficiency, except that if any producer or producers of secondary copper have been unable to accept future sales allocations beyond the current month to the same extent that such future allocations have been accepted by primary producers, then commencing with the first of the month for which such future sales allocations have been made all sales subject to allocation shall be allocated to such secondary producers to the exclusion of primary producers to the extent of the current intake of such secondary producers until such time as each of the secondary producers are brought into a proper relation with such primary producers as regards such allocated sales: *Provided*, That this provision shall not be applied so as to give any producer of secondary copper a greater allocation of sales than if it had accepted all such future allocations.

(8) Sales as made shall be proportionately applied to sales quotas for the current month and at the end of the month unsold sales quotas shall be carried forward for sale and allocation during the following month, except that the unsold quotas carried forward at the end of each month for each secondary producer shall be adjusted to eliminate the tonnage by which its shortage of accumulated actual secondary intake as compared with its accumulated sales quota exceeds its sales quota for 1½ months. If sales quotas for the current month have been sold then all sales in excess thereof shall be applied to the subsequent month for which the sale quotas have not been completely sold so that sales shall be applied to sales quotas for the current month, then to each of the 2 succeeding months. After the sales quotas of the current month and next 2 months have been sold, further sales during the current month shall be allocated to and applied to copper stocks: *Provided, however*, That prior to a general allocation to copper stocks there shall first be set aside 50 percent of all sales then to be allocated to copper stocks, which 50 percent shall be divided so that two-fifths shall go to secondary producers in proportion to their respective holdings of secondary copper accumulated since October 1, 1933, but limited in any event to such accumulations, and three-fifths to byproduct and other primary stocks, and then the remaining 50 percent (or whatever larger amount there may be available pursuant to the foregoing) shall be allocated to copper stocks generally and not to sales quotas. The code authority shall propose a plan for the handling of such allocations to stocks generally which shall be effective when approved by the Administrator, and which shall provide for the disposal of such accumulations by an orderly liquidation, and such sales from stocks shall be "Blue Eagle copper" within the meaning of this code.

(9) The sale of copper by any member of the industry without first having received an assignment of a sales quota pursuant to the provisions of this code, or otherwise in contravention of any of the provisions of this code, shall be a violation of this code; *Provided, however*, That holders of copper who are without sales quotas and who are unable to obtain sales quotas and custom smelters and/or refineries whose intake is in excess of their sales quota and to the extent of such excess may sell such copper but it shall not be eligible to be called "Blue Eagle copper" and shall not be considered copper offered for sale pursuant to the provisions of the Copper Code, and all invoices and papers covering such transactions shall be plainly marked "The copper covered in the transaction is not 'Blue Eagle copper" and is not qualified to be used in the manufacture of any articles for sale to the United States Government as provided for in the President's order of approval for the Code of Fair Competition for the Copper Industry." All sales of copper, however, shall be promptly reported to the sales clearing agent of the code authority.

(10) It shall be a violation of this code for any member of the industry by any transaction with another member to buy, sell, exchange or receive any stocks of copper so as thereby to be allowed, or enable another to participate in the sales plan and/or receive a sales quota and dispose of copper pursuant thereto, to an

extent or in such manner as would not otherwise have been possible if such purchase, sale, exchange or receipt of copper had not taken place: *Provided, however,* That this provision shall in no manner prohibit the bona fide sale of copper produced by the seller or owned by it on the effective date of this code, in the event that such sale is made pursuant to the other provisions of this code.

(11) All allocations of sales quotas and stock shall be made by the sales clearing agent. A computation shall be made by the sales clearing agent daily of the percentage of sales applied to each sales quota in relation to the aggregate of all quotas and a daily allocation shall be made at the average price of all sales made on that date after making such eliminations and additions, as to sales, as may be required by virtue of the other provisions of this code. In the event, at the end of the month, sales and purchases are necessary between those holding sales quotas in order to adjust actual sales to sales quotas, they shall be made pursuant to the daily computations and allocations made by the sales clearing agent during that month. Proper allowance shall be made by the sales clearing agent for differentials including freight charges, varying types and quality of copper, sales commissions, and time of delivery. Full information may be obtained upon request from the sales clearing agent concerning any such computations or allocations.

(12) In order to maintain the proper relation between sales and production:

(*a*) Any primary producer in operation and producing copper on the effective date, or any other primary producer not producing copper on that date but which after the effective date resumes such production, which fails to produce its sales quota reasonably averaged over a period of 3 months, or such longer period as the code authority or the Administrator may have approved, shall thereafter lose its right to participate in the allocation of sales by the sales clearing agent proportionately to the extent of such decrease in production: *Provided, however,* That the foregoing provision shall not apply in the event of a shutdown or decrease in production on account of causes beyond the control of the producer or for any reason which, in the opinion of the code authority and the Administrator, or the Administrator on his own initiative, justifies such shutdown or decreased production: *Provided, further,* That in addition to limitation on sales of primary copper provided in this article VII primary producers shall limit their production so as to conform to the plan and purpose of this code, and to coordinate the production of primary copper with current sales quotas in order to avoid excessive accumulation of stocks and any failure reasonably so to do to the satisfaction of the code authority shall be a violation of this code.

(*b*) No specific limitations or requirements shall be imposed upon the intake of secondary copper producers, but in lieu thereof sales of secondary copper shall be controlled and limited as provided in this article VII. Custom smelters and/or refiners shall endeavor, so far as practicable, to limit their intake of secondary copper so as to conform to the plan and purpose of this code, and to coordinate the flow of copper and of intake material with current sales quotas in order to avoid excessive accumulation of stocks.

(*c*) All consumers of copper, including fabricating or manufacturing companies owned or controlled by producers who are members of the industry, shall be urged by the code authority to assist in the stabilization of the industry by regular monthly purchases of copper in as large an amount as may be practicable in each case, and shall be similarly urged to enter into agreements to make such purchases. Upon the execution of such an agreement by a copper consumer in form and substance satisfactory to the code authority, or the administrator, and for so long as the terms of such agreement are complied with, and no other copper other than "Blue Eagle copper" is purchased, all copper sold and/or fabricated by such consumer shall be "Blue Eagle copper", as defined herein. The code authority of this industry shall cooperate with the code authority and/or supervisory agency of the copper and brass mill products industry and the wire and cable subdivision of the electrical manufacturing industry in effectuating the purposes of the marketing and fair trade practice provisions of this code.

(*d*) For the purpose of the sales plan, sales and/or transfers of copper by a member holding a sales quota (including any of its subsidiaries or affiliates) to its fabricating plants or to any subsidiary fabricating company, shall not be subject to said plan, except to the extent set forth in agreements made by the fabricating subsidiaries of such producer under the terms of the preceding paragraph (*c*); provided, however, that in case a member owning a fabricating plant or the fabricating subsidiaries of any one holding a sales quota should fail to make an agreement under the terms of the preceding paragraph (*c*), the sales of copper by that member shall be determined by the Administrator or in the event of his unwillingness to act, by the code authority.

(e) In order to provide equitably for an increase in employment by increasing current production and/or to facilitate liquidation of excessive copper stocks in a manner which will not interfere with the operation of the sales plan pursuant to the provisions of this code, the code authority, with the approval of the Administrator may negotiate bulk sales of copper to, through, and/or with the approval of Government agencies; provided, however, that no commitment shall be made for or become binding on any member of the industry unless he shall accept the allocation made to him by the code authority of his proportionate share of any sale so negotiated, except to the extent he is obligated to sell copper under the provisions of this code (administrative order, art. VII).

(19) Whenever, upon complaint or on its own initiative without complaint, and after affording an opportunity to any interested party to be heard, the code authority is of the opinion that an emergency exists within the industry in that destructive price cutting and/or excessive production is being engaged in to such an extent as to render ineffectual or seriously endanger the effectuation of the purposes of this code or of the act so as to require the establishment of minimum prices for the sale of copper and/or regulation of production, the code authority shall certify any such conclusion to the Administrator and, upon his approval thereof, after hearing on such notice as he may prescribe, such minimum prices and/or regulation of production may be established and the code authority may adopt rules and regulations satisfactory to the Administrator governing the establishment of such minimum prices for the sale of copper and/or regulation of production based on such factors and/or conditions as may be found necessary to meet such emergency; provided, however, that no provision of this code or of any rules and regulations which may be promulgated pursuant thereto shall be interpreted so as to require any member of the industry to reduce his production below his sales quota as originally established pursuant to the provisions of this code. When a minimum price as herein provided for shall be established any sale below such price will be considered destructive price cutting and a violation of this code.

(Administrative order.)

The following codes have some form of a general provision empowering the code authority to make recommendations concerning the balancing of production and consumption:

1. Cotton textile
5. Coat and suit
6. Lace manufacturing
9. Lumber and timber products
10. Petroleum
15. Men's clothing
18. Cast iron soil pipe
36. Glass container
67. Fertilizer
99. Asphalt shingle
118. Cotton garment
120. Paper and pulp
193. Folding paper box
230. Paper bag manufacturing
245. Corrugated and solid fiber shipping container
246. Paper disk milk bottle cap
247. Food dish and pulp paper plate
248. Glazed and fancy paper
249. Tag
252. Cylindrical liquid tight paper container
301. Sample card
305. Fibre can and tube
309. Solid braided cord
331. Bulk drinking straw, etc.
369. Expanding and specialty paper
515. Alloys industry
520. China clay producing

RESEARCH AND PLANNING DIVISION,
POST CODE ANALYSIS UNIT,
December 3, 1934.

MACHINE- AND PLANT-HOUR LIMITATIONS

(401–531 codes, 132 supplements)

This report covers the machine- and plant-hour limitations found in codes 401–531, 132 supplementary codes, and the first 530 approved amendments. This report supplements no. 45–A which covered the first 400 codes.

In six codes and one supplementary code were found some form of provision regulating machine- or plant-hours. These provisions were found to belong to the following groups: (1) Limitation on number of days' operation per week, (2) limitation on hours of operation per day or week, and (3) limitation on number of shifts per day or week.

(1) In the following 3 codes and 1 supplementary code were found limitations on the number of hours per day or week:
255. Textile processing (80 hours per week).
372. Shoe rebuilding (63 hours per week).
402. Sewing machine (60 hours per week).
201. Supplement 9, leather and shoe findings trade (70 hours per week).
(2) In undergarment and negligee (408) operations are limited to one shift per day.
(3) In the following 4 codes and 1 supplementary code were found limitations on the number of days' operation per week:
372. Shoe rebuilding (6 days).
402. Sewing machine (6 days).
408. Undergarment and negligee (5 days).
457. Cap and cloth hat (5 days).
201. Supplement 9, leather and show findings trade (6 days).
(4) The following codes have provisions empowering the code authority to make recommendations concerning the limitation of machine- or plant-hours:
54. Throwing industry.
99. Asphalt and shingle roofing.
194. Blouse and skirt.
211. Robe and allied products.
235. Textile processing.
(For code text of parts (1), (2), and (3) above, see following pages of this report. For Executive and administrative orders affecting machine-hours, see p. 4.)

402. *Sewing machines.*—No member of the rebuilders' division shall conduct his business either inside or outside of such member's business establishment for more than 60 hours per week and during any hours earlier than 8 a. m. or later than 6 p. m. on any 6 days of the week; provided, however, that the Rebuilders' Divisional Code Authority, with the approval of the Administrator, may, upon application of any local group, waive the provisions of this subsection insofar as the same are applicable to said local group (schedule A, art. III, 5).

408. *Undergarment and negligee.*—No "manufacturing employee" shall be permitted to work in excess of 37½ hours in any one week nor in excess of 7½ hours in any 24-hour period, nor more than 5 days in any 1 week, except as hereinafter provided.

There shall be no more than one shift of emlpoyees in any 1 day. The Administrator, upon showing of good cause and after such notice and hearings as he shall prescribe, may grant such exemption to this provision as he may deem necessary to effectuate the purposes of the act (art. III, 1, 2).

457. *Cap and cloth hat.*—No manufacturing operations shall be performed on any Saturday or Sunday except that the code authority, subject to prior approval by the Administrator, may permit manufacturing operations on any Saturday of a week in which there is a religious or legal holiday. In no event shall any manufacturing operations be performed during more than 5 days during any 1 week (art. III, 2).

AMENDMENTS

54. *Amendment 2, throwing industry.*—Recommendations that it shall be within the power of the code administration committee to further limit the machine-hours after a trial period of 90 days if in its judgment, and upon the operating records received, it shall have become apparent that the resulting production is in excess of the needs of those who supply material for processing by the throwing industry, and further thereafter to restore or amend such machine-hours as may from time to time become necessary. This provision for flexibility is essential for the throwing industry because it has no command over volume, being wholly dependent upon the demands and needs of the weaving, knitting, and allied trades. This provision shall not apply to throwing machinery, provided that the yarn thrown thereon is for the employers' own use only in their own plants, and operating under the Code of Fair Competition for the Cotton Textile Industry (art. IV, 1).

235. *Amendment 3, textile processing.*—Members of each division of the industry or part thereof may determine closing hours for plant operations for such division or part thereof between the hours of midnight Friday and 6 a. m. Monday; and after such determination has been approved by the members of the division pursuant to subdivision (*j*) of this section and approved by the code authority, such determination, upon the approval of the Administrator, shall have the same force and effect as any other provision of this code.

Employers shall not operate the following machines for more than 80 hours per week: Winders, warpers, coppers or quillers, section beamers, and/or slashers when used in the commission winding, warping, slashing, and/or beaming of yarns made of silk, rayon, and/or other synthetic yarns and/or combinations thereof in preparation for use on looms 16 inches wide or over (amendment 4, textile processing).

SUPPPLEMENT

201. *Supplement 9, leather and shoe findings.*—To keep their places of business open, or engage in the trade, more than 6 days in any week or on legal or public holidays, which, when one falls on what would otherwise be an ordinary working-day, shall be considered as part of the 6 days, or open in excess of 70 hours in any week; provided that nothing herein shall be construed to permit violation of any Federal, State, or local law. These provisions shall also apply to owner-operators (art. IV, 1).

ADDENDA

372. *Shoe rebuilding.*—No retail outlet or shop shall remain open or be operated on Sundays or on national, State, or local holidays, or in excess of 16 hours on any Saturday, or in excess of 12 hours on any other day, or in excess of 63 hours per week; provided, however, that where a member of the trade is operating in a department store as a department of such store and such department store, in compliance with the retail code, operates a greater number of hours, then such member of the trade may comply with the hours of the department store, and the other members of the trade in the same local trade area may remain open the same number of hours; and provided further, that when a day of the week other than Sunday is recognized as the Sabbath by a member of the trade, and such member of the trade regularly keeps his place of business closed on such days, such place of business may remain open and be operated on Sunday, subject, however, to State and local laws and ordinances (art. III, 3).

ORDERS AFFECTING MACHINE-HOUR PROVISIONS

The following are references to certain code administrative orders staying, or otherwise affecting, machine-hour provisions.

1. Cotton textile, administrative order 80, July 26, 1934. (See various orders affecting machine-hour provisions of this code.)

3. Wool textile, administrative order 1–A, August 11, 1933. Staying provisions of code insofar as they apply to limitations of use of machinery in production of woolen yarns and worsted tops.

6. Lace manufacturing, administrative order 11, August 27, 1934. Staying provisions of article III, paragraph 1, insofar as they limit the hours of operation of Barmen machines.

Administrative order 15, October 17, 1934. Staying until November 27, 1934, order no. 6–11, which stayed provisions of article III, paragraph 1, in operation of Barmen machines (machine-hours).

48. Silk textile, administrative order 2, December 23, 1933. Approving recommendation of Silk Code Authority for curtailment of machine-hours, effective December 23, 1933.

211. Robe and allied products, administrative order 13, September 27, 1934. Ratifying action of Acting Division Administrator and granting stay of provisions of article III, section 5, to apply to pressing departments, up to November 17, 1934.

Administrative order 18, November 26, 1934. Granting stay of provisions of article III, sections 1 and 5, until December 15, 1934.

RESEARCH AND PLANNING DIVISION,
POST CODE ANALYSIS UNIT,
November 20, 1934.

LIQUIDATED DAMAGES AND COST OF INVESTIGATION

(525 codes, 168 supplements)

This report covers the provisions dealing with the assessment of liquidated damages for violations and the assessment of costs of investigation of alleged violations.

Liquidated damage provisions of the following 15 codes are given in text in the body of this report: (11) Iron and steel, (46) motor-vehicle retailing, (37)

builders supply trade, (85) petroleum equipment, (92) floor and wall clay tile, (127) reinforcing materials fabric, (234) macaroni, (480) structural steel, (202) carpet and rug, (205) metal window, (207) alloy casting, (258) cast-iron boiler, (354) small arms and ammunition, (141) investment bankers, and (495) steel joist.

Cost of individual provisions of the following 20 codes and 15 supplements are given in text in the body of this report: (11) Iron and steel, (22) motion-picture laboratory, (30) linoleum and felt base, (80) asbestos, (99) asphalt shingle, (132) malleable iron, (150) asphalt and mastic tile, (172) rayon and silk dyeing, (244) construction, (266) inland water carrier, (315) industrial safety equipment, (321) rock and slag wool, (334) beverage-dispensing equipment, (345) collapsible tube, (354) small arms and ammunition, (359) preformed plastic, (401) copper, (403) bleached shellac, (407) dry color, and (480) structural steel; (84–2) hand chain hoist, (84–3) chain manufacturing, (84–4) electric industrial truck, (84–13) porcelain enameling, (84–18) screw machine, (84–20) machine screw nut, (84–21) bright wire goods, (84–22) drapery and carpet hardware, (84–23) machine screw, (84–24) wood screw, and (84–52) tubular split and outside prong rivet.

The actual code text of the above provisions are given in numerical order of approval of the codes.

Liquidated Damages and Cost of Investigations

11. *Iron and steel.*—Any or all information furnished to the secretary by any member of the code shall be subject to checking for the purpose of verification by an examination of the books and accounts and records of such member by any accountant or accountants, or other person or persons designated by the board of directors, and shall be so checked for such purpose if the board of directors shall require it. The cost of each such examination shall be treated as an expense of administering the code; provided, however, that, if upon such examination any such information shall be shown to have been incorrect in any material respect, such cost shall be paid by the member of the Code which furnished such information (art. IX, 2).

Any violation of any provision of the code by any member of the industry shall constitute a violation of the code by such member.

Recognizing that the violation by any member of the code of any provision of article VII or of schedule E of the code will disrupt the normal course of fair competition in the industry and cause serious damage to other members of the code and that it will be impossible fairly to assess the amount of such damage to any member of the code, it is hereby agreed by and among all members of the code that each member of the code which shall violate any such provision shall pay to the treasurer as an individual and not as treasurer of the institute, in trust, as and for liquidated damages the sum of $10 per ton of any products sold by such member in violation of any such provision.

Except in cases for which liquidated camages are fixed in the code and in cases which shall give rise to actions in tort in favor of one or more members of the code for damages suffered by it or them, the board of directors shall have power from time to time to establish the amount of liquidated damages payable by any member of the dode upon the commission by such member of any act constituting an unfair practice under the code and a list of the amounts so fixed shall from time to time be filed with the secretary. Upon the commission by any member of the code of any act constituting an unfair practice under the code and for which liquidated damages are not fixed in the code or which does not give rise to an action in tort in favor of one or more members of the code for damages suffered by it or them, such member shall become liable to pay to the treasurer as an individual and not as treasurer of the institute, in trust, liquidated damages in the amount at the time established by the board of directors for such unfair practice and specified in the list then on file with the secretary as aforesaid.

All amounts so paid to or collected by the treasurer under this article X or under section 4 of schedule E of the code shall be held and disposed of by him as part of the funds collected under the code and each member of the code not guilty of the unfair practice in respect of which any such amount shall have been paid or collected shall be credited with its pro rata share of such amount on account of any and all assessments (other than damages for violation of any provision of the code) due or to become due from such member under the code, or, in the case of any excess, as shall be determined by the board of directors, such pro rata share to be computed on the same basis as the last previous assessment

made against such member on account of the expenses of administering the code as hereinbefore in section 5 of article VI provided. All rights of any person who shall at any time be the treasurer in respect of any amounts which shall be payable to him because of the commission by any member of the code of any act constituting an unfair practice under the code, whether payable under the provisions of this article X or under any other provision of the code, shall pass to and become vested in his successor in office upon the appointment of such successor.

Each member of the code by becoming such member agrees with every other member thereof that the code constitutes a valid and binding contract by and among all members of the code, subject, however, to the provisions of section 7 of article XI, and that, in addition to all penalties and liabilities imposed by statute, any violation of any provision of the code by any member thereof shall constitute a breach of such contract and shall subject the member guilty of such violation to liability for liquidated damages pursuant to the provisions of the code. Each member of the code by becoming such member thereby assigns, transfers, and delivers to the treasurer as an individual and not as treasurer of the institute, in trust, all rights and causes of action whatsoever which shall thereafter accrue to such member under the code for such liquidated damages by reason of any violation of the code by any other member thereof, and thereby designates and appoints the treasurer as such individual the true and lawful attorney in fact of such member to demand, sue for, collect and receipt for any and all amounts which shall be owing to such member in respect of any such right or cause of action, and to compromise, settle, satisfy, and discharge any such right or cause of action, all in the name of such member or in the name of the treasurer individually, as he shall elect.

Anything in the code to the contrary notwithstanding, the board of directors by the affirmative vote of two-thirds of the whole board may waive any liability for liquidated damages imposed by or pursuant to any provision of the code for any violation of any provision thereof, if in its discretion it shall decide that such violation was innocently made and that the collection of such dmages will not to any material extent tend to effectuate the policy of title I of the National Industrial Recovery Act (art. X).

That, if such jobber or such other purchaser shall violate any such agreement, he shall pay to the treasurer as an individual and not as treasurer of the institute, in trust, as and for liquidated damages the sum of $10 per ton of any product sold by such jobber or such other purchaser in violation thereof. In the case of a product destined for delivery at a place in the Canal Zone or at a port in Alaska, the member of the code selling such product, in determining its delivered price therefor, shall add to its published base price for such product effective at the time of and for the sale thereof such charges in respect of transportation as shall shall have been previously approved by the board of directors and filed with the secretary (schedule E, sec. 4).

22. *Motion-picture laboratory.*—If any employer laboratory declines to permit the personnel of the recovery committee, acting under this article, to examine its books, records, or other sources of information, the committee may suggest the names of not less than three firms of certified public accountants of reputable standing in the motion-picture field, and if the employer laboratory shall indicate a choice among the three firms, the recovery committee shall employ the firm designated by the employer laboratory in making the investigation of that laboratory (art. III, 5).

80. *Asbestos industry.*—If, upon such investigation, any complaint of a violation of the code shall be substantiated in any material respect, the member of the code guilty of such violation shall pay the cost of the investigation; otherwise the cost shall be borne by the complainant. The guilty member shall be subject to all penalties provided for in the act and if a member of the code, any other penalties provided for by said member's division of the code (art. VI, 2, c).

Complaints may be filed with a sub code authority against any member of its division of the industry to the effect that said member has made a sale at a price believed to be below said member's current total cost and not to meet existing competition in the industry. Said sub code authority may in its discretion investigate such complaints, and if it finds that said prices were not made to meet existing competition in the industry, it shall designate a firm of certified public accountants to investigate whether or not the prices complained of were below said member's current total cost in conformity with sound accounting practice. The said accountants shall report their conclusions to the sub code authority without disclosing confidential details, and if the sub code authority finds after receiving such report, that such member actually sold below his current total cost and not to

meet existing competition in the industry, then the cost of the investigation shall be paid by said member if a member of the code, otherwise by the complainant. The guilty member shall be subject to all penalties provided for in the act, and if a member of the code, any other penalties provided for by said member's division of the code (art. IX, 2).

85. *Petroleum equipment.*—Recognizing that the violation by any member of the code of any provision of either article VI or article VII will disrupt the normal course of fair competition in the industry and trade and cause serious damage to other members of the code, and that it will be impossible fairly to assess the amount of such damage to any member of the code, it is hereby agreed by and among all members of the code that if it shall be determined by the code authority, after investigation, that any member of the code has violated any provision of either said article VI or article VII, such member shall pay to the treasurer, for the time being in office, of the association, as liquidated damages, in addition to all penalties and liabilities imposed by statute, a sum equal to 20 per centum of the invoiced price of any products in connection with which such violation occurred. Any amounts so paid to, or collected by, the said treasurer of the association under this article XI shall be held and disposed of by him as part of the general funds of the association.

Anything in the code to the contrary notwithstanding, the code authority by the affirmative vote of two-thirds of all the members thereof may waive any liability for liquidated damages imposed by or pursuant to any provision of the code for any violation of any provision thereof, if in its discretion it shall decide that such violation was innocently made and that the collection of such damages will not in any material extent tend to effectuate the policy of title I of the act (art. XI, 3, 4).

Any member of the industry and trade may withdraw from membership in the code after June 16, 1935, or after such published date as may be fixed by proclamation of the President or by joint resolution of the Congress as the date on which the emergency recognized by title I of the act has ended. Upon such withdrawal, all obligations and liabilities of such member under the code shall cease, except those for liquidated damages or assessments theretofore accrued under any provision of the code (art. XII, 6).

92. Floor and wall clay-tile manufacturing.—(1) Any member of the code may exceed the percentages specified pursuant to section C of this article on condition that he shall pay to the treasurer of the code authority, as trustee of the tile industry fund, as liquidated damages 20 percent of the total sales value of the second-grade tiles sold by him in excess of the percentages established pursuant to the aforesaid section C of this article.

(2) The liquidated damages referred to in the foregoing subsection shall be based upon the average percentage of seconds sold by any member of the code in excess of the percentages established pursuant to section C of this article sold for the current calendar year or part thereof after the effective date of this code.

(3) No member of the code shall be required to pay liquidated damages due for any current month if sufficient credit has accrued to his account for sales under the allowed percentage during any previous months.

(4) Any member of the code who in earlier months of any current year shall have paid liquidated damages which subsequently are offset by a credit due him for the percentage of second-grade tiles subsequently sold below the percentage established pursuant to section C of this article, shall have refunded to him on June 30 and December 31 of each year, or as soon thereafter as possible, such excess liquidated damages as he shall have paid.

(5) All sums due as liquidated damages in accordance with the provisions of this section D of this article shall be paid into a separate fund to be known as "the tile industry fund." The treasurer of the code authority as an individual shall be the trustee of the tile industry fund, and as such shall place payments for liquidated damages received to the credit of such fund and make disbursements therefrom in accordance with the provisions of this Article. This fund shall be maintained as a separate fund from any general fund which the code authority may establish or maintain. Disbursements from said fund may be made from time to time in such manner and for such purposes as the majority of the members of the code shall determine; provided, however, that at all times a sufficient fund shall be maintained in the said tile industry fund to refund any liquidated damages which may have been paid into the aforesaid fund and which subsequently may become due for refund to members of the code, in accordance with the provisions of subsection (4) of this section D (art. X, D).

99. *Asphalt shingle and roofing manufacturing.*—The code authority shall designate an agent or agents, not members of the industry, to investigate complaints of violations of the code. The members of the code shall facilitate such investigations by producing all pertinent data including correspondence books and accounts relating to alleged violations for examination by such authorized agent and by furnishing relevant information. All such pertinent information shall be kept confidential by the agent or agents, except that, in the event of any such violation being substantiated, the code authority shall be informed and may present evidence thereof to the Administrator, or to such department, agency, or judicial branch of the Government, as he may designate. If, upon such investigation, any complaint of a violation of the code shall be substantiated in any material respect, the member of the code guilty of such violation shall pay the cost of the investigation, otherwise the cost shall be borne by the complainant member of the code. (VI. 2, d.)

127. *Reinforcing materials fabricating.*—Recognizing that the violation by any member of the industry of any provision of the code will disrupt the normal course of fair competition in the industry and cause serious damage to other members of the code and that it may be difficult fairly to assess the amount of such damage to any member of the industry or the public, it is hereby agreed by and among all members of the code that each member of the code who shall violate any such provision shall unless otherwise specified by the board of directors pay to the institute as and for liquidated damages the sum of $10 per ton of any reinforcing material or 20 percent of the entire sales price of any contract for sale of reinforcing materials, whichever is the larger, sold or contracted for sale by such member in violation of any such provision.

Upon the complaint of any member of the code that any act of any member of the code constitutes an unfair practice under the code, the board of directors may provide for the investigation, hearing and decision of such complaint through such committee, impartial tribunal or otherwise as it may from time to time determine and except as otherwise in this article provided the board of directors or such committee or other tribunal may assess such liquidated damages or other penalty or take such other action to refer the complaint to the American Iron and Steel Institute or any committee or tribunal established by such institute as it may deem necessary or desirable in order to effectuate the policy of title I of the National Industrial Recovery Act or the provisions of this code. (See p. — for secs. 3 and 4.)

Anything in the code to the contrary notwithstanding, the board of directors by the affirmative vote of two-thirds of the whole board may waive any liability for liquidated damages imposed by or pursuant to any provision of the code for any violation of any provision thereof, if in its discretion it shall decide that such violation was innocently made and that the collection of such damages will not to any material extent tend to effectuate the policy of title I of the National Industrial Recovery Act (art. XIV, 1, 2, 5).

132. *Malleable iron.*—Any or all information furnished to the Secretary of the society by any member of the industry shall be subject to checking for the purpose of verification by an examination of the pertinent books and accounts and records of such member by any disinterested person or persons mutually agreed upon by the board of directors and the member of the industry whose books and accounts and records are to be examined or by a person or persons nominated by the board of directors and approved by the administrator. The cost of such examination shall be treated as an expense of administering the code: *Provided, however,* That if upon such examination any such information shall be shown to have been incorrect in any material respects, such costs shall be paid by the member of the industry which furnished such information (art. VII, 2).

150. *Asphalt and mastic tile.*—If, upon investigation, any complaint by a member of the code of a violation of the code shall be determined by the code authority to be substantiated in any material respect, the member of the code guilty of such violation shall pay the cost thereof; otherwise the cost thereof shall be borne by the complainant (art. VI, 2, c).

172. *Rayon and silk dyeing and printing.*—If, in the case of complaint and/or dispute on any matter affecting the administration of the code, including a dispute as to the accuracy of any information furnished pursuant to the provisions of this code, a concern shall fail or refuse to cooperate with code authority, the administrator, on the request of the code authority, may appoint a certified public accountant who shall have the power to view the relevant books of accounts, records, and files of any concern. No such information shall be revealed to anyone but the members of the staff of the administration and/or the admin-

istrator. If such investigation defined as aforesaid shall result in a determination that a signatory of the code was not complying with the provisions of this code, the cost of such investigation shall be borne and paid for by such member of the industry (art. IX).

202. *Carpet and rug manufacturing.*—The dollar billed sales of drops by any member of the industry shall not exceed 10 percent of his dollar billed sales of his regular merchandise at his regular published prices, for any calendar year, beginning January 1, 1934. In the case of any excess above the foregoing, then a subscriber shall pay to the code authority, as and for liquidated damages, the sum of 20 percent of the amount of such excess, such sum to be devoted to meeting the expenses of the administration of this code (art. VII, 17).

205. *Metal window.*—Recognizing that the violation by any member of the code, of any of the rules of fair competition expressed in rules 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of article VII, in sections 8 and 9 of article VIII, and in section 1 of article IX of the code will disrupt the normal course of fair competition in the industry and undermine the fair wages and reasonable working hours herein undertaken, besides inflicting serious damages on other members, and that it will be impossible fairly to assess the amount of such damage to any individual member of the code, it is hereby agreed by and among all members of the code that each member of the code who shall violate any of the above enumerated rules of fair competition shall pay to the commissioner, in trust, as and for liquidated damages, a sum equal to not more than 20 percent of the gross amount of any contract or order for industry products taken in violation of any such rule or rules. Such funds shall be applied to the administration of the code. The code authority by the affirmative vote of two-thirds, may waive any liability for such liquidation damages as may be imposed by or pursuant to this provision of the code, if, in its discretion, it so decides that such violation was innocently made and that the collection of such damage is not necessary in order to effectuate the policy of title I of the National Industrial Recovery Act (art. XI, 2).

237. *Alloy castings.*—Recognizing that violation of any provision of this code will disrupt the normal course of fair competition in the industry and cause serious damage and that it will be impossible fairly to assess the amount of such damage, each member of the association who shall violate any such provision shall pay to the association, in trust as and for liquidated damages, a sum equal to 25 percent of the invoice value of any alloy castings sold in violation of any such provision, such funds to be applied to the administration of this code. The code authority by the affirmative vote of two-thirds may waive any liability for such liquidated damages as may be imposed by or pursuant to this provision of this code, if in its discretion it so decides that such violation was innocently made and that the collection of such damages is not necessary in order to effectuate the policy of title I of the National Industrial Recovery Act (art. V, 8).

244. *Construction.*—In order to collect the information for the administrator herein called for, it 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 this 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. The proceeds derived therefrom shall be apportioned upon an equitable basis between the construction code authority and such divisional code authorities as shall cooperate in procuring the registration of such work or services (art. IV, 2, d).

258. *Cast-iron boiler and cast-iron radiator.*—In the event of violation of this code by a member who has specifically assented in writing to the provisions of this paragraph (i), the code authority, subject to disapproval by the administrator, after having afforded a fair hearing to the member of the industry complained of, may assess as liquidated damages, where the violation involves a product a sum equivalent to 20 percent of his current trade price of the product involved. When such violation does not involve a product there may be assessed as liquidated damages a sum not exceeding $500, to be paid by such member of the industry. The code authority shall immediately report any such assessment to the administrator, and such assessment shall become payable only after such report has been made. Such sums mentioned shall be payable without recourse to the Institute within 30 days after the assessment by the code authority and shall become part of the common funds of the institute (art. VI, 6, i).

266. *Inland water-carrier trade, etc.*—The code authority or the administrator may verify the information furnished by any member of the trade through an examination of the pertinent records of such member by a disinterested certified

public accountant designated by the code authority or by the administrator. The cost of such verification shall be considered an expense of administering the code. The administrator may also verify information furnished by a member of the trade through his own agents (art. IX, 5).

315. *Industrial safety equipment.*—When a member, participating in, subscribing to the code and sharing in the benefits of the activities of the code authority and who pays his proportionate share of the expenses of the code administration, makes a complaint of violation of any of the code, such complaint shall be made in writing to the code authority and accompanied by a check for $25, to apply against any expense of investigation incurred by the code authority or the agency that it may appoint to make such investigation.

In the event that the complaint is sustained by the code authority, the offending party, if he be a member in the same standing as the complaining member, will be required to defray the expense of the investigation, and the code authority may take such action against the violator as it deems desirable and report such action to the administrator in which event the deposit made by the complainant will be returned. (Art. VII, 10.) In the event that the complaint is not sustained, the complainant will be required to pay any additional cost.

321. *Rock and slag wool manufacturing.*—The code authority shall designate an agent or agents, not members of the industry, to investigate complaints of violations of the code. The members of the code shall facilitate such investigations by producing all pertinent data, including correspondence, books, and accounts relating to alleged violations for examination by such authorized agent and by furnishing relevant information. All such pertinent information shall be kept confidential by the agent or agents except that, in the event of any such violation being substantiated, the code authority shall be informed and may present evidence thereof to the administrator or to such department, agency, or judicial branch of the Government, as he may designate. If, upon such investigation, any complaint of a violation of the code shall be substantiated in any material respect, the member of the code guilty of such violation shall pay the cost of the investigation, otherwise the cost shall be borne by the complainant member of the code (art. VI, 2, e).

334. *Beverage dispensing equipment.*—To require than any information submitted to the code authority by a member of the industry shall be subject to verification, by an examination of the pertinent books and accounts and reports of such member by any person (not connected with the industry) designated by the code authority, and shall be so verified if the code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code: *Provided, however,* That if upon examination any such information shall be shown to have been incorrect in any material respect, such cost shall be paid. by the member which furnished such information (art. VI, 12).

345. *Collapsible tube.*—The code authority may on the complaint of any affected party, investigate whether any given product or products has or have been sold below cost and report the results of such investigation to the proper authority or authorities for appropriate action. The code authority subject to appeal to the administrator may, as between parties who have expressly assented to this provision, assess the costs of such investigation against the complainant or the defendant, or both (art. I, 3).

354. *Small arms and ammunition manufacturing.*—If formal complaint has been made to the secretary that any provisions of this code has been violated by any such member, the code authority shall cause the facts to be investigated, and to that end may cause such reasonable examination or audit as may be necessary, by a competent or disinterested person or persons mutually agreed upon by the code authority and such member against whom the complaint has been made, or by such person or persons nominated by the code authority and approved by the Administrator, provided, if it should appear that any reports or data called for by this code were willfully made inaccurate or not filed by any such member when and as herein required, or that any such member had indulged in any trade practice in violation of this code, the expenses of such verifying work shall be paid by the party so in default.

Since any violation of the provisions of this code will cause injury to members of the industry and the amount of such injury would not be readily ascertainable, it is therefore agreed by and between all such members of the industry who have so expressly, in writing or otherwise, assented to the provisions of this article IX that each of such members who violates any provision of this code shall pay to the secretary, or such person as the code authority may designate, as and for liquidated damages, such sum as the code authority, or the Administrator. may deter-

mine, not exceeding, however, $500 for each violation, in addition to any other sums required to be paid by the provisions of this code. Any and all moneys which may be paid to the secretary as and for such liquidated damages shall be used for the expense of administering the code, or otherwise, as may be determined by the code authority (art. IX).

359. *Preformed plastic products.*—The members of the industry shall facilitate all such investigation by opening their correspondence, books, and accounts relating to alleged violation for examination by such authorized agent and by furnishing relevant information. If, upon investigation, any complaint of a violation of the code shall be substantiated in any material respect, the member of the industry guilty of such violation shall pay the cost of the investigation; otherwise the cost of the investigation shall be borne by the complainant member of the industry (art. VI, 2).

401. *Copper.*—To make investigation of any reported or alleged violation of the code. When formal complaint is made to the code authority by any member of the industry or the code authority shall learn of any alleged violation, the code authority shall designate an impartial agency other than the association to make such investigation as is necessary to determine the facts of the alleged violation, and to that end such agency shall be authorized to conduct such examination or audit into the pertinent data and records as may be necessary. Such agency shall report to the code authority its findings as to whether or not the alleged violation of the code was actually committed. If such agency shall report that the violation did not occur, the facts ascertained in the investigation shall be confidential to the investigating agency and shall not be disclosed by it. If such agency shall report that the violation did occur and if a satisfactory adjustment thereof cannot be reached by the code authority, the findings of the investigating agency, together with its data and records in the case, shall be reported to the Administrator. The expense of the investigation, examination, or audit shall, when made on the complaint of any member, be borne by such member if the complaint was not justified. In the event that the complaint was justified, such expense shall be borne by the member or members against whom the complaint was made. (art. VI, 5d).

The last two sentences of section 5 (d), article VI, which impose the costs of investigation, examination, or audit on a member of the industry complained against if the complaint is justified and on a complainant member of the industry if the complaint is not justified, shall be effective only as to those members of the industry who shall have assented to the code. (Order of approval.)

403. *Bleached shellac manufacturing.*—Any and all information furnished to the executive secretary or other designated agent by any member of the industry shall be subject to checking for the purpose of verification, if a violation of the code be suspected, by an examination of the books and accounts and records of such member by any accountant or accountants or other impartial person or persons similarly qualified and designated by the code authority and shall be so checked for such purpose if the code authority shall require it, but if such member of the industry objects to an examination being made by any such designated agent, he shall have the option to request that such investigation be made by the Federal Trade Commission or other governmental agency approved by the Administrator, provided, however, that this provision shall not deprive any individual of his constitutional rights under the 5th and 14th amendments of the Constitution of the United States. The cost of each such examination shall be treated as an expense of administering the code; provided, however, that if upon such examination any such information shall be shown to have been incorrect or misleading in any material respect, such cost shall be paid by the member of the industry which furnished such incorrect or misleading information. Any member of the industry shall have the right to appeal to the Administrator as to the reasonable propriety of an examination of the character above referred to (art. VI, 8).

407. *Dry color.*—The code authority shall carefully investigate all complaints it may receive of any violation of the provisions of this code. If a complaint is sustained, the cost of the investigation thereof shall be borne by the member of the industry against whom such complaint is sustained, such cost to be determined by the code authority and to be paid to it (art. VI, 4, d).

480. *Structural steel and iron fabricating.*—Each member of the code which shall violate any provision of section 5 of this article IV shall pay to the treasurer as an individual and not as treasurer of the institute, in trust, a sum equal to $3 per ton of each ton of any product or products which shall have been fabricated in the plant of such member in which the violation shall have occurred during the continuance of such violation or in the erection work on which such violation shall

have occurred and which shall have been erected during the continuance of such violation, as the case may be (art. IV, 6).

If any member of the industry shall file with the secretary a written complaint claiming that the price at which any other member of the industry shall have contracted or offered to sell any product and/or to do any erection work is in violation of section 1 of this article VII, the code authority may in its discretion investigate such complaint, if it shall determine that the matters complained of therein may result or may have resulted in unfair competition in the industry and may tend or may have tended to defeat the policy of title I of the National Industrial Recovery Act. In determining whether to investigate such complaint the code authority shall consider (a) whether, on the basis of the reports filed with the secretary under the code, the member of the industry against which such complaint shall have been filed has, since the effective date of the code, contracted for more than its fair share of the business of fabricating products used in, and/or doing erection work in, the United States, as compared with other members of the industry; and (b) whether the bid or agreed price of such member in respect of which such complaint shall have been filed, as compared with the other low bids for the same work, was such as to warrant further investigation.

Before beginning any investigation, however, on such complaint the code authority may in its discretion require the member of the industry filing such complaint to deposit with the treasurer security satisfactory to the code authority for the payment of the costs and expenses of such investigation. For the purpose of such investigation the code authority shall have power to require the member of the industry against which such complaint shall have been filed to furnish such information concerning the estimated cost to such member of such product and/or of such erection work as the code authority shall deem necessary or proper for such purpose. Upon such investigation the code authority shall give such member an opportunity to be heard and to present evidence with a view of justifying such price and the code authority shall also give to any other member of the industry which shall have filed a complaint in respect of such price or which shall be interested therein an opportunity to be heard and to present evidence material to such complaint. If the code authority after such investigation shall determine that such price was less than the reasonable estimated cost to the member of the industry against which such complaint was filed of such product and/or such erection work and, therefore, that the making of such price constituted a violation of the provisions of the code, the code authority shall certify the facts in respect thereof to the Administrator; and (2) if such member of the industry shall also be a member of the code, the code authority shall have power to require such member to pay to the treasurer as an individual and not as treasurer of the institute, in trust, as and for liquidated damages for such violation, such sum as the code authority shall fix, but in any case not exceeding twice the difference between such price and such reasonable estimated cost as determined by the code authority, together with the costs and expenses of such investigation. If after such investigation the code authority shall determine that such member of the industry was not guilty of a violation of the code, the costs and expenses of such investigation shall be paid by the member of the industry which shall have made such complaint. The determination of the code authority upon such complaint shall be filed with the Secretary and he shall give written notice thereof to all members of the industry affected thereby. Such notice having been given, such member or members shall forthwith pay to the Treasurer as an individual as aforesaid the sum or sums, if any, required to be so paid by such member or members pursuant to such determination. Subject as hereinafter in section 6 of article XI provided, the determination of the code authority upon any complaint filed under this section 3 shall be final and conclusive upon all members of the code (art. VII).

Any violation of any provision of the code by any member thereof shall constitute a violation of the code by such member.

Except in cases for which liquidated damages are provided in the code and in cases which shall give rise to actions in tort in favor of one or more members of the code for damages suffered by it or them, the members of the code upon the recommendation of the code authority shall have power from time to time, by vote of members of the code having the right to cast at least two-thirds of the votes that might be cast at a meeting of the members of the code, if all the members of the code were present thereat, to establish the amount of liquidated damages payable by any member of the code upon the commission by such member of any act constituting an unfair practice under the code and a list of the amounts so established shall from time to time be filed with the secretary. Upon the commission by any member of the code of any act constituting an unfair practice under the code and for which liquidated damages are not provided in the

code or which does not give rise to an action in tort in favor of one or more members of the code for damages suffered by it or them, such member shall become liable to pay to the treasurer as an individual and not as treasurer of the institute, in trust, liquidated damages in the amount at the time so established by members of the code for such unfair practice and specified in the list then on file with the secretary as aforesaid.

All amounts paid to or collected by the treasurer for liquidated damages under this article X or under any provision of article IV or of article VII of the code shall be held and disposed of by him as part of the funds collected under the code and each member of the code not guilty of the unfair practice in respect of which any such amount shall have been paid or collected shall be credited with its pro rata share of such amount on account of any and all assessments (other than damages for violation of any provision of the code) due or to become due from such member under the code, or in the case of any excess, as shall be determined by the code authority, such pro rata share to be computed on the same basis as the last previous assessment made against such member on account of the expenses of administering the code as hereinbefore in section 7 of article VI provided. All rights of any person who shall at any time be the treasurer in respect of any amounts which shall be payable to him because of the commission by any member of the code of any act constituting an unfair practice under the code, whether payable under the provisions of this article X or under any other provision of the code, shall pass to and become vested in his successor in office upon the appointment of such successor.

Each member of the code by becoming such member agrees with every other member thereof that the code constitutes a valid and binding contract by and among all members of the code and that, in addition to all penalties and liabilities imposed by statute, any violation of any provision of the code by any member thereof shall constitute a breach of such contract and shall subject the member guilty of such violation to liability for liquidated damages pursuant to the provisions of the code. Each member of the code by becoming such member thereby assigns, transfers, and delivers to the treasurer as an individual and not as treasurer of the institute, in trust, all rights and causes of action whatsoever which shall thereafter accrue to such member under the code for such liquidated damages by reason of any violation of the code by any other member thereof, and thereby designates and appoints the treasurer as such individual the true and lawful attorney in fact of such member to demand, sue for, collect, and receipt for any and all amounts which shall be owing to such member in respect of any such right or cause of action, and to compromise, settle, satisfy, and discharge any such right or cause of action, all in the name of such member or in the name of the treasurer individually, as he shall elect.

Anything in the code to the contrary notwithstanding, the code authority by the affirmative vote of two-thirds of the whole code authority may waive all or any part of any liability for liquidated damages imposed by or pursuant to any provision of the code for any violation of any provision thereof, if in its discretion it shall decide that such violation was innocently made and/or that the collection of such damages will not to any material extend tend to effectuate the policy of title I of the National Industrial Recovery Act (art. X).

495. *Steel joist.*—Any violation of any provisions of the code by any member of the industry shall constitute a violation of the code by such member and shall subject such member to the full statutory penalties by the applicable statutes made and provided: provided, however, that the following additional damages shall be assessable against, and the following paragraphs of this section 10 shall apply only to such members of the industry as shall have signed and delivered to the secretary a letter substantially in accordance with the form contained in schedule B attached hereto and provided further that no member of the industry failing to sign such letter of assent shall be denied any of his full rights, privileges and benefits under this code as long as the same by the terms hereof shall continue in effect.

(a) Recognizing that the violation by any member of the industry of any provision of the code will disrupt the normal course of fair competition in the industry and cause serious damage to members of the code and that it may be difficult fairly to assess the amount of such damage to any member of the code or the public, it is hereby agreed by and among all members of the code that each member of the code who shall violate any such provision shall, unless otherwise specified by the code authority, pay to the code authority, in trust, as and for liquidated damages the sum of $10 per ton of any steel joist materials, or 20 percent of the entire sales price of any contract for sale of steel joist materials,

whichever is the larger, sold or contracted for sale by such member in violation of any such provision.

(*b*) Upon the complaint of any member of the code that any act of any member of the code constitutes an unfair practice under the code, the code authority may provide for the investigation, hearing, and decision of such complaint through such committee, impartial tribunal, or otherwise as it may from time to time determine, and except as otherwise in this article provided, the code authority or such committee or other tribunal may assess such liquidated damages or other penalty or take such other action to refer the complaint to the Administrator or such other governmental authority as it may deem necessary or desirable in order to effectuate the policy of the act or the provisions of this code.

(*c*) All amounts so paid or collected under this article shall be used by the code authority for the more effective administration and application of the code and may be applied pro rata in the reduction of the assessments of all members of the code hereinbefore provided for.

(*d*) Anything in the code to the contrary notwithstanding, the code authority by the affirmative vote of two-thirds of the whole code authority may waive any liability for or reduce the amount of any liquidated damages imposed by or pursuant to any provision of the code for any violation of any provisions thereof, if in its discretion it shall decide that such violation was innocently made or that there were extenuating circumstances and that the collection of such damages will not to any material extent tend to effectuate the policy of the act (art. V, 10).

30. *Linoleum and felt base manufacturing.*—All reports required by the code to be filed with the association shall be subject to verification by a competent and disinterested person, at such time or times, and by such person or persons as may be determined by the association, subject to the approval of the administrator; provided, that if it should appear that any reports were not filed when and as required by the code, or were inaccurate, the expense of such verifying work, subject to the approval of the administrator, shall be paid by the member of the association so in default (art. VI).

127. *Reenforcing materials fabricating.*—All amounts so paid to or collected under this article shall be used by the institute for the more effective administration and application of the code and may be applied in the reduction of the assessments pro rata, of all members of the code hereinbefore provided for.

Each member of the industry who makes application to become a member of the code shall agree with every other member that the code constitutes a valid and binding contract by and among all members of the code and that, in addition to all penalties and liabilities imposed by statute, any violation of any provision of the code by any such member thereof shall constitute a breach of such contract and shall subject the member guilty of such violation to liability for liquidated damages pursuant to the provisions of the code (art. XIV, 3–4).

AMENDMENTS

(The following is taken from release no. 8405 of Oct. 22, 1934, the actual code text not being available at this date:)

46. *Motor vehicle retailing trade.*—The National Industrial Recovery Board has approved a code amendment authorizing members of the motor vehicle retailing trade to enter into an agreement for payment of penalties for code violations.

The agreement binds only members who assent to it specifically. It is intended to afford a simplified way of dealing with code violations, and to encourage compliance through self-regulation within the trade.

The agreement provides for restitution to employees of wages lost to them through an employer's violation of the code's wage and hour regulations. Penalties for violations of the code's trade practice rules are to be paid to the treasurer of the code authority, to help meet expenses of administration and for redistribution in part to members joining the agreement.

An impartial agency to be appointed by the code authority will pass upon violations of the fair trade practice rules. The National Recovery Administration Compliance Division will pass upon violations of the wage and hour provisions.

Members assenting to the agreement would pay "liquidated damages" for violations on the following basis:

For violation of a wage provision, the difference between the wage actually paid and the wage which should have been paid, the amount to be restored to the employees concerned;

For violation of an hours provision, an amount equal to the code wages for the length of the irregular overtime, the payment to go to the employee concerned;

For violation of any other labor provision, $100.

For violations involving sales, either 25 percent of the selling price of the article sold, irregularly or 25 percent of the price at which it should have been sold, whichever is higher;

For violations involving neither labor provisions nor sales, $100.

The code authority's treasurer is to collect and disburse the penalties in accordance with the trade agreement. Penalties for trade practice violations are to defray administration expenses within the "code States" or territorial trade divisions where the violations occurred. All payments for wage and hour violation are to be returned to employees affected. Any surplus of the trade practice penalties is to be redistributed to assenting members within the "code State" where the violation occurred.

141. *Amendment 2. Investment bonkers.*—(*a*) The Investment Bankers Code committee, in the administration and enforcement of this article, may prescribe penalties not in excess of $500 for each violation, against any registered investment banker for any violation of the rules or for any neglect or refusal to comply with orders, directions, or decisions of the Investment Bankers Code committee for the enforcement of the rules, including interpretative rulings made by said committee and approved by the Administrator, or suspend the registration of such investment banker for a definite period, or cancel the registration of such investment banker, as such committee may, in its discretion, deem to be just.

(*b*) The Investment Bankers Code committee may cancel the registration of any investment banker for any cause for which registration could be refused as provided in section 2 of this article.

(*c*) The Investment Bankers Code committee may impose a fine not in excess of $600 for each violation against any registered investment banker, or may suspend the registration of any such investment banker for a definite period, or may cancel the registration of any such investment banker, if, in the opinion of said committee, such investment banker has been guilty of repeated violations of the principles contained in article III hereof. Within the meaning of this paragraph, it shall be deemed to be a repeated violation of such principles by a registered investment banker if such investment banker, having been notified by the Investment Bankers Code committee that he is violating or has violated a principle, continues thereafter to violate such principle.

(*d*) In all proceedings under this section the Investment Bankers Code committee shall grant any accused investment banker the opportunity to have a hearing, at which hearing such investment banker shall be entitled to be heard in person and by counsel, and to submit any matter which he may desire to present and a full record shall be kept of the proceedings.

(*e*) In any case where the Investment Bankers Code committee shall impose any fine against any registered investment banker or shall suspend or cancel the registration of any registered investment banker, the registered investment banker against whom such fine is imposed or whose registration shall be suspended or canceled shall have the right to appeal to the Administrator for a review of the facts upon which the action of the Investment Bankers Code committee was based in the matter of the imposition of such fine or the suspension or cancelation of such registration, and the Administrator shall have the right, in his discretion, to stay the effect of the action of the said committee until the further order or the final action on the matter by the Administrator, to review the facts as found by the Investment Bankers Code committee, and to take further evidence, if he deems necessary, and the Administrator may modify, affirm, or set aside the action of the Investment Bankers Code committee in respect of such fine, suspension, or cancelation of registration. (Art. X, 3.)

234. *Amendment 2. Macaroni.*—Each member violating any provisions of this code shall pay to the treasurer of the code authority, as an individual and not as treasurer, in trust, as for liquidated damages upon determination of violation by the Administrator, or an impartial agency or person nominated by the code authority or designated by the assenters to this agreement and approved by the Administrator, 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 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) involving a transaction incidental to or connected with a sale of any product of the industry, an amount equal to 20 percent of the actual selling price of the product sold in violation of any such provision, or of the price at which the product should have been sold under the code, if determinable, or 2 cents per pound, whichever is the highest;

(e) For the violation of any provision of the code (other than a labor provision) not involving a transaction incidental to or connected with a sale of any product of the industry, $100;

(f) For the nonpayment of assessments for maintaining the code authority and its activities an amount equal to 1 percent of the assessment for each 30 days such assessment is past due.

The amount to be assessed as liquidated damages under section 1, paragraphs (a), (b), and (d), shall be determined by the Administrator, or an impartial agency or person nominated by the code authority or designated by the assenters to this agreement and approved by the Administrator.

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.

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 damages found due hereunder.

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 (art. VII, 1–5.)

37. *Amendment 2. Builders' supplies trade.*—Recognising that the violation by a member of any provision of this code will disrupt the normal course of fair competition in the trade and cause serious damage to others, and that it will be impossible accurately to determine the amount of such damage, it is hereby provided that those members who may desire to do so may enter into an agreement among themselves embodying the following provisions:

1. Each member violating any provision of this 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 board, or any impartial agency or person nominated by the code authority or designated by the assenters to this agreement and approved by the board, 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 under the terms of the code, to the employee 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) involving a transaction incidental to or connected with a sale of any product of

the trade, an amount equal to 30 percent of the actual selling price of the product sold in violation of any such provision, or of the price at which the product should have been sold under the code, if determinable, whichever is the higher;

(c) For the violation of any provision of the code (other than a labor provision) not involving a transaction incidental to or connected with a sale of any product of the trade, $100.

2. 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 violation; 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 code administration, and the balance, if any, remaining in the hands of the treasurer shall be distributed semiannually among members of the trade who have assented hereto and who have not been determined to have been guilty of a violation of a code provision during the preceding semiannual period, on the basis of the most recent assessment made against members of the trade for the expense of code administration.

3. 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 other 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 damages found due hereunder.

4. The code authority may waive liability for payment of liquidated damages for any violation it finds to have been innocently made and resulting in no material injury.

5. The treasurer of the code authority, as an individual, and not as treasurer, by accepting office, accepts the trust established by this contract and agrees to perform the duties of trustee hereunder until his successor in office may have been appointed.

6. 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 trade from any contractual or legal obligations 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 (art. VIII).

SUPPLEMENTS

84. *Supplement 2, hand chain hoist manufacturing.*—Any or all information furnished to the president of the institute by any member of the industry shall be subject to checking for purpose of verifying by an examination of the pertinent books and accounts and records of such member by any disinterested person or persons, mutually agreed upon by the supplementary code authority and the member of the industry whose books and accounts and records are to be examined, or by a person or persons nominated by the supplementary code authority and approved by the Administrator. The cost of such examination shall be treated as an expense of administering the code: *Provided, however*, That if upon such examination any such information shall be shown to have been incorrect in any material respect, such costs shall be paid by the member of the industry which furnished such information.

The supplementary code authority may, subject to the approval of the Administrator, upon finding, by a three-fifths vote, that the respondent assenting member of the industry has violated this supplementary code, assess all costs in connection with such investigation and disposition of such complaint against said respondent assenting member of the industry. If any assenting member of the industry makes a formal complaint to the supplementary code authority which proves, after investigation by the supplementary code authority and approval by the Administrator to be without foundation in fact, then the supplementary code authority may assess against the assenting member of the industry bringing such formal complaint all costs in connection with the investigation and disposi-

tion of such complaint. All assessments to be paid into the treasury of the institute as the agency of the supplementary code authority (IV, 4 and 5 (*e*)).

84. *Supplement 3, chain manufacturing.*—Any or all information furnished to the president of the institute by any member of the industry shall be subject to checking for the purpose of verifying by an examination of the pertinent books and accounts and records of such member by any disinterested person or persons, mutually agreed upon by the supplementary code authority and the member of the industry whose books and accounts and records are to be examined, or by a person or persons nominated by the supplementary code authority and approved by the Administrator. The cost of such examination shall be treated as an expense of administering the code: *Provided, however,* That if upon such examination any such information shall be shown to have been incorrect in any material respect, such costs shall be paid by the member of the industry which furnished such information.

To further effectuate the policies of the act and for the administration of this supplementary code, the constituted authorities and methods of governing the industry shall be as follows:

The supplementary code authority shall have general power and supervision over the enforcement of the provisions of this supplementary code and it is hereby designated as the agency for administering, supervising, and promoting the observance of the provisions of this supplementary code, and shall have power to obtain from all members of the industry such reasonable and pertinent data as may be necessary for the administration of the provisions of this supplementary code. The request for reports from members of the industry shall not be made in any manner which will impose unequal obligations upon members of the industry (art. IV, 4, 5).

84. *Supplement 4, electric industrial truck manufacturing.*—Any or all information furnished to the president of the institute by any member of the industry shall be subject to checking for the purpose of verifying by an examination of the pertinent books and accounts and records of such member by any disinterested person or persons, mutually agreed upon by the supplementary code authority and the member of the industry whose books and accounts and records are to be examined, or by a person or persons nominated by the supplementary code authority and approved by the Administrator. The cost of such examination shall be treated as an expense of administering the code: *Provided, however,* That if upon such examination any such information shall be shown to have been incorrect in any material respect, such costs shall be paid by the member of the industry which furnished such information.

To further effectuate the policies of the act and for the administration of this supplementary code, the constituted authorities and methods of government of the industry shall be as follows:

(*a*) The supplementary code authority shall have general power and supervision over the enforcement of the provisions of this supplementary code and it is hereby designated as the agency for administering, supervising, and promoting the observance of the provisions of this supplementary code, and shall have power to obtain from all members of the industry such reasonable and pertinent data as may be necessary for the administration of the provisions of this supplementary code. The request for reports from members of the industry shall not be made in any manner which will impose unequal obligations upon members of the industry.

(*b*) The supplementary code authority shall have power to investigate on its own initiative or on complaint the operation of the supplementary code and any alleged violation of the supplementary code by any member of the industry; to make findings of fact and to state its conclusions as to whether or not there has been any violation of any provision of the supplementary code, and except as hereinafter provided to take such steps as it may deem necessary or advisable, within the provisions of the supplementary code, subject to rules and regulations by the Administrator.

(*c*) No member of the supplementary code authority shall participate, as a member of such supplementary code authority, in any proceedings in which he is interested as the complainant or respondent, or in which he is in any other manner directly interested, and in the event of any such disqualification, the remaining members of such supplementary code authority shall certify such disqualification, together with the reasons therefor and shall promptly designate a person to sit as a special member of such supplementary code authority for the purpose of such proceedings.

(*d*) The supplementary code authority may delegate any of its duties to such person of persons, committee or committees, as it may select: *Provided,* That it shall not delegate any of its duties to any person who is subject to disqualification,

as in paragraph (c) above provided: *And provided further*, That such delegation shall not relieve the supplementary code authority from any of its responsibilities under this supplementary code.

(e) The supplementary code authority may, subject to the approval of the Administrator, upon finding, by a three-fifths vote, that the respondent assenting member of the industry has violated this supplementary code, assess all costs in connection with such investigation and disposition of such complaint against said respondent assenting member of the industry. If any assenting member of the industry makes a formal complaint to the supplementary code authority which proves, after investigation by the supplementary code authority and approval by the Administrator, to be without foundation in fact, then the supplementary code authority may assess against the assenting member of the industry bringing such formal complaint all costs in connection with the investigation and disposition of such complaint. All assessments to be paid into the treasury of the institute as the agency of the supplementary code authority.

(f) Each member of the industry subject to the jurisdiction of this supplementary code shall pay to the institute as the agency of the supplementary code authority his or its proportionate share of the amount necessary to pay the cost of assembling, analyzing, and publication of such reports and data and of the maintenance of the supplementary code authority in connection with its activities relative to the administration of this supplementary code; said proportionate share to be based upon the volume of business and/or such other factors as the supplementary code authority may prescribe.

(g) A meeting of the members of the industry may be called and held at any time by order of the asupplementary code authority or members of the industry have the right to cast at least 51 percent of all votes which might be cast at such a meeting. At least 5 days' notice to each member of the industry shall be given.

(h) Each member of the industry who assents to and complies with the provisions of this supplementary code, and who is not delinquent in the payment of any assessments made under the provisions of this supplementary code, shall be entitled to cast one vote, either in person or by proxy, in writing, duly executed by such member of the industry, and filed with the supplementary code authority within a reasonable time prior to the time set for the meeting, at all meetings of the members of the industry (art. IV, 4 and 5).

84. *Supplement 15, porcelain enameling manufacturing.*—Any and all information furnished to the secretary of the supplementary code authority or other person or committee appointed by the supplementary code authority, by a corporate member of the industry shall be subject to investigation to the extent permitted by the act for the purpose of verification by a disinterested person or persons mutually agreed upon by the supplementary code authority and the member of the industry or by a person or persons nominated by the supplementary code authority and approved by the Administrator. The cost of such investigation shall be treated as an expense of administering the supplementary code: *Provided, however*, That if upon such investigation any such information shall be shown to have been incorrect in any material respect, such costs shall be paid by the member of the industry which furnished such information, provided the said member has assented to the supplementary code, and specifically to the provisions of this section (art. IV, 8).

84. *Supplement 18, screw machine products manufacturing.*—Any and all information furnished to the managing director by any corporate member of the industry specifically assenting hereto pursuant to the provisions of this code, shall be subject to verification by an examination of the pertinent books, accounts, and records of such member by the managing director or by any accountant or accountants or other person or persons designated by the supplementary code authority (none of whom shall be connected with any member of the industry) and shall be so checked for such purpose, if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement 20, machine screw nut manufacturing.*—Any or all information furnished to the secretary by any corporate member of the industry specifically assenting hereto pursuant to the provisions of this code shall be subject to verification by an examination of the pertinent or necessary books, accounts, and records of such member by the secretary or by any accountant or accountants or other person or persons designated by the supplementary code authority (none of whom shall be connected with any member of the industry) and shall be so checked for such purpose, if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement #1, bright wire goods manufacturing.*—Any or all information furnished to the secretary pursuant to the provisions of this supplementary code by any corporate member of the industry specifically assenting hereto pursuant to the provisions of the code shall be subject to verification by an examination of the pertinent books, accounts, and records of such member by the secretary or by any accountant or accountants or other person or persons designated by the supplementary code authority (none of whom shall be connected with any member of the industry) and shall be so checked for such purpose, if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement #2, drapery and carpet hardware manufacturing.*—Any or all information furnished to the secretary by any corporate member of the industry specifically assenting hereto pursuant to the provisions of this code shall be subject to verification by an examination of the pertinent books, accounts, and records of such member by any accountant or accountants or other person or persons designated by the supplementary code authority and shall be so checked for such purpose if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement #3, machine-screw manufacturing.*—Any or all information furnished to the secretary by any corporate member of the industry specifically assenting hereto purusant to the provisions of this code shall be subject to verification by an examination of the pertinent or necessary books, accounts, and records of such member by the secretary or by any accountant or accountants or other person or persons designated by the supplementary code authority (none of whom shall be connected with any member of the industry) and shall be so checked for such purpose if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement #4, wood-screw manufacturing.*—Any or all information furnished to the secretary by any corporate member of the industry specifically assenting hereto pursuant to the provisions of the code shall be subject to verification by an examination of the pertinent books, accounts, and records of such member by the secretary or by any accountant or accountants or other person or persons designated by the supplementary code authority (none of whom shall be connected with any member of the industry) and shall be so checked for such purpose, if the supplementary code authority shall require it. The cost of each such examination shall be treated as an expense of administering the code (art. IV, 8).

84. *Supplement #5, tubular split and outside pronged rivet manufacturing.*—Any or all information furnished to the supplementary code authority by any member of the industry shall be, pursuant to the provisions of this supplementary code, subject to verification by an examination of the pertinent or necessary books, accounts, and records of such member by an impartial agency agreed upon by the supplementary code authority and the member of the industry in question, or, failing such agreement, by an impartial agent designated by the Administrator. Such examination shall be made only to the extent permitted by the act and such rules and regulations as may be prescribed by the Administrator. The cost of each such examination shall be borne by the supplementary code authority (art. IV, 11).

The supplementary code authority shall have power to investigate on its own initiative or on complaint, the operation of the supplementary code and any alleged violation of the supplementary code by any member of the industry; to make findings of fact and to state its conclusions as to whether or not there has been any violation of any provision of the supplementary code, and except as hereinafter provided, to take such steps as it may deem necessary or advisable, within the provisions of the supplementary code, subject to rules and regulations by the Administrator.

No member of the supplementary code authority shall participate, as a member of such supplementary code authority, in any proceedings in which he is interested as the complainant or respondent, or in which he is in any other manner directly interested, and in the event of any such disqualification, the remaining members of such supplementary code authority shall certify such disqualification, together with the reasons therefor and shall promptly designate a person to sit as a special member of such supplementary code authority for the purpose of such proceedings.

The supplementary code authority may delegate any of its duties to such person or persons, committee or committees, as it may select; provided, that it shall not delegate any of its duties to any person who is subject to disqualification,

as in paragraph (c) above provided; and provided further, that such delegation shall not relieve the supplementary code authority from any of its responsibilities under this supplementary code.

The supplementary code authority may, subject to the approval of the Administrator, upon finding, by a three-fifths vote, that the respondent assenting member of the industry has violated this supplementary code, assess all costs in connection with such investigation and disposition of such complaint against said respondent assenting member of the industry. If any assenting member of the industry makes a formal complaint to the supplementary code authority which proves, after investigation by the supplementary code authority and approval by the Administrator, to be without foundation in fact, then the supplementary code authority may assess against the assenting member of the industry bringing such formal complaint, all costs in connection with the investigation and disposition of such complaint. All assessments to be paid into the treasury of the Institute as the agency of the supplementary code authority.

Each member of the industry subject to the jurisdiction of this supplementary code shall pay to the Institute as the agency of the supplementary code authority his or its proportionate share of the amount necessary to pay the cost of assembling, analyzing, and publication of such reports and data and of the maintenance of the supplementary code authority in connection with its activities relative to the administration of this supplementary code; said proportionate share to be based upon volume of business and/or such other factors as the supplementary code authority may prescribe.

A meeting of the members of the industry may be called and held at any time by order of the supplementary code authority or members of the industry having the right to cast at least 51 percent of all votes which might be cast at such a meeting. At least 5 days' notice to each member of the industry shall be given.

Each member of the industry who assents to and complies with the provisions of this supplementary code, and who is not delinquent in the payment of any assessments made under the provisions of this supplementary code, shall be entitled to cast one vote, either in person or by proxy, in writing, duly executed by such member of the industry, and filed with the supplementary code authority within a reasonable time prior to the time set for the meeting, at all meetings of the members of the industry (art. IV, 4 and 5).

INDIANAPOLIS, IND., *April 16, 1935.*

Senator WILLIAM H. KING,
Senate Office Building:

Special delivery letter will reach you tomorrow morning containing information regarding continuance of code rule over retailers. Because of certain evidence favoring such continuance which we understand will be offered at the Wednesday hearing we trust you will see fit to use information being sent at same session.

NATIONAL RETAIL HARDWARE ASSOCIATION.
RIVERS PETERSON.

THE NATIONAL RETAIL HARDWARE ASSOCIATION,
Indianapolis, Ind., April 16, 1935.

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: On April 12, 1935, the National Retail Code Authority, Inc., by a vote of 7½ to 1, passed and transmitted officially to your committee a resolution which stated:

"*Be it resolved*, That the National Retail Code Authority, Inc., the body recognized as truly representative of the retail trade 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 constitutent trade associations."

The National Retail Hardware Association has the largest membership of any national association represented on this code authority. Its representative voted against passage of this resolution because its members are almost unanimously

opposed to continuation under code rule, supplemented by the following reasons which we ask to have entered in the records of the hearings on National Recovery Act by the Finance Committee.

1. The resolution quoted implies that an overwhelming majority of members of the retail trade subject to this code favor its continuance for a further period of 2 years.

There are no factual data to support such a conclusion. It is estimated that approximately 300,000 retail establishments are subject to the retail code. A large majority of the firms or corporations operating these establishments are not members of the eight associations whose representatives on the code authority voted in favor of this resolution.

These nonmember retailers had no part in choosing these code authority members and have not delegated to them the right to speak for them in legislative or other matters.

The fact is that few, if any, of the eight associations whose representatives favored the resolution have even consulted all their own constituent members as to continuance of the Retail Code.

2. Such evidence as does exist as to the attitude of the retail trade at large toward the Retail Code gives reasonable grounds for concluding that the majority does not favor continuance of the Retail Code.

This is evidenced by the failure of retailers in many communities to organize local Retail Code authorities for the administration of the Retail Code, and to the inactivity of the majority which have organized, as shown in exhibit 4 submitted in connection with the testimony of Mr. Rivers Peterson before your committee on April 12, 1935.

3. The position of the National Retail Code Authority, Inc., has heretofore been that its function consisted solely of administering the Retail Code and that it was not privileged to act as a legislative body for the retail trade.

In adherence to this policy the National Retail Code Authority, Inc., in connection with a questionnaire mailed to all local Retail Code authorities in the fall of 1934, specifically ruled that these questionnaires should not question the members of these local Retail Code authorities as to their attitude toward continuance of the Retail Code beyond its present expiry date.

Yet, having given neither local code authorities nor all constituent members of trade associations the opportunity to express their opinions, the National Retail Code Authority, Inc., by the resolution mentioned, assumes the autocratic right to speak for these merchants.

It is the opinion of the National Retail Hardware Association that the resolution exceeds the powers of the National Retail Code Authority, Inc., is an unwarranted invasion of the rights of nonmember retailers, and that it should have no weight of evidence before your committee.

Respectfully submitted.

HERBERT P. SHEETS, *Managing Director.*

THE NATIONAL RETAIL HARDWARE ASSOCIATION,
Indianapolis, Ind., January 29, 1935.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Attached for your consideration is an article which will appear in the forthcoming issue of Hardware Retailer, the official publication of the National Retail Hardware Association. It is being mailed to the hardware trade this week.

The situation which this article points out is not overdrawn in the least. Hundreds of thousands of owners of small business establishments face the problem of overlapping codes, and multiple jurisdiction, which the article points out.

This problem will become progressively acute as stricter compliance with code provisions is insisted upon by the National Recovery Administration, and particularly so where State enabling acts are passed.

The article is written by a man who has spent a large part of the past 18 months in Washington and knows the situation accurately.

The material is addressed to you in the hope that you may find it interesting and useful in your consideration of future recovery legislation.

Yours very truly,

NATIONAL RETAIL HARDWARE ASSOCIATION,
HERBERT P. SHEETS, *Managing Director.*

UNITED STATES GOVERNMENT PRINTING OFFICE,
Washington, D. C., April 17, 1935.

Hon. WILLIAM H. KING,
United States Senate, Washington, D. C.

MY DEAR SENATOR: In accordance with the request in your letter of even date for a statement showing the prices of the principal paper stocks used by the Government Printing Office before the code requirements went into effect, the present prices, and the percentage of increase, the following is quoted:

	Price per pound		Percentage of increase
	Prior to code	Present	
Machine finish	$0.02728	$0.0493	81
50-percent-rag machine finish	.0522	.1009	93
Sulphite bond	.03837	.0606	58
25-percent-rag bond	.0538	.09894	84
50-percent-rag bond	.0613	.11951	95
100-percent-rag ledger	.1282	.2764	116
Postal card	.0269	.0425	58
Money order	.0621	.0855	38

I trust this gives you the information you desire.

Respectfully,

A. E. GIEGENGACK,
Public Printer.

A. M. CASTLE & CO.,
Chicago, April 15, 1935.

Hon. WILLIAM H. KING,
Senate Office Building,
Washington, D. C.

DEAR SIR: If it is true, as is so often stated on the floor of Congress, in the public press, and elsewhere, that prosperity depends upon the revival of the heavy industries, why continue to retard that development by extending the life of the National Recovery Act.

Operations of the Steel Code have resulted in placing the entire industry in the absolute control, for the time being, of the two or three larger steel companies whose plants are east of Cleveland, and under the price-fixing system and basing plan, have created such a monopoly as to place distributors and users of steel throughout the contry absolutely at their mercy.

If the administration desires to increase improvement, increase building operations, increase activity in the heavy industries, throw open the steel industry to active competition, do away with the Steel Code and price fixing and a great step forward will have been taken.

Why continue code-fixed prices practically as high as those of 1929, and in some cases higher, in order to enable the steel corporations now mislocated because of the movement of population westward, to earn a return on their now greatly oversized investments at the expense of the rest of the country?

Every user of steel in the Mississippi Valley and westward is paying undue tribute to the monopoly imposed upon him through the Steel Code.

Very truly yours,

W. B. SIMPSON,
Chairman Board of Directors.

UNION IRON WORKS,
Decatur, Ill., April 5, 1935.

Senator WILLIAM H. KING,
Senate Finance Committee, Washington, D. C.

DEAR SIR: In looking over bill S. 2445, extending the principle of the National Industrial Recovery Act for a term of 2 years, as introduced in the United States Senate by Senator Harrison, on March 29, 1935, it would appear that this bill would give the President and his agents considerably more power and authority over industry than the present bill gives. In fact, this bill would give the Presi-

dent dictatorial powers over industry until industry could get relief through court action. To me, this is more power than any good man should ask, and more than any other kind should have, and more than the United States Senate should delegate to anyone.

In referring above to court action, I would remind you of the recent request made by the Government to the Supreme Court of the United States in regard to withdrawing the now famous *Belcher Lumber case* from its consideration. Had this case been permitted to continue through the court, Congress, industry, and all the people of the land would have had a so-called "yardstick" by which to measure our future relations. To me, the above action was dishonest.

The company with which I am connected was incorporated in 1882; a small company, fairly successful, as success has been measured in the past. What chance have we, a small corporation, to protect our rights, if we should inadvertently do something which would displease the President or one of his appointed agents?

One of the main ideas of the National Industrial Recovery Act was reemployment. One sees many statistics from various Government departments stating how many men have been reemployed; however, after almost 22 months of the National Industrial Recovery Act, look at our relief rolls, larger than ever, costing more money per month than ever. I will answer for you, from a humanitarian standpoint, we must take care of the unemployed. From a humanitarian standpoint, what about almost doubling the public debt from March 1933 to January 1937, and making a present of it to posterity, with no more constructive results discernible than at present?

Let us look for a minute at a business which is a little more advanced in the obvious results of our management by the theories of the National Industrial Recovery Act and the Agricultural Adjustment Administration than other businesses, but is merely a trail blazer which other industries inevitably must follow. I refer to the textile industries and the cotton farmer.

Through the National Industrial Recovery Act and the Agricultural Adjustment Administration the price of cotton was raised, the rate of pay of the textile worker was raised; everything looked glorious.

Results: How many textile mills are closed today? What is the percentage of activity in that industry? How many share croppers and Negroes in the South are on relief?

In 1933 Japan imported into this country 1,700,000 square yards of cotton cloth. In January, February, and the first day of March 1935, they imported into this country 24,000,000 square yards of cotton cloth. Last year 150,000 bales of cotton were imported into this country while our Government owned some 5,000,000 bales, purchased to keep it off the market to bolster up the price. What is the price of cotton today? It is not 12 cents per pound.

Did our exports of cotton last year decrease 60 percent? Did our home consumption decrease 14 percent? How much did Brazil, Egypt, India, and other cotton-producing countries increase their production of cotton when we were subsidizing our cotton farmers to raise less? Are we to abandon our foreign markets for cotton? If so, what are the poor people of the south to do in order to accomplish "the more abundant life"?

What was the result of pegging the price of wheat over the world price in the Hoover administration? What was England's experience in fixing the price on rubber, Brazil on coffee?

When labor, the farmer, and the common people awaken to the results of the National Industrial Recovery Act, the Agricultural Adjustment Administration, etc., the wrath of a scorned woman will be mild as compared to their fury. I want to remind you they are commencing to see the light more and more every day.

Why is it not possible for business to get a break, a little encouragement? We are not all "big bad wolves." Is it necessary for the sheep to suffer with the goats? A little confidence in business, the farmer, the laborer, and in that great multitude known as "the common people" who have in the past made it possible for the wheels of industry to go around but who are today in a rather sorrowful position, would be of great benefit.

In your work in that great deliberate body, the United States Senate, daily considering these vast sums of money, may I humbly remind you of one great truth, "Prosperity is not bought with dollars; it is bought with work."

Yours respectfully,

ROY M. HAMILTON.

J. B. AND R. E. WALKER, INC.,
Salt Lake City, Utah, March 22, 1935.

Senator WILLIAM H. KING,
Washington, D. C.

DEAR SIR: During the past 30 days' time we have noted with considerable interest the stand which you have taken in connection with the continuation of the National Recovery Administration, and while it is not our habit to write concerning various controversial Government actions, we feel that it is our duty, in behalf of the people which we are employing, to compliment you upon this position which you have taken and urge that you continue your present position, namely, that of being absolutely opposed to the continuation of the agency in any form after June 1935, the date of its expiration.

In order to give you a picture of our own activities, we will state that since 1917 we have operated, with headquarters at Salt Lake City, a truck and grading business, closely associated with the construction of highway projects, both State and city, and during that period of time pay rolls each year to laborers in an occupation which, due to climatic conditions in this section of the country, is seasonal, have run from a minimum of around $10,000 to $60,000, this money being spent in an average of approximately 9 months' time.

For a year prior to the National Recovery Act the major portion of the work which we performed called for the staggering, as well as the limitation, of the hours of employment of the men working for us, so that principle involved in the National Recovery Act, when inaugurated, was not new to the construction industry as far as public works were concerned. With the inauguration of the National Recovery Act, the working time of the laborer was cut from an average of approximately 45 hours per week to 30, which, as far as spreading the work was concerned, accomplished its purpose. On the other hand, as far as the individual welfare of the men working on these jobs was concerned, it removed the only opportunity which they had of securing sufficient work to provide themselves and their families with the necessities of life in sufficient quantities to tide them over periods of unemployment. Our experience with these men has been that as quickly as they were finished with one job that within 6 days' time they were without funds to provide for the needs of their families; and due to the various relief agency rules and regulations, there was no chance for them to secure relief without a long waiting period; and then, after they had secured it, if they availed themselves of any employment, they again lost it for a period of approximately 90 days' time.

The result of this whole set-up, as far as the laboring man is concerned, has done one of two things—either he has concluded to take his chances in maintaining his family standard by what employment he can secure, which has proven very disastrous to himself and family, or he has refused employment because his relief allowances would be discontinued as quickly as he accepted employment and would be denied to him for a further period of time after he was finished with the particular job he went on.

As compared with this very unsatisfactory condition which has existed, to our personal knowledge, as far as the men we have employed are concerned working under the rules and regulations of the National Recovery Act, prior to its inception, when permitted to work without restrictions, were able to make sufficient funds in the period of time that they were employed to take care of themselves and families during that period of time when climatic conditions were adverse to any work being performed which they were qualified to do.

Our personal experience during that period of time was that 90 percent of our entire list of employees were able to purchase some form of a cheap car for the use of themselves and families, and the majority of them had purchased and were buying homes, which payments they were able to take care of without any great difficulty, the set-up leaving them satisfied and contented and fostering a desire to make an honest living wherever an opportunity presented itself.

Due to the restrictions referred to herein during the past 3 years, these fellows have all lost their homes, their cars, and in order to maintain their families many of them have had to resort to issuing fictitious checks and stealing foodstuffs and fuel, which has had a tendency to generally lower their effectiveness to themselves and their families, as well as debasing the quality of citizenship represented by this group.

In the early part of the month of November we had upon our pay rolls 21 men, all of them truck drivers, drawing a wage of 65 cents per hour, engaged upon one State highway job adjacent to Salt Lake City, in Davis County. For the week of November 5–10 the highest accrual of wages due to anyone amounted to $19.50,

which group was decreased to 9 men on November 26, which was the last pay roll that they received, and from that time on none of these men have been able to secure any work on any construction projects here in this State, or through the Federal Emergency Relief Administration activities. With such a condition existing it needs very little imagination to realize the physical and mental condition of these people, as well as the deplorable condition which their families would be in, which condition is due to the fact that during the year 1934 they had not had an opportunity to avail themselves of sufficient work, which has existed for them to permit them to accumulate sufficient reserves in the form of food, clothing, and money to tide them over until a new job started where they could be employed.

At the same time, while the National Recovery Administration has done this for them, through the combinations of large corporations, it has increased the price of every article which they must buy in order to maintain themselves and their families, and the situation created as a result of this agency's existence is such that their condition is becoming very intolerable.

When the idea of the National Recovery Administration was advanced to the American public the prime reason for subscribing to its theory was the fact that it was going to help the common man, the small business man, more or less at the expense of the large, well-organized groups of individuals and corporations which were able to take care of themselves, but in its operation over approximately 2 years' time the condition has become steadily worse for the very people that we were assured this agency was being created to take care of. Personally we have no objection to attempting to continue with this experiment, although it has very seriously reduced our income, its operation as applied to our own business having made it impossible to make any profit for the past 2 years, but aside from this factor the injury to us has not been as noticeable as it has been to the laborers whom we have employed.

This letter to you is not directed with any thought of complaint on our part only as it affects people that have looked to us for a living for the past 10 years, and their condition at this time is very serious as a result of the operation of the National Recovery Administration. We are somewhat hesitant about burdening you with these details at such length, but we feel that if employment conditions in the United States are such that all of the people cannot be employed, which seems to be the case at the present time, the restrictions placed upon business by this agency should be removed in order that those who still desire to work for a living might do so, thus retaining their self-respect; and at the same time this group expressing that desire, through their efforts, will make a profit for the person employing them, where under the present combination by distributing this work among others the laborer receives no benefit, as the wage return is so small he cannot even buy over the year's time from his earnings the barest necessities of life, and as soon as he finds himself out of employment is forced into a waiting period before he can secure relief; and then, when upon relief, which is objectionable and unsatisfactory to a person of his mental viewpoint and desires, his morale is shattered and he is no good to the economic system of the community in which he lives, and while this debasement of the individual is being accomplished he is an economic burden to the State and Nation for his maintenance.

The majority of this group of men which we have employed are rapidly becoming very dissatisfied with the aspects for this whole set-up, and unless these restriction of the National Recovery Administration are lifted as far as they are concerned their expressions in the ballot box in the next election will be the determining factor on the future political set-up of this country. This, of course, is merely a résumé of those that we are acquainted with; but if this is their mental reaction to the present set-up, you can rest assured that there are thousands of others in the same frame of mind at the present time.

Very truly yours,

J. B. WALKER.

REFRIGERATING MACHINERY ASSOCIATION,
Washington, D. C., April 18, 1935.

Senator WILLIAM H. KING,
Senate Office Building, Washington, D. C.

DEAR SENATOR KING: Further to the evidence of the monopoly being enjoyed by the ice industry as a result of the control of production clause, article XI, of that code, with which you are familiar:

You will be interested in the attached copy of a telegram which was sent out by representatives of the Ice Industry Code Authority to members of that industry. It is apparent that these people are sparing no effort to have this monopoly continued, with substantial detriment to the consumers of ice, to those who wish to enter the industry, and to the business of the machinery manufacturers.

Sincerely,

WILLIAM B. HENDERSON,
Executive Vice President.

April 15, 1935.

Your immediate response to this telegram is vital to continuation of Ice Code. Pending congressional action acutely threatens serious curtailment or abandonment of code. Wire your Congressman and both Senators also Senator Pat Harrison, Chairman Senate Finance Committee at the Capitol, Washington, D. C., also National Industrial Recovery Board, Commerce Building, Washington. Demand continuation code and no legislation curtailing control production or any other provision be enacted. Also assist your dealers to do same most important. Wires must be in Washington tomorrow.

O. A. REARDON, *Secretary.*

SALANT & SALANT, INC.,
Brooklyn, N. Y., April 13, 1935.

Hon. WM. L. KING,
United States Senate, Washington, D. C.

DEAR SIR: In view of the deep interest taken by you in the National Industrial Recovery Act and its operations, we take the liberty of calling your attention to the wanton waste and reckless extravagance that have characterized the administrations of code authorities. The renewal of the Recovery Act and the effects of its operation are debatable matters but it surely admits of no controversy that members of the industry should not be made the victims of extortion on the part of these anomalous bodies. The current impression in business circles is that at least as far as a good many of the authorities with headquarters in New York are concerned, they are, as one witness before the Finance Committee bluntly stated yesterday, nothing but "rackets."

In this connection permit us to call your attention to some features of the financial administration of the authority to which we are subject, the Cotton Garment Code Authority. Between November 27, 1933 when the Cotton Garment Code went into effect, and January 1, 1935, the authority collected close to a million dollars. Incredible as it may seem, throughout all that period it never had a bank account of its own. Its sources of revenue were for the first several months a percentage of the pay rolls of members of the industry. Thereafter it sold labels which all members of the industry were obliged to purchase at prices fixed by the authority. These two combined netted the revenue above named. There has never been any reason given for the failure of the authority to establish a bank account of its own. Its minutes have never been accessible to those over whom it exercises jurisdiction.

The checks from the members of the industry were turned over on receipt to a private association known as the International Association of Garment Manufacturers. For some unexplained reason this association was made the fiscal agent of the authority. We have asked the authority for a list of the amounts and dates of payments made by it to this association together with the purpose of such payments, but this information has never been given to us. Various pretexts have been availed of to evade answering our request.

There is a current belief in the trade that members of the influential clique that controls the authority had, previous to the adoption of the code, made loans to the International Association above named in connection with work in the formulation of the code; that this association had no funds with which to repay these loans and that some of the funds turned over to it by the authority were used for this purpose. It was no doubt realized by the authority that the Recovery Administration would now allow payment of the above loans. This unauthorized use of the industry funds and the method of syphoning out the moneys of the authority to the association and in turn resyphoning part of them was adopted in order to do indirectly what there was no shadow of legality for doing directly.

The authority, on its formation, engaged an executive director, Maj. R. B. Paddock, under a contract to last till June 16, 1935, at an annual salary of $25,000 a year. At the time the major was a divisional administrator under General Johnson getting $7,016 a year. The rank and file of the members in the industry were not aware until long after the appointment of the outrageously excessive salary.

The authority also engaged at a salary of $10,000 a year, a public-relations manager and his wife whose combined experience in that field was practically nil but who had the backing of an influential local politician.

The authority's headquarters at 40 Worth Street in New York reek with nepotism and favoritism. The dominant members of the clique controlling the authority have relieved themselves of pensioning superannuated employees by unloading them on the authority at the expense of the industry. The authority has been made a haven for the unemployed brothers-in-law, nephews, and nieces of the members of the clique. John Stuart Mill once characterized the old English civil service as a huge system of outdoor relief for the younger sons of the aristocracy. The authority pay roll is a form of relief for the unemployed kinsmen of favored members. No statement of receipts and expenditures has ever been made by the authority.

This scandalous mismanagement became so gross that the Recovery Administration intervened some months ago and effected some reforms but these have no more than scratched the surface and a tentative budget submitted by the authority bears every evidence of the same spirit of waste and extravagance as prevailed heretofore.

May we suggest that the Senate Finance Committee make a thorough investigation of the financial management of the authorities and of their personnel and that any bill that the Senate committee may report carry safeguards against the recurrence of such crying abuses as pointed out above.

Yours truly,

M. H. GOLD.

SUGGESTIONS REGARDING THE REVISION OF S. 2445 AND COMPLETE REDRAFT OF SAME SUBMITTED BY DR. THOMAS C. BLAISDELL, JR., DIRECTOR, CONSUMERS DIVISION, NATIONAL EMERGENCY COUNCIL

THE NATIONAL EMERGENCY COUNCIL,
Washington, April 22, 1935.

Hon. PAT HARRISON,
Washington, D. C.

MY DEAR SENATOR HARRISON: In accordance with the request of the subcommittee of the Senate Finance Committee considering S. 2445, I am submitting herewith my suggestions regarding revision of the bill. I am enclosing (1) a summary containing the major changes in phraseology and general suggestions, and (2) a complete redraft of the bill, indicating the changes in phraseology which seem to me necessary in order to include in the bill these suggested changes.

I am neither a lawyer nor a legislative draftsman; hence, I would not defend all of the suggested changes in phraseology against more competent workmen. They do, however, indicate in general the way by which the opinions which I expressed before the committee might be included in the bill.

Respectfully yours,

THOMAS C. BLAISDELL, Jr.

SUGGESTIONS REGARDING THE REVISION OF S. 2445 SUBMITTED BY THOMAS C. BLAISDELL, Jr.

I. POLICY STATEMENT

1. A more detailed statement of policy, as follows: Title I, section 1 (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, to prevent the recurrence of such emergencies, to promote the general welfare by increasing employment, by raising the standards of living of the American people, and by promoting the organization of industry for the continuous performance of its function of supplying the largest practicable amount of goods and services for consumers through the employment of labor

under healthy and fair working conditions and the efficient use of capital, and to effectuate said policy and purpose (i) by providing for the operation of competition in a free and open market and (ii) 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."

2. Modification of the "limitations and standards" section to distinguish between methods of organization for achieving the policy of the act and the types of action which may be taken. Items 1, 2, and 3 in section 1 (c) are methods for accomplishing the ends stated in items 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14; and a code should only be approved which satisfies all the conditions of numbers 4 to 14, inclusive. (Item 13 would apply only in the case of natural-resource industries.)

II. ORGANIZATION

1. The inclusion in the bill of a requirement for the establishment of three advisory boards, for industrial management, one for labor, and one for consumers, as well as a research and planning agency.

2. The requirement that Government agencies responsible for carrying out the policy of the act shall report to the President and Congress at stated intervals.

3. A more detailed statement of the character of code authorities and their powers, including the stipulation that whenever a code permits price, production, or distribution controls, such controls shall be administered exclusively by a Government agency.

4. An expansion of the realm within which codes may be imposed to include the power to impose a code to control or eliminate monopolistic trade practices, unduly high prices, restriction of output, discrimination between customers, or the waste of any natural resource.

5. A requirement that the agency entrusted with the administration of the act shall report any instances of violations of the antitrust laws to the Department of Justice or the Federal Trade Commission in case their efforts to correct the situation have been inadequate.

III. INVESTIGATORY POWERS

1. A grant of power to the President to allocate funds for investigations by the Federal Trade Commission.

2. A grant of power to the President to investigate and hold public hearings with regard to conditions of employment.

IV. DEFINITIONS

1. A definition of unfair competition, as follows:

"The term 'unfair competition' includes those business practices which (a) damage the interests of workers by imposing unduly low wages, long hours, or such labor policies and labor practices as result in intolerable working conditions, and/or (b) harm the consumer by the misrepresentation of commodities and services or by the impairment of quality to a point such as to threaten health or safety, and/or (c) damage the legitimate interests of business competitors, and/or (d) threaten the general welfare by provoking the wasteful exploitation of natural resources: *Provided*, That business practices which involve only the offering of higher quality, superior service, lower prices, and/or more favorable terms of sale shall not be construed to be damaging to the legitimate interests of business competitors and shall not be deemed to be 'unfair competition' within the meaning of this Act."

2. A definition of monopolistic practices, as follows:

"A monopolistic practice shall be any business practice, including the use of patents or copyrights, which has the effect of creating, perpetuating, or increasing the domination by a person or group of persons over production, distribution, prices, or trade practices, in any trade, industry, or subdivision thereof: *Provided, however*, That such business practices as are clearly shown to result in a substantially more efficient supplying of goods and services to consumers at substantially lower prices shall not be regarded as monopolistic practices."

V. TARIFF

Since the President already has power under the provisions of the flexible tariff act to use the tariff as a control instrument, I have suggested deleting the tariff section of this act.

APRIL 20, 1935.

COMPLETE REDRAFT OF S. 2445

By Dr. Thomas C. Blaisdell, Jr.

(*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, to prevent the recurrence of such emergencies, ~~and to promote the orderly and healthy development of trade and industry, by means of such regulations and provisions as are hereinafter authorized;~~ *to promote the general welfare by increasing employment, by raising the standards of living of the American people, and by promoting the organization of industry for the continuous performance of its function of supplying the largest practicable amount of goods and services for consumers through the employment of labor under healthy and fair working conditions and the efficient use of capital, and to effectuate said policy and purpose (i) by providing for the operation of competition in a free and open market and (ii) 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—~~ *to accomplish any one or more of the following:*

"(1) *To* establishes rules of fair competition.

"(2) ~~Promotes or maintains~~ *To permit or facilitate the* cooperative organization and action of (*a*) trade *groups,* ~~and~~ (*b*) industrial groups, (*c*) *labor organizations, and* (*d*) *consumer organizations.*

"(3) *To* induces or maintains cooperative relations between, or cooperative activities of, labor and management, *but only if the President shall find that such action will accomplish all of the following:*

"~~(4)~~ (*1*) Promotes or maintains fair competition.

"~~(5)~~ (*2*) 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, *and trade practices which have the intent or effect of collusive action by members of an industry against the public interest.*

(*3*) *Increase public knowledge of the prices and qualities of goods.*

"~~(6)~~ (*4*) Promotes the fullest effective utilization of the productive and distributive capacities of trade and industry.

"~~(7)~~ (*5*) Prevents or eliminates restrictions upon production, except those hereinafter expressly sanctioned.

"~~(8)~~ (*5*) Promotes ~~or maintains~~ *the* increased *or maintenance of* purchasing power and ~~increased~~ *of* consumption of industrial and agricultural products.

"~~(9)~~ (*7*) Reduces or relieves unemployment or regularizes ~~employment.~~ *the real income of employees.*

"~~(10)~~ (*8*) Establishes proper minimum wages and maximum hours of labor.

"~~(11)~~ (*9*) Improves the standards and conditions of labor.

"~~(12)~~ (*10*) Promotes the rehabilitation *or increase* of ~~industry.~~ *industrial activity.*

"~~(14)~~ (*11*) Removes unreasonable burdens upon, or protects the reasonable flow of, interstate or foreign commerce.

"~~(12) Conserves natural resources, and prevents production or competition wasteful of such resources and injurious to commerce therein.~~

(12) Where natural resources are involved, promote their conservation and their efficient utilization through the regulation of wasteful productive or distributive practices.

However, such limitations as are provided in this section shall not apply to such codes voluntarily submitted as contain only such limited provisions as stated in Section 6 (d) (A), (B), (C), and (D).

"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, ~~including an industrial planning and research agency,~~ to accept and utilize such voluntary and uncompensated services, to appoint, *in his discretion pursuant to, or,* 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, *in his discretion pursuant to, or,* 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.'

For the more efficient operation of such agencies there shall be established a research and planning agency, an agency for revealing the interests of labor, and an agency for revealing the interests of consumers, and an agency for revealing the interests of industrial management. It shall be the duty of each of these agencies:

(1) To supply the President, or such agency as he may designate, information helpful in taking action pursuant to this Act.

(2) To analyze the operation of the various codes and industries, and their relations to each other.

(3) To make recommendations concerning the use of the powers conferred under this Act.

(4) To recommend measures which will promote the maintenance and betterment of the American standard of living.

"(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 to act under his general supervision and control.

(c) Each governmental agency established or utilized pursuant to this Act shall submit to the President every six months, for transmission to Congress, a report in writing upon its activities and upon the degree to which title I of this Act is accomplishing the purposes thereof.

"*(d)* For the purpose of more efficient administration of codes of fair competition and agreements under this title, the President is authorized to provide under such codes or agreements for the establishment of ~~code authorities, committees, or other organizations,~~ *agencies to advise concerning and to assist in the administration of such codes and agreements,* including provision for their duties, responsibilities, tenure, removal, compensation, and records; ~~In the establishment of any such authority, committee, or other organization which is composed in whole~~ *Provided, however, that each such agency shall meet the following requirements:*

(1) No final discretionary powers shall be delegated to any such agency which is composed in whole or in part of persons in the trade or industry subdivision thereof affected.

(2) The administrative functions of such agency shall be directed by an officer of the United States or by paid employees responsible to him.

(3) If such agency contains individuals who are not officers of the United States, it shall contain representatives of (i) the management of the trade or industry, (ii) labor, and (iii) consumers, and adequate provision shall be made for the selection and financing of such representatives.

(4) Provision shall be made that representatives of the trade or industry or subdivision thereof affected shall be truly representative of the trade or industry or subdivision thereof, having due regard to sectional interests, membership or nonmembership in trade associations, volume of production and sales, and other pertinent factors.

(5) Provision shall be made that representatives of labor shall be truly representative of workers in the industry, having due regard to type of work performed, membership

or nonmembership in workers' organizations, sectional interests, and other pertinent factors, or alternatively, that labor representatives shall be selected by the President or such governmental agency as he may designate.

(6) Provision shall be made that representatives of the consumer shall be selected by the President or such governmental agency as he may designate, with due regard to representation of ultimate consumers, public purchasers, and industrial consumers.

(e) "This title shall cease to be in effect, and any agencies heretofore or hereafter established hereunder shall cease to exist, on June 16, 1937.

"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~~ *complies* with the provisions of this title, including *without limiting the generality of the foregoing* the requirements set forth in *section 1 (a) and* section 7 (a) *and (b)* thereof; and

"(4) That such code ~~or codes conform~~ *conforms* to and ~~are reasonably designed~~ *will* effectuate the policy of Congress in accordance with ~~such of the standards set forth in section 1 (a) as are specified in his findings; and~~ *section 1 (b); and*

"(5) That such code ~~or codes are not calculated to~~ *contains no provisions which may be utilized by any industry 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 minimum levels for prices, or for* or controlling production or distribution which are restrictive of fair competition; ~~but devices for controlling prices, production, or distribution may be applied (A) where found necessary and proper by the President to protect small enterprises against discrimination or oppression or to deter the growth of monopolies, or (B) where found necessary to provide corrections for emergencies caused by large volumes of production in excess of effective demand, or by destructive price cutting, or (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; and~~

Provisions for controlling price, production and distribution may be inserted in a code if and only if (a) such code relates to a trade or industry the prices, services and methods of operation of which are then regulated, pursuant to an Act of Congress, by an agency of the United States, composed exclusively of officers of the United States or; (b) such code contains provisions by which such prices, services and methods of operation are subjected to regulation (including, with limitation, the power to examine the books and records of all persons engaged in such trade or industry), which effectuates the declared policy of this title, by a governmental agency of the United States, composed exclusively of officers of the United States and the President is hereby given the power to provide in such a code for such regulation by such agency.

"(6) That public notice, and an opportunity to be heard ~~either through oral or written presentation~~, *at a public hearing* 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 sub-

division thereof are necessary and proper for the protection or regulation of interstate or foreign commerce.

"(c) The President ~~may,~~ *shall* as a condition of his approval of any ~~such~~ code, impose such conditions (including requirements for the making of reports, and the keeping of books and records and the examination thereof) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to, exemptions from, and amendments of, the provisions of any such code, as the President upon a finding of fact deems necessary to effectuate the policy of Congress in accordance with the standards of this title: *Provided*, That any applicant or applicants for the approval of a code may, within twenty days after public announcement of an amendment to such code, or of a condition imposed on the approval of the code or any continuation of such approval, file with the President a withdrawal of their application for the code, and if the President finds that the code is no longer sponsored by those truly representative of the trade or industry or subdivision thereof, he shall cancel his approval of the code, but may prescribe and approve a limited code of fair competition applicable to such trade or industry or subdivision thereof in conformity with the provisions of subsection (d) of 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 wages of employees in any trade or industry or subdivision thereof found eligible for a code within the limitations of subsection (b) are productive of unfair competition, ~~and~~ *or* (2) that the requirements of fair competition hereinafter 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 *will effectuate the policy of Congress as stated in section 1 (b) and which he finds* to be consistent with the requirements of paragraphs (3) to (6), inclusive, of subsection (a), and which shall contain only the following requirements: (A) Requirements ~~of~~ *regarding* minimum wages and maximum hours of *labor, labor policies, labor practices, and other conditions of employment;* (B) the requirements of section 7 (a) *and* (*b*); (C) prohibition of child labor, and of ~~any unfair~~ business practices which ~~is generally~~ *are* recognized *under the law* as being dishonest, *or* fraudulent, ~~or otherwise unfair~~; (*D*) ~~and (E)~~ a provision requiring such information to be furnished, and such books and records to be kept and such examinations thereof to be made, as are necessary to effectuate the policy of Congress ~~in accordance with the standards of~~ *as stated in* this title; *and which may contain* (*E*) ~~(D)~~ such provisions as he finds necessary to prevent unfair or oppressive conditions of employment, ~~or~~ *monopolistic trade practices, unduly high prices, restriction of output, discrimination between customers, or* the waste of any natural resources. The maximum hours provided for in any such limited code shall not be less than hours nor more than hours per week; except that when it is found necessary, overtime work in excess of the prescribed maximum, to be paid for at the rate of time and one-half, may be provided for in such code. The President is authorized, after notice and opportunity to be heard, as provided in subsection (a) (6) of this section, to provide such exceptions to, exemptions from, and amendments of, any such code as, upon a finding of fact, he deems necessary to effectuate the policy of Congress ~~in accordance with the standards of~~ *as stated in* this title.

"(e) The minimum wages 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. The minimum wages so provided for may be differentiated according to experience or skill of employees, locality of employment, or other applicable considerations, but shall not be so graded or classified as to tend to set maximum wages.

(f) Any code prescribed or approved under this section may require ~~persons~~ *members of the industry* 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 authority, 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~~ *and* 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 which he finds employs less than employees, that such trade or industry or subdivision either (1) be covered by the code of an appropriate trade or industry or subdivision thereof which he finds employs or more employees and has related interest or activities, or (2) 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~~ *a sufficient number of members of the industry to be* truly representative thereof shall elect to be covered by a code in accordance with this subsection.

"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 *and consumer* 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 or 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 wages and such other conditions of employment as may aid in effectuating the policy of Congress in accordance with the standards of this title: *Provided, that such agreements shall not be made with labor organizations established, maintained, or assisted by any action forbidden by Section 7 (a) or (b) as embodied in a code.*

ANTITRUST LAWS

"SEC. 5. Nothing in this title shall be construed to ~~amend or repeal~~ *permit acts which are prohibited by* any provision of the antitrust laws of the United States; ~~but~~ *and* 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 such code or agreement taken while it is in effect or within sixty 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 *and of the antitrust laws except as expressly otherwise provided in Section 3 (a) (5) and Section 10 (d) (4) (i).*

If the agencies established under this Act shall have attempted, by the use of the powers granted by this Act, to prevent injury to the public interest arising from any unfair competitive practice or any monopolistic practice and it shall appear that no further remedy exists under the powers granted by this Act, it shall be the duty of such agencies to report these practices to those officers of the United States who are charged

with the enforcement of the antitrust laws of the United States. All such codes and agreements shall cease to be in effect on or before June 16, 1937.

"INVESTIGATIONS

"SEC. 6 (a) 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, *and the President may allocate to the Federal Trade Commission for the purpose of carrying on such investigations, funds from moneys appropriated for carrying out the purposes of this title.*

(b) The President may at any time investigate and hold public hearings with respect to hours of labor, rates of pay, labor practices, labor policies, and other conditions of employment in any trade or industry or subdivision thereof.

"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 statement of rights of employees, which are hereby declared and affirmed: (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 *and be bound by* the requirements of subsection (a) and with the maximum hours of labor, minimum wages *labor practices and labor policies* 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 *title of 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 *title of 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, by requirements that departments and agencies of the United States purchase from persons complying with such codes or agreements, or by other appropriate means. 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.

"(c) The President may, from time to time, cancel or modify any order, approval, rule, *code provision*, or regulation issued under this title, and each code and/or 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 *any* other form of *business* enterprise, and any receiver, trustee, executor, or administrator *thereof;*

"(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 term 'unfair competition' includes those business practices which (a) damage the interests of workers by imposing unduly low wages, long hours, or such labor policies and labor practices as result in intolerable working conditions, and/or (b) harm the consumer by misrepresentation of commodities and services or by the impairment of quality to a point such as to threaten health or safety, and/or (c) damage the legitimate interests of business competitors, and/or (d) threaten the general welfare by provoking the wasteful exploitation of scarce natural resources: Provided, That business practices which involve only the offering of higher quality, superior service, lower prices, and/or more favorable terms of sale shall not be construed to be damaging to the legitimate interests of business competitors and shall not be deemed to be 'unfair competition' within the meaning of this Act;

(4) A monopolistic practice shall be any business practice including the use of patents or copyrights, which has the effect of creating, perpetuating, or increasing the domination by a person or group of persons over production, distribution, prices, or trade practices, in any trade, industry or subdivision thereof: Provided, however, That such business practices as are clearly shown to result in a substantially more efficient supplying of goods and services to consumers at substantially lower prices, shall not be regarded as monopolistic practices; and

(5) "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.

"ENFORCEMENT

"SEC. ~~12.~~ *11.* (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~~ *specifically to enforce and to prevent and restrain any person from violating any provision of* any code, ~~or~~ agreement, *order, or regulation* 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.~~ *to enforce such remedies.*

"(b) Any violation 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 a misdemeanor. Any person violating any such provision shall upon conviction thereof be subject to a fine of not more than $——. Each day such violation continues shall be deemed a separate offense. 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 offense, subject to the approval of the Attorney General, compromise the liability, civil or criminal or both, arising under this title with respect to such offense (1) upon payment of a sum, not in excess of $——, to be assessed and collected by such agency, and (2) upon the entry of a consent decree enjoining the future commission of such an offense, 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 wages 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 the amount of damage, if any, 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 *Government agency so empowered by the President may in the name of* 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~~ *the complainant* 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, and the damages payable when a violation is established shall in no event be less than $. 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.

"(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 any agency of the United States established or utilized under section 2 (a), 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~~. *12*. The President shall review or cause to be reviewed, for compliance with the requirements of this title, as amended, every code in effect upon the date this title, as amended, takes effect. In order to afford reasonable opportunity for such review, such codes 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 shall continue in effect after the expiration of such ninety-day period unless the President has reviewed such code and has approved it and finds that the code in the form so approved conforms to the requirements of section 3 (a) hereof. All rules, regulations, and orders (except orders approving codes), heretofore issued and now in effect under this title shall continue in effect until canceled or modified under this title, as amended."

(The following letter from Mr. E. J. Miller, President St. Louis Screw & Bolt Co., St. Louis, Mo., was ordered printed in the record.)

APRIL 22, 1935.

HON. BENNETT CHAMP CLARK,
Senate Office Building, Washington, D. C.

DEAR MR. CLARK: Recalling our pleasant visit with you in your office you expressed a desire to have a statement in writing regarding the effect of codification under the National Industrial Recovery Act on our business.

We buy our steel in a semifinished state and operate a small rolling mill to reduce it to the sizes required, and therefore are subject to the mandatory provisions of the Iron and Steel Code.

While paying a second assessment of considerable amount we notified the code authorities that we would refuse to participate in defraying further expense since the product was for internal consumption and therefore derived no benefit from the enactment of fair trade provisions.

More than 18 months have elapsed since we subscribed to a code submitted by the dominating factors in the bolt and nut industry, which was considered and amended several times by various administrative officials but not signed for approval.

Incidental to our principal business we are subject to the fabricated metals code which is parent to four supplementary codes as follows:

	Percent
1. Screw machine products, representing	3
2. Cap and set screw, representing	4
3. Machine screw and nut, representing	2
4. Galvanizing representing	1

which is a total of approximately 10 percent of our production.

Our entire organization and equipment is involved in these codes, the product being incidental and operations interwoven with our general line of production.

Assessments are based and paid on different factors such as number of employees, number of machines in operation, number of pieces produced, and value of finished product.

This makes it impractical to compile all the necessary data demanded and would entail unjustified expense, and our refusal has created controversy with the code authorities. In the absence of a code covering our principal business our operations since the National Recovery Act became effective have been conducted under the mandatory provisions of the President's Reemployment Agreement, which differs from the other codes claiming jurisdiction.

To appreciate how a small unit in an industry is handicapped by arbitrary rules governing operating time of its man power and also to a degree by arbitrary wage setting, it is necessary to understand the difference in set-up and facilities.

Large factors are simply a multiplication of the small unit with the opportunity because of extensive operations to concentrate on full operations of some of its units, and is also in a position to substitute automatic equipment for hand operation.

To illustrate, under present conditions we operate one rolling mill unit single turn every other month under code provisions, limiting the daily operation to 8 hours which compels us to adopt 7½-hour 6-day schedule in order that delays may be provided in finishing the final heat within the 8-hour limit.

Previous restrictions permitted 48 hours per week with an average of 40 hours in a 6-month period. This permitted a 9-hour 5-day schedule with a reserve of 3 hours to be applied at any time for possible delays, instead of the present 6-day week, much more desirable to the workmen and an economy to us.

Since 2 hours time is required each day to bring the furnace to operating temperature our cost is increased about 40 cents per ton through operating the extra day under the new ruling.

Larger factors in the industry with a number of units are not affected in the same manner, as they can operate the required number of units three 8-hour shifts without furnace loss leaving the balance inoperative.

Fixing wage rates in an industry also reacts against small units, who, through lack of volume, cannot counteract with automatic equipment to perform many of the tasks. The dual effect of establishing a high level of hourly rates therefore is to eliminate the smaller unit from competition and to increase unemployment.

National Recovery Administration as I see it with its resultant codes has caused dissension and controversy between factors in an industry, between industry and

its workers, and between industry and the consumer, all of which are obstacles in the path of recovery.

I believe that the elimination of sweat shops, child labor, and unfair practice can be accomplished in a general and more direct manner.

I refer to a copy of my letter addressed to you under date of February 19, which covers my viewpoint.

Thanking you for the opportunity of presenting opinions, and apologizing for the necessary lengthy explanations, I am,

Yours very truly,

E. J. MILLER.

FEBRUARY 19, 1935.

Hon. BENNETT CHAMP CLARK,
Senate Office Building, Washington, D. C.

DEAR MR. CLARK: The Nye-McCarran resolution should be supported to disclose unfair practices and wasteful expense of code operation. Determination and control of fair practices by dominating influences within an industry does not provide equitable consideration of all who may be affected.

A much simpler and more equitable plan would be to define general fair practice, prohibit infringement by law and provide proper agency to construe and enforce.

My definition of fair practice would be that all trade must be on a voluntary basis without interference, coercion, intimidation, or misrepresentation.

There must be no discrimination between buyers in the form of allowances, rebates, exemptions, or special privilege of any kind.

The character of its goods or service can be defined by industry for trade submission.

Respectfully submitted.

E. J. MILLER.