

William H. Cloward—By Govt.—Direct

2971

The Court: Now, when you say “that long,” how long is that?

The Witness: About three and a half feet or four feet, by about three feet wide, and just high enough for a chicken to stand up.

Q. And about how many chickens does it contain? A. It would depend on the size.

Q. Ordinarily what would be the range? A. I don’t know that.

Q. 12 or 13 chickens? A. Possibly more than that.

2972

Mr. Heller: I object to counsel stating. He says that he doesn’t know.

Q. About how many pounds, then? A. I don’t know offhand.

Q. Can you estimate the approximate number of pounds? A. I would not want to.

Mr. Rice: I ask that this document be marked in evidence.

(Marked Government’s Exhibit 33 in evidence.)

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The Court: If the question of pounds can be mathematically demonstrated, the jury, of course, is competent to do that.

Mr. Rice: Your Honor is right. And may I state to the jury that Exhibit 33 indicates the sale of 7209 pounds in 111 containers?

The Court: Coops.

Q. Now, on the same day did your office make an invoice indicating the sale to the A. L. A. Schechter Live Poultry Corporation? A. Yes, sir.

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Q. Of how many pounds? A. 7144 pounds.

Q. In how many containers?

Mr. Heller: I again consent that the document be offered in evidence, and the document will speak for itself.

Mr. Rice: I offer it in evidence.

(Marked Government's Exhibit 34 in evidence.)

2975 Mr. Rice: Gentlemen of the Jury, Exhibit 34 is an invoice of Risser & Rabowitz, addressed to the A. L. A. Schechter Live Poultry Corporation, dated May 28, 1934, indicating the sale to the A. L. A. Schechter Live Poultry Corporation of 7144 pounds in 38 coops.

2976 Q. Now, do you know who paid for both of these lots of poultry sold on May 28, 1934, the first one being sold to Joseph Schechter, in the amount of 7209 pounds, and the second to the A. L. A. Schechter Live Poultry Corporation, of 7144 pounds? A. I would not be able to state that without having my memorandums here. In some cases I did look it up. The Schechter account to us is a cash sale account which we do not bother keeping separately.

Q. You prepared an affidavit on June 19, 1934, did you not? A. Yes, sir.

Q. Will you look at the bottom paragraph of this affidavit, on the first page, and see whether your memory is refreshed? A. Yes, sir, an investigation we made at that time indicated that a check—

Mr. Heller: I object to "we made" unless he made it himself.

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The Witness: An investigation that I made, indicated that a check was received from A. L. A. Schechter covering both bills.

Q. The total amount was how much? A. \$2,288.43.

Q. Covering both the sale to A. L. A. Schechter Poultry Corporation and the sale to Joseph Schechter of May 28, 1934? A. Yes, sir.

Q. Both of them paid for by the check of A. L. A. Schechter? A. Yes, sir.

2978

Q. Now, on May 30th did you sell additional poultry to the Schechter Brothers? I hand you three invoices dated May 30th from Risser & Rabinowitz and ask you whether or not you made the sales indicated in those three invoices? A. Yes, sir.

Q. You did make the sales? A. Yes, sir.

Q. Who did you make the sales to and in what amounts? A. We have a bill here made to A. L. A. Schechter for \$87.58—

Q. The pounds? A. The pounds are 565—

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Mr. Heller: I consent that these documents go in as to all sales made.

Mr. Rice: Very well. I offer these three invoices as one exhibit.

(Marked Government's Exhibit 35 in evidence.)

Mr. Rice: Exhibit 35 is three Risser & Rabinowitz invoices, each of them dated May 30, 1934. The first indicates a sale to Joseph Schechter of 6577 pounds, contained in 105 containers. That is the invoice to Joseph Schechter, dated May 30, 1934, 105 containers, 6577 pounds. The price charged is \$1.019.44. The second in-

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voice indicates a sale to A. L. A. Schechter Poultry Corporation on the same date, May 30, 1934, of 10,723 pounds, for which a price of \$1,647 was charged. The third invoice indicates a sale to A. L. A. Schechter Poultry Corporation, the same date, May 30, 1934, of 565 pounds contained in 8 containers.

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If your Honor please, we have added up the aggregate amounts contained on Exhibits 32, 33, 34 and 35, and we have ascertained that the total amount of poultry sold that week, or commencing May 26th—

Mr. Heller: What is this, a summation, Mr. Rice?

Mr. Rice: No, we are just giving the mathematics.

Mr. Heller: The jury will find that out.

Mr. Rice: The total amount is 37,418 pounds. That is all.

2982

Cross examination by Mr. Heller:

Q. Mr. Cloward, is there any mystery about this sale, anything unusual? A. Nothing that I know of.

Q. It was done in the regular course of business? A. Yes, sir.

Q. You would sell them again if they paid you for the merchandise? A. Yes, sir.

Q. They paid you for this merchandise? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. The same price that someone else paid you, is that right? A. That is right.

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2983

Q. This wasn't diseased chickens, was it, you sold them? A. No, sir.

Q. Good, wholesome chickens? A. Yes, sir.

Q. That is all you deal in? A. Yes, sir.

Q. The finest brand there is? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Mr. Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

 2984

AMOS M. WHITMORE, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Whitmore, I hand you Government's Exhibit 32 and ask you to look at that and refresh your memory as to whether or not you sold any poultry from Risser & Rabinowitz that day, on May 26, 1934, to Schechter Brothers?

Mr. Heller: I object to that, the document speaks for itself, and shows a sale was made.

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The Court: He is only using that to refresh his recollection. He asked him, now having refreshed his recollection, can he say if he sold it.

The Witness: Yes, sir, this is in my handwriting.

The Court: That isn't the point. Look at that, and having looked at it then after you refresh your recollection tell us what your recollection now is.

2986 *Amos M. Whitmore—By Govt.—Direct*

Q. Do you recall the sale on that date? A. I do.

Q. Do you recall how many pounds were sold? A. Not offhanded.

Q. That invoice indicates 5200 pounds, does that accord with your recollection? A. Yes, sir.

The Court: Is that in your handwriting or somebody else's?

The Witness: This is in my handwriting.

2987 Mr. Heller: In order to make progress I will concede whatever is on the document we bought and got.

The Court: He says it is in his own handwriting anyhow.

Mr. Heller: All right, there is no dispute about that.

Q. Mr. Whitmore, what is your position with Risser & Rabinowitz? A. Plant superintendent.

Mr. Heller: I cannot hear you.

2988 Q. Will you speak a little louder? A. Plant superintendent.

Q. What are your functions as to the sale of poultry to New York slaughter house men? A. Beg pardon?

Q. When a New York slaughter house man comes to Philadelphia to purchase poultry from Risser & Rabinowitz, what are your functions in connection with the sale? A. Well, to show him the poultry, what we have to offer, and to supervise the loading.

Q. Will you speak up a little bit please? A. Supervise the loading, see that the poultry is placed in coops and weighed properly.

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Q. Do you recall whether or not there were 82 baskets of poultry in that 5200 pound lot sold on May 26th? A. No, I don't.

Q. Do you recall how many trucks called for the poultry purchased by the various Schechter brothers on that lot? A. There were three.

Q. Do you recall how many baskets of poultry were taken on the truck that was hauling poultry to A. L. A. Schechter Poultry Corporation? A. No, sir, I don't.

The Court: Do you see anybody here you dealt with on that day? **2990**

The Witness: Mr. Abe Schechter, there.

The Court: Which one?

The Witness: Abe Schechter.

The Court: Which one is that?

The Witness: That gentleman second from the end of the table.

The Court: That is right. That is the defendant Aaron Schechter.

Q. You call him Abe Schechter? A. Yes.

Q. You dealt with him on that day? A. Yes.

Q. You made the sale to him? A. Yes.

Q. Was any other Schechter brother present?

A. No, sir.

Q. Who did you charge the poultry to? A. Half—

Q. On that day. A. Half was supposed to be charged to A. L. A. Schechter and the other half to Joe Schechter.

Q. Approximately how many pounds are contained in a basket of poultry? A. A basket is approximately—it is 60 pounds.

Q. Approximately 60 pounds? A. Yes.

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2992 *Amos M. Whitmore—By Govt.—Direct*

Q. What kind of containers does Risser & Rabinowitz furnish to the New York buyers? A. Baskets.

Q. Always baskets? A. Yes.

Q. Never the large coops? A. No, we don't have any.

Q. Was this particular poultry delivered to the Schechters in baskets? A. Yes, sir, these here were.

Q. If there were 5200 pounds it would be somewhere around 82 baskets? A. Yes, sir.

2993

Q. Does that accord with your recollection? A. It does.

Q. On the following Monday, May 28, did you make additional sales to the Schechter establishments? A. I did.

Q. I hand you Government's Exhibits 33 and 34 and ask you whether you recall making the sales indicated on those two invoices, one sale being 7209 pounds to Joseph Schechter and the other being 7144 pounds to A. L. A. Schechter Poultry Corporation? A. That is correct.

2994

Q. Who did you deal with on that day? A. Mr. Abe Schechter.

Q. Abe Schechter? A. Yes.

Q. Was anybody else there? A. No.

Q. Did you negotiate for the purchase of the poultry for both establishments? A. Yes, sir.

Q. Are you sure about that? A. Yes, sir.

Q. Who delivered the poultry to New York? A. There were three trucks, one of the trucks—

Q. What is that? A. One of Schechter's own trucks.

Q. Yes, how much did Schechter's own truck take? A. Had 38 long coops.

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2995

Q. 38 long coops? A. Yes.

Q. Did you furnish those long coops? A. No.

Q. Where did they get them? A. They came from New York.

Q. They came with the Schechter truck? A. Yes.

Q. To Philadelphia? A. Yes.

Q. That was contained on the Schechter truck? A. Yes.

Q. How did you know it was a Schechter truck? A. Well, it was a Schechter driver, a fellow that I had known as one of Schechters' men.

2996

Q. Did the truck have any name on it? A. Rugby Live Poultry, to the best of my knowledge.

Q. Rugby Live Poultry Market? A. Yes, sir.

Q. And you know that as the A. L. A. Schechter Live Poultry Market? A. It was known to me as such.

Q. How about the rest of the poultry, how was that delivered? A. To the best of my knowledge there were 59 coops went on a Chevrolet known to me as—

2997

Q. Driven by who? A. Damskie.

Q. Damskie, the driver? A. Yes.

Q. Who is he, is he an employee of the Schechters? A. I could not say.

Q. Or is he an independent driver? A. I could not say as to that.

Q. But you say 59 baskets went on Damskie's truck? A. Yes.

Q. Which part of the poultry was that? A. That was—

Q. Let me see those invoices. A. (Witness hands papers to counsel.)

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Q. Was that part of the 7144 pounds sold to A. L. A. Schechter Poultry Corporation? A. No, sir. That was part of the poultry sold to Joe Schechter.

Q That was part of the 7209 pounds? A. Yes, sir.

Q. You are sure about that? A. Sure about that.

Q. Who took the rest of the poultry? A. Gottenberg.

2999 Q. And how much did he take? A. 65 coops or baskets.

Q. We have 65 coops and 59 coops taken by Gottenberg and Damskie? A. Yes.

Q. Who is Gottenberg? A. He is a Philadelphia trucker.

Q. An independent trucker in Philadelphia? A. Yes, sir.

Mr. Heller: I move to strike out about Gottenberg.

Mr. Rice: No, your Honor, he was delivering them for the Schechters.

3000 The Court: That's right.

Q. He was hired to deliver part of this poultry to the Schechters in New York? A. Yes.

Q. Now we have Gottenberg taking 65 basket and Damskie 59 baskets? A. Yes.

Q. And was all of that 124 baskets purchased on that day? A. No, sir, there was 12 baskets of leghorn fowl and one basket of colored fowl carried over from Saturday.

Q. So that 111 baskets were purchased on that day, Monday, May 28th? A. Yes.

Q. And 13 additional baskets were purchased immediately prior, that is on Saturday, they

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3001

were included in the deliveries made by Gottenberg and Damskie? A. That is correct.

Q. Which one took the 13, Gottenberg or Damskie? A. Gottenberg.

Q. Damskie took 59 purchased on that day? A. That's right.

Q. Now you stated that the 38 coops were taken by the Rugby truck? A. That is right.

Q. Was there any official inspection of this poultry in Philadelphia? A. No, sir.

Q. Did you examine your records to ascertain whether you had made a charge for baskets of poultry delivered on Saturday, May 26th and Monday, May 28th? A. Yes.

3002

Q. And what do you find? A. I have found a charge of 162 coops.

Q. On what date? A. On May 26th.

Q. That is Saturday? A. Yes.

Q. That includes the 82 coops? A. Yes.

Q. Now how about Monday, May 28th? A. That was 111 baskets or coops.

Q. That is 111 baskets? A. Yes, sir, baskets.

Q. How about 113? A. That was on Saturday's charge.

3003

Q. Now about the 38 coops, did you ascertain that 38 large coops in which part of the poultry was delivered by the Rugby truck, did you ascertain whether or not Risser & Rabinowitz had made a charge for those 38 coops? A. No, sir, they did not.

Q. Why not? A. They were not our coops.

Q. Those coops were brought over by the Schechters? A. Yes.

Q. Which Schechters do you deal with, which Schechters did you deal with at various times in May of 1934?

3004

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Mr. Heller: I object to that. We are concerned with two transactions and we have had all the information on those transactions.

The Court: Yes, but if he knows about the others——

Mr. Rice: Very well, I will withdraw the question.

Q. You stated you dealt with Abe Schechter on these occasions. A. Yes.

3005

Q. Did you deal with any other Schechter brother at about that time?

Mr. Heller: I object to “about that time,” let us confine ourselves to those occasions.

The Court: That’s right, but he can identify him if he knows him. This is what you have alleged and this is what you prove. If you want to identify them, if he knows any of the other Schechters he can say whether he knows.

3006

Mr. Rice: This is in regard to Count 1, your Honor.

Q. Do you know any of the other Schechter brothers? A. I have seen two in the plant.

Q. Which other one besides Abe Schechter? A. The one knows to me as Joe.

Q. Which one is he, do you recognize him or don’t you? A. Not exactly, no.

Q. Which one did you point at? A. This fellow on this end.

Q. The first one? A. Yes, sir.

Mr. Rice: That is Joseph Schechter, is it not, counsel?

The Court: Joseph Schechter.

Amos M. Whitmore—By Govt.—Cross

3007

Q. You have had dealings with him from time to time? A. Yes, we have had dealings with him.

Q. Does he purchase poultry for both the Schechter establishments?

Mr. Heller: He didn't say anything of the kind.

The Court: No, that is perfectly all right, they want to show his connection with the business. There is no use of going into general sales because you would not have any evidence that it wasn't inspected but if you want to show his connection with this business of course you can show that.

3008

Mr. Rice: That is all I desire to show, your Honor.

The Court: You know Joe Schechter?

The Witness: Yes, sir.

The Court: Go ahead.

Q. What dealings have you had with him? A. Well, he has bought poultry for the two concerns.

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Q. For both concerns? A. Yes, sir.

Q. And you have already stated that Alex has bought poultry for both concerns? A. Yes, sir.

Mr. Rice: That is all.

Cross examination by Mr. Heller:

Q. Did someone point out Mr. Joe Schechter to you in the hallway before? A. Point him out to me?

Q. Yes. A. No, sir.

3010 *Amos M. Whitmore—By Govt.—Cross*

Q. Somebody introduced him to you in the hallway before you came in, didn't they? A. No, sir, no one introduced him.

Q. You are sure about that? A. Yes, sir.

Q. Nothing like that took place? A. I spoke to him in the hallway.

Q. Who introduced you to him? A. No one. When I spoke to him I said, "Is this Abe or Joe?" and he said "This is Joe."

Q. You asked him whether it was Abe or Joe? A. Yes, sir.

3011 Q. And he told you he was Joe? A. I know the two boys as the Schechter boys.

Q. Do you know the other two boys as the Schechter boys? A. I know they are Schechters.

Q. Did you have any personal dealings with each and every one of them? A. No, sir.

Q. You had no personal dealings except with the one you pointed out? A. Abe and Joe.

Q. You had personal dealings with Joe? A. For the business.

Q. What is that? A. For the business.

3012 Q. When did you have personal dealings, and where? A. At Risser & Rabinowitz's plant.

Q. In Philadelphia? A. Yes, sir.

Q. When was that? A. I couldn't recall the date.

Q. A year ago? A. I couldn't say.

Q. Two years ago? A. I can't recall the date that he was there.

The Court: He is not asking you the specific date, can you recall any month of any year in which you did business with Joe, with Mr. Joseph Schechter?

The Witness: To the best of my knowledge it was along about the same time of the other transactions.

Amos M. Whitmore—By Govt.—Cross

3013

Q. Didn't you say the only one that came there in May was Abe? A. On those particular dates.

Q. And isn't it a fact that you only weigh the merchandise and Mr. Rabinowitz sells it? A. No, sir, I do not weigh it.

Q. You did not weigh it? A. I did this one particular draft, load.

Q. You did weigh it on this occasion? A. Yes.

Q. And on other occasions you did the selling? A. Yes, sir; I supervised the loading.

Q. Isn't it a fact that many merchants come to Philadelphia from New York to buy merchandise? A. Yes.

3014

Q. There is nothing unusual about coming to your place to buy merchandise? A. No.

Q. Yes, and merchants come and bring their own baskets, is that right? A. That is right.

Q. Bring their own coops? A. Some do.

Q. Don't they? A. Some do.

Q. There is nothing mysterious about that, is there? A. No.

Q. You sell good wholesale poultry? A. Aim to.

Q. You don't deal in diseased chickens, do you? A. No, sir.

3015

Q. You did not sell him any diseased chickens on these occasions, did you? A. No, sir.

Q. Sold him the best quality stuff, isn't that right? A. That is correct.

Q. You charged him the regular prices? A. That is right.

Q. You were paid for the merchandise? A. Yes, sir.

Q. Isn't that right? A. Yes, sir.

Q. You know as a matter of fact from your own knowledge that those chickens were healthy, don't you? A. Yes, sir.

3016 *Amos M. Whitmore—By Govt.—Cross*

Q. And you are sure about that, that every chicken they got was a healthy chicken as far as you know? A. As far as I know.

Q. Is that correct? A. Yes.

Q. And you charged him for healthy chickens, isn't that correct? A. That is correct.

Q. Isn't it a well known fact that chickens that come from Philadelphia are always good and healthy chickens, isn't that a fact? A. I couldn't say.

3017 Q. You couldn't say? A. As to what?

Q. You do not know the statistics with reference to Philadelphia show that not one per cent. of culls come from Philadelphia to New York? Have you ever read any such statistics? A. No.

Q. You do not make a habit of dealing in diseased chickens there? A. No.

Q. And you try to sell the best and you sold the best on these occasions? A. Yes.

Q. No question about that? A. No.

Q. Charged him the regular prices as you would sell to other merchants, is that correct? A. That is correct.

3018 Q. No mystery about these purchases? A. No.

Q. Nothing unusual; it is done in the regular course of business, isn't it? A. Yes.

(Witness excused.)

Mr. Rice: Your Honor, at the time that Dr. Ives testified I had him identify five inspection certificates which he said were the only five inspection certificates for any inspections made on behalf of any Schechter establishment during the calendar year 1933 or during 1934 up to the time

of the indictment. The first two of these certificates are in 1933 and do not concern us. I should like, however, to read the material on the three inspection certificates for 1934 to the jury.

Mr. Heller: I should very much object if counsel does that. I object to counsel coming to certain conclusions that are not founded on the facts. There is no testimony how many purchases came in from a different State. He has no right to say those are the only inspection slips. Maybe those are the only purchases.

3020

Mr. Rice: We have just proved certain purchases now. We propose to show now that the inspection, the only inspection made according to the testimony of Dr. Ives on his records were inspections of only a portion of the poultry coming from Philadelphia.

Mr. Heller: I also remember that Dr. Ives said that if a different name were given to him he would not know whether the poultry was inspected or not, and they do that frequently. Those documents are not in evidence.

3021

Mr. Rice: Yes, they are, certainly, Exhibit 15. They are in evidence, five certificates are in evidence as Exhibit 15, part of the record.

Mr. Heller: I do not know how they ever got in. Since they are in, the jury may look at them, but I do not think counsel ought to make any summation about them now.

The Court: The jury may look at them; they are in evidence.

Case

3022

Mr. Rice: I simply wish to read these figures of the number of baskets.

The Court: Read what they say, that is all. Just read the instrument. What counsel objects to is a lengthy statement about it.

Mr. Rice: The first two inspection certificates are for the year 1933. The third one, contained in Exhibit 15 is dated May 28, 1934. The number of baskets is 65.

3023

The inspection made for Schechter Brothers, 991 Rockaway Avenue.

The fourth, gentlemen of the jury, is an inspection certificate of 105 baskets for Schechter Brothers of 991 Rockaway Avenue, dated May 30th, 1934.

The fifth, is an inspection certificate for Schechter Brothers of 858 East 52nd Street, 176 containers, dated May 30th, 1934.

3024

The Court: Gentlemen of the jury, we will now take a recess until two o'clock P. M. Do not discuss this case among yourselves or allow anyone to discuss it with you and be back here at two o'clock sharp.

Recess until 2 P. M.

Jacob Damsky—By Govt.—Direct

3025

Brooklyn, N. Y., October 24, 1934.

Met pursuant to adjournment at 2 P. M.; present as before.

JACOB DAMSKY, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. What is your business? A. Well, the poultry business.

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Q. What other business? A. Well, the trucking business.

Q. Have you ever served the Schechter Brothers as a trucker? A. I did.

Q. On what date? A. On the 28th of May.

Q. 1934? A. 1934, yes, sir.

Q. What day of the week was that, do you remember? A. That was on a Monday.

Q. And who hired you? A. Joe Schechter.

Q. And what did he say to you? A. Well, he asked me did I want to bring a load of poultry for him from Philadelphia.

3027

Q. And did you do it? A. I said that I did want to bring a load of poultry and I went down and got it for him.

Q. Did he tell you where to bring the poultry? A. He did.

Q. Where? A. To his place at No. 858 East 52nd Street.

Q. This is Joe Schechter, you say? A. Yes.

Q. And where did you see him? A. At this place.

Q. You mean 991 Rockaway Avenue? A. No, 858 East 52nd Street.

3028

Jacob Damsky—By Govt.—Direct

Q. And he told you to bring the poultry where?

A. To the East 52nd Street address.

Q. The same place? A. Yes.

Q. He did not tell you to bring it to 991 Rock-away Avenue, did he? A. No.

Q. Did he say anything else? A. No.

Q. Did he say anything about stopping for inspection? A. He didn't tell me anything about inspection.

Q. What did you do? A. I went down there and I got the poultry and I brought it back.

3029

Q. You went to Philadelphia? A. Yes.

Q. Whereabouts? A. To the firm of Risser & Rabinowitz in Philadelphia.

Q. And what happened there? A. Well, I came over to the man there and I says, "I am here for Schechter's poultry," and he says, "All right, it is all weighed up, and you can take it."

Q. How many baskets? A. 59 baskets.

Q. You loaded it on the truck? A. Yes.

Q. How did you happen to remember that it was 59 baskets? A. Because he paid me for 59 baskets.

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Q. Was there anybody else there besides the man from Risser & Rabinowitz? A. No, only the workmen.

Q. Did you see any of the Schechters there? A. No.

Q. You were simply told that this was poultry for the Schechter Brothers? A. Yes.

Q. And what did you do? A. I loaded it on my truck.

Q. And who was with you? A. My brother, Morris Damsky.

Q. Then what did you do? A. Then I went back to New York with it.

Jacob Damsky—By Govt.—Direct

3031

Q. Where did you go? A. 858 East 52nd Street.

Q. Did you stop any place on the way? A. No.

Q. Did you stop for inspection? A. No.

Q. You are sure about that? A. Positive.

Q. And you brought the poultry to the market at No. 858 East 52nd Street? A. Yes.

Q. And who did you find there? A. Meyer and Al.

Q. Did you talk with them? A. I did.

Q. And what about, what was said? A. I told them that I am here with the poultry and I wanted to get it unloaded, I want to go home.

3032

Q. And did they help you? A. They did.

Q. Who? A. Meyer and Al.

Q. Both of them? A. Yes.

Q. Can you identify them? A. Sure.

Q. Which one is Alex? A. Alex is sitting back there and Meyer is in front of him.

Q. Did they help you unload? A. That is right.

Q. Did you have any conversation with them?

A. I had no conversation with them.

3033

Q. Did you talk with them? A. (No audible answer.)

Q. Did you get paid? A. Well, I got paid a couple of days later.

Q. Who paid you? A. I think Joe paid us.

Q. How much did he pay you? A. Well, it was, he paid us twenty-one dollars, something like that.

Q. You got so much per coop? A. Yes.

Q. So much per basket? A. That is right.

Q. You are sure that it was 59 baskets? A. That is right.

Mr. Rice: That is all.

3034 *Leo Schimmel—By Govt.—Direct*

Cross examination by Mr. Heller:

Q. What time of day did you load the poultry in Philadelphia? A. Loaded about four o'clock in the afternoon.

Q. What time did you get to Brooklyn? A. About nine o'clock at night.

Q. Nine o'clock at night? A. Yes, sir.

Q. Is that right? A. That is right.

Q. You have carried poultry before from Philadelphia to New York for other merchants, have you not? A. I probably did.

3035 Q. From other States too? A. I did.

Q. Is that right? A. Yes.

Q. Have you ever had poultry inspected? A. Yes.

Q. Do you know if the Inspection Service is closed at night? A. Do I know it is closed at night?

Q. Yes. A. I suppose I do.

Mr. Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

3036 Mr. Rice: I will call Leo Schimmel. The testimony of this witness, if your Honor please, will relate to Counts 41 to 59 inclusive, the labor counts.

LEO SCHIMMEL, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. What is your business, Mr. Schimmel? A. My job is bookkeeper.

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37

Q. You are a bookkeeper? A. Yes, sir.

Q. What work do you do? A. Everything that goes with bookkeeping, collecting——

Mr. Heller: I can't hear you.

A. (Continuing.) Everything that refers to bookkeeping.

Q. Look over this way to the jury. A. Collecting, depositing, charging, once in a while delivering an order.

Q. Who do you work for? A. A. L. A. Schechter Poultry Corporation. 3038

Q. How long have you worked there? A. A year and a half.

Q. Are you in any way related to any of the Schechter Brothers? A. One of their brothers is my brother-in-law.

Q. Will you tell us just what sort of work you do in addition to bookkeeping at the Schechter Market? A. As I said before, I do the books, and I go out collecting and depositing; once in a while I go out soliciting and delivering an order. 3039

Q. You actually make deliveries? A. Once in a while when it is very busy.

Q. Do you also help with the packing of the chickens at the time they are purchased? A. That is the bookkeeper's job, to help by the scale.

Q. What do you do? A. Just hold the bag while the man puts the chickens in the bag, and tie it up.

Q. So you do manual labor on the premises too?

Mr. Heller: I object to counsel's characterization as to what is manual labor.

3040

Leo Schimmel—By Govt.—Direct

The Court: Yes; let him tell what he does.

Q. Tell us everything that you do. A. When the chickens are put on the scale I get the weight of the chickens, and one of the union men puts the chickens in the bag, and I hold the bag and tie it up and put a tag on the bag.

Q. You testified before the Grand Jury, did you not? A. Yes, sir.

3041

Q. Did you tell anybody that you testified before the Grand Jury? A. I told Schechter Brothers.

Q. Did they ask you? A. Yes, sir.

Q. Who asked you? A. Well, the one that gave me the subpoena.

Q. Which one? A. Alex Schechter.

Q. Who else? A. That is all.

Q. What did he say to you?

Mr. Heller: I object to that unless the time and place is stated.

3042

Q. When was this? A. That was the day that I was subpoenaed; he gave me the subpoena, and when I came back he asked me what they asked me.

Q. That was the same day that you testified? A. Yes, sir.

Q. He asked you what they asked you before the Grand Jury? A. Yes, sir.

Q. Did he ask you what you said before the Grand Jury? A. No, sir.

Q. What is that? A. He didn't ask what I said.

Q. Did you tell him what you said before the Grand Jury? A. No, sir.

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3043

Q. What is that? A. No, sir.

Q. You just told him what they asked you before the Grand Jury? A. That is right.

Q. What I asked you before the Grand Jury? A. That is right.

Q. And what the jurors asked? A. What the jurors asked?

Q. Yes. A. Yes, sir.

Q. But you didn't tell him what you said? A. No.

Q. Why did you draw the line at that?

3044

Mr. Heller: I object to that. He is his own witness.

The Court: It doesn't make any difference why he drew the line.

Q. Did you talk to Mr. Heller about this case? A. No.

Q. You are sure about that? A. Positive.

Q. Didn't Mr. Heller come to see you one day? A. Not in reference to this case; in reference to a case in regards to the business.

Q. He called you in, did he not, he called you into the office at the place? A. It was in reference to a case where I had an accident, where I was driving one of the boss' machines.

3045

Q. But I am asking you did he discuss this case with you? A. No, sir.

Q. Did he mention it to you? A. No, sir.

Q. Did you mention it to him? A. No, sir.

Q. Did you discuss your testimony before the Grand Jury? A. Not with Mr. Heller.

Q. Did you discuss the questions that you were asked before the Grand Jury with Mr. Heller? A. No, sir.

3046

Leo Schimmel—By Govt.—Direct

Q. When you talked this over with Alex Schechter were any of the other Schechter Brothers present? A. If I remember correctly, I think Joe Schechter was present.

Q. What did he say? A. He had nothing to say; he just listened to what Alex Schechter asked.

Q. What did Alex Schechter say besides what you have told us? A. He just asked me what the Grand Jury asked me, but I didn't say anything to him in response.

3047

Q. You say you have worked for A. L. A. Schechter Poultry Corporation for a year and a half? A. That is right.

Q. All of the time doing the various duties that you have described, doing the things that you have described in your testimony? A. That is about all.

Q. During that year and a half? A. Yes, that is about all I did.

Q. Each week? A. Yes, sir.

Q. What are your wages? A. \$20 a week.

3048

Q. \$20 per week. How long have you been paid \$20 per week? A. Oh, for the past six months.

Q. For the past six months? A. Yes, sir.

Q. What did you get before that? A. Eighteen dollars.

Q. Have you gotten anything more than \$20 per week in the past six months? A. I get two chickens for Saturday—

Q. Speak up. A. I got two chickens for Saturdays and one chicken during the week, which amounts to an average of about three to four dollars worth.

Q. That is rather expensive, isn't it, for three chickens?

Leo Schimmel—By Govt.—Direct

3049

Mr. Heller: I object to counsel's questioning along that line.

The Court: He said he got so much and he got two chickens and one.

Q. And those weeks when you did not take home chickens did you get extra pay? A. It only happened one time since I am working there that I didn't take home any chickens.

Q. Did you get extra pay when you did not take home the chickens? A. No, sir.

Q. You told us what salary and wage you get; did you get anything in addition to that, or is that everything that you got? A. Well, at one time during the holidays I got a bonus of ten dollars.

3050

Q. When was that? A. That was on April 23, 1933.

Q. That was April. Since April, 1933, have you got any other wages in addition to what you have told us? A. No, sir.

Q. Speak up. A. No, sir.

Q. Commencing with the week ending on or about May 18, 1934—May 18th is a Friday, is it not? May 18th is a Friday, 1934; when does your week end? A. Saturday.

3051

Q. Saturday? A. Yes.

Q. Then taking the week ended May 19—Saturday—in 1934, did you work in the Schechter premises at 858 East 52nd Street that week? A. Yes, sir.

Q. Did you work for Alex, Martin and Aaron Schechter? A. Yes, sir.

Q. And the A. L. A. Schechter Poultry Corporation? A. Yes, sir.

Q. Do you recall when Mr. Justice was at the A. L. A. Schechter Poultry Corporation, Mr.

3052 *Leo Schimmel—By Govt.—Direct*

Justice, an accountant from the Agricultural Adjustment Administration? A. Yes.

Q. The white-haired gentleman, do you recall that he was there? A. I do.

Q. Do you recall talking to him on June 29, 1934, on a Friday? A. Yes, sir.

Q. Do you recall that? A. Yes.

Q. Oh, did I say May? I meant June 29th, 1934, that is a Friday, do you recall talking to him on that date? A. Yes, sir.

3053 Q. Do you recall making out a little slip for him? A. That is right.

Q. Showing him the number of hours that you had worked the previous week, which was the week ending June 23, 1934? A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

Q. You told him the number of hours that you worked on the week ending June 23, 1934? A. For that particular week only.

Q. That is for the week before the week that he was there? He was there on June 29th, was he not? A. Yes.

3054 Q. On a Friday. You told him how many hours you had worked the previous week? A. He was there ever since May 17th.

Q. Yes, but you told him the number of hours that you had worked each day of the previous week, which is the week ending June 23, 1934? A. Yes, sir.

Q. Do you recall how many hours it was that you worked that week? A. (No answer.)

Q. Did you make out a slip for Mr. Justice, showing him the number of hours that you had worked each day of the previous week, being the week ending June 23, 1934? A. Well, that week I just—

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3055

Q. Just answer my question. A. Yes.

Q. Did you make out a slip showing the——

A. Yes, but that does not mean that I worked those hours; the place was simply opened during those hours.

Q. Just a minute. Let us see. I hand you this little slip, which is attached to a memorandum by Mr. Justice. Is that in your handwriting? A. Yes, sir.

Q. How many hours did you work that previous week, the week ending June 23, 1934, how many hours each day? A. That does not mean that I worked these hours. Mr. Justice simply asked me how long the place was open.

3056

Q. Look at that memorandum and see if you can refresh your memory. What does that memorandum say? A. The memorandum says 73 hours.

Q. 73 hours that week? A. (No answer.)

Q. What do the words say, that you wrote for Mr. Justice? A. The words say 73 hours.

Q. Read it, read the memorandum. A. Monday, 11—

Q. No, read the memorandum, from the beginning.

3057

The Court: Read it to himself.

The Witness: "I worked the following hours last week: Monday, 11; Tuesday, 11"——

Q. Just a moment.

The Court: Read it and refresh your recollection.

Mr. Rice: All right.

Q. How many hours did you work on June 18, Monday? A. I don't remember June 18th.

3058

Leo Schimmel—By Govt.—Direct

Q. That is the week ending June 23, Monday is June 18. How many hours did you work on Monday of the week ending June 23, 1934? A. What I wrote here was that the place was open during those hours. I did not say I actually worked those hours. I was simply in the place during those hours.

Q. Answer the question.

Mr. Heller: I submit he has answered it fully.

3059

The Court: I do not see how you can bind these defendants by what he said to somebody else. Ask him to look at it. He may use it to refresh his recollection, if it is true that he said something, but he is your witness and he cannot testify to conversations he had with someone in the absence of these defendants, because it does not bind them.

Mr. Rice: Quite right. I recognize that.

3060

Q. How many hours did you work on each day of the week ending June 23, 1934? A. As far as this memorandum, it is: Monday, 11 hours—

The Court: Just look at the memorandum. He did not ask you to read the memorandum to the jury. Read that memorandum over and, after you have read it over, you listen to the questions you are asked and answer them.

Q. Look over the memo. How many hours did you work on Monday of that week? A. Monday, 11 hours.

Q. Tuesday? A. Tuesday, 11 hours.

Q. Wednesday? A. Wednesday, 12 hours.

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3061

Q. Thursday? A. Thursday, 17 hours.

Q. Friday? A. Friday, 13 hours.

Q. Saturday? A. Saturday, 9 hours.

Q. A total of 73 hours that week? A. Yes, but I did not actually work those hours. Those were the hours that the place was open.

Q. How many hours did you work that week? A. Well, you see, I haven't got a specified time schedule of the amount of hours I am supposed to work. I cannot tell you exactly how many hours I worked.

3062

Q. All right. Now, taking that week or, rather, taking the week ending May 19, 1934, what time did you come to work on Monday? A. Seven o'clock in the morning.

Q. Always at seven o'clock? A. On Monday?

Q. Yes. A. Yes, unless it is a holiday or so.

Q. Taking the entire period from the week ending May 19, 1934, up to the week ending July 20th, 1934, on Mondays, what time did you come to work? A. Seven o'clock.

Q. Always? A. Yes, sir.

Q. By seven o'clock? A. Yes, sir.

3063

Q. Never later? A. No.

Q. What time did you leave? A. Well, as soon as killing was over, I left for collections and I was away for the balance of the day.

Q. No, no. What time did you finish your work on Mondays? A. Well, as long as the place was open, I was around the place.

Q. What time? A. About six o'clock, five o'clock, six o'clock; I haven't got a specific time.

Q. And what did you do when the place closed? A. I went home.

Q. Didn't you go out collecting? A. No.

Q. Didn't you quit work Mondays at seven o'clock?

3064

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Mr. Heller: I object to counsel suggesting the answer to the witness.

The Court: He has answered that, Mr. Rice, he is your witness.

Q. What time did you generally leave? A. On Monday?

Q. Yes. A. 5:30, sometimes before.

Q. What is the earliest that you would leave?

A. The earliest 4 o'clock.

3065

Q. Did you leave at 4 o'clock? A. During that period of time a few times.

Q. When? A. I cannot remember these things.

Q. Do you remember any occasion when you left before 5:30?

Mr. Heller: He said at times at 4 o'clock, which is earlier than 5:30.

The Court: He is asking him now on Mondays, if he ever left before 5:30.

Q. Did you ever leave before 5:30 on Mondays during this period of time in May, June and July of 1934? A. Yes, sir.

3066

Q. What is the earliest you left? A. 4 o'clock.

Q. How many times did you leave at 4 o'clock?

A. Four or 5 occasions.

Q. Did you come back again? A. No.

Q. Do you recall what you testified to before the grand jury.

Mr. Heller: I object, your Honor, to this kind of testimony, it is his witness and he is bound by what he says.

The Court: I understand, but he has a right to call his attention to something that may refresh his recollection.

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3067

Q. Do you recall what you testified to before the grand jury? A. I don't remember exactly, but if you can refresh my memory——

Q. Would your memory be refreshed if I directed your attention to what you testified before the grand jury? A. Yes, sir.

Q. Well, while we are getting the grand jury minutes we will go to Tuesdays. Now Tuesdays, during this period of time, in May, June and July of 1934, throughout those months in 1934, what time did you come to work? A. On Tuesdays the same as Mondays, exactly the same hours.

3068

Q. Never after seven o'clock? A. No.

Q. And on Wednesdays? A. About an hour later.

Q. What is that? A. About an hour later than Mondays and Tuesdays.

Q. And what time did you get there on Wednesdays? A. Seven o'clock.

Q. And six o'clock on Mondays and Tuesdays? A. In between that time I went to lunch two or three times during the day.

3069

Q. On Mondays during this whole period of time you came to work at six o'clock? A. Seven o'clock.

Q. On Tuesdays what time? A. Seven.

Q. On Wednesdays was it at seven? A. Seven.

Q. Always by seven o'clock on Wednesdays, is that correct? A. Yes, sir.

Q. Speak up. A. When I come to work you are referring to?

Q. Yes. A. Yes, seven in the morning.

Q. Now how about Thursdays during this same period of time? A. Thursdays from five o'clock in the morning.

3070

Leo Schimmel—By Govt.—Direct

Q. Always by five? A. Yes.

Q. And on Fridays? A. Six.

Q. Always by six o'clock? A. Yes.

Q. On Saturdays? A. Saturdays?

Q. Saturdays, yes. A. Saturday in the after-
noons only.

Q. About what time? A. About two o'clock.

Q. By two o'clock, always, excepting for two
occasions? A. Two or three occasions.Q. Excepting for two or three occasions by
two o'clock? A. Yes.

3071

Q. Are you sure about that? A. Yes, sir.

Q. And during this whole period of time, May,
June and July of 1934, is that correct? A. Yes,
sir.Q. Now on Monday, how much time did you
take off for lunch? A. On Mondays I took from
two to three hours.Q. Didn't you take off only 45 minutes for
each lunch?

Mr. Heller: I object to that, your Honor.

The Court: He is your witness, Mr.
Rice.

3072

Q. Now think carefully, Mr. Schimmel, and
how much time did you take off for lunch on
Mondays? A. About two hours.Q. Sometimes only an hour and a half, some-
times less than two hours? A. Very seldom.Q. And that includes two lunch periods, does
it, on Mondays? A. Two lunch periods.

Q. A total of two hours? A. Yes.

Q. What time did you quit work during that
period on Mondays?Mr. Heller: Objected to as already tes-
tified. He said four o'clock in the .

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3073

noon, that is what his testimony was, on several occasions.

The Court: He said before generally between 5:30 and 6 and sometimes 4. We have had that I think now three or four times.

Q. Now on Tuesdays how much time did you take off for the lunch? A. Sometimes—the same as Mondays.

Q. About two hours? A. About two hours.

Q. Now what time did you quit work? A. Four o'clock.

3074

Q. What is that? A. Four o'clock.

Q. Four o'clock, is that the time you quit work? A. On Tuesdays, which is the same as Mondays, as I told you before.

The Court: What time was it that you quit work on Thursdays you said?

The Witness: Five o'clock.

Q. Now you said your memory would be refreshed by referring to your grand jury testimony? A. Yes, sir.

3075

Q. Now will you look at the bottom of the page, the last three questions on this page of the grand jury minutes and read the questions and answers to yourself. A. Yes, sir.

Q. Now will you tell us what time you quit work on Mondays during that period of time, May, June and July of 1934? A. When I testified I said about six o'clock.

Q. About six or seven? A. I didn't say exactly, it might have been an hour less or an hour more, I told you before my time is not limited, it is not specified, I can work an hour more

3076 *Leo Schimmel—By Govt.—Direct*

or an hour less or even two hours less and it makes no difference.

Q. Do you recall having testified before the grand jury that you never had quit on Mondays, Tuesdays or Wednesdays before six o'clock since May 16, 1934, do you remember having given that testimony? A. I said——

Q. Will you read this question again, please, the last two lines on this page? A. Yes.

Q. Have you read it? A. Yes, sir.

3077 Q. What time did you quit work on Mondays, Tuesdays and Wednesdays during May, June and July, 1934? A. When I testified at that time I understood that you asked me what time the place was closed, but you didn't ask me what time I quit work. That is how I understood the question to be.

Q. Read it again. A. I have read it three times.

Mr. Heller: He has refreshed his recollection.

3078 Q. You did read it, did you? A. I read it three times.

Q. You say on Tuesdays you quit work at what time during that period of time? A. Sometimes at four.

Q. Never before four? A. Never before four.

Q. What time did you usually quit? A. About five, five-thirty at the most.

Q. Generally five or five-thirty? A. Five-thirty.

Q. What did you do after that? A. I went home.

Q. Did you go out collecting? A. No, sir.

Q. Are you sure about that? A. Not on Tuesdays.

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3079

Q. Well, how about Wednesdays, what time did you quit work on Wednesdays? A. About six o'clock.

Q. Never before six? A. Never before.

Q. Sometimes as late as seven? A. I do not think it was as late as seven; 6:30 at the most.

Q. And you took about two hours off for lunch? A. Yes, sir.

Q. You did that every day? A. Yes, sir.

Q. During that whole period of time? A. No, on Wednesdays I took more than two hours.

3080

The Court: He answered, Mr. Rice.

The Witness: On Wednesdays I took more than two hours off for lunch.

Q. How much time did you take off? A. On Wednesdays I took three hours for lunch, two and a half or three.

Q. Never more than three? A. Never more than three.

Q. Sometimes two? A. Sometimes two, mostly three.

Q. On Thursdays you said you came to work at five o'clock in the morning? A. Yes, sir.

3081

Q. What time did you quit work? A. At five.

Q. Never before five? A. No, sir.

Q. On Thursdays? A. No, sir.

Q. During that whole period of time? A. No.

Q. How much time did you have off for lunch on Thursdays? A. On Thursdays I only went to lunch once.

Q. What is that? A. Only once I went to lunch on Thursdays.

Q. You went to lunch only once during that twelve-hour period? A. Yes, sir.

3082

Leo Schimmel—By Govt.—Direct

Q. How much time did you take off? A. A little over an hour.

Q. About how long? A. An hour or an hour and a half.

Q. Never more than an hour and a half? A. No, sir.

Q. What did you usually take off, how much time did you usually take off on Thursdays? A. One hour.

Q. One hour. It was very rare you took off an hour and a half, wasn't it? A. Yes.

3083

Q. Thursday was a very busy day? A. Yes, sir.

Q. Did you ever take off more than an hour during that period of time on Thursdays? A. On four or five occasions.

Q. You are sure about that? A. Yes, sir.

Q. After five o'clock on Thursdays you did some more work, did you not, collecting? A. It was my privilege to go out collecting if I wished to; if I wanted to I went; if I didn't, I didn't have to.

3084

Q. During that period from the week ending May 19, 1934, to the week ending July 26, 1934, how much time did you spend collecting after five o'clock in the evenings on Thursdays? A. Well, about an hour; if I would go out it was only for about an hour or two after five o'clock, but very rarely did I go out after five o'clock. If I did it was only for about an hour or two, but I never returned to the place after that time.

Q. Do you remember testifying before the Grand Jury about the time that you worked Thursdays, do you remember? A. I do not.

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3085

Q. Do you remember how many hours you said you worked on Thursdays? A. I was referring to the collection then too as well.

Q. Now, adding up the collection time, how much was it, fifteen and a half hours?

Mr. Heller: He didn't say that; he said between five and seven is when he collected occasionally.

Mr. Rice: Well, let us see——

The Court: I guess that is what he said.

3086

Q. How much time did you work on Thursdays during this period of time?

The Court: He is your witnesses; you have a right to refresh his recollection, but you can't impeach him.

Mr. Rice: I recognize that, your Honor.

Q. How much time did you work on Thursdays during this period of time, including the time that you spent collecting? A. You mean how many hours I worked all day?

3087

Q. Yes, altogether.

Mr. Heller: May we have the day and the week that counsel is referring to?

Mr. Rice: I said during this whole period of time.

Mr. Heller: That is too broad. We would like to know the specific week that he is referring to.

The Court: He is trying to find out whether he did work on those days, and how long he worked.

The Witness: Well, about twelve hours a day.

3088

Leo Schimmel—By Govt.—Direct

Q. How many hours per day? A. About twelve hours a day.

Q. Twelve hours per day? A. Figure it out.

Q. Will you read your Grand Jury testimony and see whether that refreshes your recollection, at the top of page 310 read the first two questions and answers. Does that refresh your recollection? A. That was not subtracting the hours I took for lunch that day.

Q. Well, you took about an hour off for lunch, didn't you? A. Yes, sir.

3089

Q. On Thursdays? A. Yes, sir.

Q. You subtract an hour from fifteen and a half hours, is that right? A. Yes, sir.

Q. How many hours did you work on Thursdays then? A. Fourteen, according to that figure.

Q. What is that? A. Fourteen and a half.

Q. Fourteen and a half during all that period of time, is that right? A. Yes, sir.

Q. Now, on Fridays what time did you stop work? A. Six o'clock.

3090

Q. During all that period of time, is that right? A. Yes, sir.

Q. How much time did you have off for lunch? A. Two and a half hours.

Q. I can't hear you. A. Two and a half to three hours.

The Court: What time did you go to work on Friday?

The Witness: Six o'clock.

Q. Did you ever take off more than two hours on Fridays?

Mr. Heller: He said two and a half to three; that is what he said.

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3091

Q. Did you? A. Surely.

Q. You never took more than three? A. No.

Q. You are sure of that? A. Positive.

Q. Do you remember any time when you took off three hours on Friday during that period of time for lunch, do you remember any time? A. I do not remember exactly the time, but it happened about three or four occasions.

Q. What was the normal time you took off on Fridays? A. Never less than two hours.

Q. Usually about two hours? A. About two and a half hours.

3092

Q. Usually two or two and a half? A. Two and a half; never less than two.

Q. Now, on Saturdays you said you came to work at two o'clock; what time did you finish work on Saturdays? A. Well, after I got through, really, I quit as early as I got through.

Q. What time did you finish during that period of time? A. About eight o'clock.

Q. Sometimes later? A. Sometimes nine.

Q. And sometimes nine-thirty? A. No, sir.

Q. You never finished before eight, did you, during that period of time? A. As far as I remember, I do not think so; perhaps I did.

3093

Q. You do not remember any time finishing before eight during that period of time, do you? A. That is right.

Q. Sometimes you worked until nine? A. Sometimes until nine.

Q. Did you usually work until nine? A. Usually until eight.

The Court: Any time off to eat?

Q. On Saturday afternoon did you have any time off for lunch? A. Yes, sir.

3094 *Leo Schimmel—By Govt.—Direct*

Q. How much? A. Two hours.

Q. When was that? A. That was about from four to six.

Q. Are you sure of that? A. Yes, sir.

Q. Never more than two hours? A. Never more than two.

Q. During that whole period of time? A. Yes, sir.

Q. Isn't it true, Mr. Schimmel, that you ordinarily worked about sixty-five hours a week?

3095 Mr. Heller: I object to the question put by counsel. He did not say anything of the kind.

The Court: I do not know. Let him figure it up. I did not figure it. Let him figure it.

Mr. Rice: We had figured it on the basis of the calculations——

The Court: Let him figure it now.

Mr. Rice: Very well.

The Court: And tell us.

3096 A. Well, figure it out.

Q. I cannot hear you. A. Figure it out. I did not figure it.

Q. About how much time do you think it was?

The Court: Figure it yourself.

Mr. Rice: If your Honor please, I won't waste time on that. We have computed it.

The Court: It is a matter of argument anyhow. You have his testimony.

Mr. Rice: I beg your pardon?

The Court: It is a matter of argument anyhow. You have his testimony.

Mr. Rice: Yes, quite right.

Leo Schimmel—By Govt.—Cross

3097

Q. You have told us what happened throughout this period of time? A. Yes, sir.

Q. And throughout May, June and July, were you paid twenty dollars a week? A. Well, yes, sir, plus three or four dollars worth of poultry.

Q. Plus two or three chickens per week, is that correct? A. Yes, sir.

Q. And that is all you were paid? A. That is all.

Mr. Rice: That is all.

3098

Cross examination by Mr. Heller:

Q. Now, Mr. Schimmel, when did your family go away to the country? A. (No answer.)

Q. When did your family go away to the country? A. End of May.

Q. Can you fix about the approximate time? A. About May 25th.

Q. Did you work on Saturdays from May 25th until your people came back from the country? A. (No answer.)

Q. Did you work every Saturday? A. Well, except those Saturdays that I left for the mountains.

3099

Mr. Rice: I cannot hear you.

A. (Continuing.) Except I did not work every Saturday; the times I went to the mountains I did not work.

Q. There were quite a number of Saturdays from May until your folks came back? A. They came back in September.

Q. And you went to visit them about how many times? A. About once every other week.

The Court: We are not concerned with after July 20th.

3100

Leo Schimmel—By Govt.—Cross

Mr. Heller: No, up to July.

The Court: July 20th, wasn't that it?

Mr. Rice: Yes, that is the last date.

Q. So that from May to July every other Saturday you did not work at all, is that correct? A. That is true.

Q. Did you leave early in the afternoon when you went to the country, early on Fridays? A. I left about three o'clock on Fridays and got back Monday morning.

3101

Q. So every other week you did not work on Saturday and you got off at three o'clock Friday? A. Yes.

Q. Every other week, is that correct? A. Yes.

Q. No question about that? A. If I remember exactly, during that time it was about three or four times that I left.

Q. At three o'clock in the afternoon? A. And came back Monday morning.

Q. At about what time? A. About nine o'clock.

3102

Q. Those mornings you came back at nine o'clock? A. That is right.

Q. On many occasions you went out for breakfast? A. Yes, sir.

Q. Took off about a half an hour or an hour? A. About an hour.

Q. Frequently? A. Well, every day.

Q. Every day you took off some time for breakfast, didn't you? A. Yes.

Q. Did you attend to any of your personal errands during the day, if you so desired? A. The boss did not stop me. If I pleased, I did. Nobody asked me whether I did or not.

Q. Nobody asked you what you were doing? A. No.

Leo Schimmel—By Govt.—Cross

3103

Q. What you were supposed to do? A. No.

Q. Time was your own? A. Yes.

Q. Anybody tell you you had to work fifty hours? A. Nobody ever told me that.

Q. Did anybody tell you you had to work sixty hours? A. There was no time limit.

Q. Time was your own, is that right? A. Yes.

Q. You could do as you pleased? A. Yes.

Q. Isn't that correct? A. Yes.

Q. You could go any time you wanted? A. That is true.

3104

Q. Place was as free to you as to the Schechters themselves? A. Yes, sir.

Q. Is that correct? A. That is true.

Q. And isn't it a fact that you seldom worked more than forty-two to forty-eight hours, taking into consideration the time off for Saturdays, your breakfasts and lunches and the time spent for yourself? A. I do not understand that question.

Q. I say, didn't you average about forty-two to forty-eight hours, taking off the luncheon periods, the breakfast periods and the Saturdays? A. Saturdays and Sundays?

3105

Q. Saturdays and Sundays. A. The week-ends, you mean?

Q. Yes. A. Sure.

Q. Taking into consideration that sometimes you left at three o'clock Friday? A. About forty-three, forty-four, forty-five.

Q. That was your average you worked? A. Yes.

Q. You could have worked thirty, nobody would have stopped you, if you so desired? A. Nobody stopped me so long as I did my work.

3106

Leo Schimmel—By Govt.—Redirect

Q. You went out on collections at times in the car for Schechters? A. I used their pleasure cars.

Q. Went around as you pleased? A. Yes, sir.

Mr. Heller: That is all.

Redirect examination by Mr. Rice:

Q. Let us find out about these week-ends that you went up to the country, in the mountains. A. Yes.

3107

Q. You talked to Mr. Justice on June 29th, which is a Friday, did you not? A. Yes, sir.

Q. 1934? A. Yes.

Q. When was the first time that you went to the mountains in 1934, in the Spring or Summer or Fall of 1934? A. About June 15th.

Q. June 15th, what time did you leave? A. Left three o'clock on Fridays.

Q. Three o'clock on Fridays. Now, how about the following week-end, which is the week—which is Friday, June 22nd, you did not go to the country that week, did you? A. That week I did not.

3108

Q. You did not go? A. No.

Q. How about the week that Mr. Justice was there, June 29th? A. That week I did go.

Q. That week you did go? A. Yes, sir.

Q. At what time? A. At about two or three o'clock on Friday.

Q. About what—how about the week after Mr. Justice was there? A. The week after I did not go on Friday, but I went on Saturday.

Q. What time? A. Saturday, about six o'clock.

Q. You are giving the time that you left? A. The time that I left.

Q. On each occasion? A. Yes.

Leo Schimmel—By Govt.—Redirect

3109

Q. The time you quit work on each occasion, is that right? A. Yes, sir.

Q. That is Friday, July 5th, is that correct? A. 6th.

Q. What is that? A. Saturday, July 6th.

Q. Oh, yes, Saturday, July 6th. How about the week after that, Saturday, July 14th? A. I left on Friday.

Q. Wait a minute. Did you leave on Friday? A. I know I left on the Friday following the Saturday the previous week. I left on Saturday, and then the following week I left on Friday. I do not know the exact date. I am sure that is what it was.

3110

Q. On Friday, July 5th? A. Yes.

Q. The week after Mr. Justice was there did you go to the country at all? A. On the Saturday, yes.

Q. What time did you leave? A. About six o'clock at Saturday.

Q. The following week, Friday, July 13th, you did not go, did you? You left on Saturday? A. No, I only left on Saturday on one occasion.

Q. On Friday, July 13th, did you go to the country? A. Yes, I left on Friday.

3111

Q. What time? A. About three o'clock.

Q. That is the time you quit work? A. Yes.

Q. How about Saturday—the Friday after that you did not go to the country at all? A. July 20th?

Q. July 20th? A. I did.

Q. What time did you go? A. About half past two Friday.

Q. You are sure about that? A. Yes.

Q. Excepting for these occasions did you work as you stated in your direct examination? A. (No answer.)

3112 *Leo Schimmel—By Govt.—Redirect*

Q. Excepting for these occasions which you have now stated, that you went to the country?

A. Yes.

Q. You worked all of the hours that you stated on your direct examination? A. That is right.

Q. Is that correct? A. That is correct.

Q. No question about that at all? A. No.

3113 Q. How did you happen to make out this little memorandum for Mr. Justice? A. Well, that happened to be the week that I did not go to the country. That is the week that I worked on Friday and I worked on Saturday.

Q. Did you make this little slip out for Mr. Justice voluntarily? A. (No answer.)

Q. Did he ask you to make it out? A. He asked me to make it out.

Q. Did you complain to him first?

The Court: Wait a minute. They cannot be bound by that.

Mr. Rice: I will withdraw it.

3114 Q. Did you talk to Mr. Heller about these weekends that you went to the country?

Mr. Heller: He has already testified he has not spoken to me about this case numerous times.

The Court: I will let him answer.

Q. Did you talk to Mr. Heller about these weekends that you went to the country? A. No, sir.

Q. Did you talk to the Schechter Brothers about it? A. They are the ones that sent me to the country.

Q. Did you talk to them about it in reference to testimony in this case? A. Perhaps I did.

Q. Did you, yes or no? A. Yes, sir.

Mr. Rice: That's all.

Leo Schimmel—By Govt.—Recross

3115

Recross examination by Mr. Heller:

Q. Now, did Mr. Rice ask you before the grand jury if you ever went to the country? A. No.

Q. Did he ask you whether you ever took any time off for lunch? A. He simply asked me how much time I took off when I went to lunch.

Q. He asked you nothing about going to the country? A. No.

Q. Now, you do bookkeeping work, don't you? A. Yes.

Q. You are not a laborer, are you? A. No.

3116

Q. You don't belong to the union, do you? A. No.

Q. Now on how many occasions, when you stayed there in the evening, did you stay there and watch the customers play cards? A. I did that occasionally.

Q. You stayed in there on your own time? A. Yes.

Q. And you sometimes waited for customers to take you home in their cars, didn't you? A. That's right.

Mr. Heller: That is all.

3117

Redirect examination by Mr. Rice:

Q. When I questioned you before the grand jury I asked you how much time you took off for lunch.

The Court: But we are not trying the case before the grand jury.

Mr. Rice: But Mr. Heller opened it and I wanted simply to——

The Court: But you did not object to it.

Mr. Rice: Very well: That's all.

(Witness excused.)

3118 *Garland Galloway—By Govt.—Direct*

GARLAND GALLOWAY, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. What is your occupation, Mr. Galloway? A. I am assistant to the Code Supervisor for the Live Poultry Industry and secretary to the Advisory Committee.

3119 Q. And how long have you had that position? A. Since the day the Code started.

Q. And what did you do prior to that time? A. I operated a credit bureau and I managed the New York Poultry Exchange.

Q. Are you an accountant? A. Yes, sir.

Q. And what are your functions as an assistant supervisor of the Live Poultry Code Authority? A. I am in charge of the office, of the files, and all the managing of the office.

Q. Do you have anything to do with the reports which are required from slaughter house markets as to their volume of sales? A. I do.

3120 Q. And what are your functions in that connection? A. When the reports are received at the office it is my duty to check them off with the assessment—if a check is attached, and to run over the figures to see if they are added up correctly and the proper record taken and then to see that they are put into the files.

Q. What do the reports on the volume of sales have to do with the assessments? A. The assessments are computed on the basis of pounds.

Q. The number of pounds reported by the slaughter house markets? A. That is true.

Q. And if a slaughter house market reports less than his actual volume what about his

Garland Galloway—By Govt.—Direct

3121

ment? A. Well, he would compute his assessment from that list and it would be short.

Q. He would be paying less in assessments to the Code Authority, is that right? A. Yes.

Q. Now I show you Government's Exhibit 29 and I ask you whether that is one of the reports which were made to the Code Authority as to the range of daily prices of volumes in sales? A. It is.

Q. And those reports are from whom? A. The Schechter Live Poultry Market, Inc., 991 Rockaway Avenue.

3122

Q. What did you have to do with those reports if anything? A. When these reports were received in the office I had to check them over to find out whether they were made out correctly and see if the checks were attached to them and see that the figures on the pounds were put on and in the proper records, so that we would have some definite record rather than a number of these.

Q. And did you receive all the reports of this character? A. Yes.

Q. On behalf of the Code Authority? A. Yes.

3123

Q. And you know of all the reports that have been filed? A. Yes, sir.

Q. And they all came to you? A. Yes, sir.

Q. Now there are five reports there from Joe Schechter's market at 991 Rockaway Avenue? A. Five reports.

Q. Covering what period of time? A. The week ending May 25th, the week ending June 1st, the week ending June 8th, June 15th and June 22nd.

Q. And have there been any other reports filed by Joseph Schechter or the Schechter Live Poultry Market, Inc.? A. No, sir.

3124 *Garland Galloway—By Govt.—Direct*

Q. Or on their behalf? A. No.

Q. During the entire period of time that the Code has been in effect, there have been no other reports? A. No, sir.

Q. You are sure about that? A. Positive.

Q. No reports submitted or received? A. No.

The Court: Now this is exhibit what?
Mr. Rice: 29.

3125 Q. I show you, Mr. Galloway, this Exhibit 30, and I ask you whether they are the reports received by the Code Authority from the A. L. A. Schechter Corporation? A. They are.

Q. Covering what periods of time? A. The week ending April 30th, May 7th, May 14th, May 21st and May 28th.

Q. Any others? A. Yes, June 4th and June 11th.

Q. Do you know whether any other reports have been received from the A. L. A. Schechter Corporation? A. There have been no other reports.

3126 Q. You are sure of that? A. Yes, sir.

Q. Have there been any reports filed by Alex Schechter or Martin Schechter or Aaron Schechter? A. No.

Q. Besides these? A. No.

Q. During the entire period of time that the Code has been in effect? A. That's right.

Q. From May 16, 1934, to date, is that correct? A. That's correct.

The Court: That was with reference to Exhibit 31?

Mr. Rice: This is Exhibit 30.

Garland Galloway—By Govt.—Direct

3127

Q. You have worked for the poultry industry as an accountant for a number of years? A. I have.

Q. You know the relative size of the various poultry markets? A. Yes, sir.

Q. How does the Schechter establishment at 858 East 52nd Street compare with other markets in Brooklyn?

Mr. Heller: I object to that, it has no competent bearing on the issues involved.

The Court: Oh, yes it has, objection overruled.

3128

Mr. Heller: Exception.

A. It is one of the largest.

Q. And how about the Schechter establishment at 991 Rockaway Avenue? A. That is true of that one too.

Q. That is among the largest in Brooklyn? A. Yes, sir.

Q. During the period of time from May 16th to date, those two have been among the largest in Brooklyn? A. Yes, sir.

3129

Q. Do you know whether Joseph Schechter's establishment is now open at 991 Rockaway Avenue? A. The one at 991 Rockaway Avenue it is my understanding is not open; the one on 52nd Street is open.

Q. Do you know of any large poultry markets that have not filed these reports?

Mr. Heller: That is objected to.

The Court: Sustained.

Q. Have you checked up on the accuracy of the reports on volume contained in Government's Exhibit 30?

3130 *Garland Galloway—By Govt.—Direct*

Mr. Heller: I object to the form of the question, let him state what he did and what he found.

The Court: He can state that he figured that up, he can state that.

Mr. Heller: Whether he checked the accuracy of these reports——

Mr. Rice: I will withdraw that question.

3131 Q. The reports contained in Government's Exhibit 30 show or purport to show the volume of sales by the A. L. A. Schechter Poultry Corporation for each week, being the week ending on the date indicated on the report, is that correct? A. Correct.

Q. Do you know whether or not the figures reported in Government's Exhibit 30 are correct?

Mr. Heller: I object to that as calling for a conclusion.

The Court: Unless he has examined the books.

Mr. Heller: Certainly.

3132 The Court: He might have a suspicion, he might have information, but unless he checked them with the books he cannot testify, and then he would only know what the books showed.

Q. Have you investigated the volume of sales by the A. L. A. Schechter Corporation during the period of time covered by the reports in Government's Exhibit 30? A. I personally haven't done it, but we have had investigators do it employed by the Government.

Mr. Heller: I object to what somebody else did.

Garland Galloway—By Govt.—Cross

3133

Mr. Rice: We are just about to put the investigator on the stand. That is all.

Cross examination by Mr. Heller:

Q. Do you know when 991 Rockaway Avenue closed up? A. I do not know the exact date; I took my stencil out of the file on September 26.

Q. 991 Rockaway Avenue closed up September 1? A. I don't know when they closed up.

Q. You don't know that? A. I can't tell.

Q. You cannot tell? A. We didn't receive any reports from them, so I couldn't tell.

3134

Q. You can't tell? A. No.

Q. Did you ever look at their books yourself? A. No.

Q. What do you base your opinion on that they are the largest concern in Brooklyn, or one of the largest? A. Because of the fact that we received reports from them.

Q. And that is what you based your statement on? A. Not only that, the fact that I am very well acquainted with everybody in the poultry business and with the commission merchants.

3135

Q. You mean you asked them? A. I have asked them.

Q. And they told you that information? A. Yes, sir.

Q. And that is your knowledge of that statement? A. Not only that, but the fact that I have seen these reports and have compared them with other markets in that section.

Q. For that period of time? A. For that period of time.

Q. And you do not know whether they were the largest for any other period of time? A. I don't know.

3136

Clyde N. Justice—By Govt.—Direct

Mr. Heller: All right.

The Foreman of the Jury: Your Honor, may we have a recess?

The Court: Yes, you can have a recess for about five minutes. Do not let anybody talk to you about the case.

(Short recess.)

3137

CLYDE N. JUSTICE, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Justice, what is your business? A. Accountant.

Q. And who do you work for? A. The Agricultural Adjustment Administration.

Q. How long have you worked for the Agricultural Adjustment Administration? A. A little over a year.

3138

Q. In what capacity? A. As an accountant and auditor.

Q. And you are an experienced accountant? A. Yes, sir.

Q. Did you visit the A. L. A. Schechter Poultry Corporation at 858 East 52nd Street? A. I did.

Q. When was the first time you went there? A. June 19th.

Q. What days did you spend there? A. June 19, 20, 21, 22, 27, 28 and July 2; the 29th also of June.

Q. Is that all? A. Yes.

Clyde N. Justice—By Govt.—Direct

3139

Mr. Rice: If your Honor please, this will relate to Count 38 regarding falsity of reports.

The Court: Yes.

Q. Did you make an examination of the Schechter records? A. I did.

Q. What records did you examine? A. We examined the sales and purchase records, cash book and expense records.

Q. Did you examine the purchase records for the week commencing May 26, 1934? A. Ending June 2nd—

3140

Q. Ending June 2, 1934? A. Yes, that is right.

Q. Did you ascertain the amount of poultry that had been purchased that week from Risser & Rabinowitz? A. Yes, sir.

Q. According to the purchase books? A. According to their books, yes.

Q. You made a transcript of a portion of the books? A. I made a transcript of all of the books for the period between April 27th and June 23rd.

Q. You made an exact transcript of that particular portion of the purchase records? A. Yes, sir.

3141

Q. Will you tell us how many pounds of poultry was purchased by A. L. A. Schechter Poultry Corporation during the week commencing May 26 and ending June 2, 1934, from Risser & Rabinowitz, Philadelphia? A. 37,418 pounds.

Mr. Rice: That portion of the testimony relates to Count 5.

The Court: Yes.

Q. How much poultry was purchased altogether that week by the A. L. A. Schechter

3142

Clyde N. Justice—By Govt.—Direct

Poultry Corporation? A. Excluding a credit on the Rabitzer purchase of 6500-odd pounds, their purchases for the week were 44,805 pounds.

Q. Of which 37,418 pounds was purchased of Risser & Rabinowitz? A. Yes, sir.

Q. When were the purchases made from Risser & Rabinowitz? A. The record does not show the date of the purchase.

Q. Doesn't show the exact date? A. No.

3143

Q. What does it show? A. It shows purchases were made during the week ending June 2nd.

Q. Does it show the amount of each purchase? A. No, it shows the lump sum, lump purchase.

Q. And that is 37,000— A. 418 pounds.

Q. You have added up the total amounts of the purchases on the Risser & Rabinowitz invoices, which are Government's Exhibits 32, 33, 34 and 35, have you not? A. I have never seen the invoices, no, sir.

Q. Oh, you have not seen those invoices? A. No.

3144

Q. Didn't you add up these figures? A. No.

Mr. Rice: I wish to state for the Court that they were added up this morning and I stated for the record this morning that the aggregate amount was the identical figure just stated by Mr. Justice, namely, 37,418 pounds.

Q. Did you examine the sales records for the week commencing Monday, May 28, 1934? A. Yes, sir.

Q. What was the total volume of the sales made by the A. L. A. Schechter Poultry Corporation that week? A. That is the week ending June 2nd?

Clyde N. Justice—By Govt.—Direct

3145

Q. That being the week ending—June 2nd is a Friday. A. Beginning May 26 and ending June 2nd?

Q. Yes. Did you commence the week on May 26 or May 28? A. I go by the week-end. I don't recall.

Q. You commenced on Friday? A. Friday to Friday.

Q. You commenced on Saturday morning then, May 26? A. Yes, Saturday morning and ending Friday night.

3146

Q. Then what was the amount of the sales at the A. L. A. Schechter Poultry Corporation for the week commencing May 26th, Saturday, and ending June 2nd, 1934? A. 44,134 pounds.

Q. What was the inventory at the beginning of that week? A. 1121 pounds.

Q. What was the inventory at the end of that week? A. 300 pounds.

Q. That is, there were only 300 pounds of poultry left in the premises according to their records? A. That is correct.

Q. On June 2nd? A. That is right.

3147

Q. Did the books show the amount of shrinkage for that week? A. Yes, 1,492 pounds.

Q. Did you examine all the sales, all of the records of the sales of the poultry for that week? A. We made a transcript of their sales book.

Q. How many sales were made during that week? A. I believe total sales were 196.

Q. Total of 196? A. Yes, of all classes.

Q. Was there one sale of 59 baskets of poultry to the Mogen David Live Poultry Corporation? A. I could not determine baskets.

Q. What amount? A. On May 31, there was a sale of 1,449 pounds and 3,545 pounds.

3148 *Clyde N. Justice—By Govt.—Direct*

Q. That is, there were two separate sales by the A. L. A.? A. No, they were written on one sales ticket, but two different prices.

Q. But was one amount 3,545 pounds? A. Of 3,545 pounds, yes.

Q. That was a sale by the A. L. A. Schechter Poultry Corporation to the Mogen David Poultry Corporation? A. A. M. D. L. P. Company is the way it is written on the books.

Q. At what address? A. It does not give the address.

3149

Mr. Rice: Your Honor, 59 baskets of poultry at 60 pounds per basket would be about 3500 pounds.

Q. Did you examine the largest sales made during that week? A. Yes, sir, I made a record of the largest.

Q. Did you make an exact record of the 20 largest sales during that week? A. Yes.

Q. Showing the date of each such sale? A. Yes, sir.

3150

Q. And the sales ticket number? A. Yes.

Q. And the account number? A. Yes, sir.

Q. And the number of pounds sold? A. Yes, sir.

Q. Is this the record that you made from the sales books? A. It is.

Q. How many pounds of poultry were sold in the 20 largest sales that week? A. 10,856½ pounds.

Q. You were given an arbitrary figure of 12,344 pounds, were you not? A. Yes.

Q. And you were told to subtract the shrinkage?

Clyde N. Justice—By Govt.—Direct

3151

Mr. Heller: May I know who told him that? What is this testimony about?

Mr. Rice: Well, this 12,344 pounds will be shown by the exhibits now in evidence to be the amount of uninspected poultry brought into the A. L. A. Schechter premises during that week. Now, we propose to show that that 12,344 pounds of poultry was sold in its entirety excepting for 300 pounds remaining at the close of the week and except for a shrinkage of 1492 pounds.

3152

Mr. Heller: I just do not know what this has to do with an arbitrary figure.

Mr. Rice: I will state for the Court that 12,344 pounds is shown by the exhibits now in evidence to be the amount of uninspected poultry brought into the Schechter premises during the week commencing May 26, 1934. Now we propose to show a sale of that poultry. Giving the defendants the benefit of all doubt we subtracted the 300-pound inventory at the close of the week and the shrinkage of 4,292 pounds, which amounts to a balance sold of 10,552 pounds.

3153

Mr. Heller: I haven't any objection to the witness putting in evidence the exact copies that he claims that he made of our records without him characterizing the entries or anything like that.

The Court: Yes, but he can explain them. He is not to give any conclusions, but he can explain them.

Mr. Rice: We have a very large transcript of the Schechter records.

The Court: Now, what is the question?

3154

Clyde N. Justice—By Govt.—Direct

Q. Assuming, Mr. Justice, that there were 12,344 pounds of uninspected poultry in the Schechter premises, brought in during the week of May 26, 1934, that is, the week commencing May 26, 1934, then how many of the larger sales made during that week did it take to dispose of all that poultry?

Mr. Heller: I object to the form of the question, the proper foundation not being laid.

3155

The Court: Yes, it is a matter of argument.

Mr. Rice: In order to simplify this, your Honor, I will introduce in evidence the record of the twenty largest sales during that week and then we will make our argument from that and from the other exhibits in evidence.

The Court: Do you consent to them putting in the whole record, Mr. Heller?

Mr. Heller: If this witness will testify that he personally made copies of our books, I have no objection.

3156

Mr. Rice: But this particular record is very bulky.

The Court: I appreciate that, but you can argue from it.

Q. Now, you made a transcript of the sales shown by the sales records? A. Yes.

Q. And what else is shown in these records?

A. Their purchases are shown and the sales.

Q. What else? A. Their expenses.

Q. Now, is this a correct copy of the books of the A. L. A. Schechter Corporation? A. It is.

Clyde N. Justice—By Govt.—Direct

3157

Mr. Heller: Please ask him whether he personally made all these copies, or did anyone else make any part of these records.

The Witness: Not of the sales or purchase records; they did of the cash book records.

The Court: But I am not interested in the cash books. If you want them in I will offer it.

Mr. Heller: Then offer them all in.

3158

Mr. Rice: I offer this as a correct copy of the Schechter books.

The Court: There is no objection to that, is there, Mr. Heller?

Mr. Heller: No objection, your Honor.

The Court: All right, it is received without objection.

(Marked Government's Exhibit 36 in evidence.)

Q. Now I hand you back Exhibit 36, and also a memorandum which you have prepared. A. Yes.

3159

Q. Will you tell us what were the twenty largest sales made during the week at the A. L. A. Schechter Corporation?

Mr. Heller: I object to the question as immaterial.

The Court: Overruled.

The Witness: What is that?

Q. Just give us the dates and amounts of the twenty largest sales. A. May 28th, sales ticket No. 6410—

Q. Now never mind that, just give us the dates and the amounts. A. May 5, 384 pounds; May

3160

Clyde N. Justice—By Govt.—Direct

31, 474 pounds; May 31, 352 pounds; May 31, 419½ pounds; May 31, 394½ pounds;; May 31, 324½ pounds; May 31, 450½ pounds; May 31, 326 pounds; May 31, 337 pounds; May 31, 342 pounds; May 31, 338 pounds; May 31, 586 pounds; May 31, 405½ pounds; May 31, 392 pounds; May 31, 1449 pounds; May 31, 1866 pounds; May 31, 684 pounds; May 31, 335 pounds; June 1, 378½ pounds; June 1, 523 pounds.

3161

Q. Now, did you examine the records to ascertain what payments were made to Risser & Rabinowitz during this week? A. We have a record in the cash book.

Q. And will you give the dates and the amounts of such payments? A. On May 26th they gave them check No. 1381, in the sum of \$1328.73.

Q. That is from the A. L. A. Schechter Corporation to Risser & Rabinowitz? A. Yes, sir.

3162

Q. Continue. A. On May 29th they gave them check No. 1409 in the sum of \$1734.58. On May 28th they gave a counter check for \$2,228.43, and on June 5th they gave check No. 1432 in the sum of \$827.52.

Q. Now, did you examine the volume of sales for each week prior to and subsequent to the effective date of the Code? A. Yes.

Q. The Code became effective May 15th or 16th, 1934? A. Yes.

Q. Will you tell us the volume of sales made by the A. L. A. Corporation for each week from the week ending April 27th to the week ending June 16th, 1934? A. Just the pounds?

Q. Yes. A. Week ending——

Mr. Heller: The records are in evidence and they speak for themselves.

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The Court: Yes, they are in.

Mr. Rice: If your Honor please, it will take just three or four minutes to get that upon the record, and it is very, very difficult to make a comparison with these records.

The Court: He is giving an addition, that is all.

Q. You have made these computations? A. Yes, sir. May 27, week ending May 27—

Q. Just a minute, April 27. A. April 27.

3164

Q. Week ending April 27? A. April 27th.

Q. The total volume of sales was what? A. 29,706 pounds. Week ending May 4th, 34,204 pounds; week ending May 12th, 31,772 pounds; week ending May 18th, 48,170 pounds; week ending May 26th, 36,956 pounds; week ending June 2nd, 44,134 pounds; week ending June 9th, 33,676 pounds; week ending June 16th, 24,540 pounds.

Q. Did you make an additional copy of the volume of daily sales from May 16th to June 22nd, 1934? A. Yes, sir.

Q. And is this a copy of the Schechter records I am now handing you? A. It is, yes.

3165

Mr. Rice: I offer it in evidence.

Mr. Heller: Isn't that included in those records?

Mr. Rice: Not in this form, I do not think it is.

Mr. Heller: I do not think we ought to break it up because I am not in a position to analyze this thing; the whole record is in, that is all that is in evidence.

Mr. Rice: I am offering additional records now, your Honor.

3166

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The Court: You are offering additional records?

Mr. Heller: He is offering it in a different form, he has picked out certain entries from those records and wants to offer them in his own way. I consented that the entire record go in, and it went in.

Mr. Rice: If your Honor please, I am now offering a copy of the daily volume of sales from May 16, 1934, to June 22, 1934.

3167

The Court: Isn't that all in there?

Mr. Rice: It may be distributed out at various pages, but it is very difficult to find. The witness testifies that this is a true copy of the Schechter books.

Mr. Heller: I do not think that he ought to organize the figures to suit himself; the entire record is in.

The Court: This isn't organization, this is just a statement of sales of each day.

3168

Mr. Heller: Only for certain months; if we had it for each month I wouldn't care.

The Court: It might be convenient, I do not know, that is for the whole time in question?

Mr. Heller: It is not.

Mr. Rice: Yes, that is for the period of time as to which we charge the defendants with making false and fictitious reports. Now, this has been prepared in such a way as to compare the amount reported each day for that period of time, as shown by Government's Exhibits 29 and 30, with the amount actually sold on

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those days as recorded in the Schechter books.

Mr. Heller: The trouble with that is that it bears computations of the witness. That is improper. He computed it in this method, by this method here to show the differences. I do not mind him giving the figures alone, but he has computed it in a certain way that I am in no position to question him about.

The Court: If I understood you correctly this was just an addition of sales for each day?

3170

Mr. Rice: That is correct, that is the only computation he has made.

The Court: If that is all there is to it, if it is just an addition of the sales for each day, he may put that in.

Mr. Heller: He has got on here high, low, and average——

Mr. Rice: I am quite willing to strike out the price, I have no concern with prices.

Mr. Heller: There are a lot of things here.

3171

The Court: You have got the books. If he has just made an addition of the sales for each day that is one thing, but if that is a comparison then that isn't the right way, that is subject to proof.

Mr. Rice: Very well.

The Court: You have those papers, they can be compared with this; if that is simply an addition of sales for each day I would let you do it, because it will save time.

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Q. Then may I ask, Mr. Justice, whether you have added the volume reported by the A. L. A. Schechter Poultry Corporation to the Code Authority as indicated by the reports contained in Government's Exhibit 30 for the weeks ending April 30th, May 7th, May 14, May 21, May 28, June 4 and June 11, 1934? A. I copied their report, their pounds reported from May 16th to June 9th.

Q. What do you find the total amount to be? A. 106,659 pounds.

3173 Q. 106,000 pounds reported, is that right? A. 106,659 pounds.

Q. How much poultry was actually sold during that same period of time according to the Schechter books? A. According to the books there was 151,861 pounds.

Q. In other words 50 per cent. more was sold than reported?

Mr. Heller: I object to that, first his computation is all wrong.

Mr. Rice: I withdraw the statement.

3174 Mr. Heller: His arithmetic is bad.

The Court: For convenience you can subtract one from the other, what is the difference?

Mr. Heller: Yes.

Q. How much more was sold than that which was reported? A. 45,202 pounds.

Q. Did you ascertain from the books of the A. L. A. Schechter Poultry Corporation whether any sales were made by the A. L. A. Schechter Poultry Corporation to Joseph Schechter and the Schechter Live Poultry Market, Inc. after May 16, 1934, and prior to July 26, 1934? A. As

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3175

to Joe Schechter yes. The other I don't know. I don't know that other.

Q. As to Joe Schechter? A. As to Joe Schechter, yes.

Q. You have made a short summary of part of that? A. Part of that, yes.

Q. Will you tell what dates such sales were made to Joe Schechter and the amount, the price? A. On May 21, 167 pounds, \$38.41; May 23, 909 pounds, \$131.80; May 24, 511 pounds—

Mr. Heller: How much?

3176

A. (Continuing.) 511 pounds, \$122.64; May 25, 160 pounds, \$40.00; May 30, 128 pounds, \$17.28.

Mr. Heller: Just take it easy. 124?

A. (Continuing.) 128 pounds, \$17.28; May 31, 1,866 pounds, \$298.56; June 4, 31½ pounds, \$8.19; June 4 again, 259 pounds, \$62.16; June 4 again, 380 pounds, \$79.80; June 5, 382 pounds, \$61.12; June 5 again, 202 pounds, \$52.52. That is as far as I got.

Q. There were other sales recorded in their books? A. Yes.

3177

Q. But you have not summarized them? A. I have not added them.

Q. They are contained in the large exhibit, Exhibit 36? A. Yes, sir.

Mr. Rice: That is all.

Cross examination by Mr. Heller:

Q. Will you give us the total amount of poultry sold to Joseph Schechter from May 21st—

The Court: He had better have those papers back again.

3178

Clyde N. Justice—By Govt.—Cross

Q. Which ones would you like?

The Court: Give him all the papers he had. There was a pencil computation he made there of the sales to Joseph Schechter, wasn't there? I know he did not total that, did he?

The Witness: No, sir.

The Court: That is the one you want?

Mr. Heller: Yes, I want the total amount to Joseph Schechter by the—

3179

The Court: He did not total that.

(Mr. Rice hands paper to the witness.)

A. 4,955½ pounds.

Q. Is that the total from May 21st to June 5th?

A. June 5th.

Q. Is that correct, that is the total amount sold to Joseph Schechter from the A. L. A. Schechter Corporation on 52nd Street? A. That is correct.

Q. You claim there were sales made from A. L. A. to Joseph Schechter? A. I say they show on their sales records as sales.

3180

Q. Did you understand they were sales or not? A. I do not know anything except what the books show.

Q. Did you examine the price the particular merchandise was purchased at or sold for? A. There is no way of telling what particular price it was purchased for, but the price it was sold for is on the books.

Q. Do you know the price it was sold for? A. To Joe Schechter?

Q. Yes. A. Yes, sir.

Q. Did you examine the purchase books? A. Purchase book would not disclose the price at which that particular merchandise was purchased.

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Q. Did the record show the amount paid for poultry by the A. L. A.? A. It shows the amount it was, but not the price per pound or classified.

Q. Have you seen any bills from creditors?

A. Very few invoices we could find. Just a few of them.

Q. Have you ever heard of an accommodation purchase or an accommodation sale? A. Surely.

Q. That is done in many places of business, is it not? A. Surely.

Q. As a matter of courtesy, just to show a bookkeeping entry, to keep your books straight? A. Probably so.

3182

Q. That is correct, isn't it? A. Yes.

Q. Now, do you know the purchase price of the merchandise bought from Philadelphia concerns and sold to Mogen David? A. I don't.

Q. Did you compare the two? A. I did not.

Q. You don't remember at what price they were purchased? A. There is no records of the purchase price.

Q. You have no record? A. They didn't have any record of the purchase price.

3183

Q. So you cannot tell what the sales price was? A. Oh, yes, I can.

Q. Will you just tell us what the sales price was to Mogen David? A. Yes. On what date?

Q. There was only one sale.

Mr. Rice: If your Honor please, I do not see how it is material what price was paid for this poultry. It is quite immaterial whether it is an accommodation sale or not.

The Court: I will let him show it.

Mr. Rice: Very well.

3184

Clyde N. Justice—By Govt.—Cross

Q. How many sales were made towards the end of May to Mogen David? Did I understand you to say that 65 baskets were sold, or something like that? A. No.

Q. 35 baskets? A. I did not say any amount of baskets.

The Court: He has told you the number of pounds and Mr. Rice said at 60 pounds a basket it would be so many pounds.

3185

Mr. Heller: Oh, I see, pardon me.

Q. They had an accounts receivable book? A. Yes.

Q. They had an accounts payable book? A. Yes.

Q. Did they not? A. Yes.

Q. Would that indicate to you the amount they owed for particular merchandise that they purchased from their creditors? A. Surely.

Q. And the accounts receivable would indicate what they owed them? A. That is right.

3186

Q. Is that right? A. Correct.

Q. So, examining the two, you could ascertain the price at which they were sold? A. The price at which merchandise was sold I can ascertain from their sales record.

Q. You could? A. Yes.

Q. And the purchase price? A. Not the purchase price.

Q. You couldn't do that? A. No.

Q. For how many days did you actually stay there at 858 East 52nd Street? A. How many days?

Q. Yes, how many days altogether? A. I was there on June 19, 20th, 21st, 22nd, 27th, 28th, 29th and July 2nd.

Q. That is a total of how many? A. Eight.

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Q. Eight full days? A. Eight days.

Q. You had somebody else with you? A. Part of the time.

Q. They gave you a place to work? A. Yes.

Q. Anything that you wanted they gave you?

A. Anything that I asked for.

Q. No question about that? A. Not a bit.

Q. You were treated nice? A. Certainly.

Q. You did not examine the books at 991 Rockaway Avenue, did you? A. I did not.

Q. Only this place? A. Only this.

3188

Mr. Heller: That is all.

Mr. Rice: That is all. Your Honor, the Government rests.

Mr. Heller: Shall I make my motion now?

The Court: Yes, make your motion.

Mr. Heller: On behalf of all the defendants I move for the direction of a verdict of not guilty in favor of the defendants, in that there is not sufficient and/or substantial competent evidence in the record to justify in submitting any issues to the jury.

3189

I further move for the direction of a verdict of not guilty against all of the defendants on the ground that there is not sufficient and/or substantial and competent evidence tending to show that the commerce with which these defendants were engaged was interstate commerce within the meaning of the National Industrial Recovery Act; that on the contrary, it appears that the interstate commerce testified to by the witnesses called by the Government shows that the commerce consisted in the purchase and sale of live poultry which came in

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the cars in which live poultry was shipped, was unloaded by the receivers, and the transactions which these defendants were engaged in involved only live poultry after the unloading of the cars, and slaughtered poultry, in the State of New York.

3191

I further move for the direction of a verdict of not guilty as against all of the defendants, on the first count of the indictment, which alleges in substance a conspiracy, that the defendants unlawfully, feloniously and wilfully conspired with each other to commit a large number of offenses against the National Industrial Recovery Act or the Code, and on the further ground that there is not sufficient and/or substantial evidence tending to show that the defendants were engaged in interstate commerce; in that their conduct did not affect interstate commerce in the manner alleged in the indictment; in that the transactions dealt in by the defendants, or either of them, and the acts complained of, were not violations which substantially affected interstate commerce; that the acts complained of, if affecting interstate commerce, were merely incidental; that there is no evidence to show that the defendants entered into any agreement to violate the National Industrial Recovery Act or the Code, but that, on the contrary, there was no agreement that the defendants' acts were illegal, that under no circumstances can an agreement be spelled out that had an object which

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tended to violate the National Industrial Recovery Act or the Code.

I further move to dismiss on the ground that there is no proof whatsoever that the defendants at any time intended to unlawfully, feloniously and wilfully do the acts complained of in the indictment.

I move to dismiss on the ground that the defendants have not been proven guilty beyond a reasonable doubt.

3194

I further move to dismiss on the ground that the acts complained of are not violations of any provisions of the Code of Fair Competition in any transaction affecting interstate or foreign commerce.

I further move to dismiss on the ground that there is not sufficient and/or substantial competent evidence in the record to justify the defendants to be called upon to interpose any defense.

May we have an argument on that?

The Court: Do you want an argument?

Mr. Heller: Yes.

3195

The Court: We will excuse the jury. Gentlemen, do not let anybody talk to you about the case, do not discuss it. Please go out.

(The jury retired, and argument was had upon the motion to dismiss.)

(The jury returned.)

The Court: I deny each of your motions, and I give you an exception to the denial of each motion separately.

I want to say to the jury that my denial of the motions of the defendants does not indicate any expression of opinion on my

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part as to the facts. It simply means that I believe there is a question of fact. There being a question of fact, I am obliged to submit the question of fact to you gentlemen for determination.

Mr. Heller: I would like to have until two o'clock tomorrow, and then I will expedite the testimony as rapidly as possible.

Mr. Rice: May we compromise and make it 11:30?

3197

The Court: I will give you until twelve o'clock tomorrow. Gentlemen of the Jury, do not let anybody talk to you about the case, do not discuss it among yourselves, and do not form any opinion until it is finally submitted to you. Be back tomorrow at twelve o'clock.

Adjourned to Thursday, October 25, 1934, at 12 noon.

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Brooklyn, N. Y., October 25, 1934.

Met pursuant to adjournment at 12 noon; present as before.

Mr. Heller: If your Honor pleases, I desire at this time to secure your Honor's permission to have Mr. Jacob E. Heller conduct the examination of some of the witnesses in the defendant's case. I ask this because of the fact that he has prepared the defense in some particulars.

The Court: That is perfectly all right, as long as only one attorney examines one witness.

Mr. Heller: Yes, your Honor.