

Louis Spatz—By Defts.—Direct

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Q. It did have something to do with it? A. On lots of poultry that comes out of Kansas, Missouri, this year it runs poorer than it ever ran in history, and that is all due to the drought. I have inquired from shippers what the trouble is with the poultry, and they just said it was due to the drought situation they have in that country. The fact is I turned a car down the other day on account of that fact.

Q. Did the Code do anything for your industry? A. Not to profit extent, no.

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Q. Did you sustain losses? A. Plenty.

Q. It has hurt your business? A. My business it did.

Q. Have you ever heard of the term culls? A. I did.

Q. What do you understand by the meaning of the word cull? A. Just anything that the inspector condemns—

Mr. Rice: If your Honor please, this does nothing but introduce confusion into the record, to have the witness define his understanding of the word cull. Now, we are concerned in this case only with the sale of poultry unfit for human consumption.

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The Court: That is correct. What difference does it make what he thinks a cull is? The only culls we are concerned with here are the culls described in the Code.

Mr. Joseph Heller: Very well.

The Court: Culls are described specifically in the Code; any other meaning of the word cull does not mean anything at all here.

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Q. What do you understand by an unfit chicken? A. A water-belly, or what we call an egg-bound chicken.

Q. Would you eat that kind of chicken, an egg-bound chicken? A. No.

Q. Is that an edible chicken? A. I won't eat it; I won't say whether it is edible or not; I will leave that to the Health Department rulings. An egg-bound chicken has got—

3479 Q. What is an egg-bound chicken? A. A chicken gets egg-bound, it keeps on accumulating eggs and the eggs turn bad in it, and it just develops what you call a tumor. A sick chicken which the inspection condemns after it catches the croup, like a cold, most of them die, they don't last too long.

Q. About how long does it take them to die? A. After they catch a cold, I think a chicken will not live over thirty-six hours.

Q. Do you know whether any carloads of culls come into the City of New York? A. No, sir.

Q. Is there such a thing? A. Not in my experience.

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Q. Is there such a thing as price quotations for culls? A. We have none.

Q. Never existed in the industry? A. Not in the live poultry industry.

Q. Can you tell us why there is less consumption or less need for live chickens at this time? A. At this time, it is a long story.

Q. Tell us the story. A. This industry is being painted very black all over wherever it has gone, the Jewish Orthodox public is gradually being taken away, chased away into dressed poultry. We are consuming less live poultry and more dressed poultry all the time, more dressed poultry at a higher price.

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Q. How does the price compare as far as dressed poultry is concerned with respect to live poultry? A. Sometimes dressed poultry is sold cheaper to the consumer than our live poultry is.

Q. About what percentage is there in difference between the two? A. It varies according to the time of year.

Q. Is it sometimes five cents less per pound? A. Well, I wouldn't say. You take when you get friers, you will find the A. & P. advertising them at nineteen cents to the consumer, and the live market will probably be twenty-one cents; before it reaches the consumer that twenty-one cents would add on ten cents additional, so that the price should be thirty-one cents for the live poultry as against nineteen cents for the dressed frier.

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Q. That is nineteen cents as against thirty-one? A. That is right.

Q. And you have found that even the Jewish people are now eating dressed chickens instead of live chickens? A. Those people are, yes; it is cheaper and it is cleaner, it is all plucked clean, and it is cheaper.

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Q. Do you think from your experience that that situation had something to do with the falling off of the consumption of live poultry?

Mr. Rice: I object to this constant leading.

The Court: Well, he has said it already, there is no use going over it, he said that.

Q. Can you tell us whether any other conditions exist which in your opinion contribute to

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this situation? A. That we are using less consuming?

Q. Yes. A. It seems the public hasn't got the money. If we get a cheap price, they can buy. We can sell poultry a lot if we can sell for less than they practically can afford it right now.

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Q. Would you say in your opinion that if additional charges were made to a concern like the Schechter brothers, so that the price would be increased, that under those circumstances the consumption would be less or more? A. Sure would. We had occasions where a shipper from Dakota shipped two cars of chickens, has not drawn no draft at all, and he was overdrawn. That means he did not get nothing for his merchandise, and he still owes the commission men \$150 for the two cars of poultry that he gave to them.

Q. Do you know what kind of chickens come into the City of New York or the State of New York? A. City of New York, I do.

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Q. How they compare with other States? A. City of New York, but I don't know about the State of New York.

Q. City of New York? A. City of New York, compared with others, are the good and best poultry in the United States.

Q. There is no question about that? A. There is no question about it.

Q. The best poultry comes in here? A. You will find that a car of poultry in Indiana, if it is right there and then dressed for dressed poultry, it will appear to be better because it takes them four days en route, cooped up into a car, and naturally after taking a chicken off the farm and putting her in a coop like that for four or

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five days, she is losing quality a little, but it is still the best chicken in the country.

Q. That is the only way you can bring chickens into the City of New York? A. Either that way or trucks.

Q. Do you know whether there has been a demand in the City of New York for inferior chickens as such? A. As average poultry—well, we call it average, it is.

Q. There has been an average demand for poultry? A. It has.

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Q. Is there a special market in the City of New York solely for the purpose of selling inferior poultry? A. You will find in every part of the Metropolitan area, like in the Bronx, consuming, Bank Avenue, Jenkins Street, and 165th Street, that if any of the women go down and buy a chicken they expect to buy a cheap chicken, and that is the territory for it. You will find it in every borough, such sections.

Q. Are such chickens diseased chickens? A. No, sir.

Q. Perfectly good for human consumption? A. Just poor fowl.

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Q. And by poor fowl I understand you to mean they weigh less? A. They weigh less. A poor fowl, you will find in Indiana today, that it is the most desirable fowl in the City of New York, and around April, or March, rather, you will find that the most undesirable in New York, you will find the price on the Indiana will vary three cents lower than today, the southern poultry, which is five and six cents poultry, which just varies by that condition, time of season.

Q. Will you explain and express this situation as you have now given it to the jury in pennies per pound? A. In pennies per pound?

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Q. Yes. A. Now, assume today an Indiana fowl is quoted eighteen cents, an average fowl is quoted fifteen cents. There is no poor quotation today because there haven't been any poor cars on the market today. If a poor car would be on the market, that would be quoted thirteen cents. That same poor car would probably come this time of the year from Mississippi, Arkansas, Texas, some part of Tennessee. Now, the same car of poultry will come in here, sometimes around April, where the market will be nineteen cents, and that car will bring nineteen cents in comparison on the Indiana car, which will only bring sixteen.

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Q. So, in other words, it is possible for the best chickens, the best grade of chickens during one part of the year, will bring in a price of nineteen cents and during another part thirteen cents? A. Correct. The reason of that is, the Jewish public wants a fat chicken this time of the year, and fat chickens, the time that the laying season is bad, there is very few of them, and, well, later on every chicken has got a little fat, but the Indiana chicken is naturally heavy, she wants a smaller chicken, and a smaller chicken comes out of the South all during the year, southern States.

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Q. When there are no fat chickens in the City of New York there would be a lesser demand? A. It would be.

Q. And when the chickens are fatter the Jewish people consume more? A. They consume for the purposes of fat.

Q. And that has something to do with the fixing of price? A. It has.

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Q. And it has something to do with the fixing of the price, that is, what the commission man gets for the chicken? A. Yes.

Q. And it has something to do with what the farmer gets for the chicken? A. It has.

Mr. Rice: This is not cross examination, your Honor, and he is putting the words into the witness' mouth.

The Court: Yes, that is right.

Q. Has that condition something to do with it? A. It has a lot to do with the condition because if the woman wants a fat chicken she knows she has to take a seven or eight-pounder to get some fat out of it. They cannot produce it down here at these present prices.

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Q. Have you ever sold, during your experience, any diseased chickens to the Schechters? A. I did not.

Q. Do you know anybody that has ever sold diseased chickens to the Schechters? A. I don't know of anybody selling diseased chickens to anybody.

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The Witness (To the Court): May I ask your Honor one question for information?

Mr. Heller, when you question about diseased chickens do you refer to those stamped "For immediate slaughter"?

Q. Are there such chickens? A. Sure, whenever they catch colds, Dr. Ives inspects them, and he recommends them for immediate slaughter.

Q. Now, do I understand you to say that chickens with some colds are passed for imme-

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diate slaughter? A. Yes, he marks it with red chalk, and then he puts a label on the car that it is to be disinfected before any other poultry is to be put in. He recommends to us that we sell it immediately, otherwise if we let it stay, otherwise they will drop off one after the other.

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Q. Did you ever hear Mr. Peterson say to you that he was going to convict the Schechters? A. We told him that. It happened in Mr. Werner's office. We called Mr. Peterson and explained to him that there is an overhead of \$80,000 and nothing has been done by this Code. Mr. Peterson said to me, "We are going to get an indictment and convict the Schechters, and that will be a whip over it." We told him at that time "as long as you do something to try and see that the industry is brought out of the present condition."

Q. And that is what he said he would accomplish for the industry, to get a conviction of the Schechters? A. That is right.

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Q. Now, were you ever present at any meeting when Mr. Forsmith presided, about four weeks ago? A. I was not present. It happened to be in the back office of mine, and I walked in there and I listened to the conference.

Q. Do you remember Mr. Forsmith saying that he and Mr. Peterson are the only ones that are getting the benefit out of the Code?

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

The Court: Sustained. Ask him what he said.

Mr. Rice: I have a further objection. This was one of the questions asked by Mr. Heller on cross examination of Mr. Forsmith. That, of course, is an immaterial issue and it is well-established

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that he cannot contradict a Government witness on an immaterial issue.

The Court: If he is claiming persecution, that is different from credibility. If he claims that the authority, that is, those that represented the Code, that they are persecuting, that is different than discrediting. If he can show on that ground, then he has a right to show. You cannot contradict a question that you ask on cross examination, generally, because you are concluded by the answer, but I assume here that he is attempting to show that Mr. Forsmith is entering into it from a different way, not to attack his credibility, but to attack his actions.

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Q. Was such a statement made? A. I happened to walk in in the middle of that meeting that they held, and there must have been about twelve or fifteen merchants in there, and I have asked Mr. Forsmith, I said, "Abe, what have you done so far for the industry? You originated that Code, and you are in the Code, and you are just ruining us," and he said, "Louis, I know it. The only benefit so far that is got out of this industry is myself and Mr. Peterson."

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Cross examination by Mr. Rice:

Q. As a matter of fact isn't this what Benjamin Forsmith said, that he wanted the Code to benefit the entire industry and not just benefit Mr. Peterson and himself? A. I don't know if he is trying—

Q. Isn't that what he said? A. He didn't say that, no, sir.

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Q. Didn't say that? A. No, sir.

Q. Didn't he say that in substance? A. No, sir.

Q. At this meeting, Mr. Spatz, where you said Benjamin Forsmith made the statement was anybody else present? A. Yes.

Q. Do you see anybody in the courtroom that was present there? Do you see Mr. Winkle over here? A. Yes, sir.

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

(Mr. Winkle stands.)

Q. Do you see Mr. Al Winkle? A. Yes, I see Al Winkle there.

Q. He was present there? A. I do not remember.

Q. You do not remember? A. No, whether he was.

Q. You stated on direct examination that Mr. Leroy Peterson said that he was going to make an example of the Schechter brothers, is that what you meant? A. That is right.

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Q. When did this conference take place? A. It took place, I won't be exact as to the day, but it must have been around three or four months ago.

Q. It was some time after July 26, 1934? A. Well, I couldn't say the date, the day.

Q. Did you remember when the Schechters were indicted by the grand jury? A. I do not. If you will tell me the date I will know.

Q. That was July 26th. A. All right.

Q. It was after the indictment? A. It must have been prior to that.

Q. Wasn't it after the indictment? A. I do not think so.

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Q. Wasn't it about two weeks after the indictment?

Mr. Joseph Heller: He said before, counsel is suggesting after.

The Witness: It has been after the indictment too.

Q. It was after the indictment? A. That statement was prior to the indictment; there was another statement made after the indictment.

Q. What was it Mr. Leroy Peterson said?

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The Court: Which time?

Q. At the time after the indictment, is that the time you are testifying to? A. I have been testifying before the indictment.

Q. All right, what was it Mr. Peterson said on that occasion before the indictment? A. That we got to get somebody to set an example in the industry for enforcement of this Code. He says we are building up a fine case against the Schechter brothers.

Q. Did he tell you the Schechter brothers were the worst violators in the industry? A. No, he hasn't.

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Q. He didn't tell you anything of that sort? A. No, sir.

Q. As a matter of fact didn't you ask Mr. Peterson what he was doing to enforce the Code? A. That is right.

Q. You asked him that? A. I asked him.

Q. And he answered your question? A. He did.

Q. And his answer is, "We are preparing a case against the Schechter brothers"? A. That is right.

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

Q. After the indictment you said you had another conversation with Peterson about this?

A. That is right.

Q. What was that conversation? A. The conversation was taken, we had a meeting, an executive meeting of the commission merchants' association in Mr. Werner's office prior to the holidays. We asked Mr. Peterson that this industry is being ruined and destroyed—

3509 Q. That the Code wasn't being enforced? A. Do you want me to answer it my way?

The Court: Better let him go ahead and answer it.

Q. Very well, go on with your answer. A. We told Mr. Peterson at that time if it goes on that way we are going into bankruptcy, the entire industry is. Then Mr. Peterson said, "Just have a little patience, after we get the conviction on the Schechters we will set a new business."

3510 Q. You were complaining that the Code wasn't being enforced? A. Not that it was being enforced, we were complaining that the Code was losing us money.

Q. Were you complaining that the Code was not being lived up to by everybody? A. No, sir.

Q. Some people were not living up to the Code? A. No.

Q. Didn't you express impatience that there weren't prosecutions of violators? A. I beg pardon?

Q. You do not understand that? A. Repeat it and I will see if I can.

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(Question repeated by stenographer as follows: “Q. Didn’t you express impatience that there weren’t prosecutions of violators?”)

A. No, we expressed that the entire industry is not living up to the Code.

Q. That is what you expressed? A. That is right.

Q. And you thought that the Code ought to have been enforced? A. No, I felt the Code ought to be thrown out.

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Q. But if there was a Code you thought that it ought to be enforced? A. No, I thought in the beginning that the Code would not work, from my past experience I knew the Code would not work.

Q. You are against the Code, aren’t you? A. Certainly.

Q. You would like to have the Code overthrown? A. Positively.

Q. This Code applies chiefly to the slaughter house men, does it not? A. This Code applies to the industry and the entire industry has been in bankruptcy since this Code has come in.

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Q. Most of the provisions apply to the slaughter house men? A. Most of them are, yes.

Q. You would like to have the Code thrown over? A. That is right.

Q. That is why you are here testifying? A. Only as far as labor are concerned, I beg your pardon. That is not why I am here to testify. I would like to see the practical experience of this Code, which is physically impossible to enforce, to be thrown out and just a labor Code provision left in it.

Q. Isn’t it true that you and other commission men urged the slaughter house men not to pay

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their assessments so that you could break the Code Authority? A. No, sir.

Q. Isn't that true? A. No, sir.

Q. Isn't it true that for weeks you have been trying to get the slaughter house men not to pay their assessments to the Code Authority? A. No, sir, we have right now—

Q. Just answer yes or no. A. I say no.

Q. Isn't that true? A. I will answer it my way, if you will let me.

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Q. Answer it yes or no. A. No.

Q. You had a third conference with Mr. Leroy Peterson, did you not? A. When was that?

Q. Just a few days ago or a few weeks ago. A. (No answer.)

Q. This is Mr. Peterson sitting here (indicating). A. Sure.

Q. You had a conference with him a week ago last Tuesday, did you not? A. Where at?

Q. You and three other commission men. A. At his office? Yes.

Q. Was it at the Code Authority office? A. That is right.

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Q. Isn't that true, that you and three other commission men— A. Two other, I believe, it was.

Q. Two others? A. Two others.

Q. Isn't it true that you commission men visited Mr. Peterson and asked him to drop the prosecution against the Schechters, isn't that true? Yes or no? A. Yes.

Q. That is true? A. That is true, yes, sir.

Q. And isn't it true that you told Mr. Peterson that the Schechters were customers of the commission men? A. No, sir.

Q. Aren't they customers of the commission men? A. Sure they are.

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3517

Q. You claim to be an expert on the practices in the live poultry industry? A. No, sir.

Q. You are not an expert? A. Just an expert to the Acme Commission Company, to myself.

Q. But you do not claim to be an expert? A. No.

Q. On the competitive practices in the live poultry industry? A. I would want to get paid, if I was an expert.

Q. Just answer yes or no. A. No.

Q. Do you claim to be such an expert? A. No expert.

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Q. You are not an expert? A. I am experienced, but not an expert.

Q. You are not an expert on the effect of competitive conditions upon the prices of live poultry? A. I am experienced—

Q. Are you an expert? A. I am experienced in that, not an expert.

Q. You are not an expert? A. I am not an expert about anything.

Q. You have not studied agricultural economics? A. No, sir.

Q. Or any sort of economics? A. No, sir.

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Q. What is your education? A. None; very little.

Q. None at all? A. Very little.

Q. You weren't here the other day when Mr. Termohlen testified? A. No, sir.

Q. You would not match your wits on economic subjects—

Mr. Joseph Heller: We are not matching any wits here. I object to that, your Honor.

The Court: I do not believe that his expertness depends on his own claims.

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His modesty may prevent him from claiming such.

Q. You have not studied economics at all?

A. No, sir.

Q. And you would not endeavor to explain economic consequences of competitive practices?

A. In my business I am the best economist.

Q. What is that? A. In my business I am the best economizer.

3521 Q. You are the best economizer? A. Yes, without figuring.

Mr. Rice: I wish to have that word spelled in the minutes, just as he stated it.

The Witness: I do not know how to spell.

Mr. Rice: I mean just as he stated it.

Q. Mr. Spatz, you are a commission man today? A. Yes.

3522 Q. You used to be a slaughter house man? A. Yes.

Q. Now I think you stated, Mr. Spatz, you considered yourself one of the best economizers in the industry. A. In my business.

Q. You mean an economist, don't you? A. I don't mean an economist, I mean that without education, on figuring, because where I come from there is no compulsory education, and yet I can figure in my business as good as any one of you fellows can figure with an education, so, I call myself an economizer or an economist or whatever you would like to call it.

Q. Now back in 1929 you were a slaughter house operator, weren't you? A. Yes.

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Q. And you and 68 others—— A. 91.

Q. I am not talking about the indictment. A. All right.

Q. And you and 68 others were convicted as co-conspirators for violating the Sherman Anti-trust Act? A. That's right.

Q. And you received a jail sentence? A. That's right, four weeks and \$1,000 fine.

Q. And you served the jail sentence? A. Yes.

Q. And that was because of your activity in the live poultry industry in New York? A. No, sir.

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Mr. Joseph Heller: If your Honor pleases, he cannot go any farther. He asked him whether he was convicted and he said yes.

The Court: Yes, you asked him if he was convicted of a crime and he said yes, and that's all.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Now you said you were president of the Acme Commission Company? A. Yes.

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Q. Now you paid your assessment promptly? A. I am paying them promptly but I am holding back three weeks so that any time it breaks up I will have that much advantage.

Q. You paid your assessments in the industry? A. Approximately \$5,000 directly and indirectly God knows.

Q. So from May 16th to date you have paid \$5,000? A. No, approximately it would cost me over \$5,000 a year directly and indirectly God knows.

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Q. Your testimony was not from book experience, was it? A. I have none.

Q. It was from your actual manual labor and your observations? A. That's right.

Q. From your experience in this business? A. I started on the bottom from 1912 and I am on the top right now.

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

Direct examination by Mr. Joseph Heller:

Q. Mr. Garlick, are you a commission merchant? A. Yes, sir.

Q. Have been for how long? A. About eleven years.

Q. Were you in any other business before that? A. Always in the live poultry business.

Q. How long have you been in the live poultry business? A. Close on to thirty-four years.

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Q. Thirty-four years? A. Since I was a boy, a little boy thirteen years old.

Q. That is your experience in the live poultry business? A. Yes, sir.

Q. For thirty-four years? A. Yes, sir.

Q. What branches of it? A. In New York City, every branch of it.

Q. And by "every branch" what do you mean? A. Well, when I was on the east side with my father we sold poultry retail, we sold it to the butchers, in fact, we sold it to hotels, restaurants and direct to the consumer.

Q. How long have you been a commission merchant? A. Eleven years.

Q. And at what address? A. At West Washington Market.

Q. Were you ever a slaughter house man? A. Slaughter house man about—it must be sixteen or seventeen years ago, but I was a jobber in between in West Washington Market.

Q. You have had extended experience in the live poultry business? A. Yes, sir.

Q. Have you had experience in the live poultry business in any other city besides the City of New York? A. No.

Q. Your experience is limited to the City of New York? A. The Greater City of New York.

Q. Do you know the other poultry centers? A. Yes, sir.

Q. Have you ever been there? A. Yes.

Q. Then you have visited other poultry centers? A. All poultry centers.

Q. What are they? A. Well, I have traveled all through Maine, New England, all through New England, the South, the West, the Far West, wherever poultry is raised; I receive poultry from those sections from time to time.

Q. You are familiar with every phase of the poultry industry? A. I think—

Q. You think you are? A. I think I am.

Q. And your experience is not book experience, is it? A. No, from hard knocks.

Q. Hard knocks? A. Yes.

Q. Do you know each of the Schechters sitting at the table? A. No.

Q. Which one do you know? A. I know the oldest one, Joe.

Q. Joseph Schechter. How long have you known him? A. Not very long.

Q. For how long? A. Intimately about a year.

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Q. Has he been purchasing poultry from you?

A. He has.

Q. Have you heard his reputation discussed among the merchants? A. No, it is just from my own experience with him. I do not discuss my business with other merchants.

Q. What is your experience with him? A. He has always lived up to everything that was expected of him.

Q. You consider him an honorable man? A. I do.

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Q. You consider him an honest man? A. I do.

Mr. Rice: Your Honor, this is not the correct way of proving his reputation.

The Court: He is not testifying as a character witness; he says he never discussed him with anybody else; he couldn't even be a negative character witness.

Q. Have you ever heard anything said bad about him? A. Not to my knowledge.

Q. Now, will you describe the industry?

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Mr. Rice: Just a moment. I move to strike that out unless we first have some preliminary evidence to show that he has discussed Joe Schechter with plenty of other people.

The Court: He says he has not with anybody, and I suggested to you that he could not even be a negative character witness.

Q. Do you know his reputation?

The Court: No, you asked whether he discussed it with anybody and he said he had not.

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Q. Did you ever talk to any merchants about Mr. Schechter? A. The only way I would is when this case come up, as we meet in the restaurant or in the street, we would hear a lot of hearsay, you know, and I would be naturally interested to see what was going on, but as to my personal dealings with him, it has just been between the two of us. I have never asked anybody about his credits.

Q. And you found him to be—— A. I have found him personally to be O. K.

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Mr. Rice: I object.

Mr. Heller: Talking about his personal transactions.

The Court: He has already gone over that without objection.

Mr. Heller: All right.

Q. Have you bought poultry from other States? A. I have.

Q. Do you buy them every day of the week? A. No, I receive my consignments every day in the week.

Q. You sell poultry on consignment? A. Yes.

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Q. Do you know of a condition existing in the City of New York such as this city being characterized as the dumping ground for diseased chickens? A. No.

Q. Have you ever heard of such a thing? A. I have heard it and read it in the newspapers.

Q. Since this case has come up? A. Since this case has come up and other cases, I am sorry to state, and it has practically ruined the reputation of our business.

Q. Is there a market in the City of New York for diseased chickens? A. No, sir.

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Q. What percentage of poultry do you sell that comes into New York City? A. What percentage? That I do not know.

Q. Approximately. A. But I handle approximately, some weeks six; I will jump to eight; I will jump to ten; I will jump to twelve, and sometimes fifteen, and sometimes fall down to four cars. I have never figured up what I handled during the year.

Q. Do you know how prices are fixed in the City of New York? A. Prices are not fixed.

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Q. Do you know how they are ascertained? A. Yes.

Q. How are they? A. Supply and demand and with buyers at the railroad terminals.

Q. That is the sole factor in determining price in New York? A. Supply and demand goes a long way.

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

Q. Will the fact that Mr. Schechter pays a person less than fifty cents per hour affect the price structure in so far as the commission merchants are concerned? A. No.

3540

Q. Do you know what quality of poultry comes into the City of New York? A. Well, from my experience, and from what I know, how my competitors work, we all aim to solicit the best poultry available at the time, at the season.

Q. Does that quality of poultry vary? A. All the time.

Q. When does it vary? A. We have seasons in the year where poultry that is in demand now, in the spring or in the summer would not be in demand, and vice versa.

Q. Will you describe the poultry as it is named in the market? A. Yes; we have what we call

Albert Garlick—By Defts.—Direct

3541

the best poultry, comes this time from Ohio, Illinois and Indiana; we might get a car from Iowa, we might get a car from Missouri, to come up to that standard. That is considered the best poultry, graded as Indiana, in bulk, in carload lots. Then we have what we call the fancy western. A car might come out of also Missouri, Iowa or Nebraska. Then we will have an average western, that is not so good, but the farmer has not been so particular in culling out his flocks. You see, he has been negligent on his part and he will let his stuff go as straight country run. That is shipped in. That doesn't bring as much as an Indiana car poultry of that day's sale on the arrival of the car.

3542

Q. Can you tell us what factors make up the poundage of poultry that comes in day by day in the City of New York from other States? A. There are certain shippers that ship practically fifty-two weeks of the year. That poultry is delivered to their door in little Ford cars or Chevrolets, small ones and large ones, all the way up to big Mack trucks. Then they are taken off the farm and they are delivered through the countryside, for hundreds of miles, in open trucks, to a standing loading section, where they will load them onto a car, a carload of poultry. That poultry is liable to catch cold and by putting it into the car it will come to New York and you will find here and there some chickens that are sick, and a great many maybe that have got a cold, and when it is unloaded here we have the United States Government Inspection here that looks at that poultry, and once it passes through my hands it is sold, and I have a Government Inspection ticket that says it is all right.

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Albert Garlick—By Defts.—Direct

Q. Now, is there a market in New York for diseased poultry? A. I never found it yet; not to my knowledge.

Q. And your knowledge extends for a good many years? A. As long as any man in the commission business.

Q. And is there a particular market in the City of New York for culls? A. Not that I know of.

3545

Q. What grade of chickens comes in at any particular time and what determines what grade comes into the City of New York? A. The sections will differ from other sections; some sections produce better qualities than others.

Q. Is there anything else that would determine as to the grade of chicken that comes into the City of New York? A. No.

Q. There is no question about that? A. No.

Q. The sole factor then, as you say, is the output by the different farmers? A. Yes.

Q. And the demand for it in the City of New York? A. Yes; it is all sold as is at the railroad terminals. A man sees what he buys and he buys it subject to the Government inspection.

3546

Q. Now, does the fact or can a fact such as the permission given by a slaughter house man to select his chickens affect the grade and quality of the chickens that come in regularly from day to day? A. No.

Q. There is a steady demand for poultry in the City of New York? A. Yes.

Q. And it would come in in any event? A. Rain or shine, they come in. It makes no difference. Poultry moves to New York all the time; the only thing that would shut it off maybe would be if the price happened to be lower, that is, drastically lower, four or five cents, and then the

Albert Garlick—By Defts.—Direct

3547

shipper would look and see that it would cost too much to ship it in, and it would stop automatically.

Q. They would not ship at all? A. No.

Q. Has the slaughter house then anything to do with the fixing of prices down at the West Washington Market? A. There is no price fixing. They agree on the price that you are willing to pay, and if they are too low, we think the stuff is worth money we do not sell it to them.

Q. That is the only thing that determines the price? A. That is all, supply and demand.

3548

Q. And would a fact such as this change the price that you might get for your poultry, suppose Schechter gives away his poultry for nothing, would that affect your price? A. No.

Q. You would still get your price? A. If he was to create a demand, all of them would give it away, that would create such a demand for it that the price would automatically go up.

Q. It would go up and not down, is that it? A. Yes, sir.

Q. No question about that from your personal experience? A. Yes, positive.

3549

Q. Definite and certain? A. If they pay us 15 cents for poultry and went home and sold it for 14 or 13 they would clean up the market so fast that the next day they would be putting up the price on themselves, and the price would go up in the country.

Q. Do you know from your knowledge who consumes live poultry in the City of New York? A. Well, the Jews, Italians, Gentiles have come in a little bit, but a very, very small percentage.

Q. Can you tell the jury with any degree of certainty as to what caused the drop of consumption in chickens in the City of New York? A.

3550 *Albert Garlick—By Defts.—Direct*

Well, as I said before our business got the wrong kind of publicity. We are known, we are looked upon as the worst type of business men in the world, and have been prosecuted and persecuted for years, and the public is against us.

On the other hand we have got an economic condition today, the depression, and our mothers, the old-fashioned mother spent more time in the kitchen than the young women do today. That is another angle to it.

3551 Q. What do they do? A. They go down and buy canned goods.

Q. They eat in restaurants? A. They go and buy canned goods, and when the husband comes home they have makeshift meals. They go out and buy a steak or chops. They do not spend as much time in the kitchen as our mothers did, we know that for a fact. We have had the wrong kind of publicity in the last few years besides.

Q. Do you know anything about the dressed poultry industry? A. Yes, a little, not as an expert, just hearsay.

3552 Q. Do you know whether the Jewish trade are now consuming more dressed poultry than live poultry? A. Well, the younger element here and there might switch to it, yes, they are getting away from the religious part of the question. And then they get a cleaner product, you see.

Q. It is all cleaned? A. Cleaned and picked, and at times of the year it is cheaper, and it is handled cleaner.

Q. It costs less to buy dressed poultry than live chickens? A. That varies with the seasons or the times of the year. At certain times you will find the dressed line is out of line with the live poultry line, sometimes our market is out of

line with the dressed line, but after we go along for a week or so we come closer together.

Q. Do you sell Schechter brothers any poultry?

A. Yes, we sell them. We like to sell them. The trouble is, they don't care to buy.

Q. Do you sell them any diseased poultry? A. My poultry is all Government-inspected. How can I sell them diseased poultry.

Q. Is there any such thing as diseased poultry in the market? A. No.

Q. Do you sell them the rottenest poultry you have? A. I have the name of handling good poultry.

Q. Then they buy good poultry from you? A. They buy good poultry from me.

Q. The highest quality? A. The best prices. You know, the prices, they don't always want to buy at top prices, because they are shrewd buyers, they understand the business, but they look for the best,—

Q. Want the lowest price? A. (Continuing.) —merchandise they can get for the least price.

Q. And you do not call a man a chiseler if he does that? A. No.

Q. Did you ever hear Mr. Forsmith call Mr. Schechter a chiseler? A. No.

Q. You did not hear that? A. No.

Q. You were not here when he testified? A. No, I just came in here about an hour and a half ago.

Q. Did Mr. Forsmith ever buy from you? A. Occasionally.

Q. Does he still buy? A. No.

Q. When was the last time he purchased? A. I don't know.

Mr. Rice: If your Honor please, this is obviously immaterial.

3556 *Albert Garlick—By Defts.—Direct*

Mr. Heller: I will show you in the morning how material it is, tomorrow morning.

The Court: He may ask him if Mr. For-smith bought from him.

3557 Q. Do you know whether the grade or quality of poultry has changed in the last few years, that is, coming to the City of New York? A. Well, in my experience in the last year or two, I would give the main reason as this little trouble they had out west during this hot spell, the drought, the farmers haven't got enough feed to feed them with, you know, like they did in former years, when they had plenty of grain to feed poultry. Some of these farmers haven't got enough to feed themselves, let alone feed poultry. They leave them go out and shift for themselves. That is my experience. I just came back from the west ten days ago.

Q. You found that to exist? A. Yes.

3558 Q. Does that fact sometimes account for the poorer grades of poultry that come in? A. It will. Feed is the main thing that will uphold the quality.

Q. That would not make all the poultry diseased? A. No, just poor.

Q. For the poor quality you get less money? A. Yes.

Q. People do not die from eating that kind of poultry? A. No.

Q. And you can eat it and live without being sick? A. Yes, we eat it in the finest hotels and you don't know the difference. This is something that grows, it is not manufactured.

Q. You people do not grade your chickens as they come into the City of New York? A. We sell them as they come in.

Albert Garlick—By Defts.—Cross

3559

Q. Now, if the Schechters came down on any certain date, they look at the stock after they have been inspected?

Mr. Rice: I object to any particular course of practice on the part of the Schechters. Let us have the day and occasion designated.

Q. Take every day that they have come down during the last two months.

Mr. Rice: I object unless the specified date is designated.

3560

The Court: Oh, he can ask him whether on any day in the last two months they bought any bad chickens.

Q: Have they bought any bad chickens? A. I cannot sell them any bad chickens because I haven't any, and I never heard them ask for them.

Mr. Joseph Heller: That is all.

Cross examination by Mr. Rice:

3561

Q. Now, you don't want this poultry industry to have the reputation for selling unfit poultry, do you? A. No.

Q. And you don't want the reputation for selling unfit poultry, do you? A. No.

Q. It is bad for your business? A. Yes.

Q. And it affects your pocketbook? A. It affect the industry at large.

Q. You are not an economist? A. No.

Q. Have you ever studied any agricultural economics? A. No.

Q. Or any other economics? A. No.

3562 *Albert Garlick—By Defts.—Cross*

Q. What is your education? A. Public school; I went to work at thirteen.

Q. Now, you have said this industry has had a lot of bad publicity? A. In the years gone by, yes.

Q. And there have been a lot of bad practices in this industry? A. Not very bad.

Q. A lot of evil competitive practices? A. It has just been enlarged and magnified to the public.

3563 Q. It has had a bad reputation? A. It was given a bad reputation.

Q. And the consumption of live poultry has suffered as a result? A. Not alone from that, but somewhat.

Q. Well, partially from the bad reputation? A. Not entirely.

Q. Don't you know that the Live Poultry Code Authority is designed to improve the industry? A. Yes, I was told that.

Q. You are against the Code? A. I am not in favor of it.

3564 Q. You are against it, aren't you? A. I am.

Mr. Rice: That is all.

(Witness excused.)

The Court: We will take a recess.

Gentlemen of the Jury, do not discuss this case among yourselves or allow anyone to discuss it with you, and keep your minds open until the whole matter has been presented to you, and return here tomorrow morning at ten o'clock.

Adjourned to Friday, October 26, 1934, at 10 A. M.

Herman Solon—By Defts.—Direct

3565

Brooklyn, N. Y. October 26, 1934.

Met pursuant to adjournment at 10:00 a. m.;
present as before.

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

Direct examination by Mr. Heller:

3566

Q. What is your full name? A. Herman Solon.

Q. And what is your occupation, please? A. Bookkeeper.

Q. For what concern? A. The Chelsea Live Poultry Company, Inc.

Q. And what are your duties with this concern as bookkeeper? A. Why, to do the books.

Q. Entering accounts? A. Making out bills, entering payments and closing the books.

Q. Do you know a person by the name of Benjamin Forsmith? A. I do.

Q. Is he in court? A. I do.

3567

Q. Is he in court? A. He is right there (indicating).

Q. Is that the gentleman (indicating Mr. Forsmith a previous witness)? A. Yes, sir, that is him.

Q. Now have you any records of the Chelsea Company that you work for, showing the account of Benjamin Forsmith?

Mr. Rice: If your Honor pleases, it appears from counsel's preliminary questions that he is entering upon an attempt to impeach Mr. Forsmith's credibility.

The Court: No, he is not; Forsmith occupies a Government position and he is

3568

Herman Solon—By Defts.—Direct

attempting to show that that man is engaged in business as a competitor.

Mr. Heller: Not only that, your Honor, but also—

The Court: Just a minute, if it was anybody else there is no doubt about it, he would be bound by it, but if he contends that this man was engaged in this line of business he can show it then. As a chief investigator he would have a right to show that. That would not be compatible perhaps with his position, I really don't know.

3569

Mr. Heller: I have something else in mind, your Honor.

The Court: Now yesterday, Mr. Heller, you asked him if he made a certain statement to somebody as to who was being benefited, and that was purely for impeachment. I thought you intended to follow it up but you did not. Now this is different, this is an attempt to show something that would be bias and prejudice, altogether different than impeaching testimony.

3570

Q. Now what does your account show? A. I have a copy here of the merchandise sold Mr. Benjamin Forsmith from May 14th to July 27th.

Q. Is that charged to the account of Benjamin Forsmith? A. Yes.

Q. And do you know whether he personally paid for that merchandise? A. Yes, with his personal check.

Q. And do you know approximately how much he bought during that period of time? A. \$3,475.07.

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

George Levin—By Defts.—Direct

3571

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

Direct examination by Mr. Heller:

Q. Are you engaged in any business, Mr. Levin? A. I am engaged in the live poultry business, commission merchant.

Q. Where is your office, Mr. Levin, your place of business? A. On Bloomfield Street, at West Washington Market.

3572

Q. How long have you been engaged in that business? A. I am engaged in the commission business you mean?

Q. Yes. A. 15 years.

Q. Were you engaged in the live poultry industry prior to that time? A. About 22 years altogether.

Q. Will you tell us what experiences you have had as a commission merchant? A. Well, as a commission merchant—

Q. And in any other capacity pertaining to the live poultry industry. A. When I first came into that industry about 22 years ago I worked for B. Baff & Sons as weigher, and I worked for them for about 5 years. Then I went in the employ of Flick & Hillman, and I worked for them about 3 years as a salesman, in charge of all unloading. Then I went in business for myself, and in that capacity I have been for 15 years, I have been secretary of the concern and salesman.

3573

Q. What do you do for the concern? A. What do I do?

Q. Yes. A. I sell poultry, I take charge of credits, help solicit poultry.

Q. Have you ever been at any other market besides West Washington Market? A. Yes, sir.

3574

George Levin—By Defts.—Direct

Q. Which ones please? A. I have been on the Philadelphia market, I have been on the Boston market, I have been on the Baltimore market, on the Chicago market, St. Louis market, Kansas City market.

Q. How often have you visited those markets?
A. How often have I visited them?

Q. Yes, about how many times a year do you go there? A. I do not go there very much, I go out there sometimes during the conventions, once a year and go out at different points maybe once in two or three years. I do not travel much, my partner does all the traveling.

3575

Q. Have you at any time discussed the marketing conditions with people engaged in that industry? A. I have.

Q. At those centers? A. I have.

Q. And with people in the industry in the City of New York? A. With the people——

Q. In the City of New York? A. I have.

Q. Merchants of the same calibre? A. I have.

3576

Q. About how much poultry do you get in approximately by the year? A. By the year, well I would safely say in the year of 1933 I handled right close to 1,000 cars of poultry by freight. I would safely say about another 150 cars by express.

Q. Do you know the value of that merchandise?
A. In dollars and cents?

Q. Yes. A. Well, from the statement I received from my accountant which showed I done approximately close to \$3,000,000 worth of business.

Q. During the last year? A. That is the year 1933.

George Levin—By Defts.—Direct

3577

Q. Can you approximate the percentage of all the business you do in comparison with what comes into the City of New York in the live poultry industry? A. Well, I couldn't give it to you on a percentage basis, but I handle on an average of 12, 14, 15, 17, 18 cars a week; it just depends on how my receipts come in; some weeks I am heavy, some weeks I am light.

Q. You are considered as one of the big commission merchants in the City of New York? A. I am considered one of the largest.

3578

Q. Do you know the Schechter brothers sitting at the table? A. I do.

Q. How long have you known them? A. I have known them about four or five years.

Q. Do you know other merchants that know them? A. I believe I do.

Q. Have you had any occasion to talk with other merchants about the Schechters? A. We have, we have just consulted.

Q. Have you observed them from time to time? A. Observed who?

Q. The Schechters. A. I have.

3579

Q. Have you at any time seen Alexander Schechter buy merchandise during the month of June? A. Which is Alexander, Alec?

Mr. Heller: Stand up.

(Defendant Alexander Schechter stands up.)

A. Yes, sir.

Q. He was a buyer? A. Yes, sir.

Q. You saw him frequently there? A. Yes, sir.

Q. In the morning? A. Yes, sir.

Q. Do you know whether it was pretty near every day? A. Well, I wouldn't say every day but I have seen him three or four times a week on the railroad and in the market.

3580

George Levin—By Defts.—Direct

Q. Do you know the general reputation in the community with reference to these defendants in the following manner: Do you know whether they are reputed to be peaceable citizens? A. Positively are.

Q. Do you know whether their reputation is that they are quiet? A. Very quiet.

Q. Gentle? A. Very gentle.

Q. Do you know whether their reputation is that of law-abiding citizens? A. They are positively.

3581

Q. Do you know their reputation, what their reputation is for honesty in business? A. Very honest.

Q. Have you had any trouble in collecting your bills? A. I have never had any trouble.

Q. Is their credit standing good with you?

Mr. Rice: I object to that, that isn't proper on reputation.

Mr. Heller: I will withdraw it.

Q. Have you ever heard anything bad about them? A. I positively have not.

3582

Q. Will you tell us what particular knowledge you have of the poultry business? A. Well, my knowledge of the poultry business since the day I came into the business, I worked for B. Baff & Sons, I went to slaughter houses, charged poultry, I have unloaded poultry, sold poultry, delivered poultry, help unload poultry, handled poultry with manual labor, loaded cars of poultry up in the mountains and at the seashore, sold it direct to the trade and to hotels, sold poultry here in the City of New York to the slaughter houses and retailers.

Q. Did you observe, have you observed daily that cars of poultry that come into the City of New York? A. I have.

Q. Do you know where the poultry comes from? A. All the poultry comes from?

Q. During the year. A. Oh, sure.

Q. Where? A. Poultry comes from the States of Indiana, Ohio, Illinois, Missouri, North and South Dakota, Wisconsin, Tennessee, Kentucky, Texas, Arkansas, Nebraska, as far back as Colorado.

Q. Can you describe the kind of poultry that comes into the City of New York by grade? A. By grade, why we have a grade that comes from Indiana and Ohio and certain parts of Illinois that is considered the finest grade of poultry that comes into the City of New York, we call that black land poultry. Then we have poultry that comes from the northern part of Missouri which is considered as good a grade as Indiana and Ohio. Then we have poultry from the southern part of Missouri that is not quite as good in quality. We have poultry that comes from Arkansas and Kansas which I would call also poultry not as good as the Indiana grades, but average poultry. We have poultry that comes from Tennessee and Alabama and Georgia, and Texas which is a lighter grade poultry.

Q. During your experience have you had an opportunity to examine trade reports? A. I do not quite get your question.

Q. Are there such things as trade reports in your industry? A. Trade reports?

Q. Yes, Urner-Barry, Urner-Barry Publishing Company? A. Oh, yes, sir.

Q. Any other reports? A. That is the only reports we get.

George Levin—By Defts.—Direct

3586

Q. You have examined those? A. Yes.

Q. As long as you have been in business? A. Yes, sir.

Q. You are familiar with them? A. Yes, sir.

Q. Have you ever seen any Government reports pertaining to this industry? A. Government reports?

Q. Yes. A. I have.

Q. Do you know whether New York City is a dumping ground for diseased poultry? A. Positively no diseased poultry is sold in New York City.

3587

Q. Do you know whether the City of New York is a dumping ground for culls? A. There is no such things as culls sold in New York City.

Q. What is the operation that takes place when poultry comes into the City of New York?

A. When a car of poultry comes into the City of New York it is offered for sale. Before it can be offered for sale it has got to be inspected by the United States Government Inspectors or veterinarians who are in charge of the Inspection Bureau. You give them the card, you mark the car number down, the place on the platform where it is located. They go in and inspect that car of poultry. Before they go in they look at the car of poultry from the outside to determine its health. Then they go inside the car, inspect it as to weight, the weight of the crop, and anything unfit for human consumption is destroyed, thrown into a barrel, and disinfectant poured over it.

3588

Q. What happens to the poultry after that? A. The poultry is sold to the buyer, and retail and wholesale slaughter houses, put in crates and Government labels placarded on each coop.

Q. Do the merchants, wholesale slaughter house men, select their poultry on the piers or at the market? A. Well, they go over to the railroad and they buy their poultry from any car that they like, and that is how they select their poultry.

Q. By crates? A. By crates.

Q. They select the individual chickens from the crates? A. Oh, no, sir. It would take all year to get a car out.

Q. They take them on their trucks thereafter? A. They take them on their trucks and sometimes they use the New York Live Poultry Trucking Company's trucks.

3590

Q. That is how it is delivered to their place of business? A. That is how it is delivered to their place of business.

Q. You have heard of the term straight killing? A. I have.

Q. Will you explain what you mean by that? A. Well, my definition of a straight killing would be a crate of poultry that is unloaded from a car, that is unloaded—that is loaded onto the slaughter house man's truck, delivered to his place, and when the buyer comes in he must take that coop of poultry straight as it is delivered to him.

3591

Q. Will you describe the grades of poultry? A. The grades of poultry?

Q. Yes. A. Coming to New York?

Q. Yes. A. There is a grade called a Fancy Indiana, there is a grade called the Fancy Western, there is a grade called the Western, there is a grade called Average, Medium and Poor.

Q. Can you find these various qualities of poultry mixed up in one of the coops that are sold to a market man? A. Oh, certainly. You find all sizes in a crate.

3592

George Levin—By Defts.—Direct

Q. Would those grades of poultry be fit for human consumption? A. Positively.

Q. How about the poor grade? A. The poor grade of fowl? The poor grade of fowl is fit for human consumption. It is only thin-breasted fowl, crooked-breasted fowl.

Q. And do you know whether that kind of a fowl is cheaper than a high, fancy grade fowl? A. Positively.

Q. Is that the only difference? A. That is the only difference.

3593

Q. Do you know whether a practice exists at this time, or has existed for the last few months, of loading poultry and sending in poultry to the City of New York which have gravel or are infected or constipated poultry? A. Which has gravel?

Q. Yes. A. Positively not. It could not be passed by the Government inspection; it would be turned down.

3594

Q. How long a time does this condition not exist? A. Why, this condition don't exist—this condition was—don't exist since the time that Dr. Ives took over the inspection. I believe it is about ten or eleven years; I am not sure. I am not quite certain of the number of years.

Q. Do you know how the market price for the live poultry industry is determined in the City of New York? A. I do.

Q. Will you explain it? A. Well, the first thing is supply and demand, the second thing, the buyer, they are selling together and they bargain for price; the Urner Barry Publishing Company reporter is there, and if he sees he has enough sales to quote price, why, he quotes it.

Q. Does he quote a top and a low price? A. He does.

Q. What does that mean? A. Well, that means that there is different grades of poultry, as explained before, there is fancy poultry, poultry that is quoted higher; there is fancy Western poultry that is quoted a cent less, there is Western car poultry that is quoted still a cent less than that, and there is the average grade poultry, and there is a poor grade of poultry.

Q. Is it possible that even for one particular grade of poultry the price may vary? A. I have seen the fancy grades of poultry in the morning sell for the top market price, and two hours later selling for one and two and two and a half cents less.

3596

Q. Who consumes live poultry in the City of New York, do you know? A. Who consumes?

Q. Yes. A. Most of the poultry consumed in New York City is consumed by the Italian and Jewish trade, the Orthodox trade.

Q. Can you ascribe the reason for the falling off of the consumption of live poultry in the City of New York? A. Well, I believe it is due to the depression; public has not got the money, second thing, I believe,—third, I believe the young Jewish element is going to dressed poultry, not observing the Orthodox laws, and, fourth, I believe that most of the people who consume this poultry, that is, the poorer class of people, are on relief, and they cannot afford to buy a chicken.

3597

Q. Have you ever heard whether or not there exists a list price for culls as such in the City of New York? A. There is no culls sold in the City of New York.

3598

George Levin—By Defts.—Direct

Q. Have you ever heard of a list price for diseased poultry in the City of New York? A. I have not.

Q. Does such a thing exist? A. No, sir.

Q. Do you know of your own knowledge whether or not there has been a drop in consumption of other food products? A. There has been.

3599

Q. How do you know that? A. Well, I have happened to be—my brother happens to be a large fruit and produce merchant out in Hartford; I keep in touch with him quite often, go out to see him, and he tells me his business is in terrible shape.

Mr. Rice: I object—

The Court: Strike out what his brother told him.

Q. Have you spoken to other merchants? A. Yes, I have spoken to people in the butter and egg line, dressed poultry line—

3600

Mr. Rice: If your Honor please I object to this type of expert testimony.

The Court: Yes.

Mr. Rice: As to other commodities.

The Court: That is correct. If he has studied reports and he can testify from them, all right.

Mr. Heller: This is first-hand knowledge.

The Court: But if he has talked to somebody here and there, that does not fix it. He cannot qualify as an expert because he asked one man here and there about it.

Q. About how many merchants—

George Levin—By Defts.—Direct

3601

The Court: He must have made a study. A man who makes a study of the reports daily, or weekly, or monthly, that man gains some information which is general, but a man who has talked to one person here and there, that is no good. You would have to prove the different conditions of each one of them and their business. If he follows up the reports, yes, because the reports are supposed to be a general statement of conditions, but not the individual. You would have to prove the condition with each individual.

3602

Q. Did I understand you to say you read the Urner Barry reports? A. I have.

Q. Do they show the condition of other industries besides live poultry? A. I could not say.

Q. Show the egg industry? A. Well, it shows the egg industry.

Q. Been a drop in that? A. Been a drop in prices.

Q. Corresponding to that in chickens?

3603

Mr. Rice: I object to leading this witness.

The Court: Yes, let him tell us what he found.

Q. What did you find?

The Court: You studied the reports, have you, of the egg industry?

The Witness: Well, I have read the egg reports.

The Court: Do you read them regularly?

The Witness: Every time I get them in, every week.

3604

George Levin—By Defts.—Direct

The Court: How do they compare with your live chicken industry?

The Witness: Well, the live chicken industry is about fallen off the same as the egg industry has. In actual percentage I couldn't tell you.

The Court: I did not mean to take him away from you, but that is the way to elicit the information.

Mr. Heller: All right, Judge.

3605

Q. Do you know what determines the grade of poultry that comes into the City of New York? A. What determines it?

Q. Yes, what elements? A. I don't get that question.

Q. Do you know whether the grades of poultry that come into the City of New York vary from time to time? A. They do.

Q. Why? A. Why, because sometimes the poultry is shipped out of say Illinois or Ohio or Indiana, and it is shipped in nice weather and they come through a storm, and by the time they hit New York they look bad and they are cold and frozen.

3606

Q. And what happens to them when they come here? A. They are sold—inspected and sold.

Q. And are they fit for human consumption? A. Positively.

Q. Now, can you compare the grade of chickens coming into the City of New York in relation to other centers? A. The grade of poultry that comes into New York is just as good in quality as any other center in the United States.

Q. There is no question about that? A. No question about it at all.

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3607

Q. Do you know whether there is a demand for inferior poultry as such, in the City of New York, for the past two years? A. Well, inferior poultry is sold in New York, anybody who has it sells it.

Q. And is there a special demand for it? A. No special demand.

Q. By inferior poultry, what do you mean by that? A. I mean poultry out of States that ship light grades of poultry. That poultry, in certain times of the year, is the finest grade of poultry.

3608

Q. Do you know whether the failure to slaughter chickens by straight killing would affect the price as it is gotten up? A. It would not have any effect on the price whatsoever.

Q. Do you know whether the payment of less or more wages by the slaughter house men would in any way affect the price as received in the market for your poultry? A. Positively not.

Q. Would those conditions affect in any way the price that the farmer gets for his merchandise? A. Positively not.

3609

Q. Would it affect the price that any particular State would get for its poultry? A. It has nothing to do with it.

Q. Would those elements affect the price that the commission man or the receiver gets? A. No effect at all.

Q. Is that correct? A. Correct.

Q. Would it affect the price of the collector? A. No effect at all.

Q. Now, the Schechters have bought poultry from you? A. They have.

Q. And they bought the same poultry that Ben Forsmith bought from you? A. They have.

3610

George Levin—By Defts.—Direct

Q. Now, do you know what an accommodation sale or purchase is? A. I would describe an accommodation sale where a man buys poultry for two or three different slaughter houses, and when he gets his poultry he divides it up. I have accommodation sales every day in the week.

Q. Now, the person who buys the poultry, does he charge a profit? A. No, positively not.

Q. Just a bookkeeping entry? A. Just a bookkeeping entry.

3611

Q. Do you know whether you can inspect the bills of lading at the New York Central Railroad in so far as they affect other merchants? A. Can I inspect bills of lading in so far as other merchants are concerned?

Mr. Rice: If your Honor pleases—

The Court: Don't repeat the question.

3612

Mr. Rice: If your Honor pleases, Mr. Tottis, of course, is not a Government employee, in no sense at all, and this is obviously for the purpose of impeaching Mr. Tottis. Mr. Heller has attempted to do this with another witness, and he is simply repeating it here.

The Court: I think he can ask this witness whether he could.

Mr. Rice: How is it relevant except for the purposes of impeachment, your Honor?

The Court: I think that he can ask him. I will overrule your objection.

Q. Now, have you access to all the bills of lading at the New York Central Railroad? A. I have not.

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3613

Q. Why not?

Mr. Rice: I object to that.

The Court: You can ask him if he has or not, and that is all. He cannot tell you why he cannot.

Q. Do you know whether anybody else has access? A. Nobody has access.

The Court: Now, you are not there every hour of the day, are you?

The Witness: No, but it is impossible.

3614

The Court: I say, you are not there every hour of the day, are you?

The Witness: No.

The Court: Then you don't know whether anybody else can or not. Strike it out.

Q. Are you acquainted with the I. C. C. rule—

Mr. Rice: I object to that.

The Court: He is not called as a legal expert. I let you ask him whether he could have access, because that is a source of information, and that is all.

3615

Q. Do you know whether Mr. Tottis buys poultry from you? A. We only sold Mr. Tottis one bill of goods a few weeks ago, which was through an error—

Mr. Rice: I object, your Honor.

The Court: What has that to do with this case, whether he sold Mr. Tottis poultry or not?

Mr. Heller: Tottis said that he was an expert commission man, your Honor.

3616 *George Levin—By Defts.—Direct*

The Court: I don't care what he said; we are not going into all of his transactions. You are asking him a question which is purely collateral, and we are not going to try out all of those questions. Anything that affects the defendants, yes, or anything that affects the Government officers, to show anything in reference to his duty, yes, but when you are asking some witness that is called here as an expert, and then try to go out to prove various things, no, that is collateral, and that is not correct. You have his answer anyhow that he did sell, whether through an error or not.

3617

Q. Now, in your opinion as an expert in the industry, can you tell us whether straight killing can be enforced?

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

The Court: Well, it is his opinion.

3618 Mr. Rice: How does the validity of the straight killing Code depend upon its enforceability, your Honor?

The Court: You can show whether or not it affects interstate commerce.

Mr. Heller: I have already asked him that.

The Court: Yes. I do not think you can go into the enforceability. We have had a lot of laws that were difficult to enforce. This is the Code; if it does not affect, all right; if it does affect, all right.

Congress passed on its reasonableness, that is, the reasonableness of the law,

George Levin—By Defts.—Direct

3619

and they invested power to adopt rules and regulations. These rules and regulations have been adopted and they are the rules and regulations. They have got to show that a violation of those rules and regulations, by these defendants, affect interstate commerce. Nobody could tell whether they could be enforced. Any law can be enforced even though it might be difficult.

Mr. Heller: I understood that the reasonableness of a provision can always be questioned. That was the purpose of that question.

3620

The Court: The question of whether it affected interstate commerce is a question of fact for the jury.

Q. Now suppose the Schechters do not comply with the provisions of straight killing, will that bring in any diseased chickens of any sort? A. Positively not.

Q. Will that bring in any culls? A. Positively not.

3621

Q. Will that affect the amount of chickens that come into the City of New York? A. Positively not.

Q. Will that affect the price? A. No, sir.

Q. Will that in any way interfere or affect the supply and demand? A. Positively not.

Q. Will the fact that a person pays less wages in any way interfere with the number of chickens that come into the City of New York? A. Positively not.

Q. Will that cause to divert the number of shipments that come into the City of New York to other centers? A. It will not.

3622

George Levin—By Defts.—Direct

Q. Can you tell us specifically as to why it could not? A. Why it could not affect other markets?

Q. Yes. A. Why, the poultry shipped here already is listed and posted at noon on Tuesday with the Code of Authority, and naturally the amount of cars listed can be the only ones available to the market in that week. And the price is established on those cars. And anything that comes in after Tuesday noon cannot be unloaded that week.

3623

Q. In other words, am I to understand on one day of the week you know how many cars are coming in that week? A. On Tuesday we know approximately how many cars there will be for the week.

Q. How many cars will come into the City of New York? A. How many cars will come into the City of New York.

Q. You already know that? A. We know that on Tuesday noon.

3624

Q. And what somebody else does in a slaughter house could not affect that number of cars that come in? A. Positively not.

Q. That has no relation at all with the business that you do, has it? A. No, sir.

Q. Do you know whether there is a certain demand for certain poultry every day of the year in the City of New York? A. There is a demand for all grades of poultry every day of the week.

Q. And poultry is shipped in regardless no matter of what anyone may do in a slaughter house? A. Poultry is routed and shipped to here, and that is all there is to it.

George Levin—By Defts.—Cross

3625

Q. And would that affect, his conduct and his business, would that affect your price that you got? A. Positively not.

Q. Would it affect the price that anybody else would get for his poultry? A. No, sir.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Mr. Levin, you have endeavored to tell us how the price of poultry is arrived at? A. The price of poultry?

3626

Q. Just answer my question. A. I say that the price—

Q. I say have you endeavored to tell us how the price of poultry is determined on the New York market, yes or no? A. Well, I can't get your question, have I endeavored—

Q. What is that? A. I do not grasp your question.

Mr. Rice: Read the question.

(Question repeated as follows: "Have you endeavored to tell us how the price of poultry is determined on the New York market, yes or no?")

3627

A. Yes.

Q. You profess to be familiar with the method of determining the price? A. I do.

Q. Of poultry? A. I do.

Q. That is you are familiar with the fact that the commission men and the buyers, that is the slaughter house operators, get together every morning and haggle about the prices? A. That is right.

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

Q. Everybody is familiar with that? A. Most everybody in the business.

3628 *George Levin—By Defts.—Cross*

Q. But you are not familiar with the economic factors that bear upon prices, are you? A. I am not.

Q. You are not an economist? A. I am not.

Q. You haven't studied economics? A. I have not.

Q. But you have expressed the opinion that the competitive practices among the slaughter house operators do not affect the prices? A. I have.

3629 Q. Is that right? A. Yes, sir.

Q. No competitive practices among the slaughter house operators affect prices? A. Positively not.

Q. You are positive of that? A. Yes, sir.

Q. No competitive practices whatever? A. Positively.

Q. Don't you know that the whole N. R. A. is built on the principle that competitive practices do affect prices, and the amount and character of commerce flowing in that particular commodity? A. I do not.

3630 Q. You do not know that? A. No.

Q. You haven't studied the background of the N. R. A.? A. I have not.

Q. Or the background of the Live Poultry Code? A. I have not.

Q. You do not understand the Code, do you? A. I understand certain parts of the Code.

Q. You do not understand the purpose of it? A. I understand certain parts of the Code.

Q. You are against the Code? A. I am.

Q. You want to smash it? A. Do I want to smash it?

Q. You want to smash it. A. I am against the Code.

George Levin—By Defts.—Cross

3631

Q. You and all the other commission men at West Washington Market are against the Code?

A. I am talking for myself.

Q. I saw that you and the other commission men in West Washington Market are against the Code? A. I am speaking for myself.

Q. Is it true that you and the other commission men in West Washington Market are against the Code? A. It is not true, I am talking for myself only.

Q. You are just talking for yourself? A. I am.

3632

Q. You were here when the other commission men testified yesterday? A. I was.

Q. You listened to their testimony? A. Some of their testimony.

Q. And you spent a number of days here when the Government was putting in its case? A. While the Government was putting in its evidence?

Q. Yes. A. I was only here about two hours one afternoon.

Q. Didn't I see you here two or three days? A. That is not right, I was only here one afternoon for two or three hours.

3633

Q. You have been subpoenaed to testify in another Government proceeding, have you not?

A. Have I been subpoenaed?

Q. Yes. A. To testify?

Q. Yes, in another Government proceeding. A. I was called, yes, I have, you called me.

Q. Yes, I called you. A. Yes.

Q. I called you before the grand jury, did I not? A. No, you did not—yes, you called me before the grand jury, that is right, excuse me.

Q. And I confronted you by a special agent of the Department of Justice? A. You did.

3634

George Levin—By Defts.—Cross

Q. And I asked you whether you had made certain statements in his presence?

Mr. Heller: I object to this collateral issue, this does not affect his expertness in this field.

Mr. Rice: I am attacking his credibility, your Honor.

3635

The Court: You can question him along that line, but you cannot call the agent. He is bound by his testimony collaterally the same as you were. That is just what I ruled against you. You can ask the man what he said, but you can't call somebody else to disprove it.

Q. I examined you at great length regarding a certain transaction occurring in West Washington Market? A. A great transaction?

Q. A certain transaction. A. A certain transaction?

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

3636

Q. I asked you whether you had made certain statements? A. You did.

Q. I asked you whether you had anything to do with the conspiracy in the duck industry—

Mr. Heller: I think that is very prejudicial, your Honor.

The Court: I think that is rather remote. We are getting into bad ways when we get into that, when we get into trying these collateral issues.

Mr. Rice: Very well, I didn't intend to go into it at great length.

Q. I confronted you with a special agent of the Department of Justice, and the agent told you you were not telling the truth?

George Levin—By Defts.—Cross

3637

Mr. Heller: I object to that.

A. He told me——

The Court: No, he can ask him that.

Mr. Heller: We haven't any information as to what transpired.

The Court: That doesn't make any difference whether you have or not, he is trying to show whether this man said something different at some other time.

Mr. Heller: About the duck industry.

3638

Mr. Rice: About the methods of fixing prices at West Washington Market.

Mr. Heller: Let him ask him about the poultry industry.

The Court: I know, but let him conduct his cross examination, do not tell him how.

Q. I confronted you by a special agent of the Department of Justice? A. You did.

Q. And I asked you to speak so that he could identify your voice? A. He did.

Q. And he said, "That is the voice"? A. He did.

3639

Q. He said, "I am positive that is the man"? A. He did.

Q. And he said you were lying? A. He did.

Q. And were you lying? A. No.

Q. You weren't? A. No, emphatically no.

Q. And there was another man present? A. There was—when?

Q. At the time this conversation took place? A. Where?

Q. At West Washington Market. A. There were several people there.

George Levin—By Defts.—Cross

3640

Q. Several people present? A. Yes, several buyers and receivers.

Q. And I called one of the other persons that were present? A. I do not know who you called.

Q. And he said you were lying? A. I don't know what he said, I do not even know who you called.

Q. Then I called you before the Grand Jury, didn't I? A. You did.

Q. And I called the special agent there? A. You did.

3641

Q. And I had him identify you? A. You did.

Q. And you don't know what took place before the Grand Jury? A. I do.

Q. When you were out? A. When I was out?

Q. Yes, you did not follow up the Grand Jury proceedings, I presume, after you left? A. I did not, positively not.

Q. Have you told us everything about the method whereby prices are determined at West Washington Market? A. To the best of my knowledge I have.

3642

Q. You have never heard of any price-fixing in West Washington Market? A. I have not.

Q. You have never heard of any commission men getting together and holding prices up? A. They have not.

Q. Never heard of it? A. No, sir.

Q. You have never heard of a monkey? A. A monkey?

Q. A monkey. A. I have heard of monkeys, yes.

Q. What is a monkey? A. A monkey is an animal with four legs, with a long tail.

Q. What is a monkey in the live poultry industry? A. We have no monkeys in the live poultry industry. We have all gentlemen.

George Levin—By Defts.—Cross

3643

Q. You have been in this industry fourteen years? A. I have been in this industry twenty-two years.

Q. Twenty-two years, I beg your pardon. And you have never heard of a monkey who arranges with a commission man to bid higher than prevailing prices at West Washington Market? A. I have not heard of a monkey in the West Washington Market.

Q. You were not one of the commission men who were convicted a number of years ago of price-fixing? A. I was not.

3644

Q. You were not? A. I was not.

Q. Do you know a number of them were? A. I do.

The Court: That does not make any difference, what he knows about. Interrogate him, if he was convicted, but he said he was not.

Q. But you say that there has been no price-fixing among the commission men in the past? A. I—there has not. Supply and demand makes the price.

3645

Q. Now today supply and demand does make the price, is that right? A. Yes, sir.

Q. And there are various economic factors that go into price-making, aren't there? A. Economic factors?

Q. Yes. You don't understand that, do you? A. No, I do not.

Q. All right, we will let it go. All you know is that the commission men and the buyers meet at a common place in West Washington Market and they haggle over the price? A. No, they meet over at 60th Street.

George Levin—By Defts.—Cross

3646

Q. And sometimes at West Washington Market? A. They make the express market in West Washington Market.

Q. But you do not know what else determines the price of poultry? A. Nothing else determines the price of poultry.

Q. You are positive that competitive practices among the slaughter house operators have no effect upon price? A. Right; it has no effect whatsoever.

3647

Q. And you are positive that that is true of other industries? A. Of other industries?

Q. Of other industries. A. I cannot tell you about other industries.

Q. You were telling us about the egg industry and the butter industry.

Mr. Heller: He would not let him answer.

The Court: No, he was only telling Mr. Heller about the comparative ranges in those two from the reports, that is all.

Mr. Rice: I withdraw it.

3648

Q. You do not know anything about any other industry? A. About any other industry?

Q. Yes. A. Only just what I hear and read about.

Q. Don't you know that the total aggregate value of live poultry sold in New York in 1933 is about thirty-five per cent. of the total aggregate value of live poultry sold in New York in 1927, thirty-five or forty per cent., don't you know that? A. Well, I know the demand has fallen off. That is all I can answer you.

Q. Don't you know it has fallen off to about thirty-five or forty per cent.? A. I would not say that.

Q. Don't you know that other food commodities have fallen off only half as much? A. I could not answer your question.

Q. You do not know that? A. I could not answer that.

Q. I believe you did say that the falling off of consumption was partially as the result of the depression, is that right? A. I do.

Q. Partially as the result of depression? A. Yes.

Q. What do you understand to be a depression? A. What do I understand to be a depression? Business conditions have fallen down.

Q. Yes. A. Public hasn't got any money.

Q. And bad competitive practices, is that right? A. I did not say bad competitive—

Q. I am asking you now—

The Court: Let him finish. He has not finished. Go ahead.

A. (Continuing) I said falling off of business, people out of work.

Q. What causes those things? A. What caused the depression?

Q. Yes. A. You are asking me? What do I know what causes a depression?

Q. That is all I wanted to know. You do not know what causes a depression, do you? A. I know a falling off of business—of business, sales, and people out of work.

Q. And you do not know that bad competitive practices accentuate a depression? A. I don't.

Q. Make it worse? A. I don't.

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

Q. You do not know that the Codes under the N. R. A. are designed to correct the bad competi-

3652

George Levin—By Defts.—Cross

tive practices and to alleviate the depression? A. I do not know anything—I don't know much about the Code at all.

Q. That is right. A. I never attended a Code meeting except once, and that was I was a guest.

Q. Then you went down with Benjamin Forsmith to Washington? A. I did not go down with Benjamin Forsmith. I went down to visit Washington. I did not go on any Code hearing.

3653

Q. You had never been in Washington before? A. First time I was ever in Washington in my life. Beautiful country.

Q. You know Benjamin Forsmith, don't you? A. Know him very well.

Q. He was a retailer, was he not? A. Retailer, and one time he was a wholesaler.

Q. During the year 1934, when he was in business, he was only a retailer, was he not? A. 1934, retailer.

Q. Only a retailer? A. Only.

Q. Since this Code has come into effect he was never been a wholesaler? A. No, he has been a retailer.

3654

Q. Where did he do business? A. He does business over in Brooklyn.

Q. Whereabouts? A. I could not tell you the street. I would not know his—

Q. Lexington and Tompkins? A. Lexington Avenue, somewheres around there, that is right.

Q. In the Williamsburg section? A. Williamsburg? I could not tell you whether it was Williamsburg or Flatbush.

Q. He was never a competitor of the Schechters, was he? A. Who is that?

Q. Benjamin Forsmith. A. I could not say he was a competitor, no.

George Levin—By Defts.—Redirect

3655

Q. He couldn't be a competitor? A. No, he couldn't be a competitor if he had been in the retail end.

Q. That is right. A. Positively, he couldn't be a competitor.

Q. He wouldn't have any reason to persecute the Schechters, would he? A. To persecute them?

Q. Yes. Do you see any reason why Benjamin Forsmith should persecute the Schechters? A. No, I could not see any reason why he should.

3656

Q. He is not in business today, is he? A. No, as far as I understand.

Q. He is giving all his time to the Live Poultry Code Authority, is that right? A. In the last month or so he has.

Q. He has given up his business since July, 1934? A. I could not tell you just what date.

Q. You stated that Dr. Ives came into the picture ten or eleven years ago? A. About ten or eleven. I don't know just exactly.

Q. As a matter of fact, wasn't it exactly eight years ago? A. I told you I didn't exactly know the amount of years.

3657

Q. Wasn't it about November, 1926, when the Joint Inspection Service was inaugurated? A. Whenever it was, that is, when it opened up, that is all I can tell you. I don't remember the date.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Now, what benefits did you get out of the Code? A. I got no benefits whatsoever. It just saddled me with extra expense.

Q. And that is the only benefit you have gotten? A. Yes, that is the only benefit.

3658

George Levin—By Defts.—Redirect

Q. Do you know of anybody else that got any benefit? A. I don't know anybody else that got any more benefit than I have.

Q. Mr. Rice said should Mr. Forsmith have any reason to persecute the Schechters, and you said you don't know whether he should or not? A. That is right.

Q. Did you recently have a conversation about the Schechters?

Mr. Rice: I object, your Honor.

3659

The Court: Now, we are not going into that. You brought out one question that I let you go after, but we are not going to try over all these collateral issues. You raised the question here that this man who was an agent, charged with enforcement, that he was in the same business that he was, and now the evidence of this witness is that he was never a slaughter house man, but was a retailer. We are not going to try all the collateral issues.

3660

Q. Now, do all retailers buy at the West Washington Market? A. Some buy at the West Washington Market and some buy at 60th Street.

Q. Are those substantial purchases? A. They are.

Q. Now, when you say he is a retailer what do you mean, is he a butcher? A. No, he is a retailer, he just buys poultry—he retails them out in individual chickens.

Q. Do those fellows buy large quantities? A. Some buy large and some buy small quantities; it depends on their business and the section they are in.

Mr. Heller: That is all.
(Witness excused.)

David Pack—By Defts.—Direct

3661

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

Direct examination by Mr. Jacob Heller:

Q. Mr. Pack, how long have you been engaged in the live poultry industry in the Metropolitan area? A. About eighteen years.

Q. Talk up loud now, please, so that this man here (indicating Juror No. 12) can hear you. A. Yes, sir, I will.

3662

Q. How old are you? A. Thirty-one.

Q. And with whom were you engaged in the business, and where? A. I was engaged with my father for a number of years in Astoria, and then about four years ago I formed a corporation with three other men—my brother and two other men, and we were in Astoria for about a year and a half, and then we moved to Brooklyn.

Q. And in what branches of the live poultry industry were you? A. Slaughter house man.

Q. At all times? A. At all times.

Q. Now, will you tell us, tell the Court and the jury, just what you did? A. We bought poultry and we took into our places and we slaughtered it and sold it to the butchers and retailed it to customers.

3663

Q. Were you in a business similar to that which the Schechters are in now? A. Yes.

Q. You know the Schechters, do you? A. Yes.

Q. And you know they are slaughter house people? A. Yes.

Q. And you have had occasion to visit their place of business? A. Yes.

Q. Both before and after the Code? A. Yes.

Q. Were you ever employed by the Code Authority? A. Yes, sir.

David Pack—By Defts.—Direct

3664

Q. In what capacity? A. As an investigator.

Q. And who was your supervisor? A. Mr. Forsmith, I believe.

Q. Can you tell us about when you were employed and how long you remained in their employ? A. I don't remember the dates, but I was in their employ for about a week, but I don't remember the dates.

3665

Q. And what duties were you assigned to? A. I was assigned to go to certain places in the morning and watch how they killed the poultry and to ask to look at their books and to look at them if they allowed me to.

Q. What places did you go to? A. I was in various places.

Mr. Rice: How is this material, your Honor, unless he investigated the Schechters?

Mr. Jacob Heller: Now, we are going to get right down to that.

Mr. Rice: Well, let us get down to it then.

3666

Mr. Jacob Heller: And then, your Honor, I am going to attempt to show that certain provisions with which we are charged as not having complied with, are unreasonable, and for that reason unconstitutional.

The Court: That is not before us, it is not before this jury, whether they are reasonable or not.

Mr. Jacob Heller: I ask you for an exception, and I will abide by your Honor's ruling.

The Court: You ask the questions and then there will be an objection and I will

David Pack—By Defts.—Direct

3667

rule. Now what you want to do is, you want to offer evidence to show that some provisions of the Code are unreasonable.

Mr. Jacob Heller: That is correct.

The Court: I will not allow you to show it. You can have an exception to my ruling. The question is not before us; the question before us, that you may present, is whether or not it affects interstate commerce, but we are not dealing with the reasonableness of the regulations which it was conceded was enacted in pursuance of the Statute.

3668

Q. During the time that you were so employed did you visit the premises of the Schechters? A. Yes.

Q. And do you know the addresses of their places of business? A. Yes.

Q. What are they? A. I don't know, that is, I don't know exactly, but I know it is the Rugby Poultry on East 52nd Street.

Q. And do you know another one on Rockaway Avenue? A. Yes.

3669

Q. And pursuant to your duties did you make an inspection at those places?

Mr. Rice: I object to the lumping of his duties. Let us hear what he did, let us see what his duties were and what his instructions were.

The Court: I do not see the materiality unless it relates to these charges.

Mr. Jacob Heller: It does, your Honor.

Q. Now, from whom did you receive your instructions?

3670

David Pack—By Defts.—Cross

Mr. Jacob Heller: Mr. Forsmith, he said before.

Q. From whom did you receive your instructions? A. Mr. Forsmith.

Q. What did he tell you to do? A. He assigned me, I believe, at two different points to the Schechter Brothers on East 52nd Street.

Q. What did he tell you to do there? A. To watch the killing and to ask to look at the books.

Q. And did you go there? A. Yes.

3671

Q. Tell us what you saw when you got there.

Mr. Rice: I object to that.

The Court: Because they kill properly on some occasions would not be evidence that they did not kill improperly on another.

Mr. Jacob Heller: In this event, your Honor, we will withdraw the witness, as long as we cannot go into these matters.

Mr. Rice: Then you consent that all his testimony be stricken out, otherwise I should like to cross examine the man.

3672

Mr. Jacob Heller: We do not consent to strike the testimony out; you may cross examine.

Cross examination by Mr. Rice:

Q. Now, Mr. Pack, you say you were in the employ of the Code Authority? A. Yes.

Q. Did you ever get paid by them? A. No.

Q. You never got a penny, did you? A. No.

Q. As a matter of fact, weren't you in the employ of the Live Poultry Slaughter House Association? A. Well, indirectly, the Live Poultry Slaughter House Association were supposed to

turn over the money to the Code Authority for our pay and they did not, and we were discharged for that week.

Q. You got fired, didn't you, you got fired the first day you worked? A. Not the first day.

Q. You just worked one day and that was a Thursday? A. I worked for practically a full week.

Q. Didn't you work just one day? A. No, sir.

Q. You were loaned by the Live Poultry Slaughter House Association to the Code Authority? A. Yes.

Q. And you, together with eight other people, who were loaned from the Association, is that right? A. Yes.

Q. And the whole bunch of you got fired after working one day? A. I worked a full week.

Q. You did not put in a full week's time, did you? A. I did.

Q. The Code Authority did not know that you worked for more than one day, did they? A. Mr. Forsmith knew that I worked for one week.

Q. Are you sure about that? A. Positive.

Q. When you first came to the Code Authority office it was on a Wednesday night, wasn't it?

The Court: Has he testified to anything at all, Mr. Rice?

Mr. Rice: Just a few questions, your Honor, because I fear that just putting this witness on the stand may tend to prejudice the jury.

The Court: Very well.

The Witness: I don't remember whether it was Wednesday night or not.

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

3676 *David Pack—By Defts.—Cross*

Q. You do not remember that Benjamin Forsmith gave you your instructions on Wednesday night? A. No.

Q. And that you went out on Thursday? A. No, sir.

Q. And that when you came back on Thursday you were fired, is that right? A. I had—

Q. Yes, or no, is that right? A. No, it is not right.

Q. It is not right? A. No.

3677 Q. You claim you worked a week? A. I was interviewed by Mr. Forsmith more than one afternoon, I remember three—

Q. Before you started working? A. After I started working.

Q. Do you know why you were fired? A. Because the budget could not afford us, and the members of the Live Poultry Slaughter House Association did not give the Code Authority the money for us.

Q. Do you know why else you were fired?

3678 Mr. Heller: He said he wasn't fired; he didn't get paid.

Q. Do you know any other reason why you were fired?

Mr. Heller: That is what he said; he wasn't paid.

The Court: Let him answer.

Q. Do you know any other reason why you were fired? A. No.

Q. Weren't you told? You weren't told? A. No, we weren't told any other reason.

Q. You weren't? A. No.

Q. At that time you were engaged in the industry, were you not? A. No, sir.

David Pack—By Defts.—Cross

3679

Q. You were not? A. No, sir.

Q. Your brothers were? A. I do not believe so.

Q. Well, now, think. A. I am pretty sure I wasn't.

Mr. Heller: That hasn't been brought out on direct examination.

The Court: No.

Mr. Heller: You didn't let us go into that, and now he is going into this entire thing and making him his own witness.

3680

Mr. Rice: This will take only a few questions, if your Honor please.

The Court: Go ahead.

Q. Wasn't your brother engaged in the industry at that time? A. I do not believe he was.

Q. You are in the industry today, aren't you? A. Yes, sir.

Q. You are competing with other slaughter house men? A. No, sir, I am only working in the industry.

Q. You are only working in the industry? A. Yes, sir.

3681

Q. Are you working for somebody else? A. Yes, sir.

Q. You are not a member of the union, are you? A. No, sir.

Q. You are not just a plain working man, are you? A. I am working for my brother.

Q. What do you do? A. I am a buyer.

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

Q. And your brother operates a market? A. Yes, sir.

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

3682 *Julius Kastein—By Defts.—Direct*

Q. Was there as a reason why you were fired because you were going around to various slaughter house markets and getting secret information from them to use in your own business?

Mr. Heller: There is no such testimony, that he was fired, or that he got any secret information from anybody.

3683 The Court: You opened that door; I kept the door closed; and if you are going to open up the door and make him your witness, that is another thing. I stopped him.

Mr. Rice: Very well, I will abide by your Honor's—

Mr. Heller: In the meantime he has asked the question.

3684 The Court: I stopped him from testifying to that. It doesn't make any difference what he was doing, he didn't do anything down there; I stopped him. He went down to the place, and he asked for something, and I stopped him, and that is the end of it.

Mr. Rice: Very well; that is all.
(Witness excused.)

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

Direct examination by Mr. Heller:

Q. Mr. Kastein, are you in business? A. I am in the live poultry commission business.

Q. What address? A. 26 Bloomfield Street, West Washington Market.

Julius Kastein—By Defts.—Direct

3685

Q. How long have you been in that business?
A. About 20 years.

Q. Are you considered the largest commission merchant at West Washington Market? A. I have been for the last five or six years.

Q. Are you a member of the Advisory Committee of the Code? A. Yes, sir.

Q. Sitting in with Mr. Peterson, do you advise him? A. Well, we have our meetings and we discuss matters.

Q. Were you called here by the Government as a witness? A. No, I was subpoenaed by Heller.

3686

Q. Myself? A. Yes, sir.

Q. Now, Mr. Kastein, will you tell the jury something about your experiences in the industry? A. At the present time?

Q. From the beginning to the end.

The Court: Your experiences he said.

The Witness: Experiences in the industry. Well, my experience in the industry is that for the last year or so things are becoming very bad, we have got really a chaotic condition in the industry—

3687

The Court: Yes, but counsel wants to know your experience, when you started, what did you do, what has been your work.

The Witness: I started as a slaughter house man and was in that end of the game for about 10 years.

The Court: When?

The Witness: We started about 20 years ago.

The Court: All right.

The Witness: About 10 years ago we went into the commission business, and

3688

Julius Kastein—By Defts.—Direct

since that time we have been in the commission business.

Q. And as a commission merchant will you tell us your daily experiences, what you do, what happens with poultry? A. Well, we go up on the railroad early in the morning and sell our poultry to our customers, to the slaughter house men, and we usually have quite a bit of poultry, have say 5 or 6 cars of poultry.

3689

Q. A day? A. Sometimes, some days more, some days less. And we have different grades of poultry, and we sell those various grades according to price. For instance fancy poultry brings you one price, western poultry brings another price, average poultry brings another price.

3690

A little later in the day about 9:15 the reporter of the Urner-Barry Company comes around and we show to him what business we have done. This reporter sees every receiver in the market, and he gets their sales and he quotes the market on the sales that he gets from the various receivers, and that becomes the market quotations for the day. Then after that the market is according to supply and demand, sometimes it gets firmer, sometimes weaker, and that is our regular business.

Q. Where do you buy your poultry? A. We do not buy the poultry, we handle on consignment.

Q. What States of the Union do you get consignments from? A. I would say about 20 States in the United States, Indiana, Illinois, Missouri, Nebraska, Kentucky, Tennessee, Alabama, and various States, various other States, Arkansas and other States.

Julius Kastein—By Defts.—Direct

3691

Q. Does the season depend as to what grade—does the season affect the poultry, that is the amount of poultry that comes in from various States? A. Yes, different sections have different seasons of the year.

Q. Will you explain that to the jury? A. Yes, like in the Spring here we get our poultry from the Southern States, Arkansas, Tennessee, Kentucky, Oklahoma, Texas. In the Fall of the year we get the bulk of our poultry from Ohio, Indiana, Illinois, Missouri, Nebraska. The reason for that is around the Fall of the year the poultry from the Southern States is very poor, and we get our good poultry from the Western States. And in the Spring of the year when lighter fowl is wanted we turn to the Southern States; and the poultry in the Middlewest and the Western States is very light at that time.

3692

Q. Will you describe the kinds of poultry that come into the market in New York City as to grades? A. Well, personally our firm handles the very finest poultry that comes into New York. We handle very fine poultry. The bulk of our stuff is from Ohio, Indiana and Illinois, and we try to get very fancy stuff.

3693

Q. And how is the poultry graded in the City of New York before it is sold? A. It is sold straight run according to States and grades.

Q. Can you describe some of the grades, you mentioned fancies. A. Yes, like we sell Ohio, Indiana, and Illinois, that usually grades as right fancy poultry. And you take poultry from Iowa or Nebraska, that is known as western poultry. You take poultry from northern Missouri, that poultry we would call that fancy western poultry. You take poultry from Tennessee or from Oklahoma or Texas, we call that

3694 *Julius Kastein—By Defts.—Direct*

average poultry. And we get some grades from Tennessee that you would call poor.

Q. Are those the grades of poultry that exist in the industry today? A. Yes, sir.

3695 Q. Do you know of your own knowledge whether or not during your 20 years' experience any carload or any portion of a carload of poultry has come into the City of New York that could be called diseased poultry? A. Well, no. For the last 10 years we have had this supervision of the United States Department of Agriculture. Anything which is diseased is immediately killed by the inspector. They do not give us an opportunity to sell a diseased bird. If we wanted to we have no access to the car until the car is inspected by the inspector, we can't go into the car until we get the certificate which says that the poultry is absolutely inspected and in good health.

3696 Another thing if we do sell any poultry that someone objects to, if it is diseased it is turned back by the buyer, it is rejected by him. Anything that he does not want he throws it back, so that there is a double check on it. We really could not hope to have any for sale, because there is a double check on it.

Q. Do you know whether there is a market in New York for diseased poultry? A. No, it is impossible to sell it because we have the check of the Health Department, and then we have our own inspectors, and they themselves would call up the Health Department if there were any diseased birds.

Q. Is there such a thing as a price quotation for diseased poultry? A. No such thing.

Julius Kastein—By Defts.—Direct

3697

Q. Is there such a thing as a market in New York City for culls? A. No, we are not allowed to sell anything like a cull.

Q. Do you know whether there is a price quotation for culls in the City of New York? A. No.

Q. You are sure about those two things? A. Absolutely.

Q. Do you sell to the Schechters? A. I do sell to the Schechters, yes, we sell them whenever they want anything.

Q. How long have you been selling the Schechters? A. 10 years, I think about 9 or 10 years.

3698

Q. Do you know every one of the Schechters sitting at the table? A. Yes, I know them all.

Q. How long have you known the defendants? A. Well, I imagine about 9 or 10 years.

Q. Do you know other people that know these defendants, market people? A. Well, they are well known figures in the business, they are factors in the industry.

Q. Have you had any occasion to talk to other commission merchants about the Schechters? A. We discussed credit and so on, yes, we have discussed lots of people.

3699

Q. Do you know the general reputation of the defendants? A. Well, their record is very good as far as we are concerned, as far as their bills are concerned they always pay their bills——

Mr. Rice: I object to that and move to strike it out.

The Court: Strike it out.

Q. I am not asking you as to credit. A. Their credit standing is good.

Q. I am asking you about their general reputation, what is their general reputation as to honesty—— A. I think they are very fine boys.

3700

Julius Kastein—By Defts.—Direct

Mr. Rice: I move to strike that out.

The Court: Strike it out, the question is is their reputation good or bad?

The Witness: Their reputation is good.

Q. Would you say it is very good? A. I would say very good.

Q. What would you say is their reputation as to quietness? A. They are very fine respectable boys.

3701

Q. What is their reputation as to being law-abiding citizens? A. I think they are O. K., 100 per cent.

Mr. Rice: I move to strike that out.

The Court: Yes, good or bad is the answer.

Q. As to honesty in business. A. Very good.

The Court: You didn't answer the other question because I struck it out. If you want an answer to that we will have it repeated, if you want it repeated you may. Repeat the question.

3702

(Question repeated as follows: "Q. What is their reputation as to being law-abiding citizens?")

A. Good.

The Court: Now if there is anything else go ahead.

Q. Yes. Mr. Kastein, have you studied the various reports that exist pertaining to the live poultry industry? A. Well, I try to study them as much as I can, yes.

Julius Kastein—By Defts.—Direct

3703

Q. Which ones do you study? A. Well, I study the market conditions in New York and Philadelphia, Chicago, and other markets and compare them with the New York market.

Q. No question about that? A. I try to, yes.

Q. You have done that for how long? A. Quite some time.

Q. Do you know how the price is fixed in the City of New York for the poultry that the commission merchants sell? A. Well, the price is not fixed. The price—the Urner-Barry Company has their reporter which comes around and gets the sales from the various commission men and he quotes the market accordingly.

3704

Q. How is that price determined? A. Well, the reporter comes up on the railroad, where we do most of our business, and he interviews each receiver and he tells them what business he has done and who he sold to, and he makes a record of it and then when it is all through he quotes all these various prices.

The Court: I do not think you understood the question that counsel has asked you. He did not ask you how the reports are made up. He asked you how the price is arrived at on the market.

3705

The Witness: That is just how it is arrived at.

The Court: Where is the place?

The Witness: On the railroad at 60th Street, New York.

The Court: Now, he asked you how the price was fixed.

Q. Just tell us the routine as to how the price is arrived at. A. The routine is that this reporter interviews each receiver and these

3706

Julius Kastein—By Defts.—Direct

ceivers tell him what they have done, what business they done, and he makes a record of it.

The Court: Before they start to do business?

Q. Before you sell it? A. Before they sell it?

3707

Q. Yes. A. In the morning the poultry is inspected by the United States Department of Agriculture and they go through the car carefully and anything which is unfit they kill, and then we tell our buyer that we got this car and they go in and they look it over, and if they like it they buy it.

Q. How do the buyers know what the prices for the poultry are? A. Some buyers agree on a definite price before the market is established, and other buyers take it on the basis of quotations.

3708

Q. What determines the fixing of the price? A. Well, there is no such thing as fixing a price. These sales which the Urner-Barry reporter gets, he quotes, and they become the market price. That is the recognized price for the day.

Q. What determines the price you are to get for your poultry? A. Supply and demand makes our price.

Q. How does that vary from day to day? A. It all depends on how many receipts we get in. If the receipts are short, we get more money for it; if the receipts are heavy, we break the market.

Q. That is the only way the price is fixed? A. Supply and demand is the only way we regulate the market price.

Q. If you receive many carloads of poultry, the price declines? A. The price declines.

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3709

Q. Does the quality of the poultry decline? A. No, quality has nothing to do with price.

Q. Are you sure about that? A. Has nothing to do with it.

Q. That has been the uniform practice? A. Yes.

Q. If you get any shortage of carloads— A. Why, then we ask more money for the poultry.

Q. And does that affect the quality in any way? A. Why, no, but we have our different ranges of quality, different quality no matter what the market is, they may be fine, we sell fancy grades for more money and average grades for less money.

3710

Q. There is a difference in price between the fancy and the average? A. Yes, there always is.

Q. Difference of price between the average and poor poultry? A. Yes.

Q. By poor poultry what do you mean? A. I mean thin-breasted, a little poorer quality, isn't as good as the fancy grade.

Q. Those chickens are edible? A. Oh, yes; I have eaten them many times.

3711

Q. Do you know whether the price in the City of New York on any day of the week has any effect on the price that the commission merchants may get in Philadelphia or Chicago? A. No. New York has got a market of its own. We have nothing to do with any other market. The only thing is, some markets are based on the New York quotations. Boston gets cars whatever the New York market is; or Newark gets cars on the basis of New York quotations, but as far as we are concerned, we run our own business. We sell it solely on supply and demand.

3712 *Julius Kastein—By Defts.—Direct*

Q. Are you familiar with some of the practices provided in the Code? A. Yes; I am on the Advisory Board.

Q. You are very familiar with them? A. I attended these meetings.

Q. Have you studied the relation, if any, between practices of the trade and the prices and volumes, and volume of goods? A. I would like you to make that a little more plainer.

Q. You are familiar with the trade practices? A. Yes.

3713 Q. Have you studied as to what effect these trade practices might have upon the prices you are to get for your poultry? A. Well, I do not think it has any effect whatever—

Mr. Rice: Just a moment.

A. (Continuing.) No.

Mr. Rice: I move to strike that out.

The Court: Yes, strike it out.

Mr. Rice: I think—

3714 The Court: He ought to ask him whether he has studied—

The Witness: I studied the situation, yes.

Q. Now, tell us your answer.

Mr. Rice: Just a moment.

The Court: He said he studied it. Mr. Witness, if you will listen, and when you can answer the question yes or no, do it.

Mr. Rice: Would your Honor permit me to cross examine at this point to see what studies he has made?

Mr. Heller: He said he is on the Advisory Committee, he has attended on the meetings.

Julius Kastein—By Defts.—Cross

3715

Mr. Rice (continuing): To see whether this evidence is admissible?

The Court: If you offer him as an expert, he has a right to cross examine at this time. I let you do it before.

Mr. Heller: Yes, sir, all right.

Preliminary cross examination by Mr. Rice:

The Court: It is limited only to that, this cross examination; then the cross examination generally.

3716

Q. You say you have studied— A. Yes, sir.

Q. (Continuing.) —the effect of the Code provisions upon prices? A. Yes.

Q. What study have you made? A. Well, I study that every day. I am—that is all I am—I am tangled up in this deal. That is all I do, live poultry, and move around it all day long.

Q. Which particular practice are you referring to? A. You just asked about this question.

Q. Yes, what particular practices have you studied? A. Every practice that comes up.

3717

Q. What particular practice involved in the Code? A. Every one of them.

Q. Which one? Just name one. A. You give me any one you want and I will answer it.

Q. You name any one. I give you first choice. A. You asked the question, I will let you name any one.

Q. Name any practice in the Code. A. You name it.

Mr. Rice: May I have an answer to my question, your Honor?

3718

Julius Kastein—By Defts.—Cross

Mr. Heller: He has given his answer.

The Court: He said yes, all.

Q. Will you name all of the practices in the Code? A. I could not tell you all of the practices in the Code. Name any one you want.

Q. Will you name any practice in the Code?

A. You ask any one you want and I will answer it.

Q. Will you name all of the practices? A. You name one.

3719

Q. Will you name any practices in the Code? I want to see whether you know anything about this Code. A. I have attended every meeting of the Code, and if you want to know anything, I will answer it.

Q. Will you name any practice in the Code?

A. Ask any question and I will answer it.

The Court: He asked you—you said you had made a study of these things. Now, what trade practices have you considered?

3720

The Witness: Every one of them.

The Court: Well, name some of them.

The Witness: If you want me to bring up the question about straight killing—

Q. All right. Have you studied the relationship between straight killing and the prices received by the commission men for their poultry?

A. Yes.

Q. What study have you made? A. I have talked to the bulk of my buyers.

Q. What study have you made? A. That is the study that I have discussed with every one of my buyers, about this straight killing.

Julius Kastein—By Defts.—Direct

3721

Q. All of your information is based upon hearsay, upon what somebody else told you? A. I have had experience in the industry and I discussed with my trade, from the ones that I would do business with, and they are the ones that are supporting this Code.

Q. And you are not a slaughter house operator yourself? A. I have been; I was in it for ten years prior to this.

Q. You have not been a slaughter house operator for the past three years? A. No.

3722

Q. And you have not observed the practice of straight killing at the slaughter house since the Code came into effect? A. No.

Q. You have not? A. No.

Mr. Rice: That is all.

Direct examination (continued) by Mr. Heller:

Q. Do you know what straight killing is? A. Yes.

Q. Will you describe it? A. Straight killing would be at the slaughter house, they would buy this poultry from the railroad and buy it straight, straight run, and when they got it into their place, they would be compelled to sell that coop or half coop just as it is, just as they got it.

3723

Q. Now, do I understand that they must buy a coop as it is in the market, the West Washington Market? A. They have to take the coop just as it is and sell it the same way.

Q. And they must sell it the same way as they bought it? A. Yes.

Mr. Rice: If your Honor pleases, I do not understand the purpose of this. Is this man purporting to construe the law?

3724

Julius Kastein—By Defts.—Direct

The Court: I do not think so; I imagine that is my duty.

Mr. Heller: Mr. Rice asked him what he knew about it and I am asking him what he knows about it.

Mr. Rice: I believe I asked him whether he was familiar with the Code provision, and that is the only thing in issue in this case. Now, the Code provision does not define straight killing as he is defining it.

3725

The Witness: We discussed it at the meeting of the Advisory Board, and it means just what I said.

Mr. Rice: I object to that, your Honor, and move that it be stricken out.

The Court: Yes, I will strike that out. Mr. Heller, do you want him to tell us—what difference does it make what they discussed? We know what the Code says about straight killing. Now do you want him to give a different definition? We know what it says. Do you want to go ahead with him and ask him to construe it?—I don't think so.

3726

Q. The Advisory Board is part of the Code Authority? A. Yes.

Q. No question about that? A. No.

Q. And you are on that? A. Yes.

Q. And you discussed each and every provision of the Code?

Mr. Rice: I object, your Honor. This appears to be an attempt to circumvent your Honor's ruling.

Julius Kastein—By Defts.—Direct

3727

The Court: It does not determine what straight killing is in this case, the Code does, and I will interpret it. Ask him questions about his experience, that is all right, but do not attempt to have him interpret the Code. It would not make any difference if these gentlemen solemnly resolved that it meant anything in the world; that would not make it mean that in this case. In this case it means what I say it means.

3728

Q. Can you tell us whether or not a person refusing to kill straight, that such conduct on the part of such person will in any way affect the price that you get for your merchandise in West Washington Market? A. No, sir.

Q. No question about that? A. No.

Q. Will the fact that a person pays less wages than any other, referring to wholesale slaughter house men—in any way affect the price that you would get for your commodity? A. No.

Q. Would the conduct of such person with reference to straight killing or the payment of less wages in any way affect the price that the farmer would get? A. No.

3729

Q. Or the shipper? A. No.

Q. Do you know whether the practice exists of loading poultry with gravel or constipating the chickens in order to make them heavy at this time? A. No, sir, no such condition exists.

Q. And has it existed for the past five years? A. No.

Q. And who consumes the live poultry in the City of New York? A. Well, the bulk of this poultry is consumed by the Jewish trade, and the balance is sold to the gentile trade.

3730

Julius Kastein—By Defts.—Direct

Q. Do you know whether the consumption has dropped in the last few years? A. Yes, it has been on the decline continuously.

Q. And can you attribute that to any particular reason? A. There are many reasons. It is due mostly, I imagine, to the bad conditions. Another factor that I had in mind is that a lot of these Jewish people are turning to dressed poultry. Dressed poultry is on the advance and live poultry is on the decline.

3731

Q. And by bad conditions what do you mean? A. The general bad conditions throughout the country. Take the vegetable business or the fruit business, all produce business has been on the decline, all commodities have had the same effect.

Q. And will unemployment have anything to do with that? A. Yes.

Q. And will bankruptcies have anything to do with that? A. Yes.

Q. And bank failures, will that have anything to do with that? A. Yes.

3732

Q. Now, can any man in the world that you know of point out any particular reason and attribute it to that reason alone for the drop in the consumption of live poultry?

Mr. Rice: I object to that question.

The Court: I do not think he can tell what anybody else in the world can do. He can tell us his opinion.

Q. What is your opinion? A. The general economic conditions have been bad and people haven't got the money, and they are not buying so much live poultry, and some Jewish people are not living up to the real Orthodox religion,

Julius Kastein—By Defts.—Direct

3733

they are buying dressed poultry because they can buy that dressed poultry just a little bit cheaper than we can sell live poultry, and that is the reason they turn to dressed poultry.

Q. Do you know why dressed poultry is cheaper? A. Yes, they can handle it cheaper, they haven't got the overhead that we have got.

Q. Do you know what the difference in overhead is? A. We pay very heavy wages compared with the other industries. Take people in the dressed poultry business, on 23rd Street, they are paying \$25 and \$30 a week, and we pay \$50 a week. Our unloaders get a lot of money, where they haven't got that in other industries.

3734

Q. You pay higher wages? A. We pay higher wages.

Q. And that enters into the cost of sale? A. Yes, sir.

Q. Production? A. Yes, sir.

Q. Do carloads of culls come into the City of New York as such? A. There is no such thing.

Q. What is a cull, if you know? A. A cull is any bird unfit for human consumption—

3735

The Court: What kind of culls are you talking about, the culls of the Code?

Mr. Heller: That is right.

The Court: But they are defined in the Code.

Mr. Heller: But the definition in the Code says a chicken that is unfit for human consumption.

The Court: There has been testimony here as to various kinds of culls, various people apply different meanings to the word. You had better let him know what kind of a cull you mean.

3736 *Julius Kastein—By Defts.—Direct*

Q. In other words, as defined by the Code, culls are birds which are unfit for human consumption. Do culls, according to that definition, come into the City of New York? A. No, sir. I have had cars come in from which we have thrown out two birds, out of an entire carload, and other cars that they just go through without throwing anything out, all real fine, healthy birds.

3737 Q. Would you say that a thin-breasted chicken is unfit for human consumption? A. No, sir.

Q. Is there a market for thin-breasted chickens? A. Oh, yes, yes. The dressed poultry has a range of from eight to ten cents on their grades also.

Q. Do you know whether more culls, as defined by the Code, have come into the City of New York since the Code has been adopted, or prior to its adoption? A. There is no difference; the situation is the same.

Q. Have you received any benefit from the Code, your firm?

3738 Mr. Rice: I object to that as quite immaterial.

The Court: Are we concerned with the benefits that he has received?

Mr. Heller: Well, it is stated in the indictment, if it please your Honor, that the Code has been adopted and has succeeded in improving conditions, and so I am entitled to inquire.

The Court: Do not ask him what he has received; if he knows whether or not conditions have been improved, all right, but not him individually.

Q. Do you know whether conditions have been improved since the adoption of the Code? A. I am very sorry to state we have a chaotic condition now; they are much worse since the Code went into effect.

Q. No question about that? A. Yes; we have a chaotic condition.

Q. That is uniform throughout all the poultry business? A. It seems so right now.

Q. And you are a member of the Advisory Committee? A. Yes, sir.

Q. Of the Code Authority? A. Yes, sir.

3740

Q. Can you specify any particular benefit that the industry received since the Code has been adopted? A. I do not know of any.

Q. Then am I to understand that it received no benefit at all since the adoption of the Code? A. No, we received no benefit whatsoever; we had hardships, I will say, it is quite a hardship on me.

Q. What do you mean by that? A. We have got assessments to pay, which is hard when we do not make any money, and we do not get any benefits.

3741

Q. And that assessment is paid whether you make any profit or not? A. Oh, yes, we are compelled to pay it.

Q. That depends on the number of pounds that you sell? A. Yes.

Q. And it does not depend upon whether you sell at a loss or whether you sell at a profit, you have to pay nevertheless? A. Yes, sir.

Q. No question about that? A. Yes, sir.

Q. Were you present at a meeting when Mr. Peterson was present a few weeks ago wherein this case was discussed? A. Yes, sir.

Julius Kastein—By Defts.—Direct

3742

Q. Was a certain motion made by Mr. Peterson? A. Motion, yes.

Q. In reference to counsel? A. Yes, sir.

Q. Will you state the nature of the motion?

A. Well, there was an effort made to retain counsel, counsel wanted a certain amount of money.

Q. What was it, what did Mr. Peterson say?

A. Mr. Peterson brought the matter up we had to change attorneys, and this attorney wants nine hundred dollars in order to be retained to work on this Schechter matter.

3743

Q. And did he then make a motion with respect to the payment of that nine hundred dollars? A. We discussed it, and we voted on it. We voted not to pay this nine hundred dollars.

Q. And that was supposed to come out of the Code money? A. Everything is paid from the Code Authority.

Q. And everything that the Code Authority gets is from you members? A. Yes, sir.

Q. And that money is being paid for Mr. Peterson's salary? A. Yes, sir.

3744

Q. And for Mr. Forsmith's salary? A. Yes, sir.

Q. And for every other employee? A. Yes, sir.

Q. Do you know whether the character of the grade or quality of poultry that comes into the City of New York, has that changed in the last few years? A. No, the quality is the same.

Q. No question about that? A. Yes, sir.

Q. Have more poor birds come in the last few years than before? A. No.

Q. What does it depend on, whether you get a good grade or a poor grade coming in? A.

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3745

Well, certain States have certain grades. It all depends on the market. If the market is good they try to ship a little more poultry in; if the market is bad they stay away from New York, that is all. But every State has their own grade. We might at certain times get a few more cars of average poultry, and at other times get a few more cars of Western poultry, and at other times get a few more cars of Indiana poultry. But it doesn't really make much difference in the situation, as it is graded according to States.

3746

Q. Can you compare the grade of poultry that comes into the City of New York with other centers, in other States? A. We get just as good poultry in New York as any other place; as a matter of fact, better poultry.

Q. Better poultry? A. Yes. I know that in the Chicago market they get very little, hardly any. Indiana poultry; the shipments of Indiana poultry there are very light. We get all that stuff, it is concentrated to New York, which is the finest poultry in the United States.

3747

Q. Do you know the relative percentage of poultry used in the City of New York as against the other centers? A. Well. I would say that New York City consumes more poultry than all the other cities combined, in reference to car lots and express lots. that is really the fact, of the United States, New York City, with reference to live poultry.

Q. Do you know whether the price as it is fixed in the City of New York has any particular effect on the price in another locality in the United States? A. The paying price in the country depends on the New York market.

3748

Julius Kastein—By Defts.—Direct

Q. What do you mean by that, on the New York market? A. I mean when the huckster goes out to buy his poultry from the farmer he depends on what the New York market is, he knows what to pay the farmer. He has a certain margin of profit, he knows what it costs to operate, and when he is shipping from the West to New York he gauges the price that he will pay the farmer by what the New York market is.

3749

Q. Then it is the commission merchants who determine the price that the farmers will get? A. The only thing is we sell according to the supply and demand, we do the best we can. When we get a carload here we sell it to the best of our ability.

Q. You sometimes sell at a loss? A. Well, we handle it on consignment, but sometimes we sell it at a loss to the shipper, yes, many a time.

3750

Q. There might be a loss to the farmer? A. Well, the farmer gets an outright price. The huckster buys from the farmer and he sells to the shipper, and the shipper is the one that takes the risk.

Q. Am I to understand that the huckster is the speculator? A. The shipper is the speculator.

Q. And they are located in other States, not in New York? A. Yes, in the west and south.

Q. Not in the City of New York? A. Not in the City of New York.

Q. Then do I understand the farmer gets a definite price? A. The farmer gets a definite price.

Q. That is fixed? A. He gets cash, when the huckster buys from him he gets his money right away.

Q. Is it a fact that the price that the poultry is sold for on the New York market on a particular day determines what the farmer gets that particular day? A. Not the farmer, no, he is not taken into consideration at all one way or the other; it is only the supply and demand here, the situation here makes the price.

Q. Did I ask you whether you sold to the Schechters? A. Yes, I do sell to the Schechters.

Q. You have sold them? A. Yes, sir.

Q. What grade of chickens do you sell them?

A. Well, I sell them fancy poultry, most of the time they come around and want fancy poultry, they want good poultry. I have always sold them good poultry, and he always wants my best stuff. Sometimes he buys some average and some western, but as a matter of fact he has been ready to take Indiana poultry right along, and I have sold him a great deal of that. Also I have sold him some western and some average poultry, all kinds.

3752

Q. Did you ever sell any diseased poultry?

A. We never handle any diseased poultry.

Q. Did you ever sell him any culls? A. We never handle any culls.

3753

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Mr. Kastein, you say you are a member of the Advisory Committee of the Live Poultry Code Authority? A. Yes, sir.

Q. How many members are there on that committee? A. About 15, something like that, I just don't remember, I think it is about 15.

Q. You attend the meetings? A. Every meeting.

3754

Julius Kastein—By Defts.—Cross

Q. And you keep your ears open and hear what is considered at all of these meetings? A. Yes, sir.

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

Q. You are a loyal member of that Committee? A. Yes, sir.

Q. You are loyal to the Code? A. Yes, sir.

Q. You are for the Code, aren't you? A. Right now?

Q. Yes. A. Well, from past performance I do not know if I am.

3755

Q. You are sort of wavering, is that right? A. Yes, sir.

Q. You are losing a little business? A. A little business?

Q. Yes. A. I am losing money and business.

Q. You are losing business to Newark commission men? A. No, I don't care about that.

Q. You do not care about that, you do not care about your pocket-book? A. I do about my pocket-book, yes, but I have got my own business to attend to, and I have got nobody to sell to—

3756

Q. Before the Code came into effect the New York slaughter house operators didn't go over to Newark to purchase poultry, did they? A. They always went to Newark.

Q. Didn't they buy all their poultry from the New York commission men prior to the time the Code went into effect? A. As far as I know some of the business has always gone to Newark.

Q. Very seldom? A. I do not consider that makes any difference.

Q. You do not want all your customers, do you? A. My customers?

Q. Yes. A. I only want my business in my way, whatever business I do I want, whatever goods come to me consigned to me I try to sell.

Julius Kastein—By Defts.—Cross

3757

Q. Isn't it true before the Code came into effect there was virtually no slaughter house operator who went to Newark to purchase his poultry from the Newark commission men, but since the Code came into effect there have been at least 20 of them who deal possibly with the Newark commission men, isn't that true? A. I know——

Q. Yes or no? A. You want me to answer it and I can't answer it that way.

Q. Answer yes or no.

3758

The Court: He says he cannot.

The Witness: I can't answer it that way.

Q. Is it true or is it not true? A. A number of buyers always went to Newark for years.

Q. Isn't it true that the number of local buyers, slaughter house operators who have gone to Newark for their poultry has increased since the Code came into effect? A. I do not know about that.

Q. You do not know about that? A. No, sir.

3759

Q. You wouldn't say they haven't? A. I wouldn't say if they have or have not, but I know that local buyers, New York buyers always went to Newark for years to buy poultry, and I always sell Newark buyers and Jersey buyers. I have got plenty of Jersey buyers on my books now.

Q. Well now, before the Code came into effect you had a buyer by the name of H. Ruben, did you? A. Yes.

Q. A big buyer? A. Yes.

Q. New York buyer? A. Yes.

Julius Kastein—By Defts.—Cross

3760

Q. Bought from you all the time practically, didn't he? A. He bought a lot of poultry from me.

Q. Where is he buying his poultry today? A. I don't know if I can answer that. I can take it up with the Judge—

Q. Where is he buying his poultry today? A. I cannot answer that for a certain reason, because the reason for that is—if the Judge will ask me that—

3761

Q. Are you afraid it might incriminate you? A. It would not help the situation. It is something personal.

Q. Might it incriminate you? A. There is a personal matter in that, that is why he is not buying.

Q. Just personal? A. Yes.

The Court: Now listen to me: If any question is asked here, the answer to which might tend to convict you of a crime or degrade you in the community, you can decline to answer that question.

3762

The Witness: Yes, I can tell—

The Court: Whatever you may say here may be used against you anywhere.

The Witness: Because it is a personal credit situation there, I don't want to bring it up. I can tell you any time you want, personally; I will let you know what it is.

Q. Will it tend to incriminate you? A. It is just a credit matter, that is all it is. I don't want to discuss that in the open.

Mr. Rice: Then, your Honor, I should like an answer.

Julius Kastein—By Defts.—Cross

3763

The Witness: You had better explain that to me.

The Court: Wait a minute.

The Witness: What do you mean by incriminate?

The Court: Incriminate means it might tend to convict you of a crime.

The Witness: Not for a crime, no; not for a crime. It is a credit matter which I do not want to bring in the open.

Mr. Rice: I then, your Honor, I am entitled to an answer.

3764

Mr. Heller: Yes, I think the witness ought to answer.

The Witness: There is a lot of money involved in this thing.

The Court: Why should we advertise their business?

The Witness: That is the idea.

Q. All I am asking you now is whether or not it is not true that H. Ruben is buying his poultry in Newark today? A. There is a reason for that.

3765

The Court: You can answer that.

The Witness: He is buying in Newark, but there is a reason.

Q. You don't want to tell the reason? A. I can tell that to the Judge, if he wants me to.

The Court: If you do not want to tell the reason, if it is a matter of credit, we won't force you to.

Q. Do you know the Kings Poultry Company?
A. Yes.

3766

Julius Kastein—By Defts.—Cross

Q. They used to buy their poultry at West Washington Market before the Code, didn't they?

A. Yes.

Q. And now they are buying in Newark? A. No, sir, I am selling them every day.

Q. They are buying in Newark? A. They are buying in New York.

Q. They are buying in Newark? A. I sell them poultry.

Q. Don't you know they are buying most of their poultry in Newark today? A. No, sir.

3767

Q. Do you know Jake Litvack and David Litvack and all the other Litvacks of the Kings Poultry Market? A. Yes.

Q. Isn't it true they are going to Newark to purchase their poultry today? A. It is not true.

Q. And that they have since the Code came into effect? A. I know they are buying some poultry there, but they are buying the bulk in New York.

3768

Q. Don't you know they have been buying their poultry in Newark since the Code came into effect? A. I have heard they are buying some poultry in Newark, but they came back to New York.

Q. Do you know Meyer Oster? A. Yes, sir.

Q. He bought his poultry in New York before the Code? A. Yes, sir.

Q. Today he is buying in Newark? A. No, sir; I sold him the other day in New York, I sold him the other day.

Q. Just answer my question. Isn't he buying in Newark? A. I don't know if he is.

Q. You would not say that he is not? A. I would not say that he is not.

Q. Do you know Adelstein? A. Yes.

Julius Kastein—By Defts.—Cross

3769

Q. Before the Code he bought in New York, did he not? A. Yes.

Q. From the commission men in New York? A. Yes.

Q. Today he is buying in Newark? A. Today he is buying in New York. I sell him every week, 30 to 40 coops of poultry practically.

Q. Today he is buying in Newark? A. No, sir, he is buying 95 per cent. of his poultry in New York.

Q. You know he is buying some of his poultry in Newark? A. I think he is buying a few coops in Elizabeth.

3770

Q. And the commission men in New York do not get any benefit from that? A. Naturally we do not.

Q. You do not like that, do you? A. As far as I am concerned, it does not make any difference to me.

Q. Do you know I. Frank, Ida Frank? A. Yes.

Q. Where does she buy her poultry? A. The only reason she don't buy it here is because she cannot get it here, we do not sell to her. We had trouble with her with credit.

3771

Q. Where did she buy at the time before the Code went into effect? A. She wasn't in business before the Code.

Q. Oh, she was not? Where is she buying today? A. She is compelled to buy outside of New York, on account of her credit standing.

Q. She is buying outside of New York? A. Only due to her credit standing.

Q. She is buying outside of New York? A. As far as I know she is buying outside of New York.

Q. How about Abe Frenzel? A. Yes.

3772 *Julius Kastein—By Defts.—Cross*

Q. Is he buying outside of New York today?
A. Only for credit reasons.

Q. Only for credit reasons? A. Yes, he owes me money. He hasn't paid his bills.

Q. You would like to keep him here as a customer? A. No, I would not.

Q. You would like to tie him down to New York? A. If he paid me my bills.

Q. Before the Code he bought from you? A. Before the Code?

3773 Q. Yes. A. Sure, if I sold him by credit; if I sold him by credit, he would buy from me today.

Q. There are about 20 large wholesale slaughter house operators who bought from New York commission men before the Code, who are buying now in Newark today, aren't there? A. Yes, and I can go on record by saying only for credit reasons.

Q. Let us go back to these meetings of the Code Advisory Committee. You say that you are a loyal member of the Committee? A. Yes, sir.

Q. You hear everything that goes on there? A. Yes, sir.

3774 Q. Those meetings are behind closed doors, aren't they? A. Yes, sir.

Q. They are secret meetings? A. Yes, sir.

Q. Nobody else is admitted? A. Yes, sir.

Q. Where you here the other day when Mr. Heller examined Mr. Dale, the associate counsel? A. No, sir.

Q. You know he examined him, don't you? A. No, sir.

Q. You know he asked him about the fee which he was offered by Mr. Peterson? A. No, sir.

Q. To help in this case? A. No, sir.