

I N D E X

	PAGE
Statement Under Rule 13, Subdivision 4	1
Indictment	2
Docket Entries	119
Demurrer	125
Order Sustaining Demurrer in Part and Overruling in Part	130
Decision	131
Notice of Motion for Bill of Particulars	165
Affidavit of Martin Schechter in Support of Motion for Bill of Particulars	167
Affidavit of Joseph Heller in Support of Motion for Bill of Particulars	175
Bill of Exceptions	178
Motions for Direction of Verdict	1063
Motions to Dismiss	1065, 1479
Charge to Jury	1483
Verdict	1547
Motion to Set Aside Verdict	1553
Minutes of Sentence	1555
Petition of Appeal	1620
Assignments of Error	1624
Stipulation and Order Waiving Printing of Exhibits	1643
Stipulation as to Record	1644
Order as to Record	1645
Clerk's Certificate	1646

TESTIMONY FOR PLAINTIFF

Leland D. Ives:	
Direct	182
Cross	220
Redirect	239, 246
Recross	244

	PAGE
Theodore J. Tottis:	
Direct	248
Cross	304
Redirect	368
Recross	380
W. T. Termohlen:	
Direct	387, 421
Cross	416, 441
Redirect	482, 484
Recross	483
Leroy Peterson:	
Direct	485, 526
Cross	541
Redirect	589
Jack Zasloff:	
Direct	499
Cross	513
Hyman W. Gardner:	
Direct	594
Cross	607
Benjamin Forsmith:	
Direct	612, 696
Cross	639, 697
Redirect	671, 698
Irving H. Dale:	
Direct	671
Cross	683
Redirect	695
Philip Alampi:	
Direct	699
Cross	724
Jack Musican:	
Direct	767
Cross	791
Redirect	804
Recross	806

Index

iii

	PAGE
Samuel Cohen:	
Direct	808
Cross	875, 880
Redirect	908
Robert Lenhart:	
Direct	877
Cross	879
Abe Danziger:	
Direct	912
Cross	950
Redirect	973
Recross	981
William H. Cloward:	
Direct	985
Cross	994
Amos M. Whitmore:	
Direct	995
Cross	1003
Jacob Damsky:	
Direct	1009
Cross	1012
Leo Schimmel:	
Direct	1012
Cross	1033
Redirect	1036, 1039
Recross	1039
Garland Galloway:	
Direct	1040
Cross	1045
Clyde N. Justice:	
Direct	1046, 1442
Cross	1059, 1465

TESTIMONY FOR DEFENDANTS

	PAGE
Herbert Frankel:	
Direct	1067
Cross	1101
Redirect	1140
Louis Spatz:	
Direct	1143
Cross	1167
Redirect	1175
Albert Garlick:	
Direct	1176
Cross	1187
Herman Solon:	
Direct	1189
George Levin:	
Direct	1191
Cross	1209
Redirect	1219
David Pack:	
Direct	1221
Cross	1224
Julius Kastein:	
Direct	1228, 1241
Cross	1239, 1251
Redirect	1267, 1271, 1275
Recross	1269, 1274
Helil Gershon:	
Direct	1277
Cross	1284
Joseph Weisman:	
Direct	1292
Cross	1294
Redirect	1299

Index

v

	PAGE
Harry Landes:	
Direct	1300
Cross	1304
Redirect	1309
Leo Schimmel:	
Direct	1309, 1325
Cross	1336
Redirect	1339, 1347, 1387
Recross	1344, 1349
Irving Meuterick:	
Direct	1319
Isidore Molmod:	
Direct	1323
Martin Schechter:	
Direct	1351
Cross	1367
Redirect	1381, 1385, 1387
Recross	1382, 1386
Aaron Schechter:	
Direct	1389
Cross	1402
Redirect	1411
Alexander Schechter:	
Direct	1412
Cross	1418
William E. Casey:	
Direct	1420
Joseph Schechter:	
Direct	1423
Cross	1433
Redirect	1439
Henry Goldsmith:	
Direct	1441

GOVERNMENT'S EXHIBITS

	Offered Page	Printed Page
1.—Certificate of Incorporation of the Schechter Live Poultry Market, Inc.	179	1556
2.—Certificate of Incorporation of the A. L. A. Schechter Poultry Corp.	179	1556
3.—Certificate of Doing Business of Rugby Live Poultry Market	180	1556
4.—Certificate of Incorporation of Mogen David Live Poultry, Inc.	181	1556
5.—Signature Card of A. L. A. Schechter Poultry Corp. with Manufacturers Trust Co.	181	1556
6.—Bank Resolution of A. L. A. Schechter Corp.	182	1556
7.—Live Poultry Carload Report, 1929	194	1557
8.—Live Poultry Carload Report, 1930	195	1558
9.—Live Poultry Carload Report, 1931	195	1559
10.—Live Poultry Carload Report, 1932	195	1560
11.—Live Poultry Carload Report, 1933	195	1561
12.—Monthly Live Poultry Market Report, September, 1934	196	1562
13.—Receipts of Live Poultry by States, 1926 to 1933	199	1563
14.—Inspection Service Record, 1928 to 1934	201	1576
15.—Five Inspection Certificates	207	1577
16.—Rules Setting Up Inspection Service	211	1577

Index

vii

	Offered Page	Printed Page
17.—Sanitary Code, Dept. of Health, City of New York . . .	213	1579
19.—Notice of Hearing on Proposed Code of Fair Competition	408	1580
20.—Certificate of List to Whom Notices Were Mailed	408	1580
21.—Copy of Proposed Code	408	1581
22.—Table of Poultry Receipts, 1927 to 1933	437	1581
23.—Table of Price per Pound, 1927 to 1934	437	1581
24.—Chart, Poultry Receipts as Related to Population	441	1583
25.—Minutes of Meeting of April 23, 1934	539	1585
26.—Certified Copy of Live Poultry Code	540	1586
27.—Report of Inspector, Termed Score Card	601	1587
28.—Report of Inspector, Termed Score Card	607	1589
29.—Slaughter House Poundage Reports, Schechter Live Poultry Market	773	1592
30.—Slaughter House Poundage Reports, A. L. A. Schechter Live Poultry Corp.	787	1597
31.—Letter to Code Authorities, June 26, 1934	791	1604
32.—Invoices by Risser & Rabowitz	987	1605
33.—Invoice by Risser & Rabowitz	991	1605
34.—Invoice by Risser & Rabowitz	992	1605
35.—Invoice by Risser & Rabowitz	993	1606

	Offered Page	Printed Page
36.—Copies of A. L. A. Schechter Poultry Corp.'s Books	1053	1606
37.—Memorandum of Working Time by Leo Schimmel	1338	1606
38.—Daily Sales Record—A. L. A. Schechter May 16th to June 9, 1934	1445	1607
39.—Reports of A. L. A. Schech- ter to Code Authority—May 7 to June 9, 1934	1448	1608
40.—Sales Record—A. L. A. Schechter—May 16 to June 11, 1934	1458	1609
41.—Table of Comparative Prices —A. L. A. Schechter	1460	1610

DEFENDANTS' EXHIBITS

A.—Picture of Live Poultry Freight Car	223	1611
B.—Inspection Receipt	324	1611
C.—Letter to Code Supervisor, June 19, 1934	547	1611
D.—Letter, Code Authority to Samuel Schechter, June 8, 1934	552	1612
E.—List of Market Men	699	1613
F.—Assessment List	799	1613
G.—A Sheet Book	1313	1614
H.—A Sales Book	1317	1614
I.—Two Charge Books	1328	1614
J.—Accommodation Sales Record Sheets	1388	1615
K.—Bill of Inspection, June 2, 1934	1395	1618
L.—Check, Mogen David Live Poultry Market to Jack Dam- sky, June 21, 1934	1396	1619
Proceedings in U. S. C. C. A. Second Circuit		1648
Opinion, Manton, J.		1648
Concurring opinion, Hand, J.		1660
Judgment		1664
Clerk's certificate		1664
Orders allowing certiorari		1666

Herbert Frankel—By Defts.—Direct

3199

HERBERT FRANKEL, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Jacob E. Heller:

Q. Mr. Frankel, what is your business or occupation? A. Commission merchant.

Q. Will you talk a little louder, please, so that the jurymen can hear you? A. Commission merchant.

Q. Where is your place of business? A. West Washington Market. 3200

Q. Are you associated with some firm? A. Yes.

Q. Will you tell us what that is? A. I am president of the Sol Frankel, Inc.

Q. And how long have you been associated with that firm? A. Twenty-seven years.

Q. In the West Washington Market? A. Yes.

Q. Are you connected with any association in the live poultry industry? A. Yes.

Q. What association? A. The Commission Merchants' Association and the New York Live Poultry Exchange. 3201

Q. Do you have any office in any of those associations? A. Yes.

Q. What office do you hold? A. I am vice-president of the Poultry Exchange

Q. Will you describe the nature of your business or your firm's business? A. We receive shipments from the West on consignment and we sell it to the slaughter house trade in the City of New York.

Q. Will you tell us your particular activity in this particular business? A. Mine is executive; I solicit the shipments from my western connections and I also do the financing.

3202

Herbert Frankel—By Defts.—Direct

Q. Have you any connection with any slaughter houses? A. No, sir.

Q. Are you acquainted with the practices, or rather, are you acquainted with the activity in the slaughter house? A. Yes.

Q. And how did you become so acquainted? A. Well, I have been in the business twenty-seven years.

Q. And that has brought about visits on your part to these establishments? A. Yes, sir; and many years ago I worked in a slaughter house.

3203

Q. For any length of time? A. For about a year and a half.

Q. And you are in constant contact with the slaughter house people and also those commonly denominated as market men? A. Yes.

Q. Now, have you made any studies of the conditions in the live poultry industries? A. Yes.

Q. And have you also made studies of the relation between the New York, Chicago and Boston and other markets? A. Yes.

3204

Q. And it is understood, when I ask these questions, that I am referring to the live poultry industry? A. Correct.

Q. And also the various classes of poultry and where they come from? A. Yes.

Q. And in making these studies do you consult any reports? A. Yes.

Q. What reports do you consult? A. Why, there is the daily report of Urner Barry, and the Daily Chicago Report, and then there is a monthly Federal Reserve report, and there is, oh, possibly a dozen commercial agency reports.

Q. And do you familiarize yourself with those reports? A. Yes.

Q. Have you also studied the relation, if any,

Herbert Frankel—By Defts.—Direct

3205

between the practices in the trade and the prices and volume of poultry? A. Yes.

Q. And are you also acquainted, sir, with competitive practices in the live poultry industry in New York and the Metropolitan area? A. Yes.

Q. And are you acquainted, sir, with the Live Poultry Code for the Metropolitan area, and its provisions? A. Yes.

Q. Now, will you tell us what straight killing is, sir? A. Why, straight killing is the killing of a coop of poultry exactly as it is purchased, all the birds on that particular coop.

3206

The Court: All?

The Witness: Yes, your Honor. In other words, if a butcher buys a coop of poultry he gets everything that is contained in that, or if he buys a half a coop he gets what is contained in the half.

Q. You are referring particularly to a sale made by yourself to market men? A. No, I am referring to a sale made by the market man to a butcher. We have no straight killing; we sell ours alive.

3207

The Court: No allowances for culls at all?

The Witness: Culls are removed at the car, your Honor.

Q. Will you tell us what the industry, referring to the commission men, understands by a cull? A. The industry's understanding—a cull is a bird that is poor in flesh, possibly has crooked breast, or other physical deformities, has pin feathers, I think that is about covering it.

3208

Herbert Frankel—By Defts.—Direct

Q. Is that type of bird that you have now described fit for human consumption? A. It is, if it is healthy.

Q. How do you differentiate, if you do, between what you have described as a cull and a diseased bird, one that you say is not fit for human consumption? A. Well, the inspector kills all those that are diseased.

3209

Q. You want us to understand then that when you receive the birds from the cars that there are no birds which you have deemed unfit for human consumption? A. Well, that is a difficult question to answer. I am healthy today and tomorrow I have a cold. A bird comes in, in a car, perfectly healthy and contracts a cold. The inspector would kill a bird of that kind.

Q. What is the understanding in the trade among the commission men with respect to the health or non-health of any birds when they receive them in their place of business? A. Why, they are killed.

3210

Q. Now, what is the understanding or the—well, I will reframe the question. To the knowledge of commission men, when the birds are brought into their places of business, are there any birds unfit for human consumption amongst those birds received by them?

Mr. Rice: I object as hearsay, your Honor, as to what the knowledge of other commission men is.

The Court: As to his own experience, he may testify to that.

Mr. Jacob Heller: 27 years.

A. I would say that we offer no birds for sale which are not fit for human consumption.

Herbert Frankel—By Defts.—Direct

3211

Q. What percentage—well, I will withdraw that. How many commission men engage in similar business as yours in the metropolitan area? A. Possibly 20.

Q. Of the total volume of birds received by these 20 what percentage does your firm receive? A. Oh, of course, that varies every year, but I should say over a period of years somewhere between 5 and 10 per cent.

Q. Are you acquainted, sir, with the practice known as mis—selling misbranded poultry? Do you know of such a practice, sir? A. No, I do not know what that means. I have never heard of the expression.

3212

Q. Have you ever heard, or do you know of, a practice of selling poultry unfit for human consumption? A. No.

Q. You refer now to a practice on the part of the commission men or on the part of the market men? A. I think both market men and commission men.

Q. Are you acquainted, sir, with the practice known as giving secret rebates? A. Secret rebates? No.

3213

Q. Are you acquainted, sir, with the requirements of inspection of birds coming into New York? A. Yes, sir.

Q. Do you know whether there is a Government inspection system in vogue in Philadelphia? A. There is not.

Q. Do cars come in directly from Philadelphia as they do to New York? A. Yes.

Q. And are there Government inspectors posted there? A. No.

Q. Are you acquainted with the practice of loading poultry with gravel and of constipating

Herbert Frankel—By Defts.—Direct

3214

chickens so as to make them heavier? A. Oh, that is—that practice has not been anything like that for more than 10 years.

Q. Are you aware that there is no such practice in vogue today? A. I am absolutely certain.

Q. Are you acquainted, sir, with the type or character of the population which consumes live poultry in New York? A. Yes.

3215

Q. Will you tell us? A. I would say that our poultry is consumed, the live poultry is consumed about at least 60 per cent. by the Jewish trade and the balance Italians, and Poles, and Germans, and other Slav races.

Q. Can you tell us, sir, the manner of the mode in which the poultry comes into the City of New York? A. Why, it comes in—

Q. Start from the beginning, with the farm. A. With the farm?

3216

Q. Yes. A. Why, poultry is collected by men known as hucksters, or little country stores; and they in turn are brought into what is known as shipping stations. Now, these shipping stations may belong to large concerns, like the packers or might be owned by little individual shippers. They are then loaded into what we call patent cars. These cars are so designed that they will—there are 128 steel cages, and they accommodate, according to size, somewhere between 4,000 and 5,000 head. These cars are so arranged that there is water and feed, and space there for a caretaker, who can sort of lead the same life as you would if you were camping out, he has a cook-stove and water and a cot on which to sleep. These—it takes anywhere from 3 to 10 or 12 days to bring a carload of poultry to New York; that is, Ohio points would

Herbert Frankel—By Defts.—Direct

3217

take 3 days, and down in Texas or Colorado it would take 10 or 12. Is that what you want?

Q. Yes; and then, of course, it arrives in New York or any one of the other known centers where poultry is received, is that correct? A. That is correct.

Q. When it arrives there——

The Court: When you speak of New York, you mean terminal in Jersey?

The Witness: Either one of the railroad terminals.

3218

Q. When it arrives at one of those terminals, will you tell us if you know what, if anything, is done with respect to this poultry by, let us say, commission men and market men or anybody else who has anything to do with it? A. Before the car can be unloaded, application must be made to the Department of Agriculture representative there for the inspection of that car, both as to health and to feed contents, and unless it meets the requirements of the Government, why, the car is rejected and must remain on the track until it does meet those requirements. Once it is rejected it may not be unloaded within 24 hours. After a car has passed inspection, we then, through our crew, unload these birds, by taking the birds from the car and placing them in coops. If you are not familiar with them, they are a coop, wooden-slatted coop, which is 6 by 3, and the coops contain anywhere from, oh, 150 to 180 pounds net.

3219

Q. Then you say after this inspection has taken place, they are removed to the various places of business of the commission men? A. No, it is sold right at the terminal, it may be.

3220

Herbert Frankel—By Defts.—Direct

Q. All of it? A. Well, what isn't sold is brought to West Washington Market.

Q. And sold to whom, sir? A. To the slaughter house men.

Q. And what do the slaughter house men do with it, do they themselves cart it off? A. Yes.

Q. With respect to that poultry which is not sold at the terminal and not carted off by the slaughter house men, what happens to that? A. That is taken down to our places in the market.

3221

Q. Tell us what happens to it there. A. Then offered for sale. If it cannot be sold that day, it is sold the next day.

Q. Do you know of any difference or any differentiation between the manner or type of quality of inspection prior to the time the Code went into effect and since the Code was in effect? A. No.

Q. Would you say the inspection to your knowledge was exactly the same? A. I would; perhaps some very minor changes; with that exception it is the same.

3222

Q. Those minor changes do not go to the very merits of the inspection? A. That is correct.

Q. Then you would say, sir, that you would characterize the inspection as the same prior to the Code and what pertains today? A. That is right.

Q. Do you know, sir, the manner in which the price that a commission man gets for his poultry is fixed? A. Yes.

Q. Will you describe how that process takes place? A. Well, at nine o'clock in the morning the buyers gather at the New York Central Terminal at 60th Street—

Herbert Frankel—By Defts.—Direct

3223

Q. What do you mean by “buyers”? A. The slaughter house men; the commission merchants are there, the cars are there. This poultry is offered for sale. There is a representative there of the press, the recognized price medium as the Urner Barry quotation. In the absence of any direct sales or purchases the Urner Barry Quotation representative takes a willingness to buy and a willingness to sell, and that becomes the price at which the poultry is actually the basis on which the poultry is actually settled for.

3224

Q. Assuming that sales do actually take place, then what? A. The price is quoted.

Q. What are those prices that are quoted? You mean the high and the low? A. The high and low and various grades; there are four or five different grades, on each particular kind of poultry.

Q. And the high and low quoted by this agency, Urner Barry, that usually determines, does it not, the price that the balance of the poultry is sold for that particular day? A. Correct.

Q. And this procedure or process is the only process or procedure by which these prices are fixed, is that right? A. That is correct.

3225

Q. And the prices vary from day to day, do they not? A. Yes.

Q. Do you know, sir, whether there is any practice of shipping in car loads of culls as such, and for this purpose I will say to you that the definition of a cull is a chicken unfit for human consumption, not your definition as given here, but the definition that I give you? A. There is no such practice.

Q. Have you ever known in your entire experience of such a practice? A. No.

3226

Herbert Frankel—By Defts.—Direct

Q. Do you know, sir, whether car loads of diseased chickens as such come into New York? A. No.

The Court: You don't know or they do not, which is it?

The Witness They do not.

3227

Q. Do you know, sir, what percentage of live poultry that does come into New York is known as a cull in accordance with the definition that I gave? A. I do not quite understand that.

The Court: Read it.

(Last question repeated by the reporter.)

A. I should say a great deal less than possibly one-tenth of one per cent.

Q. What happens to those birds as I have defined them? A. They are killed.

Q. By whom? A. The inspectors.

3228

Q. Would you say that the percentage of culls to the live poultry has been greater prior to the Code than it is today? A. Are you talking about my definition?

Q. My definition. A. Now what was that question?

Mr. Jacob E. Heller: Read it, please.

(Question repeated by the stenographer as follows: "Would you say that the percentage of culls to the live poultry has been greater prior to the Code than it is today?")

A. No.

Q. Would you say it is the same? A. About.

Herbert Frankel—By Defts.—Direct

3229

Q. Would you say that the percentage has been the same for the last ten or twenty years?

A. Yes. That varies with the weather. If you have weather like this you have few sick birds; if you have a sudden change in weather they do get sick; they are just like humans.

Q. But you would say that the average, taking all these facts into consideration, is lower than one-tenth of one per cent? A. Correct.

Q. So that, to characterize this further, you say that one carload may have none, and another carload may have five or six? A. That is right.

3230

Q. But on an average it is no more than one-tenth of one per cent? A. That is correct.

Q. Do you know, sir, whether the character of the grade of poultry that has come into New York has changed within the present year or past two years? A. I think it is just the same.

Q. For how long would you say it has remained the same? A. About the last ten years.

Q. What determines the quality or grade of the poultry that comes in in any one month—I would rather put that this way: What determines the grade or the quality of poultry during any year? You do not understand my question? A. No, I will answer what I think you ask. I would say you get different grades that are shipped from different States in the United States, and perfectly good, healthy poultry, but one is large and another is small.

3231

Q. Will you describe as best you can the various grades? A. Well, I would say the fancy poultry came from the central part of the United States, Ohio,——

Q. If you can, tell us also when these various grades come in, if there is any particular time in which they come in?

3232

Herbert Frankel—By Defts.—Direct

The Court: Let us get this straight. You said Ohio—

The Witness: Ohio, Indiana, Illinois.

The Court: All right.

3233

The Witness: The lighter grades come from the Southern States, Tennessee, Alabama, Mississippi, Texas. You get another grade as you go up in Iowa and Nebraska; still another grade in the Dakotas and Minnesota; and then you go around in Nebraska and you get still another grade. It so happens that the Southern States ship in poultry during the months of, I should say, January to June; then that crop is cleaned up. Some States ship twelve months a year, like Missouri, Indiana, Illinois. The Northern States ship only in the Winter time, so to answer—I think that is the best answer I can give to your question.

3234

Q. You have said that various fowl come from various States; you also used the word “grade.” I take it, then, if I am wrong check me, that a bird that comes from Indiana may be either a higher or lower grade than the bird which comes, let us say, from Nebraska, is that correct? A. That is correct.

Q. Will you explain the difference in the grade? A. Well, I would say that the poultry that comes from the central States, all grade fancy poultry, and the weight would be uniformly, I would say, five pounds and over. Birds coming from Nebraska would have a tendency to be from four to five pounds. In the Southern States they run lighter than that, three and a half to five, but with very few fives.

Herbert Frankel—By Defts.—Direct

3235

Q. Using the term top grade and low grade as it is done in your industry? A. No, we have fancy, heavy, western, average western, average and light.

Q. Then the light bird would be the low grade? A. That is correct.

Q. And the fancy bird would be the top grade? A. That is correct?

Q. Now is it true, sir, in any one month of the year birds that may have been designated in some other month as top grade may become low grade? A. Correct.

3236

Q. And you are definite, sir, that the character, and grade of poultry, of bird, spread over a period of any one year has been uniform over the last 10 years? A. Yes.

Q. Now will you please compare, sir, the metropolitan area, with the Chicago and Philadelphia and Boston and some of the other centers, known to you with respect to the grade of poultry received? A. Well, with the exception of the metropolitan district those are very small markets. Where we consume an average of 175 to 200 cars weekly, the Chicago, the next largest market, would consume over 30 cars a week or even less than that, and Boston probably not more than 10 and Philadelphia maybe a dozen and Newark a dozen, so when you say the grades I don't quite get it.

3237

Q. Well, if I may put it this way— A. I would say we get as fine a poultry for the top grades in the City of New York as any other city does. Likewise, the Southern poultry, which is a lower grade, is also shipped to the other markets and is also just as desirable with a differential in price.

3238 *Herbert Frankel—By Defts.—Direct*

Q. Now in what proportion does the total amount of the various grades that come into New York would you say the percentage of the low grade—to the top grade—is higher in New York than would pertain in Chicago? A. No, the Chicago market would be identical.

Q. Do you know, sir, whether there has been a greater demand for the low grade poultry in New York in the last few years? A. No, no greater than the fancy, in fact I would say that fancy poultry is always in demand.

3239 Q. Do you know of any practice of a number of market men coming to a commission man and saying that they want only inferior poultry? A. No.

Q. Is that practice existing or has it ever existed to your knowledge? A. Not to my knowledge.

Q. Do you know any practice, sir, of dumping all of the inferior grades of poultry in the New York market? A. No.

3240 Q. Has there ever been to your knowledge a demand by market men, upon commission men for birds which I have defined as culls? A. No.

Q. And do you grade chickens when they come into your place of business or at the car barns? A. Well, now we get into a question of what is a grade.

Q. Well, what I mean is this; assuming that in one freight there are three or four grades, would you separate them into separate grades? A. No.

Q. Now where is the proper place for that grading? A. That is an industrial question which I do not care to answer.

Herbert Frankel—By Defts.—Direct

3241

Q. It has been testified here that the proper place is in the country where it is assembled. A. No, that would be impossible, because a very fancy bird on the way in, either from wear or tear or from a change in weather, may become a No. 2 bird or a cull. The proper place to do it would be at the railroad yards when the cars are unloaded.

Q. By the commission man? A. Yes.

Q. And that is not done, is it? A. No.

Q. Now will you explain the practice or the manner in which the market men buy from you with respect to grading— A. Well, they go up into these railroad yards and they look at our cars and some will grade fancy and some will grade western.

3242

Q. You mean select instead of grade, don't you? A. No, we do not agree on the term grade.

Q. Well, now assume that I use the word grading as the separating of various types of chickens.

The Court: You are using it as a verb and he is using it as a noun. You mean active selecting and he means by grading, taking the coop as it stands.

3243

Q. Now that we understand what you mean, will you go ahead? A. I would say that every car grades—I would say the price is based on the grades and that is why I said there is fancy, heavy, medium and average and so forth. The customer comes up and he knows just by looking at it, as to what grade that would be, and at what price that would sell.

Q. And when you are referring to grade now do you want us to understand that all those various grades are edible? A. Yes.

3244

Herbert Frankel—By Defts.—Direct

The Court: He takes it on the average of the car, is that right?

The Witness: It is the average of the car, yes, your Honor. It either grades top, medium or light.

Q. Now, do you know, sir, whether in proportion to the total amount of live poultry that comes in, whether recently more of the poorer grade has come in? A. No, it is just the same.

3245

Q. Now you stated that there are various prices for the various grades. A. Yes, sir.

Q. And to what extent do they differ? A. Possibly—that varies at seasons of the year—today it would be five or six cents from the lowest to the top.

Q. Do you know whether the slaughter house people also show that difference in the price when they sell to their customers? A. I think they do.

3246

Q. In other words when the customer of a slaughter house comes in he also buys in accordance with the grade that he is buying? A. Yes.

Q. And do you also know, sir, whether there is a difference in the price to the ultimate consumer in the butcher store? A. I think there is, but I haven't followed it that far.

Q. Now you sell poultry to the Schechter Brothers? A. Yes.

Q. How long have you been doing that? A. Quite a number of years.

Q. And are you acquainted with the grade of poultry that they buy? A. Yes.

Q. Tell us what those grades are? A. They buy all grades.

Herbert Frankel—By Defts.—Direct

3247

Q. And have they ever bought anything known as culls from you? A. No.

Q. Do they make it the practice to purchase only the low grade chicken? A. Oh, no.

Q. Do you know one Tottis, who is connected with the Dexter Food Company? A. Yes.

Q. How long have you known him? A. 8 or 10 or 12 years.

Q. And do you know what his connection with the industry is? A. Why, I think he is a buyer for the Dexter Poultry Company—I mean a buyer for his concern. I don't know whether he is in that corporation, that is whether he holds an office or not.

3248

Q. I mean his particular function in the industry. A. Well, he has come to me and bought poultry and I would consider him a buyer.

Q. Do you mean in the same category as the Schechters? A. Yes.

Q. He is not a commission man to your knowledge? A. Well, the Dexter Poultry Company is a commission firm, I would not say that Tottis was, he works for that concern.

3249

Q. Now when he purchases poultry from you doesn't he buy it for his concern? A. Yes.

Q. Now do you appear practically every day at the car barn when this poultry comes in? A. Either myself or my brother.

Q. How long have you been doing that? A. For some time.

Q. Now how often do you go? A. Well, in some seasons I am there almost daily.

Q. And from what period of time have you been doing this? A. 20 years.

Q. Now confine yourself to the last 7 years? A. Yes.

3250

Herbert Frankel—By Defts.—Direct

Q. Who else did you find there when you got there—I mean what other commission men, or people in your line of business would you meet there? A. All of them.

Q. And how many times would you say you saw this fellow Tottis there. A. Not very often.

Q. He is not understood by you in the trade as one of the commission men, is he? A. No.

Q. Did you ever know him to be connected with a slaughter house? A. They slaughter poultry.

3251

Q. Recently? A. Yes, the Dexter Poultry Company, they do both.

Q. And at what times has Tottis bought at your place of business? A. Oh, on about three or four occasions.

Q. Do you know of your own knowledge whether he makes purchases at other commission men's houses? A. I don't know.

Q. Do you know, sir, whether the consumption of live poultry has fallen in New York within the last few years? A. Yes, it has decreased.

3252

Q. Can you state why that has been the case? A. Well, there has been a natural decrease in the consumption of all food products.

Q. Do you know of your own knowledge, sir, whether the degree with respects to poultry has been uniform with the degrees in the consumption of all other food commodities? A. Well, that seems——

Mr. Rice: Just a moment. I think, if your Honor please, we ought to have some figures and let the jury determine.

Mr. Jacob Heller: That is proper for cross examination, if your Honor please.

The Court: If you show he knows about it.

Herbert Frankel—By Defts.—Direct

3253

Mr. Jacob Heller: I asked him. He testifies he knows.

The Court: But he has not shown any knowledge of any other food products.

Mr. Jacob Heller: All right; I will get to that.

The Court: Undoubtedly he is an expert as to chickens because he has been dealing in them, but does he know about other food products, so he may be able to state?

3254

Mr. Jacob Heller: I will get to that, sir.

Q. You stated before that you consulted various, oh, periodicals and other literature pertaining to the poultry industry. A. That is right.

Q. Have you also done that with respect to the food industry in general? A. Yes; they report the same thing.

Q. When you say "they" who are you referring to? A. The agencies show other commodities.

3255

Q. When you express an opinion now, is it based upon your own observation as well as what you read in these various periodicals? A. Yes.

Q. Do you include the Government reports? A. Yes.

The Court: What other products do you relate to?

The Witness: Are you asking me?

The Court: What other products?

The Witness: Well, beef, dressed poultry, fish, milk.

Q. Eggs? A. Eggs.

3256 *Herbert Frankel—By Defts.—Direct*

Mr. Jacob Heller: May I have an answer to the question now, Judge?

The Court: Go ahead. That is what he says, as to those products he says he is familiar with them.

Mr. Jacob Heller: I do not know whether we got the answer.

The Court: I say, he says he has examined the——

Mr. Jacob Heller: Yes.

3257 The Court: (Continuing.) —reports as to those products.

Mr. Jacob Heller: But before I was interrupted, Judge, I asked a question and then——

The Court: I know, but you had better ask it over because there is too much between it.

Q. Do you know, sir, whether the relative decline in the poultry industry has been uniform with that in the other food industries?

3258 The Court: That you have investigated.

A. Well, I would say that with some it was less and with some it was greater.

Q. The average decline? A. I think that the decline in poultry has been about ten per cent. a year for the last three years; in beef it has been as great as thirty per cent.; in milk it has been almost thirty per cent.; in dressed poultry I think during the last year there has been an increase, and prior to that there was a decrease, so you cannot say average.

Q. How about fruits and vegetables? A. I do not know any about it.

Herbert Frankel—By Defts.—Direct

3259

The Court: Has the increase in the business of dressed poultry—

Mr. Jacob Heller: Decrease you mean.

The Court: (Continuing) —been greater or less than the decrease in live poultry?

The Witness: I think the increase in dressed poultry has been larger, far larger, than the decrease in live poultry.

Q. But you say, sir, the decrease in the consumption of beef— A. Has been greater.

3260

Q. About three times as great? A. Yes.

Q. What effect, if any, do you give to the increased consumption of dressed beef as it relates to the decrease in consumption of live poultry—I meant dressed poultry when I said dressed beef? A. Oh, in dressed poultry, it really depends on the condition of the export market. What would show up in our tabulations as to consumption in dressed poultry may mean the exporting of poultry. We do not mean that it is actually consumed in the Metropolitan district. What figures they show really depend on what the conditions of the foreign exchange and the demand—foreign demand are.

3261

Q. What relation, if any, is there between the decrease in the consumption of live poultry in New York and the type of poultry that has been coming into New York? A. I don't think any.

Q. What effect, if any, have the various economic conditions had in your opinion upon the decrease in consumption of live poultry in New York? A. I think that is what has affected our consumption.

3262

Herbert Frankel—By Defts.—Direct

Q. What effect, if any, has—well, I will withdraw that. Have you found that the Jewish element in New York has tended towards a disregard of the Jewish dietary laws? A. Yes.

Q. Would you say, sir, that that has had any effect upon the decrease in the consumption of live poultry? A. Yes, that is one of the contributing factors.

3263

Q. What, in your opinion, is the effect upon the character and grade—the character, I would say, rather—of the character and quality of the poultry that comes into New York City, of the amount of poultry that comes into New York City, if any, be—what effect have these various things I am now going to describe upon these first mentioned things, to wit, straight killing—
A. I am afraid I do not understand your question.

3264

Q. Well, I will withdraw it and I will put it differently. What effect, in your opinion, has the trade practice relating to straight killing had upon the type of poultry that comes in here, meaning New York City? A. (No answer.)

Q. Would you say that if straight killing was enforced that the type of poultry, meaning grade, would be different or the same? A. I do not think it would make any difference.

Q. Would it have any effect upon the total amount of poultry that came into New York? A. No.

Q. Similarly, the enforcement of an inspection—of inspection, would that have any effect upon the total amount of poultry that came into New York? A. No.

Q. Would that have any effect upon the type of poultry that came into New York? A. No.

Herbert Frankel—By Defts.—Direct

3265

Q. What would a requirement, or practice requiring a slaughter house man to pay sixty cents an hour instead of fifty cents an hour have upon either the type of poultry that comes in or the amount of poultry that comes in? A. None.

Q. Are you certain of these things, sir? A. Yes.

Q. Isn't it the fact that the price that the commission men set upon their poultry is usually the determining factor? A. Yes.

Q. What effect, if any, have these trade practices which I have referred to before upon the price that you receive for your poultry? A. None.

3266

Q. The price that the farmer receives for his? A. None.

Q. The price that the shipper or collector gets for his poultry? A. No effect.

Q. Have you access to the bills of lading or receipts at the New York Central? A. No.

Q. Showing the car loads that have come in and to whom they came? A. No.

Q. Are those records accessible? A. If they are, they should not be.

3267

Q. Why? A. Well, it is, in the first place, it is very personal information and it is against the Interstate Commerce Commission ruling.

Q. Are you acquainted with this practice I am now going to refer to—I withdraw that. Are you acquainted with a practice which was heretofore described in this court, and I am now going to read the testimony, which will contain this practice, and then you will answer:

“Q. Are you familiar with the inspection of poultry since the Live Poultry Code went into effect? A. Yes.

“Q. Is it different in any effect? A. I think it is more drastic.

3268

Herbert Frankel—By Defts.—Direct

“Q. Describe the difference. A. Previously a lot of the poultry that are considered unfit for human consumption was left largely to our discretion.

3269

“Q. To your discretion as a commission man? A. The way it works out at the present time, previously, and we have an expression in the trade, if it is a scarce market in New York, everything is good. If there is an over-supply, nothing is good. The way it worked out recently, even on a top market, if we try to make the buyer take the poultry he immediately starts out threatening with an inspector and you have to take back stuff that formerly we could insist on his taking.”

A. Well, a lot of that is Greek to me, and I have been in the business a long time.

Q. Do you state that no such thing has been going on? A. He talks about a lot of things I do not understand.

Q. Did you hear the language? A. I certainly did.

3270

Q. It is as intelligible to you as it is to me, is it not? A. No, it doesn't mean much to me.

Q. Do you mean that you know of no such practice? A. Yes.

Q. Are you definite in that? A. Absolutely.

Q. How does the practice differ from what you described in what I just read to you? A. I told you before how poultry was sold.

Q. I will read you some more testimony and see if you are acquainted with this particular practice:

“Q. Are you familiar with the figures on the shipment of live poultry from other States of the practice of selling culls in New York market? A. Yes.

Herbert Frankel—By Defts.—Direct

3271

“Q. You have made a study? A. Yes.

“Q. What is the figure? A. A group of chicken dealers. One of them will go to the market and buy for 3 cents or 7 cents a pound when the market price is 17 cents and back in his store pastes up a sign poultry 15 cents a pound. All the competitors want to buy poultry at their market to compete with him and we have to be in a position where we can buy cheap poultry so we can sell it to our customers to compete with their trade. Cars come into New York with practically culls picked up just from other cities and brought to New York to satisfy that trade which wants to mark the price down.”

3272

A. I never heard of that.

Q. Are you familiar with any such practice?

A. No carloads of culls have come to this market.

Q. With respect to a person coming in and saying they only want to buy 3-cent poultry.

A. I think that relates to butchers coming into slaughter houses.

Q. It referred originally, if I may paraphrase it, to a butcher originally pasting on his window the price of 3 cents a pound, or 15 cents a pound, and another butcher going to the slaughter house or the commission man and saying that he wants like poultry so as to compete with him? A. Not to a commission man.

3273

Q. You know of no such practice? A. No.

Q. If there is such a practice would you know of it? A. Yes.

Q. I read you this testimony and see if you are acquainted with this particular practice described in this testimony:

“Q. Do you know whether it was a practice on the part of shippers prior to the Code to send

3274

Herbert Frankel—By Defts.—Direct

the inferior and sick poultry to New York markets? A. Yes, New York was the dumping ground.”

A. That wasn't the practice.

Q. Is it the practice now? A. No. You have to understand when a farmer wants to sell his poultry he sells it, he doesn't particularly care whether we want it or not.

Q. This testimony, if I may interrupt you, is with respect to culls and inferior and sick poultry. A. No.

3275

Q. Confining whatever you say to that type of poultry that I have read and as I have designated, do you know of any such practice? A. No.

Q. Is it a fact that if at Philadelphia they only need 10 cars, and if 12 happen to be there the other 2 may be sent here to New York? A. That is correct.

Q. Does that mean those 2 sent to New York are inferior? A. No, they are not.

Q. They may be the best of the 12? A. Correct.

3276

Q. Referring to the practice described here, “Q. Did it differ from other large cities of the country? A. Yes, decidedly.

“Q. Why? A. Because there was a demand created for it and no effort made to keep it out of New York. Chicago has what they call a poultry board that comes in. When it arrives at the door of the receiver he requests inspectors from the Board of Trade and they grade the poultry which is sold according to their official grading. In Cleveland, Toledo, Columbus, Pittsburgh, all the poor poultry is returned and destroyed.”

Herbert Frankel—By Defts.—Direct

3277

Q. Do you know of any such practice? A. No.

Q. Is it a fact to your knowledge that this practice does not exist, and that as a result of that these sick chickens come into New York? A. They do not.

Q. Do you know whether there is a difference between the demand for culls in New York and that which is in Newark, assuming that there is a demand for culls? A. From your definition of culls—

3278

Q. That is right. A. There is no demand, because that poultry is killed.

The Court: So that the jury does not misunderstand you, you are now talking about culls, chickens that are unfit for human consumption?

The Witness: Correct, they are killed at the car by the Federal inspectors.

The Court: And as for them you say say there is no demand?

The Witness: Yes.

The Court: On the part of the commission merchant?

3279

The Witness: That is correct.

Q. Now, do the commission men sell, as a separate item, taken apart from all other poultry, what we have defined as a cull? A. We sell only chickens fit for human consumption.

Q. So if a slaughter house man buys only from a commission man he would have no culls? A. That is correct.

Q. Except such chickens as may become diseased on the way? A. That is right.

Q. And that cannot be helped? A. No.

3280

Herbert Frankel—By Defts.—Direct

Q. Now what percentage is that that suddenly take sick en route from the commission man to the slaughter house?

The Court: You mean between the time they leave the cars, and the commission man, and the time that they arrive at the slaughter house?

Mr. Jacob Heller: Yes.

3281

The Witness: I would hazard a guess and say it would be less than one-tenth of one per cent, it would be very small.

Q. Taking into consideration the time element, from the time that it gets into the hands of a slaughter house man until he sells it, would you increase or decrease that percentage? A. I think it would be still remaining about the same.

Q. You don't think there is an appreciable increase during that period of time? A. That's correct.

3282

Q. Now do you know of the relationship between the market prices in New York City—I withdraw that question. Do you know of your own knowledge of the differential between the market prices in New York, Chicago, Philadelphia and Boston or in any of the other centers? A. Yes.

Q. What is it? A. It never remains stationary.

Q. Approximately? A. I would say Chicago to New York would be 3 cents higher in New York, and Boston would be about a cent and a half.

Q. Does that portray the railroad charges? A. The difference in charges, yes. Philadelphia probably would be a cent and a half to two cents.

Herbert Frankel—By Defts.—Direct

3283

Q. Now will you describe the manner in which—I withdraw that question—you have described the manner in which the price is fixed by the commission man on any one day. Does a similar practice pertain in Chicago and Philadelphia and in the other centers? A. Just about the same.

Q. Each of those centers fix their own prices?

A. Yes.

Q. So that a price fixed in New York City would in no way determine the price fixed for instance in Philadelphia?

3284

Mr. Rice: I object to that, your Honor. If this witness is going to compare the practice of fixing prices on the New York market with the practice of the Chicago, Philadelphia or Boston markets, then we must have the facts from which this jury can make the comparison.

The Court: That is correct. If he knows.

(To Witness): Have you been on the Chicago market?

3285

The Witness: Oh, yes, your Honor.

The Court: Does the practice differ there from New York or is it the same?

The Witness: The practice in Chicago probably in the mechanical way of arriving at it is slightly different.

The Court: Well, let us have it.

The Witness: They have a little thing that they call the Chicago Poultry Board, and they will go up there and make offers on five or ten coops. There is contained in these coops not to exceed fifty pounds, so that a price is made on a very small

3286

Herbert Frankel—By Defts.—Direct

percentage of the poultry which arrives at the market that day. They will probably make a price for the entire Chicago market on less than three hundred pounds of poultry, over an average of weeks, even though they may sell on that particular day or week one hundred thousand pounds. That differs from the Boston market, which is based on the New York market. They have a differential of about one and a half to two cents below New York, that is below the New York quoted market. In Philadelphia it is a catch-as-catch-can market.

3287

The Court: Is the price of the New York market reflected in Philadelphia?

The Witness: No, only in Boston, but has nothing to do with the other markets, either Philadelphia or Chicago.

3288

Q. Now assume, sir, although you have testified contrary, that the competitive practice in New York demoralizes the market price in New York City, does that in any way affect the market price in any of the other centers to your own knowledge? A. Are you speaking now about the slaughter house man?

Q. Yes. A. No.

Q. In no way would it affect it? A. No.

The Court: You said it was reflected on the Boston market.

The Witness: I asked whether he was talking about the commission man or the slaughter house and he said the competitive prices amongst slaughter houses. That would not have an effect.

Herbert Frankel—By Defts.—Direct

3289

Q. Nor would it have any effect on the interstate shippers or the farmers? A. That is correct.

Q. Now have you any opinion of what the effect of the sale of culls as I have defined it, has upon the prices received by interstate shippers? A. To my knowledge none of that is sold.

Q. So that if anybody assumed there is such a thing, that person is mistaken in your opinion? A. Yes.

Q. Now would you say, sir, in your opinion, in the absence of any requirement on the part of a commission man to practice straight killing, that it is a fair provision with respect to the market man?

3290

Mr. Rice: There is no question of straight killing as between the commission man and the market man involved in this case, your Honor. The Code provision provides the transaction between the market man and the retailer.

Mr. Jacob Heller: There is no question about that, but I still want the question answered in the way that I suggested it.

3291

Mr. Rice: I object, your Honor, on the further ground that it calls for a conclusion.

The Court: He is an opinion witness.

The Witness: I don't understand the question.

Mr. Rice: I am afraid I don't either.

Q. It is a practice, sir, is it not, that a market man must buy from a commission man, the run of the coops? A. That is correct.

3292

Herbert Frankel—By Defts.—Direct

Q. They have no right to select any number of chickens from any one coop and say we will only take those?

Mr. Rice: I object to that as leading.

The Court: Ask him if they make any selection or do they have to take the whole coop.

The Witness: If a coop is unloaded out of a car and there are, in there, either culls as your definition goes or culls of my definition, they are removed from the coop.

3293

Q. I am referring, sir, to the grade that may be—I withdraw the question. I am referring to the difference in weight with respect to the various poultry that may be in your opinion graded.
A. No.

Q. In other words, when he takes the grade, he takes it with the run of the weights as contained therein? A. Correct.

Q. Now, will you tell us again what you understand by straight killing as it applies to the market man and his customer?

3294

Mr. Rice: If your Honor please, he has defined that already.

The Court: Well, go ahead. I don't think it will do any harm.

The Witness: My understanding is that a butcher will come into a market and purchase a coop of chickens and he gets everything contained in that coop, and likewise if he purchases a half a coop he will get half of what is contained in the coop, just as it runs.

The Court (to witness): To make it plain, you mean by that that he cannot exercise any arbitrary selection?

Herbert Frankel—By Defts.—Direct

3295

The Witness: That is correct.

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

(Recess until two P. M.)

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

Mr. Joseph Heller: If your Honor please, we have about five or six witnesses who are expert witnesses, and I assume that they will be accorded the same privilege as the Government's expert witnesses and may remain in the court room.

3296

The Court: If they are expert witnesses, yes.

Mr. Joseph Heller: Expert and character witnesses.

The Court: And not fact witnesses?

Mr. Joseph Heller: Not fact witnesses, no.

3297

Mr. Rice: Will they qualify as experts?

Mr. Joseph Heller: Sure, that is right.

The Court: Expert witnesses and character witnesses may stay in the room. Character witnesses do not have to be kept out at any time. Any character witnesses can sit in at any time, that is, assuming they are just character witnesses, not fact witnesses.

Mr. Joseph Heller: They will give expert testimony and testimony as to their character; they are both expert witnesses and character witnesses.

3298 *Herbert Frankel—By Defts.—Direct*

The Court: Character witnesses, and those that qualify as expert witnesses, will be accorded the same privilege as the other side; they may stay in the room.

HERBERT FRANKEL resumed the stand.

Direct examination (continued) by Mr. Jacob Heller:

3299 Q. Are you certain, Mr. Frankel, that the poultry, all grades of poultry bought by the Schechters from you is of an edible quality? A. Yes.

Q. No question about that in your mind? A. No question.

Q. Have you ever testified as an expert in the poultry industry on behalf of the Government? A. Yes.

Q. On how many occasions? A. Once or twice; I really don't remember.

Q. Did the Government call you as a witness to testify on this trial? A. No.

3300 Q. Were you available? A. Yes.

Q. How long have you known the defendants, the Schechter brothers? A. About ten years.

Q. Do you know others who also know the Schechters? A. Yes.

Q. Referring to people in your trade? A. Yes.

Q. Have you had occasion to talk about the Schechters with the other people in the industry during these last ten years? A. Yes.

Q. Have you observed the Schechters, their demeanor? A. Yes.

Q. Do you know their general reputation in the community, referring to the trade, of the Schechter brothers? A. Yes.

Herbert Frankel—By Defts.—Cross

3301

- Q. For peaceableness? A. Yes.
 Q. For quietness? A. Yes.
 Q. For law abidingness? A. Yes.
 Q. For honesty in business? A. Yes.
 Q. Will you tell us what that reputation is? A.
 Well, we have always found them—

The Court: No, what is their reputation, good or bad?

- Q. In the community? A. Good.

Mr. Jacob Heller: That is all.

3302

Cross examination by Mr. Rice:

- Q. Mr. Frankel, you say you were available as a witness for the Government in this case? A. Yes.

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

- Q. Were you not invited to come to the Grand Jury to present testimony as to the course of interstate commerce? A. I do not believe I was.

- Q. Now, think a moment. Do you remember when the Grand Jury met in this case in July, 1934? A. Yes.

3303

- Q. Do you remember that you were urged to come before the Grand Jury and present your testimony as to the course of interstate commerce? A. The only thing I know is that Mr. Loeb asked me to come to the Code Authority office.

- Q. What did he say to you? A. And it conflicted with—

Mr. Jacob Heller: I object to that; it is not material and not binding on the defendants, what Mr. Loeb said.

The Court: You are not bound by what Mr. Loeb said to him, no.

Herbert Frankel—By Defts.—Cross

3304

Q. Who was Mr. Loeb? A. The attorney for the Code.

Q. Chief counsel for the Code Authority, is that right? A. Yes.

Q. And he told you that the Government wanted you as a witness before the Grand Jury, is that correct? A. No.

Q. Are you positive about that? A. Yes.

3305

Q. Didn't he tell you, "We want to use you as a witness before the Grand Jury on the question as to the course of interstate commerce in live poultry? A. He never mentioned the Grand Jury.

Q. Don't you know that the Grand Jury waited for you? A. I do not.

Q. On one occasion? A. I do not.

Q. You do not? A. No.

Q. Now, Mr. Frankel, you have testified that there are virtually no evils in the live poultry industry? A. I wasn't aware that I had.

Q. Is that your opinion? A. That there are no evils in the business?

3306

Q. Yes, no competitive evils. A. There are competitive evils.

Q. According to you there is no occasion for the Code? A. I did not so testify.

Q. What is your testimony now? A. As to what I think of the Code?

Q. As to whether or not there is any occasion for the Code? A. So far as the benefits are concerned, this industry would have been better off without a Code.

Q. That is your idea about the Code? A. That is my opinion.

Q. You are against the Code, are you not? A. I am.

Herbert Frankel—By Defts.—Cross

3307

Q. And the other commission men are against the Code, aren't they? A. I cannot speak for them.

Q. Don't you know as a matter of fact that the commission men have opposed the Code? A. I do not.

Q. And that you are one of the leaders of the commission men? A. I am one of the leaders, but I am not on the Advisory Board.

Q. And you have opposed the Code, haven't you? A. No, sir.

Q. You did not want the Code adopted? A. That is not so.

3308

Q. Didn't the commission men protest against the Code at the Washington hearing? A. I beg your pardon. I appeared in Washington for a code.

Q. You appeared yourself? A. I did, but it was not the Code which the Government gave us.

Q. Wasn't it virtually the identical Code which the Government gave you? A. No.

Q. It was not? A. No.

Q. Will you look at this proposed code and tell us, Exhibit 21, and tell us whether or not that was the proposed Code submitted by the industry to Washington? A. It was not. This is the one——

3309

Q. Look it over. Have you looked it over? A. I know this particular document. This is not the Code that I proposed in Washington.

Q. Oh, that you proposed? A. For the industry.

Q. Are you the whole industry? A. I am the leader in the industry.

Q. Oh, the entire industry? Where did you get that title? A. Very well, I am not the leader.

3310 *Herbert Frankel—By Defts.—Cross*

Q. What did you mean a moment ago when you said you were the leader? A. You asked me whether I was, and I said yes. At that time I was president of the Commission Merchants' Association.

Q. There are several groups in this industry, are there not? A. I am speaking for the commission merchants only.

Q. There are commission men, about twenty in number?

3311 The Court: He said he was speaking for the commission men only.

Mr. Rice: Yes.

Q. There are about twenty commission men, is that right? A. That is correct.

Q. And you claim to be the leader of the commission men? A. Correct.

Q. And then there are about four hundred slaughter house operators? A. That is right.

Q. You are not the leader of them? A. No.

3312 Q. And in addition there are five or six thousand retail poultry dealers and butchers in this live poultry industry? A. Correct.

Q. Who handle live poultry? A. Right.

Q. In New York, is that right? A. Yes.

Q. You do not profess to be the leader of them? A. No.

Q. Don't you know that this is the Code that was proposed by the industry, Exhibit 20? A. This is not the Code that I, as leader of the commission merchants, appeared before a Board in Washington—

Q. A Board? A. Well, a Committee.

Q. You mean you appeared before several individuals in Washington? A. Well, it was

posed to be a Code Board. I do not know what you would call it.

Q. What was the name of this so-called Code Board? A. I can tell you the names of the people who appeared there.

Q. Yes, tell us that. A. One was Mr. Termohlen, another was Mr. Slocum. I think, I am not certain, I think Mr. Potts was there.

Q. Anybody else? A. There were two other men whose names I have forgotten.

Q. Mr. Termohlen is with the Agricultural Adjustment Administration, isn't he? A. Yes.

Q. And Mr. Slocum is not with the Agricultural Adjustment Administration at all, is he? A. He is with the Department of Agriculture.

Q. Yes, he is with the Bureau of Agricultural Economics? A. Right.

Q. And Mr. Potts is with the Bureau of Agricultural Economics? A. That is correct.

Q. They do not have anything to do with the administration of the Code, do they? You know that. A. No, I don't.

Q. The only individual that you talked to on that occasion that had anything at all to do with the administration of the Live Poultry Code or any other Code was Mr. Termohlen, is that right? A. No.

Q. Who else? A. There was an attorney for the Code present.

Q. What is his name? A. I don't recall.

Q. You went down and talked to these individuals? A. Correct.

Q. And you call that the Code Board, is that right? A. I said I supposed it was.

Q. And what you submitted informally to these individuals you think is the proposal of the in-

3316

Herbert Frankel—By Defts.—Cross

dustry, is that right? A. No. I represented the commission merchants.

Q. Isn't it a fact that, Mr. Frankel, that the industry, the live poultry industry submitted this proposed Code to the official representatives of the Agricultural Adjustment Administration? Look at it. A. Some months later.

Q. Some months later? A. Right.

Q. Is that right? A. Yes.

3317

Q. You have looked at it so you know what you are talking about? A. Yes.

Q. I believe I referred to this as Exhibit 20 a moment ago. It is Exhibit 21. This Code that was proposed by the industry was really proposed by the industry, wasn't it? A. Yes.

Q. Exhibit 21? A. Correct.

Q. And the proposed Code contained a proposed provision for straight killing, didn't it? A. Yes.

Q. And a proposed provision for prohibiting the sale of uninspected poultry, did it not? A. Yes.

3318

Q. And another provision prohibiting the sale of culls? A. Yes.

Q. Culls was defined as poultry unfit for human consumption? A. Correct.

Q. Is that right? A. Yes.

Q. You stated on direct examination that you were familiar with the Code as adopted, is that right? A. Yes.

Q. You are? A. Yes.

Q. What does the Code provide with regard to straight killing? A. I think that it provides for straight killing.

Q. Well, that is not very definite. Can't you tell us a little further what the Code provides

for as to straight killing? A. No, I am not familiar with the phraseology, if that is what you mean.

Q. Didn't Mr. Heller ask you whether you were familiar with the Code provision on straight killing? A. I think he did.

Q. And didn't you say yes? A. Yes.

Q. And then didn't you go ahead and try to define straight killing as you thought it was defined by the Code? A. Yes.

Q. And you did not define it as it is defined by the Code, did you? A. I really don't know. I have not seen that Code in six months.

3320

Q. Let me read—oh, you have not seen it in six months? A. That is correct.

Q. You do not know very much about the operation of the Code? A. That applies to slaughter house men. I am interested in the few sections which apply to commission merchants.

Q. And this provision deals with slaughter house men, doesn't it? A. Correct.

Q. And most of the provisions of the Code deal with slaughter house men? A. Yes.

3321

Q. Virtually nothing deals with commission men? A. That is right.

Q. This is a slaughter house men's Code? A. That is right.

Q. You don't know anything about it? A. I do.

Q. You do not know very much about it? A. A little.

Q. You have not seen the Code in the last six months? A. That is correct.

Q. And that Code was adopted on April 13, 1934? A. I do not know the date.

3322

Herbert Frankel—By Defts.—Cross

Q. And you have not seen the Code since it went into effect? A. But I have been at the hearings.

Q. We will come to that. I am glad you brought that out. You say that you have not seen this Code in the last six months? A. To my recollection I have not.

Q. And you do not know what the operation of the Code has been in the last six months? A. Yes, I do.

3323

Q. You do not know what the provisions are, do you? A. I do not know what is written in that Code, no, but know how the Code Authority has been administering it.

Q. You do not know what the straight killing provision is? A. I do.

Q. Define it. A. I know what I think it is.

Q. All right, let us see what you think it is. A. I think it means that poultry should be killed as it is bought without—

Q. Exactly as it is bought? A. Yes, without permitting a buyer to select poultry from any given coop.

3324

Q. Without permitting the buyer to reject any poultry? A. That is right.

Q. Not any poultry at all? A. Not any poultry at all?

Q. Yes. A. Without any poultry at all, right.

Q. That is, he cannot reject any poultry at all under the straight killing provision of the Code? A. That is correct.

Q. I want to see if you know what you are talking about. Do you remember his Honor asking you during the direct examination whether the Code provision permitted the buyer to reject any poultry at all from the coop or half coop? A. Yes.

Herbert Frankel—By Defts.—Cross

3325

Q. Do you remember that? A. That is right.

Q. And you answered that no rejections were permitted? A. That is correct.

Q. You did not know what the Code provision provides, do you? A. Well, I again repeat I think I do. If not in actual phraseology, in practical working, I know.

Q. Let me read Article 2, Section 15 of the Code: “The term straight killing means the practice of requiring persons purchasing poultry for resale to accept the run of any coop—of any half coop, coop or coops purchased by slaughter house operators except for culls.” Now, you did not know that provision was in there, did you, “except for culls”? A. We—

3326

Q. That is brand new to you, isn't it? A. No.

Q. Why didn't you mention that? A. It sort of slipped my mind.

Q. That is one of the most fundamental provisions of the straight killing provision, isn't it, that the buyer is permitted to reject culls, is that right? A. Well, that also depends on what we call a cull.

3327

Q. Do you know what the Code provides as to culls? A. I think my definition covers it generally.

Q. Do you know how the Code defines culls, yes or no? A. Not its phraseology, I don't.

Q. Do you know the substance? A. I think—

Q. What the Code provides for culls? A. I think the definition I gave was the definition in substance.

Q. What is that definition? A. That it is a bird which is fit for human consumption, poor in flesh, possibly pin feathers, with crooked breasts.

3328

Herbert Frankel—By Defts.—Cross

Q. You think that is what the Code provides as to the definition of culls, is that right? A. That is what the practical application is.

Q. You think that is what the Code provides in substance? A. I do.

Q. I want to get your understanding straight. A. That is what I think.

Q. I want to see if you know anything about this Code. A. That is what I think.

3329

Q. That is what you think. Well, we will read the Code provision for you, Section 16 of Article 2: "The term culls means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics covering the inspection of live poultry at New York." You never heard that definition before, did you? A. If you heard my testimony this morning, you would have heard—

Q. I heard every word of it. A. That there was a difference of opinion in the industry as to what we consider a cull.

3330

Q. But we are concerned with the Code definition of culls, aren't we? A. I guess we are; I do not know.

Q. That is what we are concerned with, and you didn't know what that provision was, did you? A. Yes, I did.

Q. You did? A. I know what a practical application is of the term cull.

Q. You do not know what the Bureau of Agricultural Economics provision in respect to culls, in respect to poultry unfit for human consumption, is? A. Yes, I do.

Q. You have seen that? A. Yes.

Herbert Frankel—By Defts.—Cross

3331

Q. You didn't know the Code made any reference to those definitions of the Bureau of Agricultural Economics, did you? A. Yes.

Q. You did? A. Yes.

Q. Why didn't you say so a moment ago? A. I do not believe I was asked the question.

Q. I asked you to define culls as it is defined by the Code. A. Whether I knew it was in there and whether I could define it are two different things.

Q. Well, I think I understand you. Mr. Frankel, you say that there is no practice of selling culls in New York, culls as defined by the Code meaning poultry unfit for human consumption. A. Not to my knowledge.

3332

Q. There is no such practice? A. Not to my knowledge.

Q. Do you know why the industry proposed a code provision prohibiting the sale of culls? A. Do I know?

Q. Yes. A. Yes, I know why.

Q. They urged the adoption of that provision because that was a flagrant practice in New York City, didn't they?

3333

Mr. Jacob Heller: Your Honor, I object to that. He may ask the witness why, but not state why.

Mr. Rice: I am cross examining. Why?

Mr. Jacob Heller: But don't state it; you may cross examine, but do not state it for the record.

Q. Isn't that right? A. My understanding is the reason it was proposed is because it was against the Health Department regulations.

Q. If there had been no practice of selling poultry unfit for human consumption on the New

Herbert Frankel—By Defts.—Cross

3334

York market do you suppose the live poultry industry would have urged the adoption of such a provision? A. That was in our—that was in the department's feeding regulations long before we ever dreamed of a code.

Q. You know that doesn't answer my question, don't you? A. I thought it answered it.

Mr. Rice: Will you read the question?

3335

(Question read by the reporter as follows: "If there had been no practice of selling poultry unfit for human consumption on the New York market do you suppose the live poultry industry would have urged the adoption of such a provision?")

A. No, I do not think they did.

Q. You do not think they did?

The Court: It is purely speculative; that isn't an opinion as to fact, that is speculation as to what might or might not have been, and I do not think it is of any great value.

3336

Q. As a matter of fact, wasn't it a flagrant widespread practice in the New York market prior to the adoption of the Code for the market men to sell all of their poultry unfit for human consumption; wasn't it? A. No.

Q. Wasn't it their practice, or the practice of many of them, to sell anything with a head on it? A. No.

Q. Anything that didn't smell really bad? A. No.

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

Q. But still the live poultry industry proposed this provision prohibiting the sale of poultry unfit for human consumption? A. Yes.

Herbert Frankel—By Defts.—Cross

3337

Q. They made many trips down to Washington, didn't they? A. Yes.

Q. They spent \$9,000 making trips down to Washington? A. I don't know what they spent.

Q. Didn't you follow that up? A. No.

Q. They sent delegate after delegate down to Washington? A. Yes.

Q. You knew that, didn't you? A. Yes, sir.

Q. They were very impatient because the Government was slow in adopting a code for the live poultry industry? A. Are you talking about commission merchants or buyers?

3338

Q. I am talking about slaughter house men? A. Yes, they sent delegates.

Q. They sent many delegates? A. Yes.

Q. They spent lots of money? A. I presume so.

Q. And they made representations to official representatives of the Government that there were evil widespread practices in the poultry industry that had to be corrected, did they not?

Mr. Jacob Heller: I object to what anybody else said in regard to this case. The defendants did not say it.

3339

The Court: No, this is on the broader question, the question of the adoption of the Code.

Mr. Jacob Heller: There is no question but that the Code was adopted.

The Court: But he is asking what led to its adoption; the necessity for it, myself, I do not see.

Q. Will you answer the question? A. I have no idea what proposals they made.

Q. Now, you have been testifying on direct examination——

3340 *Herbert Frankel—By Defts.—Cross*

The Court: I do not know about that. He testified that his knowledge is confined to the commission merchants, that is what he said.

Q. You did not mean to testify only to the practices of the commission men on direct examination, did you? A. What is that?

Q. I say, you did not mean to testify on direct examination to the practices of only the commission men? A. No.

3341

The Court: That isn't the point at all. You are talking about whether they went down or not. He said he did not know what the other parts of the industry did about the adoption of the Code; he testified to the practices, yes.

Q. Do you know anything about the practices of the live poultry slaughter houses? A. Some of them.

Q. Market houses? A. Yes.

3342

Q. Some of the practices? A. Yes.

Q. Did you testify in respect to what you knew about those practices on direct examination? A. I answered every question that was asked.

Q. Is it your opinion that there were no competitive evils in the live poultry industry prior to the adoption of the Code? A. Lots of them.

Q. In so far as the slaughter house men were concerned? A. Yes, lots of them.

Q. There were a lot of them, weren't there? A. Yes.

Q. The sale, consumption and sale of poultry unfit for human consumption, was one of the worst practices, wasn't it? A. No.

Herbert Frankel—By Defts.—Cross

3343

Q. It was tearing down the consumption? A. No.

Q. Of live poultry in New York City, was it not? A. No.

Q. And you know that the practice of bringing in poultry from Philadelphia by truck and not having that poultry inspected was also a large practice prior to the adoption of the Code, do you not? A. It still is.

Q. It still is, and do you know that the Schechters engage in that practice? A. I understood they bought poultry in outside markets.

3344

Q. Do you know that the Schechter brothers avoid inspection of poultry that they bring in by truck? A. I have heard so.

Q. You have heard so, and you know it is so, don't you? A. I have heard so.

Q. You have just heard so?

The Court: Do you know or don't you?

The Witness: I don't know it, no, I have just heard of it.

The Court: What you have heard doesn't mean anything; if you do not know say so.

3345

Q. Have there been any other evils in the live poultry industry so far as slaughter house men are concerned in the past five or six years? A. Yes.

Q. What other evils? A. Selling the poultry below cost.

Q. Any other? A. Well, that is the greatest evil.

Q. That is the greatest evil? A. Yes.

The Court: What is that?

3346

Herbert Frankel—By Defts.—Cross

The Witness: The sale of poultry below cost, cut-throat competition.

Q. There has been a great deal of cut-throat competition, has there not? A. Correct.

Q. And that cut-throat competition has manifested itself by the sale of inferior and diseased chickens, has it not? A. No.

Q. Repeatedly? A. It hasn't anything to do with it; they sold fancy Indianas below cost.

3347

Q. And in order to compete with those slaughter house men that were selling fancy Indianas below cost other slaughter house men brought in inferior poultry, did they not? A. No.

Q. They sold inferior poultry? A. No.

Q. And diseased poultry? A. No.

Q. You know that is the practice, don't you? A. I do not, sir, it is not a practice.

Q. You are familiar with the anti-racketeering provision of the Code? A. No.

Q. You are not familiar with that? A. No.

Q. Have you ever read over the Code? A. Yes.

3348

Q. As adopted? A. Yes, sir.

Q. Did you read that provision? A. Yes.

Q. Aren't you familiar with it? A. Just generally.

Q. Do you know whether there have been racketeering processes in the live poultry industry?

A. Yes, sir.

Q. You know that there have been? A. Yes, sir.

Q. What type of racketeering processes? A. Principally as relates to union labor.

Q. Principally as relates to corrupt delegates of labor unions, is that correct? A. I do not know how corrupt they are; I am speaking of the union labor men.

Herbert Frankel—By Defts.—Cross

3349

Q. You know that corrupt delegates of two labor unions operating in the poultry industry have used their power over those unions to compel market men and commission men to buy their feed from the Metropolitan Poultry Feed Corporation, don't you? A. I did not know that.

Q. And did you know that in the past the corrupt delegates of two labor unions in the live poultry industry have used their power over those unions to compel the market men to rent the coops of the New Jersey Coop Company, don't you know that? A. I do not.

3350

Q. And to use the trucking service of the New York Live Poultry Trucking Company, don't you know that? A. I do not.

Q. Don't you know that these corrupt delegates of the labor unions have bled this industry of millions of dollars for the past ten years, don't you know that as a fact? A. I do not.

Mr. Jacob Heller: I certainly object to this line of cross examination, this is not what we are charged with.

The Court: They are not charged with these practices.

3351

Mr. Rice: This is laying a foundation to attack this witness' credibility in a most important respect.

The Court: But you are not dealing with the union proposition at all, nor as far as this kind of racketeering is concerned here. The only charges here that have anything to do with labor is the excess of hours and the insufficiency of payment, that is all. Now then, your so-called racketeering here has to do with intimidation that is alleged as to three different

3352

Herbert Frankel—By Defts.—Cross

individuals, that is all, and none of them are labor men; they are employees of the Code.

Mr. Rice: Yes, your Honor, but that is not my purpose here, I think my purpose will be manifest in a moment.

The Court: I do not see why you should inquire from the witness as to that.

Mr. Rice: I propose to attack this man's credibility.

3353

The Court: All right, but it is not connected with these defendants. There is no charge that these men were engaged in any of these practices at all, and there is no charge that any of them are officers of any union.

Q. Don't you know that those practices existed for many years here? A. No.

Q. You know that there was a trial in the Southern District of New York about six months ago, do you not? A. Yes.

3354

Mr. Jacob Heller: I object to that.

The Court: I think that is very objectionable, that is not even indirectly connected up with anything in this case, and should not be brought into this case.

Mr. Rice: But may I state, your Honor, I do not propose to show—

The Court: I know, but I think that is objectionable. You can ask him questions and all that, but we are not going into a trial which was on an entirely different basis, entirely different charge.

Herbert Frankel—By Defts.—Cross

3355

Q. When is the last time that you testified in any trial in any respect to the live poultry industry? A. About a year ago I think it was.

Q. Didn't you testify in March, 1934? A. About—

Q. Six months ago? A. Well, you know the case as well as I, I do not remember the date, you know the case.

Q. It was in the Spring of 1934? A. As I say if that is the date that is the date.

Q. And you testified there that there were no racketeering practices in the live poultry industry, didn't you? A. I do not recall that I so testified.

3356

Mr. Jacob Heller: I object to it, he is going back to the very same thing over again.

The Court: No, if he wants to show he testified differently at another time than now as an expert he can do that. We are not going into what that trial was. It is perfectly proper to examine him as an expert, and that is right to attack his credibility, and if he testified differently on the same subject at some other time, then it is a proper attack. That is the question he is asking now, whether at a certain time he testified differently. It is perfectly proper to ask him that.

3357

Mr. Heller: I misunderstood him, I thought he was asking him with respect to other racketeering.

The Court: No, it is perfectly simple as I heard it.

Q. You have come here and testified that various competitive evils did not exist in the live

3358

Herbert Frankel—By Defts.—Cross

poultry industry, haven't you? A. I said they did exist.

Q. Haven't you come here today and testified that there was no practice of selling unfit poultry? A. Unfit for human consumption?

Q. Yes. A. Correct.

Q. No practice of selling poultry unfit for human consumption? A. Correct.

Q. And there is no practice of selling uninspected poultry, you have testified to that effect?

A. No, I wasn't asked to testify about that.

3359

Q. You testified today that there are various other competitive practices which are involved in this case that do not exist, haven't you? A. I do not quite understand your question.

Q. On direct examination you testified that various practices, various evil practices involved in this case did not as a matter of fact exist. You understand that, don't you? A. I don't understand what you mean by various practices.

Q. You were asked about a number of practices, weren't you? A. Yes.

3360

The Court: Better call his attention to the specific ones if he does not understand.

Q. You testified that there was no practice of rebating. A. Someone said about secret rebating.

Q. Well, there is no practice of secret rebating? A. To my knowledge there is none.

Q. To your knowledge there is none? A. Correct.

Q. And to your knowledge there is no practice or there has been no practice of selling poultry unfit for human consumption? A. Correct.

Q. Didn't you testify six months ago in the racketeering case involving the sale of coops and

*Herbert Frankel—By Defts.—Cross***3361**

feed that there was no racketeering in the feed business and no racketeering in the coop business? A. Correct.

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

Q. You testified for Arthur Herbert and Joe Weiner and other delegates of the two labor unions? A. That is right.

Q. You testified there was no such practice? A. Correct.

Q. Now those five defendants were convicted of that very practice, were they not?

3362

Mr. Jacob Heller: Your Honor, I think that is highly objectionable.

The Court: It is, and the jury will entirely disregard it. We are not going to try these men for what somebody else did. You can ask him how he testified, but you have no right to state what the jury found as against some other defendants; and the jury will disregard it. These defendants are not charged with anything of the kind. I would like to have this trial go along, we have been at it for quite some time and we do not want you to continue that line or it won't.

3363

Mr. Rice: Very well.

Q. Now, Mr. Frankel, did you make an effort to have this prosecution against the Schechters stopped? A. No.

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

Q. You know Garland Galloway, do you not? A. Yes.

Q. Who is he? A. He is with the Code Authority.

Q. He is the assistant supervisor of the Code Authority, is he not? A. Correct.

3364

Herbert Frankel—By Defts.—Cross

Q. Did you pay him a visit within the past few weeks? A. No.

Q. Did you discuss the Schechter case with him? A. Yes.

Q. Did you tell him that you wanted the Government to drop the Schechter prosecution? A. I did. Not that exactly, but——

Q. What did you tell him? A. I told him I thought it was a shame that they were bringing this prosecution against the Schechters.

3365

Q. You tried to have this prosecution dropped? A. That is the only thing I discussed.

Q. You and the other commission men tried to have this prosecution dropped against the Schechters, didn't you? A. I know nothing about the other commission men.

Q. You were representing other commission men? A. No.

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

Q. You say you have been doing business with the Schechters? A. Yes.

Q. You have been selling them poultry? A. Yes.

3366

Q. Large amounts of poultry? A. Yes.

Q. And other commission men have sold them large amounts of poultry? A. Yes.

Q. And they owe the commission men money, do they not? A. Except for current purchases, they owe me nothing.

Q. About how many thousands of dollars of poultry do they purchase a week? A. Possibly five.

Q. Possibly seven thousand? A. Possibly.

Q. They purchase about five or seven thousand dollars' worth of poultry per week, do they not? A. Yes.

Herbert Frankel—By Defts.—Cross

3367

Q. And they are about one week behind in their payments to the commission men, that is the practice of the industry? A. No, the bills are payable in ten days, and the Schechters pay their bills promptly.

Q. They pay them within ten days? A. And even before.

Q. Sometimes within seven days? A. Yes.

Q. So at all times the Schechters owe about seven thousand dollars to the commission men? A. Yes.

3368

Q. And they owe a part of this to you? A. Yes.

Q. And they owe part of it to you today, don't they? A. I don't know whether they have purchased anything in the last ten days.

Q. Have you ever heard Joseph Schechter say that the Schechter brothers were going to use the money they owed to the commission men for the purpose of paying any costs of this prosecution? A. No.

Q. You have not heard that? A. No.

Q. Hasn't that been a general rumor in the industry? A. No.

3369

The Court: You can't have testimony about general rumors.

Q. Haven't you heard that? A. No.

Q. Don't you know that that is a fact? A. I do not. I think they have more money than anybody in the industry.

Q. Aren't you afraid that if this prosecution costs the Schechter brothers any money, that you commission men are going to pay it? A. No.

Q. They are going to take it out of your hide, so to speak? A. No.

3370 *Herbert Frankel—By Defts.—Cross*

Q. Didn't you, as a matter of fact, tell Mr. Garland Galloway, the Assistant Supervisor of the Code Authority, that you wanted this prosecution stopped because the Schechters owed money to the commission men? A. No.

Q. Didn't you tell him that? A. He is over there.

Q. Didn't you tell him that? A. No.

Q. He is sitting right here in this court room? A. Right.

3371 Q. This gentleman right here? (Indicating.)
A. Yes.

Mr. Jacob Heller: What right has he to be in here if he is going to be a witness, your Honor?

The Court: He has been a witness. He has a right here now.

Q. Now, you told that to Garland Galloway? A. I did not.

3372 Q. You told him that you wanted this prosecution stopped because it was going to cost you and the other commission men money? A. I have already testified that I did not.

Q. Well, let us see if you haven't done the same identical thing sometime in the past.

Mr. Jacob Heller: Meaning what?

Q. Meaning this: Do you recall paying a visit upon Mr. Osseus and myself about four or five years ago, you and other commission men? A. Yes.

The Court: Has it anything to do with the Schechters?

Mr. Rice: No.

Herbert Frankel—By Defts.—Cross

3373

The Court: Then it is not admissible. What he did four or five years ago about somebody else is not what we are trying here.

Mr. Rice: May I explain to your Honor the reason that I desire——

The Court: No; and if you keep on you will put this trial in some jeopardy. I tell you that you cannot do it.

Mr. Rice: Very well, your Honor.

Q. Now, do you believe that there has been the practice of selling uninspected poultry in New York? A. Yes.

3374

Q. There has been such a practice? A. Yes.

Q. And it is an evil competitive practice? A. Yes.

Q. Something that ought to be stopped? A. Yes.

Q. And the Code had ought to prohibit it, had it not? A. Yes.

Q. And you yourself spoke in favor of stronger inspection regulations at a recent hearing? A. Well, I wasn't at the hearing, but I have spoken about it.

3375

Q. Weren't you at the recent hearing of the proposed amendments of the Live Poultry Code? A. Yes.

Q. And weren't you asked some questions in regard to the inspection provision of the Code? A. Yes, I had forgotten that meeting.

Q. Didn't you state that the inspection ought to be more rigid? A. Right.

Q. That there ought to be a better inspection? A. That is right.

3376

Herbert Frankel—By Defts.—Cross

Q. Why did you state that? A. Because poultry was being brought into New York which was not inspected and it was making—it was making competition bad for us.

Q. There was poultry being brought in that was not inspected? A. Yes, from outside markets.

Q. Is that correct? A. Correct.

3377

Q. How about Dr. Ives' inspection, that is, the Bureau of Agricultural Economics' inspection at the railroad terminals of the freight poultry? A. Yes.

Q. You are familiar with that? A. Yes.

Q. Is that inspection service an efficient one? A. Yes.

Q. Is it a careful inspection? A. I think so.

Q. And you think that they find all of the diseased chickens? A. I think so.

Q. All of the poultry unfit for human consumption? A. I do.

Q. And that they have them destroyed? A. Yes.

3378

Q. You think that is an efficient inspection? A. I do.

Q. You know Dr. Ives? A. Yes.

Q. You know he is an official of the Bureau of Agricultural Economics? A. Yes.

Q. A Government official? A. Yes.

Q. That he has been in charge of this inspection service since 1926? A. Yes.

Q. Since it commenced? A. That is correct.

Q. Do you think Dr. Ives is about the most competent person to speak about the inspection under his direction? A. He should be.

Q. You do not have any doubt as to his knowledge of inspection service, do you? A. No.

Q. And the character of that inspection service? A. No.

Herbert Frankel—By Defts.—Cross

3379

Q. You testified that no more than one-tenth of one per cent. of all live poultry coming into New York was poultry unfit for human consumption, didn't you? A. That is right.

Q. Do you know that it is the practice of the Inspection Service to destroy whatever unfit poultry they find at the time of inspection? A. That is right.

Q. You know that they keep exact records, do you not? A. I think they do.

Q. They keep records of every pound of poultry destroyed? A. That is right.

3380

Q. Do they not? A. Yes.

Q. The date of the destruction? A. That is correct.

Q. The number of chickens destroyed? A. Yes.

Q. And the number of pounds destroyed? A. That is correct.

Q. Do you know that in the year 1933 there were 29,000 pounds—no, 290,000 pounds of live poultry destroyed by the inspectors of the Joint Inspection Service? A. No, I do not.

3381

Q. You do not know that? A. No.

Q. Upon what did you base your conclusion that there was only one-tenth of one per cent. of the live poultry coming into New York that was unfit for human consumption? A. On my own experience.

Q. On your own experience? A. Yes.

Q. You claim to handle a very superior grade of poultry? A. No, just average grade.

Q. Not better than the other commission men? A. No. But the grade has nothing to do with the health.

Q. How about the health, do you handle more healthy chickens? A. No.

3382

Herbert Frankel—By Defts.—Cross

Q. Than any other commission man? A. No, just average. I am still not sure whether that 300,000 pounds does not represent one-tenth of one per cent.

Q. We have computed it for you and we find it is one-fourth of one per cent. A. Well, that is probably all freight, and it does not include trucked and expressed.

3383

Q. Yes; and you know that the trucked and expressed poultry coming into New York is not—into New York is of a poorer quality than freighted poultry? A. Is of a better quality.

Q. Do you know much of the poultry that comes in by truck is uninspected? A. Oh, no. I would say that ninety-five per cent. is inspected.

Q. You would not say that ninety-five per cent. of what the Schechters bring in by truck is inspected, would you? A. I do not know what they bring in.

Q. You know they bring in uninspected poultry? A. I have heard Dr. Ives mention it.

3384

Mr. Jacob Heller: If your Honor please, I object to this. He has answered it before.

The Court: Strike out what somebody else told him. What you know yourself, I told you that before, Mr. Witness. When you are asked a question and you do not know, say so; not what somebody told you.

Q. You said there were about twenty commission men, twenty commission men in New York? A. Yes.

Q. How many of them have their headquarters at West Washington Market? A. About sixteen.

Herbert Frankel—By Defts.—Cross

3385

Q. About sixteen? A. Yes.

Q. Mr. Tottis' commission house is not located at West Washington Market, is it? A. That is correct.

Q. Where is it located? A. In the Bronx.

Q. In the Bronx? A. Yes.

Q. Is there some jealousy between the sixteen commission houses at West Washington Market and Mr. Tottis' commission house in the Bronx? A. No.

Q. None at all? A. No.

Q. You know that the Dexter Food Company in the Bronx is one of the largest commission houses? A. They are one of the smallest.

3386

Q. They are one of the largest? A. One of the smallest.

The Court: He said one of the smallest.

Q. Do you know how much poultry they handle per year? A. I can estimate that to be about 200 cars.

Q. About 200 cars per year? A. Yes.

Q. You were not here when Mr. Tottis testified? A. No.

3387

Q. To the effect that they brought in about one car every day? A. No, I was not here, but that is not a fact.

Q. Do you know the business of the Dexter Food Company? A. Yes.

Q. They are competitors of yours, aren't they? A. Yes.

Q. They compete with the sixteen commission men at West Washington Market? A. Yes.

Q. They are in an entirely different category from the commission men in West Washington Market, aren't they? A. Not as commission merchants.

Herbert Frankel—By Defts.—Cross

3388

Q. Doesn't the Dexter Food Company also have a slaughter house market? A. Yes.

Q. And they sell as commission men to their own slaughter house market? A. That is correct.

Q. And the slaughter house market operated by them sells to the retailers and butchers, is that right? A. Right.

Q. They are somewhat different from the other commission men at West Washington Market? A. That is right.

Q. Is that correct? A. Yes.

3389

Mr. Jacob Heller: If your Honor please,—

The Court: What is your objection? State it.

Mr. Jacob Heller: I do not think that this is material or relevant to the issues here.

The Court: Overruled.

Mr. Jacob Heller: Exception.

The Court: He has a right to search his conscience and see whether he is biased or prejudiced.

3390

Q. You did not mean to suggest on direct examination that Mr. Tottis was simply a slaughter house man, did you? A. No, I said he was a buyer.

Q. Yes; he is a buyer for the Dexter Food Company? A. Yes.

Q. And you did not mean to say that he is simply a slaughter house operator? A. No.

Q. He is a commission man, isn't he? A. Dexter is. I said he worked for him in some capacity.

Q. And isn't it a fact that he is one of the most learned commission men in the industry? A. No.

Q. Isn't it a fact that he knows more about the industry than any other commission man, with the possible exception of yourself, in the entire industry—yourself excluded? A. I would say that the history of the industry speaks for itself, and Mr. Tottis is only a very small part of it, and I do not think he knows the industry at all.

Q. You do not think he does? A. No.

Q. You think you know it better than he does? A. I certainly do.

Q. Isn't it a fact that Mr. Tottis has much more contact with the shippers out of town than you do? A. That is not a fact.

Q. It is not a fact that he spends several months out of every year going out around the shippers in the various States of the union? A. I do not know.

Q. Isn't it a fact that he visits thirty or thirty-five States every year? A. I do not know.

Q. And has direct contact with the shippers? A. I do not know.

Q. And the concentrators? A. I do not know.

Q. And even with the farmers? A. I do not know.

Q. You do not know? A. No.

Q. Do you do any of those things? A. Yes.

Q. Not to the same extent that Mr. Tottis does? A. Perhaps to a greater extent.

Q. Did you mean to testify on direct examination that the practice of straight killing does not have any effect upon price? A. On price?

Q. Upon the price structure. A. I do not think it has any bearing.

Q. You do not think it has any bearing? A. No.

3394 *Herbert Frankel—By Defts.—Cross*

Q. You do not think that the practice of destructive price-cutting has any effect upon the price structure, do you? A. Are you speaking about the wholesale price now?

Q. Yes. A. Do I think it has any effect? No, I think it has no effect.

Q. The practice of destructive price-cutting has no effect? A. Upon wholesale price?

Q. Upon wholesale price. A. No.

3395 Q. And it has no effect upon the price paid by the wholesalers to the commission men? A. That is correct.

Q. And it has no effect upon the price paid by the commission men to the shippers, that is your idea? A. Yes.

Q. You stated that you were present at the hearing on the proposed amendment to the Live Poultry Code a few weeks ago? A. Right.

Q. Do you recall that? A. Yes.

Q. Here was a proposed provision for price posting suggested at that hearing? A. Correct.

3396 Q. And that most of the time was devoted to a discussion of that proposed provision? A. I came in late and if you recall the chairman asked me to make my speech as I was leaving for Chicago that afternoon.

Q. And you were permitted to make your speech out of order? A. Yes.

Q. And what did you say? A. That was on the inspection.

Q. You made a speech also on price posting? A. No.

Q. Were you asked your opinion as to the price posting provision? A. No.

Q. Didn't you state at that meeting that you believed that the absence of price posting demoralized the price? A. No.

Herbert Frankel—By Defts.—Cross

3397

Q. And it demoralized the price to the shipper as well as the commission man? A. No.

Q. Didn't you testify on that? A. No.

Q. And didn't you hear other testimony on that? A. No, I came in late.

Q. Don't you know that most of the testimony was on that very point? A. I cannot testify about something that happened when I wasn't there.

Q. You did discuss the lack of inspection? A. The lack of inspection?

Q. Yes—did you discuss the proposed inspection provision? A. Why the Code was going to take over the inspection.

3398

Q. Take over all inspections? A. Yes.

Q. Taken entirely out of the Board of Health Department's hands? A. That's right.

Q. And you were in favor of that? A. Yes.

Q. What were your reasons?

Mr. Jacob Heller: I object on the ground that it is not binding on these defendants.

The Court: He is an expert and he may be cross examined as an expert. I do not know if it is material or not. If he has a change of front it is and if he has not it is not. We are not dealing here with a concrete case now but with his testimony as an expert, whether this affects interstate commerce. We are dealing now with his qualifications. I will overrule the objection.

3399

Mr. Jacob Heller: Exception.

Q. Mr. Frankel, you were under oath when you were at that hearing? A. Yes.

3400 *Herbert Frankel—By Defts.—Cross*

Q. And while you made your speech you were under oath? A. Correct.

Q. And you stated at that meeting that the lack of inspection on trucked poultry had the effect of demoralizing the price structure, did you not? A. I don't think I mentioned the price structure.

Q. That it did have an effect on demoralizing the prices? A. No.

Q. Didn't you, now? A. No, if you want me to tell you what I did say I will tell you.

3401 Q. We will let you tell us later; didn't you testify at that hearing just a few weeks ago that the lack of inspection had the effect of demoralizing the price in New York and that that in turn had the effect of demoralizing the price received by the interstate shippers, didn't you testify to that effect? A. I don't think I did.

Q. You are not so sure? A. I am pretty sure I did not.

Q. And you would like your testimony shown to you? A. If you have it, sure.

3402 Q. We are trying to get it. Now will you say you did not testify at that meeting that the lack of inspection had some effect upon prices? A. I don't recall that I testified. I was invited to make a speech and I did.

Q. You are not quarrelling with me on the word testify, are you? A. No, I am not. I don't recall that in this talk I ever touched on the question of prices.

Q. Now weren't you asked the question as to whether or not the lack of inspection had any effect upon prices? A. I don't recall.

Q. Would you say you were not asked that question? A. There were some questions asked

Herbert Frankel—By Defts.—Cross

3403

after I was finished, I do not recall what they were.

Q. Didn't you state it would have the effect upon the price and would demoralize the price?

A. I don't recall that part of it.

Q. You would not state you did not so testify?

A. No.

Q. Now as a matter of fact wouldn't the failure to inspect have an effect upon the price? A. No.

Q. But you are not sure that you did not so testify at that hearing? A. I would say, if you pin me down, that I don't believe I brought up the question.

3404

Q. I am not talking about who brought it up.

A. That I testified to that particular phase.

Q. You are not sure? A. I am quite certain I did not mention that question.

Q. Weren't you asked, step-by-step, whether or not the failure to inspect would have an effect upon the price in New York and upon the price received by the commission men and upon the price received by the shipper in other States?

A. I don't think so.

3405

Q. Weren't you asked those identical questions? A. I don't think so.

Q. And didn't you say it would have the effect upon the price received by the commission man and the shipper in the other States? A. I don't think so.

(Short recess.)

Q. You know Garland Galloway real well?

A. Yes.

Mr. Rice: Will you stand up, Mr. Galloway?

(Mr. Galloway stands.)

3406 *Herbert Frankel—By Defts.—Cross*

Q. This gentleman here? A. Yes.

Q. At one time he was in the employ of the commission men, was he not? A. That is correct.

Q. For how many years? A. Oh, ten or a dozen.

Q. Ten or a dozen years? A. Yes.

3407 Mr. Jacob Heller: If your Honor please, may I know the reason for this line of examination, what bearing it has on these defendants?

The Court: What was it?

Mr. Rice: I propose to show that he has taken a different position with regard to these Code provisions then at some previous time.

The Court: If it affects his credibility as an expert it is admissible.

Mr. Jacob Heller: I didn't know what it was.

3408 The Court: This is not running to the substantive counts, this runs to his qualifications. When a man testifies as an expert they can show that he testified differently before, it goes to the weight of his testimony as an expert.

Q. You say you were the leader of the commission men prior to the adoption of the Code? A. Yes.

Q. For how many years prior to that time? A. I do not recall.

Q. The commission men had an association, didn't they? A. Yes.

Q. And the association employed Mr. Garland Galloway? A. Yes, sir.

Q. As the man to look up the credit of the slaughter house operators, is that right? A. Correct.

Q. You knew him very well? A. Yes.

Q. During the months that the Code was being discussed in Washington, D. C., did you send Garland Galloway to Washington as a representative of the commission men? A. Yes, sir.

Q. On repeated occasions, did you not? A. Yes.

Q. You sent him there to get in the provisions regarding the sale of uninspected poultry, did you not? A. I do not recall just what—I will tell you—

Q. Just a moment, just answer my question. A. I do not recall what provisions were in there.

Q. Didn't you send Mr. Galloway down there to urge the adoption of the following Code provisions: The provision prohibiting the sale of unfit poultry, the provision prohibiting the sale of uninspected poultry, and the provision regarding straight killing, did you not? A. I do not think I sent him there to do that.

Q. You wouldn't be so sure about that, would you? A. No.

Q. Do you think you might have sent him down for that purpose? A. As a matter of fact I didn't send him down directly—

Q. Well, the commission men sent him down? A. Yes.

Q. They paid his expenses? A. Yes.

Q. And you contributed to the payment of his expenses? A. The association did.

Q. And he was the official representative of the commission men in Washington, D. C., is that correct? A. That is correct.

3412

Herbert Frankel—By Defts.—Cross

Q. Don't you know that as the official representative of the commission men Mr. Galloway urged the adoption of the provision prohibiting the sale of unfit poultry? A. I hope he did.

Q. You hope he did? A. Yes.

Q. And you asked him to, didn't you? A. I probably did.

Q. And you thought it was a proper Code provision, didn't you? A. Yes.

3413

Q. And you thought that the practice of selling unfit poultry in New York was a flagrant practice, didn't you? A. I thought it was a flagrant practice?

Q. Yes, a widespread practice, did you not? A. No.

Q. You wouldn't waste your money sending Galloway down to Washington to urge the adoption of a provision that had no effect on the industry, would you? A. No.

Q. Then you thought that the provision prohibiting the sale of unfit poultry would have an effect upon the industry, didn't you? A. It was just one of the minor things, that is only a minor clause.

3414

Q. That is one of the minor things? A. Correct.

Q. The sale of diseased poultry to our public here is a minor thing? A. If you want to phrase it that way, yes.

Q. Don't you know that the sale of diseased poultry has cut down the consumption of poultry? A. No, it hasn't.

Q. You know that you urged Garland Galloway to get the Code provision adopted prohibiting the sale of uninspected poultry, do you not? A. If that was in the original draft I urged it; I do not recall what was in the original draft.

Herbert Frankel—By Defts.—Cross

3415

Q. You wouldn't say you didn't urge it? A. No.

Q. And you urged Galloway to ask for a Code provision prohibiting selective killing, did you not? A. I did not.

Q. A Code provision requiring straight killing, didn't you? A. I was interested in the provisions pertaining—

Q. No, answer my question. A. I would say I do not know.

Q. You do not know? A. No.

Q. You wouldn't say you didn't ask it? A. I was interested in the commission merchants' end, I can only say, and as a matter of fact—

3416

Q. Just a moment— A. I didn't—

Q. Just answer my question.

Mr. Jacob Heller: If your Honor please, I think he should be permitted to answer so that we can get the complete answer.

Mr. Rice: I am asking him about the straight killing provision.

The Court: I know, but he started to answer you that that didn't interest him.

3417

Mr. Rice: Let me withdraw this question and ask another then.

Q. You would not say that you did not ask Galloway to urge the adoption of a provision prohibiting the sale of poultry by selective killing? A. I would say that I did not discuss with Garland Galloway any provisions pertaining to slaughter house men, and that is one of them.

Q. Galloway represented only the commission men, did he not? A. Correct.

3418 *Herbert Frankel—By Defts.—Redirect*

Q. And anything he brought down to Washington was brought as the representative of the commission men? A. Yes.

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

Q. And you reduced that to writing, didn't you? A. I presume so.

Q. You know you did, don't you? A. Yes.

Mr. Rice: This is all.

Redirect examination by Mr. Jacob Heller:

3419 Q. You stated on cross examination that the sale of diseased poultry is a minor thing. Will you tell us why? A. I did not say it was a minor thing. I do not think there is any diseased poultry sold.

Q. Is that the reason why you thought it was a minor thing? A. Yes.

Q. You stated on cross examination that you knew there was such a thing that is known as cut-throat competition in the industry? A. Yes.

Q. Do you also know whether that competition also exists in other industries? A. Yes.

3420 Q. There is nothing peculiar about that in the poultry industry, is there? A. Nothing strange about that.

Q. Do you know, sir, whether the cut-throat competition that you were referring to is keener today than it was before the Code came into effect? A. It is keener today.

Q. Much keener? A. Yes.

Q. There is no question about that in your mind?

Mr. Rice: I object to leading the witness on this.

The Court: He is your witness. Do not lead him. You are not cross examining.

Herbert Frankel—By Defts.—Redirect

3421

Q. I call your attention to a definition of a cull given by F. A. Bushell, Senior Agricultural Economist, Division of Dairy & Poultry Products, Bureau of Agricultural Economics, contained in a technical bulletin No. 107, entitled, "The Wholesale Marketing of Live Poultry in New York City," which is as follows—

Mr. Rice: Just a moment. If your Honor please, we are not concerned with any definition of culls here, particularly with respect to this witness, other than the definition of cull in the Code.

3422

The Court: We are not concerned with any definition of cull except that which is in the Code.

Mr. Jacob Heller: This particular definition—

The Court: It may be in any book you like, however sacred the book may be, but it does not prevail here. We have a definition of a cull in the Code.

Mr. Jacob Heller: This particular definition happens to be in—

3423

The Court: It is the definition in the Code that we are concerned with.

Mr. Jacob Heller: I respectfully except.

The Court: You and the witness have already given your separate definitions. It is the one in the Code that counts.

Q. You stated on direct examination that you had a conversation with one Galloway, assistant supervisor of the Code Authority, in reference to the dropping of the prosecution against the Schechters. Will you give us the entire conversation relating to that? A. The entire conversation?

3424 *Herbert Frankel—By Defts.—Redirect*

Q. Yes. A. It was over the telephone.

Q. Yes. A. And I said that I thought to select—I do not know my exact words.

Q. As best as you can. A. To pick out simply one man and go after him, when he was doing only what other people were doing, was not just. In principle I felt that the Code should be upheld so long as there was a Code, but I did not think that we should prosecute just one man who was doing what everybody else was doing.

3425 Q. But there is no question in your mind, is there, sir, that Mr. Tottis purchased from you like a buyer, I mean, a buyer in the category of the Schechters? A. He purchased poultry from us.

Q. Do other commission men like this purchase poultry from you? A. No.

Q. They get it themselves from the cars, do they not? A. Correct.

Q. Do you know a party by the name of Benjamin Forsmith? A. Yes.

Q. Does he purchase poultry from you? A. No.

3426 Q. Were you used as an expert first in the practices of the poultry industry by the Government? A. Yes.

Q. They did not question your qualifications at that time, did they? A. I don't know.

Mr. Jacob Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

Louis Spatz—By Defts.—Direct

3427

LOUIS SPATZ, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Joseph Heller:

Q. Mr. Spatz, what is your business, please?

A. Acme Commission Company, president, receiving of live poultry.

Q. Speak up a little louder so the jury can hear you. A. Connected with the Acme Commission House, as president, receiving of live poultry.

3428

Q. Located in the City and the State of New York? A. Yes, sir.

Q. Have you a place of business at the West Washington Market? A. Yes, sir.

Q. How long have you been in business? A. Entire business or just in the Acme?

Q. No, what has been your experience in the live poultry industry? A. Since 1912.

Q. Since 1912? A. That is right.

Q. Twenty-two years? A. That is right.

Q. And during that course of experience did you buy and sell poultry? A. Yes, I did.

3429

Q. And from every State in the Union? A. I did—well, not every State, poultry-producing States.

Q. Will you explain in detail some of your experiences as a merchant and buyer and as to your observations, as to your knowledge of the industry itself? A. As a commission man or as a buyer?

Q. Were you ever in the slaughter house business? A. I was.

Q. Wholesale? A. Yes.

Q. As to all of those three functions? A. You mean pertaining how it is being operated?

3430

Louis Spatz—By Defts.—Direct

Q. Yes; give us a short history. A. Well, we received poultry from through the country that is bought by what they call a huckster, what goes out with a horse and wagon to the farmer. This huckster, so-called, is bringing it into the shipper which he loads it up straight carloads and ships them to New York at the railroads, and as a slaughter house man we purchase our supply and sell them to the butcher and the retail chicken dealers, and when I say "our supply," I buy it from the receiver.

3431

Q. That is your operation as a slaughter house man? A. That is right.

Q. As a commission merchant? A. Well, we just sell it to the wholesale men, the slaughter house men.

Q. And you would receive the poultry from all over the country? A. From the poultry-producing States.

Q. In carload lots? A. Carloads and truck loads.

Q. And how much business does your firm do? A. In the year 1933 I think we were the next largest receivers in New York.

3432

Q. About what percentage of all the poultry? A. About fourteen per cent.

Q. So about fourteen per cent. of all the poultry that comes into the City of New York you handle? A. Yes.

Q. Now, who is the largest concern? A. Julius Castein.

Q. Is he in court? A. I believe so. Yes, he is over there (indicating).

Mr. Joseph Heller: Will you stand up?
(A man stands up in the courtroom.)

Louis Spatz—By Defts.—Direct

3433

Q. Do you know what percentage Mr. Frankel's concern does? A. About the same as ours, but I don't know exactly.

Q. You three are the largest merchants? A. No, there are five largest merchants; there is the Chelsea Live Poultry Commission and the Western Commission Company.

Q. You have had a lot of trouble yourself, haven't you? A. Pertaining to what time, my family or who?

Q. You were prosecuted by the Government? A. I was.

3434

Q. And you were convicted of a crime? A. I was. We have been prosecuted.

Mr. Rice: Now, just a minute, your Honor. If this is going to be—if he is going to impeach his own witness,—

The Court: Now just a minute. If he has been convicted of a crime, that would simply go to his credibility.

Mr. Rice: Yes, your Honor, and I should like to go into it thoroughly.

The Witness: That is all right; I will give you a chance.

3435

Q. Continue. A. In 1929 Mr. Rice and Mr. Osseus, we were prosecuted at that time and we were convicted due to some kind of politicians that were looking for money.

Q. Do you see any members of the Code Authority here? A. I do.

Q. Will you mention some of them and point them out in court? A. Well, the Code authority.

Q. Yes. A. There is the Supervisor, Mr. Peterson, and there is Mr. Galloway and Mr.

3436

Louis Spatz—By Defts.—Direct

smith, and there are so many up there I can't remember them all.

Q. Do you see anybody else? A. Not that I know. As I say, there is so many up there I don't even know them.

Q. Now, you pay the salaries of those gentlemen who are sitting there now? A. We do.

Q. You contribute to it? A. About \$5,000 a year direct and a whole lot more indirect.

3437

Q. And the gentlemen are sitting right here in the court now? A. That is right.

The Court: Now just a minute, Mr. Witness. I can tell you now that if any question is asked you the answer to which might tend to incriminate or degrade you in your community, you have a right to refrain from answering, and that anything you say in this court is admissible in any court, that is, may be used against you in any court.

If you will just answer the questions asked you we will get along better.

3438

The Witness: Thank you, your Honor.

Mr. Joseph Heller: I thought he answered the question, your Honor.

The Court: He did, but he has volunteered some foot-notes.

Q. Have you stated the market conditions as they existed in the City of New York? A. I do.

Q. And as they existed in any other State? A. Yes.

Q. What is the extent of your experience? A. The extent of the experience is successful.

Q. You operated successfully financially? A. That is right.

Louis Spatz—By Defts.—Direct

3439

Q. During the entire period of time? A. That is right.

Q. You made purchases and sales? A. Yes, sir.

Q. You have inspected marketing conditions in Chicago? A. I did.

Q. Philadelphia? A. I did.

Q. All important centers in the United States which pertain to poultry? A. I did.

Q. State of New York? A. Yes, sir.

Q. Very familiar with it? A. Very familiar.

3440

Q. Do you know of your own knowledge whether or not the State of New York is the dumping ground for diseased chickens? A. No, sir.

Q. Is there such a condition existing today, or did it exist at any time up to today? A. Can I answer in my own way?

Q. Answer it your way? A. The State of New York is a dumping ground for surplus, but not for diseased chickens; the City of New York, I mean.

Q. By surplus what do you mean? A. All other markets are limited to their supply. Assuming Newark, they can use about twelve to thirteen cars a week, that is their limit of supply; if they get sixteen, three cars will be sold to New York; and so goes along Philadelphia, Boston and all other markets.

3441

Q. In other words, all the poultry that cannot be sold, although fit for human consumption, is sent to the City of New York? A. That is right.

Q. You do not call those diseased chickens, do you? A. No.

Q. What do you know about the grading of chickens? Explain the terminology used with ref-

Louis Spatz—By Defts.—Direct

3442

erence to the classification, what kind of chickens there are, such as first, second, and so on. A. Well, we get, for instance, the southern poultry, southern quality poultry at this time of year is called a poor grade; that same quality around March and April will be the most desirable grade.

Q. Why do you say it will be the most desirable grade in March and April? A. On account of the changeability in the seasons in the country.

3443

Q. In other words, do you mean to say some States do not raise and send chickens to the State of New York during certain times of year? A. That is right.

Q. That is the reason there are inferior qualities of chickens in one month and superior quality during other months? A. That is right.

Q. What kind of chickens come into the City of New York, good or bad ones? A. All kinds.

Q. Well, explain what they are. A. There are, as far as grades are concerned, we call them in our quotations Indiana, Fancy Western, Western, Average and Poor.

3444

Q. Well, take the worst kind, the poor. A. Yes.

Q. Are those diseased chickens or are they fit for human consumption? A. They are not diseased, they are fit for human consumption, I would eat them myself.

Q. And when you say "poor" you mean they are thin, thin-breasted? A. Thin-breasted, small size.

Q. Weigh little? A. Small size.

Q. That is all that is meant by poor quality? A. And probably sometimes too hard.

Q. Too hard? A. Yes.

Q. They can be eaten? A. You have got to cook them longer.

Louis Spatz—By Defts.—Direct

3445

Q. That is all the matter with them? A. That is all.

Q. You can't die from eating that kind of chicken? A. I do not know of anybody that did.

Q. Now, you have a price quotation in the City of New York, have you not? A. We have.

Q. And do I understand you to say that the price quotation consists of the grades you just enumerated? A. Yes.

Q. And the price will vary in so far as the quality is concerned? A. The price would vary on the fowl as far as quality is concerned, and on chickens, ducks, turkeys, geese, and all other commodities.

3446

Q. And the price for the poor chicken would be less than for the good quality chicken? A. Yes.

Q. Isn't that correct? A. That is right.

Q. And that varies from time to time? A. Practically at all times, probably only two months during the year you won't find it.

Q. There are certain classes of people that buy the poor grade chickens? A. Sure they do.

3447

Q. Nothing wrong about that? A. No, sir.

Q. Can you explain to the jury how the price is determined in your market from day to day? A. We get together around 60th Street, that is, as far as freight poultry is concerned, received by freight in the railroad yards, and I would have six or seven cars for sale today, and I would get an idea of what the poultry for the week, the receipts, are, to find out how the sale in the slaughter houses is, and to my opinion the poultry also would cost in the country so much to produce, and it should be about eighteen cents, and I would go down to the railroad and ask eighteen

3448

Louis Spatz—By Defts.—Direct

cents for fowl fancy grade. And if a buyer agrees to pay eighteen cents, that constitutes a sale for the Urner Barry Quotation quotation.

Q. They take those figures from you? A. That is right.

Q. Let us say you determine the price to be eighteen cents at 10 a.m. in the morning for a certain grade of chicken— A. That is correct.

3449

Q. Is it possible and does it frequently happen that the same grade of chicken, the same quality chicken, may be sold for less on the very same day?

Mr. Rice: If your Honor please, I think this witness should be permitted to testify rather than simply answer yes or no to leading questions.

The Court: Well, that is true, but it is hard to present this to him otherwise, this particular question. That is true, but I will let that question go because it is pretty hard to present that in any other way.

3450

Mr. Joseph Heller: It is my understanding with respect to experts that I may pursue the same line as my friend, I may have the same leeway.

The Court: I will give you a certain leeway, but that question couldn't be presented much easier.

Mr. Joseph Heller: Yes. Will you repeat the question?

(The reporter repeated as follows: "Let us say you determine the price to be eighteen cents at 10 a.m. in the morning for a certain grade of chickens, is it possible and does it frequently happen that the same grade of chicken, the same quality

Louis Spatz—By Defts.—Direct

3451

chicken, may be sold for less on the very same day?")

A. Yes, it is.

Q. And why does such a situation arise, what is your explanation? A. It is on occasions, sometimes weather conditions, sometimes the public don't buy that particular week, and sometimes the reason the prices are too high, or an extra surplus got in from other markets to New York.

Q. And when you speak of an extra surplus, do you mean good wholesome chickens? A. Yes, sir.

3452

Q. By that you also mean that they could not use those chickens in the other State because there was no demand for them? A. Well, I had that occasion yesterday, Philadelphia sent me in a load of chickens because they couldn't use one of the finest grades in the country.

Q. And you had a market for it here? A. Yes.

Q. Isn't this the greatest market there is in the United States, the City of New York? A. For live poultry it is.

Q. Isn't that right? A. That is right.

Q. That demand does not vary very much? A. It is the price that makes the public buy.

3453

Q. When do the public buy more? A. When the price is low.

Q. And you have found that from your actual experience from day to day? A. That is right.

Q. You found the same condition to exist with other merchants? A. I presume so. I don't know much about it. I know in the egg business and in the dressed poultry, we found it the same way, any food commodity in comparison.

Q. You have occasion to examine Government reports? A. What kind of Government reports?

3454 *Louis Spatz—By Defts.—Direct*

Q. Pertaining to the poultry business. A. We get Government reports pertaining to the inspection.

Q. Anything else? A. Not that I know of.

Q. Do you use the Urner-Barry service? A. Do we what?

Q. Urner-Barry service? A. We do.

Q. That tells you all about the industry? A. That is right.

3455 Q. As it is gathered from the different merchants? A. Most of the times I tell him; I know everything.

Q. They come to you for information? A. The reporters do.

Q. Isn't that right? A. That is right.

Q. Every day? A. Practically.

Q. And they go to other merchants for information? A. That is right.

Q. That is how they get it up? A. That is right.

Q. Isn't that the source that the Government gets its information? A. I wouldn't say that.

Q. You do not know that? A. I don't know.

3456 Q. Can you tell the jury from your experience what factor in particular determines whether a poor chicken comes in or a better grade chicken comes into the City of New York from time to time? A. Well, you will find weather conditions, a car of poultry that will leave somewhere around the northern part of Illinois, northern part of Indiana, Missouri, they take four to five days to arrive here. That poultry is going through all kinds of weather conditions. If that car is routed by way of North Buffalo in the winter time it hits hot—cold weather, and when they get into the 60th Street yard the weather is changed, and it has much effect on the poultry,

Louis Spatz—By Defts.—Direct

3457

catching colds very frequently. You find it going by the southern route and you will find very hot weather, like Arkansas, Tennessee, Carolinas, and during the hot weather you will find that they just drop off in the car, drop off on the way of routing them.

Q. Then when those loads of chickens come into the City of New York they receive the proper inspection? A. They do.

Q. Then you sell them to slaughter house people? A. That is right.

Q. Such as Schechters? A. That is right.

3458

Q. They take them in crates? A. That is right.

Q. Just what is the operation between the time they come in and the time that they get chickens?

A. The time they come in there is a car—a man, which we will call him a car man in our line, who has to take care of that poultry all through the route, and feed it up before he unloads, then we apply for inspection. After the inspector goes through, destroys what he thinks is unfit for humans, and the rest is by five men loaded in the coops, sold to the particular buyer, loaded on his truck or on hired trucks, and he takes it to his own place.

3459

Q. You have done business with the Schechter brothers? A. I did.

Q. Do they owe you any money? A. Not right now. I think about three coops.

Q. Trust them all they want? A. Unlimited.

Q. You are not afraid of their credit risk? A. No, sir.

Q. You would like to have some more customers like that? A. I hope so.

Q. Do you know this Mr. Tottis? A. I do.

Q. Do you know that he went into bankruptcy? A. I do.

Louis Spatz—By Defts.—Direct

3460

Q. Tell me about it.

Mr. Rice: If your Honor please, this is nothing but leading questions.

The Court: That is right.

Q. What do you know about Mr. Tottis? A. Unsuccessful company.

Q. I did not get that. A. They are an unsuccessful company.

3461

Mr. Rice: I object to that characterization, if your Honor please.

The Court: I do not know. If he knows, I will let him say so.

Mr. Rice: That is a conclusion on the part of the witness.

The Court: I do not know. He said they went into bankruptcy. I suppose that is some animus.

3462

Q. Can you tell us why he is an unsuccessful business man? A. When this company organized in 1927, I believe, under the Dexter Poultry Company, and a subsidiary of the old Salthe Poultry Company, they were in competition with my own slaughter house, I was a slaughter house operator at that time, and their original idea was not to go in, into the slaughter house business——

Mr. Rice: If your Honor, this is obviously incompetent. The question also is improper. He asked the witness why.

The Court: We are dealing with the one man. Anything about him, all right.

Q. Do you know whether he is president of the concern? A. Mr. Tottis?

Q. Yes. A. I don't know.

Louis Spatz—By Defts.—Direct

3463

Q. Do you know what his connection with the concern is? A. I think he is a solicitor for the concern.

Q. Now have you ever seen him in the West Washington Market? A. Very often.

Q. Does he buy merchandise from your concern? A. Not much.

Q. Does he buy any particular kind of poultry? A. All kinds.

Q. Inferior? A. When he comes down and buys inferior I get the top price.

Q. That is the kind of a merchant he is? A. Well, he cannot help it.

3464

The Court: (To witness.) You are friend to him?

The Witness: Not friendly. He only comes down when he needs me. He is not a steady account. I am going to try to get all I can when he does come down.

Q. You say you were also in the slaughter house business? A. I was.

Q. And you know the operation of a slaughter house? A. I do.

3465

Q. Now what was the most evil practice that you know of? A. In the slaughter house business?

Q. Yes. A. No. 1, I cannot get bills collected.

Q. What is the next one? A. The butcher, all we know him is by a number, and it disappears overnight and a new number is born. No. 2 is the competition amongst ourselves due to the overhead, that we have, trying to cover the overhead.

Q. And when you say overhead, the overhead being big, do you mean the labor situation? A. The labor and the shochets.

3466

Louis Spatz—By Defts.—Direct

Q. You know as a fact that the ordinary laborer or workman earns as much as \$60 a week? A. At the time that I was in the slaughter house business my men never went home under \$60 and as high as \$110 a week.

Q. Now did you listen to the questions put to the last witness by Mr. Rice? A. Some.

Q. Did you hear about union racketeering? A. I did.

Q. And was that one of the conditions? A. That was.

3467

Mr. Rice: Do you mean one of the evil conditions existing?

Mr. Joseph Heller: Yes.

Mr. Rice: Then, your Honor, I expect that that opens up the door on that subject and that I may go into it on cross examination.

Mr. Joseph Heller: You opened it up.

The Court: Well now, we are dealing with racketeering under this Code and that is all we are concerned with. The charges here in this case are difficult. I think it would be well if we all stuck to the case. We have enough of them.

3468

Mr. Joseph Heller: That is right, your Honor.

Q. Now can you tell us from your experience whether or not a man paying under 60 cents an hour to his help, whether that situation would affect the price structure of chickens on any day in the City of New York or elsewhere? A. Under 60 cents an hour?

Q. Well, say 50 cents an hour to his help. A. The price would go down on poultry.

Louis Spatz—By Defts.—Direct

3469

Q. In what industry? A. In the live poultry industry.

Q. Where? A. I don't think we both understand each other, Mr. Heller. Do you mean in New York?

Q. Yes, New York. A. Yes.

Q. Now suppose the Schechters employed a man and employed him only at 50 cents an hour instead of 60 cents, would that affect the price of poultry which you were going to charge? A. Yes.

3470

Q. In what way? A. It would cost me less to operate.

Q. As a commission merchant? A. As a slaughter house man.

Mr. Rice: He asked him about the Schechters who are slaughter house operators.

Q. Now will you listen carefully to my question.

Mr. Rice: I object to his impeaching the witness, your Honor.

3471

The Court: I don't think he is impeaching him.

Q. You, as a commission merchant, sell chickens to Mr. Schechter as a wholesale slaughter house? A. That is right.

Q. Now suppose the Schechters pay less than 60 cents for laborers, ordinary laborers, would that affect in any way the price you as a commission merchant would sell them? A. Probably indirectly that the farmer would get more money that way. If he would sell them for cheaper I would get more money. If we sell in New York

3472 *Louis Spatz—By Defts.—Direct*

as cheap as we sell them the higher our wholesale market to the buyer is. If they go out and sell to the consumer at 15 cents the over-supply is eaten up in one day and the following day our price raises, and when it does that affects the country.

Q. So by selling it cheaper the farmer gets more? A. Indirectly, yes.

3473 Q. Would the fact that the Schechters were not to kill straight in any way affect the quality of chickens that come into the City of New York? A. Would it what?

The Court: Read it.

(Question repeated by the stenographer.)

A. None.

Q. The quality of the chickens that come in have nothing to do with straight killing? A. No.

Q. That is fixed according to the supply—

A. And demand.

3474 The Court: Suppose you let him tell us what fixes it. He is your witness.

Q. Yes. Does it depend upon any other conditions? A. Any other conditions of what? Give it clear.

Q. Of the quality of poultry— A. Yes.

Q. Coming into New York? A. Would depend on any other conditions?

Q. Yes. A. I think I have stated practically every one right now; I do not know of any more.

Q. Would the drought have something to do with it? A. That is only this year.