

97. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: Prior to the adoption of said Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry Industry of the Metropolitan Area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other states, contaminated and demoralized the character thereof, substantially diminished the volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils. The failure and refusal by the defendants herein to submit reports relating to the range of daily prices and volume of sales, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial shipments of such poultry.

98. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., violated Article VIII, Section 3 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute

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of the United States in such case made and provided.

## WITHHOLDING REPORTS ON HOURS WORKED

*Fortieth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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99. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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100. The aforesaid Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., hereby made defendants in this Count, wilfully, knowingly and unlawfully failed and refused to make any monthly reports or other reports to the Code Supervisor regarding the number of hours worked by their employees, during the period from May 16, 1934 to and including the time of filing this indictment, in violation of Article III, Section 4 of said Code.

101. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment in the following manner, that is to say: Prior to the adoption of said Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry Industry of the Metropolitan Area, and obstructed the free flow of interstate commerce in live poultry into the State of New

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York from other states, contaminated and demoralized the character thereof, substantially diminished the volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils. The failure and refusal by the defendants herein to make such reports regarding the number of hours worked by employees of the defendants herein, obstructs and prevents the accomplishment of the purposes of said Code and of said National Industrial Recovery Act, encourages and causes all of the practices prohibited by said Code, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial shipments of such poultry.

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102. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., violated Article III, Section 4 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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#### ILLEGAL WAGES

*Forty-first Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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103. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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104. During the week ending on or about May 18, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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105. Said violation and the transactions in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: The payment by the defendants herein of wages at a rate less than 50¢ per hour to employees working in the transactions relating to the purchase of poultry coming into the State of New York from other states and the handling and sale thereof at the said wholesale slaughterhouse operated by the defendants herein enables the defendants herein to obtain unfair advantages over other slaughterhouse men, and encourages and causes other slaughterhouse men to engage in the same and all other practices prohibited by said Code,

and thereby obstructs and prevents the accomplishment of the purposes of said Code, and of the said National Industrial Recovery Act, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial interstate shipments of such poultry.

106. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Forty-second Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

107. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

108. During the week ending on or about May 25, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street,

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Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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109. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

110. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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*Forty-third Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

111. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

112. During the week ending on or about June 1, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them

at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

113. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

114. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Forty-fourth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

115. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

116. During the week ending on or about June 8, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them

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at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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117. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

118. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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*Forty-fifth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

119. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

120. During the week ending on or about June 15, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person em-

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ployed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

121. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

122. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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*Forty-sixth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

123. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

124. During the week ending on or about June 22, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants

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in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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125. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

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126. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Forty-seventh Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

127. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

128. During the week ending on or about June 29, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron

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Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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129. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

130. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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*Forty-eighth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

131. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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132. During the week ending on or about July 6, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

133. Each and every allegation contained in paragraph 105 of this indictment is here re-alleged with the same force and effect as though here set forth in full.

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134. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Forty-ninth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

135. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15

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of this indictment is here realleged with the same force and effect as though here set forth in full.

136. During the week ending on or about July 13, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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137. Each and every allegation contained in paragraph 105 of this indictment is here re-alleged with the same force and effect as though here set forth in full.

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138. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fiftieth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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139. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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140. During the week ending on or about July 20, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

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141. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

142. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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## EXCESSIVE HOURS

*Fifty-first Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

143. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

144. During the week ending on or about May 25, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

145. Said violation and the transactions in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, in the following manner, to-wit: Permitting such employees to work more than 48 hours per week enables the defendants herein to obtain unfair advantages over other slaughterhouse men and thereby encourages and causes other slaughterhouse men to engage in the same and all other

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practices prohibited by said Code, and thereby obstructs and prevents the accomplishments of the purposes of said Code and said National Industrial Recovery Act, causes a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial interstate shipments of live poultry.

146. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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*Fifty-second Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

147. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

148. During the week ending on or about June 1, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person

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being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

149. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

150. And so the Grand Jurors aforesaid, upon their oaths do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-third Count*

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And the Grand Jurors aforesaid, upon their oaths, do further present that:

151. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

152. During the week ending on or about June 8, 1934 the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a

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person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

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153. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

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154. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code, in transactions affecting the interstate commerce in live poultry described in paragraph 2, 3, 4, and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-fourth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

155. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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156. During the week ending on or about June 15, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

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157. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

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158. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-fifth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

159. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15

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of this indictment is here realleged with the same force and effect as though here set forth in full.

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160. During the week ending on or about June 22nd, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

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161. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

162. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-sixth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

163. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

164. During the week ending on or about June 29, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

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165. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

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166. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraph 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to

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the form of the statute of the United States in such case made and provided.

*Fifty-seventh Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

167. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

**341**                 168. During the week ending on or about July 6, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

169. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

170. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code, in transactions affecting the interstate commerce in

live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-eighth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

171. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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172. During the week ending on or about July 13, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

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173. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

174. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, vio-

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lated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

*Fifty-ninth Count*

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And the Grand Jurors aforesaid, upon their oaths, do further present that:

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175. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

176. During the week ending on or about July 20, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

177. Each and every allegation contained in paragraph 145 of this indictment is here re-alleged with the same force and effect as if here set forth in full.

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178. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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## ILLEGAL SALES TO PERSONS NOT LICENSED

*Sixtieth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

179. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 is here realleged with the same force and effect as though set forth in full.

180. On repeated occasions during the period from May 16, 1934, up to and including the filing of this indictment, the exact date of said occasions being to the Grand Jurors unknown, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter sold live poultry to Joseph Schechter and/or the Schechter Live Poultry Market, Inc., both of whom are persons not legally entitled to conduct the business of handling live poultry and not having a permit or license to handle, sell, or slaughter live poultry as is required by the ordinances of the City of New York and by the rules and regulations of

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*Indictment*

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the Board of Health of the City of New York, which said sales were in violation of Article VII, Section 15 of said Code.

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181. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs, 2, 3, 4 and 5 of this indictment in the following manner, that is to say: The purpose of Article VII, Section 15 of said Code, is to limit the marketing and distribution of live poultry in the Metropolitan Area to persons bound by and complying with the health regulations of the City of New York and all other health regulations within the Metropolitan Area. The marketing and distribution of live poultry by other persons tends to encourage and increase the marketing, distribution and consumption of unfit poultry, fosters the existence of an undisciplined class of poultry dealers not readily subject to regulation by governmental bodies, and thereby causes the transportation in interstate commerce into the State of New York from other states of substantial amounts of unfit poultry which would otherwise be destroyed prior to such interstate transportation, diminishes the interstate transportation of healthy and edible poultry, disrupts the normal and orderly flow of live poultry, and diverts substantial shipments thereof.

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182. And so the Grand Jurors, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter violated Article VII, Section 15 of said Code in transactions affecting the interstate commerce, against the peace and dignity of the United

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*Docket Entries*

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States and contrary to the form of the statute  
in such case made and provided.

Dated July 26, 1934.

A True Bill:

MEYER DOMBEK,  
Foreman.

LEO J. HICKEY,  
United States Attorney.

WALTER L. RICE,

Special Assistant to the Attorney General. 356

**Docket Entries**

C. 36041

7/26-34 Indictment filed.

Aug 1-34 Before Galston J. Defendants arraigned plea not guilty A L A Schechter Poultry Corp. enters a plea not guilty by its President Joseph Schechter, Schechter Live Poultry Inc. enters a Plea not guilty by its President Alex Schechter. Ten days allowed to defendants to withdraw Plea not guilty and make such motion as may be required. Bail fixed at 2500 each as to defts. Joseph and Alex Schechter and 1500 each as to Martin and Aaron Schechter. Defts. ordered to return Sept 5/34.

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Aug 3-34 Notice of Appearance filed.

Aug 11-34 Demurrer filed.

Aug 14-34 Notice of Hearing of demurrer filed.  
Defendants withdraw Plea not guilty. Demurrer noted.

**358***Docket Entries*

Aug 16-34 Before Campbell J. Hearing on demurrer. Demurrer argued. Decision Reserved. Submit briefs by Aug 18-34.

Aug 28-1934 By Campbell J. Decision rendered overruling demurrer as to certain portions of indictment and sustaining demurrer as to others. (See opinion book)

Aug 30-1934—Notice of motion filed for a bill of particulars etc.

Aug 31-34 By Campbell J. Order on demurrer filed and entered.

**359** Aug 31-1934 Before Campbell J Defts. present —plea not guilty. Def. A L A Schechter Corp enters a plea of not guilty by its president Joseph Schechter Deft. Schechter Live Poultry Market enters a plea of not guilty by its president Alex Schechter. Bail continued and appearances same. Defts ordered to return Sept 5-1934.

Sept 4-1934—Before Campbell J Hearing on motions for a Bill of particulars—Adjd to Sept 5-1934.

**360** Sept 5-1934—Before Byers J. Hearing on motion for a bill of particulars—motion argued and submitted—Submit all papers by Sept 17-1934.

Sept 5-1934 Byers J. Defts. present ordered to return Sept 18-1934.

Sept 10-1934 By Byers J. Decision rendered denying motion for a bill of particulars etc. Settle order on 1 days notice. (See memo attached to papers.)

Sept 14-1934 By Byers J. Order filed and entered on motion for bill of particulars.

Sept 18-1934 Byers J. Defts. present ordered to return Sept 24-1934.

Sept 20-1934 Notice that pltf will present proof upon counts 1-5 inclusive, counts 24 to 39 inclusive, and counts 41 to 60 inclusive upon trial of action.

Sept 24-1934 Byers J. Defendants present Ordered to return Oct 18-1934.

Oct 8-1934 Campbell J Defendants present ordered to return Oct 17-1934.

Oct 17-1934 Before Campbell J case called. Defts. present. Trial ordered. Mr. Heller moves to dismiss Counts 4 and 5. Motion denied.

Oct 18-1934 Trial adjd to Oct 18-1934 Before Campbell J. Case called. Defts. present. Trial resumed. Trial adjd. to Oct 19-1934.

Oct 19-1934 Before Campbell J. Case called. Defts. present. Trial resumed and adjd to Oct 22/34 at 10 A. M.

Oct 22-1934 Before Campbell J. Case called—defts. present—trial resumed and adjd to Oct 23-1934.

Oct 23-1934 Before Campbell J. case called—defts. present. Trial resumed and adjd to Oct 24, 1934.

Oct 24-1934 Before Campbell J. Case called. Defts. present. Trial resumed. Mr. Heller moves for a directed verdict. Motion denied. Mr. Heller moves to dismiss the indictment. Motion denied. Trial adjd to Oct 25-1934 at 12 noon.

Oct 25-1934 Before Campbell J. Case called defts. present—trial resumed and adjd to Oct 26-1934.

Oct 26-1934 Before Campbell J. Case called. defts. present trial resumed. Trial adjd to Oct 29-1934-10 A. M.

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*Docket Entries*

Oct 29-1934 Before Campbell J. Case called. defts present. trial resumed and adjd to Oct 30-1934.

Oct 30-1934 Campbell J. Case called Defts. present—Trial resumed. Mr. Heller renews motion to dismiss the indictment. Motion granted as to counts 45-47-49-50-54-56-58 and 59.

Oct 31-34 Trial adjd. to Oct 31-34 by Campbell J. Order for sustenance filed and entered.

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Oct 31-1934 Campbell J.—Case Called. Defts. present. Trial resumed. Jury not having reached a verdict at 11:30 P. M. The court declares a recess until Nov 1-1934 at 10 A. M.

Nov 1-1934 By Campbell J. Order filed and entered for proper Lodging, etc.

Nov 1-1934—Before Campbell J.—case called Defts. present. Trial resumed. Jury return and rendered a verdict of guilty as to each of counts 1-2-4-5-24-25-26-27-28-29-30-31-32-33-38-39-46 and 55 and 60 as to each of defts named in each of said counts and not guilty as to counts 3-34-35-36-37-41-42-43-44-48-51-

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52-53 and 57 as to each deft. named. Mr. Heller moves to have Jury poled. Motion granted. Jury poled and each render a verdict as given by the foreman on consent of Mr. Heller. Mr. Heller moves to have verdict set aside. Motion denied. Defts. continued on bail to Nov 7-1934 for sentence. Oct. Term extended to and including Nov 7-1934.

Nov 7-1934 Campbell J. Defts. present. Sentence adjd to and defts. ordered to return Nov 9-1934 at 10:30 A. M.

October Term 1934 extended to and including Nov 9-1934.

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*Docket Entries*

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Nov 9-1934 Before Campbell J. Defts. present.

Defts. Joseph Schechter sentenced to be imprisoned for 3 months and to pay a fine of \$1000 on count one without costs and stand committed and to pay a fine of \$100 on each of counts 27-28 and 39 without costs and stand committed.

Deft. Martin Schechter sentenced to be imprisoned for one month and to pay a fine of \$500 on count one without costs and stand committed and to pay a fine of \$100 on each of counts 2-4-5-24-25-26-29-30-31-32-33-38-39-46-55 and 60 without costs and stand committed. Deft. Alexander Schechter sentenced to be imprisoned for 2 months and to pay a fine of \$500 on count one without costs and stand committed and to pay a fine of \$100 on each of counts 4-5-25-31-32-33-39-46-55 and 60 without costs and stand committed.

Deft Aaron Schechter sentenced to be imprisoned for 1 month and to pay a fine of \$500 on count one without costs and stand committed and to pay a fine of \$100 on each of counts 2-4-5-24-25-26-29-30-31-32-33-39-46-55 and 60 without costs and stand committed.

Deft. A. L. A. Schechter Poultry Corp. sentenced to pay a fine of \$25 on each of counts 1-2-4-5-24-25-26-29-30-31-32-33-38-39-46-55 and 60 without costs.

Deft. Schechter Live Poultry Market Inc. sentenced to pay a fine of \$25 on each of counts 1-27-28 and 39 without costs—sen-

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*Docket Entries*

tence of imprisonment on count 1 as to each  
deft. to be executed in Detention Headquar-  
ters N. Y. City. Writs of committment is-  
sued.

Nov 9-1934—By Campbell J Order filed and  
entered fixing bail of deft. Joseph Schechter  
at \$4000 of deft Martin Schechter at \$3000  
—of deft Aaron Schechter at \$3000 and of  
deft Alex Schechter at \$4000—

Nov 9-1934 Notice of appeal filed.

371 Nov 10-1934 Copy of notice of appeal together  
with Clerk's statement mailed to Clerk U S  
Circuit Court of Appeals.

Nov 10-1934 By Campbell J Order filed and  
entered directing attorneys to appear before  
Judge on Nov 15-1934 at 10 A. M.

Nov 10-1934 Certified copy of order of Nov  
10-1934 mailed to atty. for appellants and  
another certified copy served on U. S. Attys  
office.

Nov 22-1934 Filed Assignments of Error.

Dec 6-1934 Filed order extending defendants  
time to file and settle bill of exceptions.

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**Demurrer**

IN THE DISTRICT COURT OF THE UNITED  
STATES

EASTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

*against*

A. L. A. SCHECHTER POULTRY CORPO-  
RATION, SCHECHTER LIVE POULTRY  
MARKET, JOSEPH SCHECHTER, MAR-  
TIN SCHECHTER, ALEX SCHECHTER,  
and AARON SCHECHTER.

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COMES NOW, the Defendants, A. L. A. SCHECHTER Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter and Aaron Schechter, by their attorney, Joseph Heller, and by leave of Court first had and obtained, the following defendants, to wit:— A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, withdraw their plea of not guilty heretofore entered herein, and file their demurrer to the indictment herein:

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All of the defendants herein demur without waiving the right to plead not guilty, to the indictment in the above entitled cause and say that the indictment herein and the matters and things therein set forth are as therein set forth and alleged not sufficient in law to compel them to answer thereto, and all of the defendants herein therefore demur to each and every of the sixty

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*Demurrer*

separate counts thereof, severally without specifically repeating their objections to each of said counts by special and separate reference thereto, on the following grounds and for the following reasons to wit:

## As to ALL OF THE COUNTS

I. For that the said acts charged in the said indictment have no connection with Interstate Commerce made unlawful by any statute of the United States.

377 II. Said indictment is too general, vague, indefinite, and uncertain that it could not be pleaded as res adjudicata or former jeopardy.

III. That all of said counts do not charge or accuse any or all of the defendants with the commission of any Federal offense, and wholly fail to state any offense against the laws of the United States of America.

IV. That said indictment and each and every count thereof does not set forth the necessary elements of the offense which is sought to be charged.

378 V. Said indictment and each count thereof are too general, vague and indefinite and does not sufficiently advise the said defendants to the charges against them that they may prepare their defense.

VI. Attempted Statements of Fact seeking to show a connection of these defendants with an alleged conspiracy are conclusions of law and not statement of facts.

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*Demurrer*

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VII. The said indictment is insufficient to allege a conspiracy to violate the law of the United States in that the alleged conspiracy relates solely to intrastate commerce and the defendants are likewise solely engaged in intrastate commerce.

VIII. No facts are alleged in the indictment from which it can be determined that the poultry actually sold by the defendants were being moved or transported by defendants in interstate commerce or were a shipment or part of a shipment being transported in interstate commerce.

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IX. The indictment contains conclusions of the pleader and does not state facts upon which such conclusion is based.

X. The indictment does not allege the object or purpose of the conspiracy and the alleged object of the offense against the United States.

XI. Each count is duplicitous.

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XII. The alleged conspiracy relates to matters entirely within the jurisdiction of the laws of the State of New York, and not within the inhibition of any laws of the United States of America.

XIII. The indictment is vague and indefinite and uncertain in what manner such conspiracy restrained interstate commerce.

XIV. The law which is claimed to have been violated by these defendants is unconstitutional and void in that it violates the Eighth Amendment to the Federal Constitution in that it imposes excessive fines, and cruel and unusual punishment is inflicted.

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*Demurrer*

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XV. The code, orders and regulations, which is alleged to have been violated by the defendants herein is unconstitutional and void in that such code, orders, rules and regulations, made and provided, is the exercise by the President, Code Administrator, Code Authority, Code Supervisor, Boards and Committees, their agents and representatives, of legislative power as distinguished from administrative acts of investigations and regulation, all legislative powers by Article I Section 1 of the Constitution being vested in Congress and which legislative power may not be abdicated or delegated by Congress.

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XVI. Section 3 Subdivision b7 of the act of June 16-1933, National Industrial Recovery Act and Executive Order Approving of the Code date as of April 13-1934, purporting to prohibit under penalty of fine and imprisonment the violation of the same are unconstitutional and void as repugnant to the Fifth Amendment to the Constitution, provideng that "No person shall be deprived of \* \* \* liberty or property without due process of law; the declaration by this act that a serious emergency exists is unconstitutional and void as repugnant to the Fifth Amendment, in so far as the declaration of such emergency affects the Constitutional rights of any person; for the reason that the Constitution does not contain any such power to so legislate, or to suspend or limit Constitutional guarantees by virtue of any declared emergency.

XVII. The executed orders and the Code referred to in this indictment are unconstitutional and void or repugnant to Article I, Section I of the United States Constitution, being an at-

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*Demurrer*

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tempted exercise of an authorized delegation of legislative power to the President, Code Authorities, and persons designated by the President to carry out the power and in so far as such attempted exercise of unauthorized delegation of legislative power affects the Constitutional rights of any person, such acts, orders and codes are further repugnant to the Fifth Amendment.

XVIII. The defendants specifically demur to counts 6 to 23 inclusive, 34, 35, 36, 37, 39, and 41 to 60 inclusive, as not stating any violation of the Code or crime set out in the indictment, this without prejudice to the General Demurrer to the entire indictment as heretofore set out.

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WHEREFORE, the defendants Joseph, Martin, Alex, and Aaron Schechter, and A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc. pray judgment that such indictment and each of the counts thereof, be dismissed and quashed, and that the demurrer be sustained.

Respectfully submitted,

387

JOSEPH HELLER,  
Attorney for Defendants,  
Office & P. O. Address,  
51 Chambers Street,  
Borough of Manhattan,  
City of New York.

**388 Order Sustaining Demurrer in Part and  
Overruling in Part**

At a Stated Term of the United States District Court held in and for the Eastern District of New York, at the Federal Building, Borough of Brooklyn, City, State and Eastern District of New York, on the 31st day of August, 1934.

Present—Hon. MARCUS B. CAMPBELL,  
389 *United States District Judge.*

UNITED STATES OF AMERICA,  
*Plaintiff,*  
*against*  
JOSEPH SCHECHTER, *et al.*,  
*Defendants.*

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A demurrer having been filed by the above named defendants to the indictment herein, and the same having come on to be heard before me, and after hearing Joseph Heller, Esq., in support of said demurrer and Leo J. Hickey, Esq., United States Attorney for the Eastern District of New York by Walter L. Rice, Special Assistant to the Attorney General, of counsel, in opposition thereto, and after reading and filing all papers, and after due deliberation, it is

ORDERED, that the demurrer be sustained as to that portion of the indictment denominated as Sixth Count to Twenty-Third Count both in-

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*Decision*

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clusive, being Eighteen counts in all, and to the Fortieth Count, and the demurrer is in all other respects, and as to all other Counts, overruled, with exceptions to all of the defendants and the United States of America.

MARCUS B. CAMPBELL,  
United States District Judge.

**Decision**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA  <i>against</i>  JOSEPH SCHECHTER, <i>et al.</i>	Criminal 36041 August 28, 1934
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Leo J. Hickey, United States Attorney.  
 Harold M. Stephens, Assistant Attorney General.  
 Walter L. Rice, Special Assistant to the Attorney General, of counsel for the United States.

Joseph Heller, attorney for defendants.  
 Joseph Heller and Jacob E. Heller, of counsel.

CAMPBELL, D. J.

On July 26, 1934, the grand jury of this district returned an indictment against six defendants, Joseph, Martin, Alex and Aaron Schechter,

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*Decision*

A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., charging conspiracy to violate the National Industrial Recovery Act and the Code of Fair Competition for the Live Poultry Industry, for the Metropolitan Area in and about the City of New York, and substantive violations thereof.

395

The Code of Fair Competition for the Live Poultry Industry for the Metropolitan Area in and about the City of New York was approved by the President of the United States, on April 13, 1934, and it became effective on April 23, 1934, and is divided into eight Articles.

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Article 1 deals with the purposes of the code; Article 2 defines certain terms used in the code; Article 3 deals with the hours which employees may be engaged in the industry; Article 4 deals with the scale of wages to be paid to employees of the industry; Article 5 deals with general labor provisions which are to govern the industry; Article 6 deals with administrative matters concerning the industry; Article 7 provides for certain trade practices which the code prohibits; Article 8 deals with general provisions respecting the industry.

The defendants were arrested, pleaded not guilty, and were released on bail, and in pursuance of leave given, they have withdrawn their pleas of not guilty and filed a demurrer to the indictment.

The indictment contains what are alleged as sixty counts.

The defendants are each charged with the violation of the counts, the numbers of which are placed after their names:

Joseph Schechter, Counts 1, 27, 28, 37, 39, 40.

Martin Schechter, Counts 1-26, both inclusive, 29-36, both inclusive, 38-60, both inclusive.

Alex Schechter, Counts 1, 4-23, both inclusive, Counts 25, 31-33, both inclusive, 35 and 36, 39-60, both inclusive.

Aaron Schechter, Counts 1 and 2, 4-26, both inclusive, 29-33, both inclusive, 35 and 36, 39-60, both inclusive.

A. L. A. Schechter Poultry Corporation, Counts 1-26, both inclusive, 29-33, both inclusive, 38-60, both inclusive.

Schechter Live Poultry Market, Inc., Counts 1, 27, 28, 39, 40. 398

The first count charges all of the defendants with conspiracy to commit various offenses against the United States (R. S. 5440; 18 U. S. Code, 88) by agreeing and conspiring (a) to sell poultry unfit for human consumption, (b) to sell uninspected poultry, (c) to engage in the practice of "selective killing", (d) to intimidate Code Authority Investigators, (e) to file false and fictitious sales reports, (f) to decline to furnish reports on hours worked by employees, (g) to pay illegal wages, (h) to permit employees to work excessive hours, and (i) to obstruct the Code Supervisor from carrying out his duties.

The remaining fifty-nine counts charge as separate substantive offenses substantially the same violations as those involved in the conspiracy count as follows, the Article and Section of the Code of the Industry alleged to be violated being as follows:

Counts 2 and 3 deal with sales of unfit poultry (Article 7, Section 2); Counts 4 to 23 deal with sales of uninspected poultry (Article 7, Section 22); Counts 24 to 33 deal with violations of

**400***Decision*

straight killing (Article 7, Section 14); Counts 34 to 37 deal with threats, coercion, and intimidation (Article 7, Section 21).

Count 38 deals with false report (Article 6, Sections 1 and 2; Article 8, Section 3).

Count 39 deals with withholding sales reports (Article 8, Section 3).

Count 40 deals with withholding reports of hours worked (Article 3, Section 4); Counts 41 to 50 deal with illegal wages (Article 4, Sections 1 and 2); Counts 51 to 59 deal with excessive hours (Article 3, Section 1); Count 60 deals with illegal sales to persons not licensed (Article 7, Section 15).

The demurrer filed by the defendants sets forth eighteen grounds, and following the method pursued by counsel for the Government, I will classify them for discussion as follows; placing in parentheses the number of the paragraph of defendants' demurrer being considered.

**I. Recovery Act and Code Unconstitutional:**

- 402** 1. Section 3 (f) of the Act violates Fifth Amendment; and national emergency does not warrant depriving persons of constitutional rights. (16).
- 2. Act violates Eighth Amendment by imposing fines. (14).
- 3. Improper delegation of power in violation of Sec. 1, Art. 1, of Constitution. (15).
- 4. Improper delegation of power in violation of the Fifth Amendment. (17).

**II. No Interstate Commerce.**

- 1. Indictment charges no connection with interstate commerce made unlawful; i. e., Code is ultra vires the Act. (1).

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2. Conspiracy relates solely to intrastate commerce and defendants are engaged in intrastate commerce. (7).

3. No allegation that poultry sold by defendants was moving in interstate commerce. (8).

4. Conspiracy relates to state laws rather than federal. (12).

**III. *No Violation of Any Federal Statute.***

1. Counts fail to state Federal cause of action. (3).

2. Elements of offense not charged. (4).

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**IV. *Indictment Defective.***

1. Too vague and general to be pleaded as res judicata or former jeopardy. (2).

2. Too vague and general to prepare defense. (5).

3. States conclusions as to conspiracy rather than the facts thereof. (6).

4. Object of conspiracy and offense not alleged. (10).

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5. Vague as to how conspiracy restrained interstate commerce. (13).

6. Pleader states conclusions without facts on which they are based. (9).

7. Each count is duplicitous. (11).

8. Counts 6-23, both inclusive, 34, 35, 36, 37, 39, 41-60, both inclusive, do not allege violations of the code. (18).

The National Industrial Recovery Act (Act of June 16, 1933, Title 15 Ch. 15, Sections 701 to 712 inclusive, U. S. C.), is based on the Commerce Clause of the Constitution, not the Wel-

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*Decision*

fare Clause, and the first question to be considered is, whether the Act is a valid exercise of the power of Congress to regulate commerce among the states.

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The national powers such as the commerce power are supreme in the field. Railroad Commission of Wisconsin *v.* Chicago, B. & Q. R. R. Co., 257 U. S. 563. Congress in the exercise of its major powers, including the commerce power, has incidental powers tantamount to the police power of a State. Hoke *v.* United States, 227 U. S. 308; Hamilton *v.* Kentucky Distilleries Co., 251 U. S. 146, 156, 157. Congress is the sole judge of the necessity of its laws, Farmers' and Mechanics' National Bank *v.* Dearing, 91 U. S. 33, and the courts have refused uniformly to question the means adopted by Congress to accomplish its purposes. McCulloch *v.* Maryland, 4 Wheat. 418; Legal Tender Case, 110 U. S. 421, 441.

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Within the limits of the commerce power, Congress is no more restricted by the Fifth Amendment than are State legislatures by the Fourteenth Amendment. Nebbia *v.* New York, 54 S. Ct. 505, 291 U. S. 502, 537; Calhoun *v.* Massie, 253 U. S. 170, 175.

If the Recovery Act is to be declared obnoxious to the Fifth Amendment, it can only be because there is an unreasonable, arbitrary, or capricious regulation, or if its provisions bear no real or substantial relation to the object sought to be attained.

The first section of the Recovery Act provides:

"A national emergency productive of widespread unemployment and disorgan-

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ization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people is hereby declared to exist."

This declaration of an emergency contained in the Act is not conclusive upon the courts, but is entitled to great respect, *Block v. Hirsch*, 256 U. S. 135, and the national emergency so declared has been noticed by the courts. *Appalachian Coals, Inc. v. United States*, 288 U. S. 344; *United States v. Spotless Dollar Cleaners, Inc.* (S. D. N. Y., March 31, 1934).

An emergency does not create power, but it may furnish the occasion for the exercise of power conferred by the Constitution. *Home Building & Loan Assn. v. Blaisdell*, 78 L. Ed. 255, 290 U. S. 398.

Following the declaration of the emergency is set forth, the purposes of the Act, and these findings by Congress, incorporated as they are in the body of the Act, must be given full recognition. *Hill v. Wallace*, 259 U. S. 44; *Chicago Board of Trade v. Olsen*, 262 U. S. 1; *Stafford v. Wallace*, 258 U. S. 495; *Nebbia v. New York*, *supra*; *Block v. Hirsch*, *supra*; *United States v. Calistan Packers*, 4 Fed. Supp. 660.

Section 3 (f) of the Recovery Act provides:

"When a code of fair competition has been approved or prescribed by the President under this chapter, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be

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fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense."

Penalty statutes of this character have been upheld as valid. *United States v. Clyde S. S. Co.*, 36 Fed. (2d) 691. Cert. Denied, 281 U. S. 744.

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Penalties for recurrent violations do not make fines excessive. *Badders v. United States*, 240 U. S. 391; *Gulf, Colorado, &c. Ry. v. Texas*, 246 U. S. 58.

I do not overlook the fact that a statute may be obnoxious which imposes penalties so great, or conditions so onerous, that no one will dare test its constitutionality, for fear that his opinion may be wrong and the severe penalty be inflicted. *Ex parte Young*, 209 U. S. 123; but that is not the situation here.

414

See *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, in which the Supreme Court held that, in view of the fact that the defendant's assets were valued at more than \$40,000,000, penalties of \$1,623,500 imposed by a Texas Court were not excessive, even though most of the penalties imposed accumulated at the rate of \$1500 per day.

This point seems to be raised prematurely if defendants merely fear that the aggregate sentence that may be imposed may be excessive. *Wadley Southern R. v. Georgia*, 235 U. S. 651, 662.

The provision for a \$500 fine for each offense does not violate the Fifth and Eighth Amendments.

The only delegation of powers involved in this case is the President's approval of the Code, and

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we are not concerned with any delegation of powers which include orders, regulations and rules suggested by the defendants.

The first section of the Act declares the policy of Congress to be:

“To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and conserve natural resources.”

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Section 3 (a) of the Act provides:

“Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry.”

Section 3 (b) provides that such approved codes

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shall be "the standards of fair competition for such trade or industry".

The code of fair competition here alleged to be violated was approved by the President April 13, 1934, after joint hearings conducted by the Agricultural Adjustment Administration and the Industrial Recovery Administration.

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This brings us to the real question at issue, whether Congress by the provisions of Section 1 of the Act, *supra*, has set up adequate standards to warrant the delegation of power involved in the President's act in approving the code. *Hampton & Co. v. United States*, 276 U. S. 394.

Article 1, Sec. 1, of the Constitution provides:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

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Congress may, without improperly delegating legislative power, set up a general standard and delegate to administrative bodies the power to make such standard effective. *Field v. Clark*, 143 U. S. 649; *Buttfield v. Stranahan*, 192 U. S. 470; *Union Bridge Co. v. United States*, 204, U. S. 364; *United States v. Grimaud*, 220 U. S. 506.

The courts have frequently recognized the necessity of delegating substantial powers to carry out the legislative intent.

In *Hampton & Co. v. United States*, *supra*, a delegation of power to the President to reclassify tariff duties established by the Tariff Act of 1922, after investigating the difference between foreign and domestic costs of production, and other competitive factors, was sustained.

In *Field v. Clark*, *supra*, there was sustained the delegation of power to the President, to sus-

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pend the free importation of certain commodities which he might "deem to be reciprocally unequal or unreasonable" where foreign countries were imposing duties on American products.

In *Buttfield v. Stranahan*, *supra*, the Tea Inspection Act of 1897, authorizing the Secretary of the Treasury to establish standards of purity for imported tea, and to exclude all teas not measuring up to such standards, was sustained.

In *United States v. Grimaud*, *supra*, there was sustained the power given to the Secretary of Agriculture, in a forestry conservation statute, to regulate the occupancy of, and use of, a reservation, and to preserve the forest thereon from destruction, and punishment was provided for violation thereof.

In *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, there were approved the flexible provisions of the Tariff Act of 1922.

In *Intermountain Rate Cases*, 234, U. S. 476, a delegation of broad discretionary powers in reference to the long and short haul clause was upheld.

In *Avent v. United States*, 266, U. S. 127, there was approved the power delegated to the Interstate Commerce Commission to grant certain preferences.

In *Union Bridge Co. v. United States*, 204 U. S. 364; *Monongahela Bridge v. United States*, 216 U. S. 177; the delegation of power to the Secretary of War to require alteration or removal of bridges which unreasonable obstruct navigable water, was sustained.

In *Ryan v. Amazon Petroleum Corporation*, 71 Fed. 2nd, 1, 7 (C. C. A. 5, May 29, 1934, there was sustained the broad power vested in the

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President under Section 9 (c) of the Industrial Recovery Act, to prohibit transportation of excess oil, and the redelegation of that power to the Secretary of the Interior, in accordance with Section 2 (a) of the Act.

No redelegation of power is involved in this case.

425

In *United States v. Calistan Packers*, *supra*, the District Court for the Northern District of California upheld the delegation of power by the Agricultural Adjustment Act to the Secretary of Agriculture, to issue licenses to persons engaged in handling agricultural commodities, and providing for revocation and fines of \$1000. per day for violation thereof.

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Not only would it be impracticable, but virtually impossible, for Congress to perform the duties which it delegated to the President and his agents. The investigations, hearings, negotiations, enactment of codes and code amendments for the very large number of industries, operating under dissimilar conditions and requiring different treatment, require immediate attention, and to require Congress to assume those duties would seriously interfere with, if it did not deprive it of its power to effectively regulate commerce.

I am not unmindful of, nor have I overlooked the cases cited on behalf of the defendants, to which I make no reference.

It is beyond dispute that Congress cannot delegate legislative power to the President, therefore it is unnecessary to discuss the cases cited by defendants in support of that contention. *Field v. Clark*, *supra*, and *Hampton v. United States*, *supra*, cited by defendants on the ques-

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tion of delegation of power, have been considered by me and cited in support of my opinion.

The United States *v.* Bob Lieto, United States District Court, Northern District of Texas, February 16, 1934, cited by the defendants, from the observation quoted, "The controversy herein is between a humble person who asserts his right to carry on his little business in a local community, and in a local fashion, without being arrested and punished for a mythical indirect effect upon interstate commerce", shows that the facts in that case are clearly distinguishable from those in the case at bar.

The citation by defendants of an opinion by U. S. D. J. Dawson, of Louisville, Kentucky (May 18, 1934), without stating the name of the case or where reported, makes it impossible for this Court to do more than say, that from the quotations in defendants' brief, that opinion was based largely upon the General Welfare Clause of the Constitution, which is not in issue here.

In United States *v.* Suburban Motor Service Corporation, 5 Fed. Supp. 798, the National Industrial Recovery Act was not declared unconstitutional. At page 802 Judge Barnes says:

"But, while the principle that legislative power may not by Congress be delegated to other agencies of government has been frequently announced, yet decisions which have held acts of Congress invalid because of violation of the principle are difficult or impossible to find. Accordingly, this court, being one of the inferior courts contemplated by the Constitution, does not feel justified in declaring the act in question invalid because of the violation of the

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principle of constitutional law prohibiting the delegation of legislative power."

In *Amazon Petroleum Corporation v. Railroad Commission*, 5 Fed. Supp. 639, cited by defendants, Judge Bryant, at page 649, said:

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"Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction, that this provision of the act is invalid by reason of its delegation to the Executive of legislative authority, yet conceding it for the purpose of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself."

It is to be observed that in that case the act was not decided to be unconstitutional.

In *United States of America v. Splotless Dollar Cleaners, Inc.*, *supra*, Judge Knox said:

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"To the end that these purposes might be accomplished, the President was vested with broad and comprehensive powers. With the right of Congress to make such delegation, there can be in my opinion, no reasonable dispute."

These are all of the decisions on the law in question brought to my attention, or that I have found, and I am in agreement with Judge Knox of this Circuit.

The defendants' argument, based on the use of the word "code" in the Recovery Act, does not seem to me to be determinative. It is the sub-

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stance of the power granted, not the name given to it, that is of moment, and the question of the right of Congress to grant the power to the President has been fully discussed.

Defendants' contention that codes must be uniform throughout the country, strikes at the root of the regulation proposed.

It seems to me that uniformity between members of the same class is sufficient, and that is attained.

The only questions before this Court are questions of law.

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The emergency existed. The selection of the remedy and the method of enforcement rested with Congress, which has spoken, and I am convinced that the Congressional policy and standards are sufficiently set forth in the Recovery Act; and that the power delegated to the President by said Act, by Section 3 (a) was properly delegated under the Constitution.

The National Industrial Recovery Act is an emergency measure, for a fixed period (Section 702, subdiv. c) and as such does not violate the Constitution.

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Without repeating here the allegations of the indictment, it seems to me that interstate commerce in live poultry is fully described in paragraphs 2, 3, 4 and 5 of the indictment, which are in Count 1, and by reference are incorporated in all other Counts. Counts 4 and 5 and what are denominated as Counts 6 to 23, both inclusive, deal with poultry trucked into New York from Pennsylvania by the defendants, and immediately sold by them. In them it is alleged that the defendants are themselves engaged in interstate commerce, and that the transaction of sale at

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their wholesale slaughter houses in Brooklyn, New York, occurred while the poultry were still moving in interstate commerce. This contention that such first sales within the State are in interstate commerce is indicated by the decision in *Greater New York Live Poultry Chamber of Commerce et al. v. United States*, 47 Fed. (2d) 156. In that case the Circuit Court of Appeals of this Circuit, upon the assumption that the commission men were purchasers, rather than agents of the Western shippers, held that the sales by them to the wholesale slaughter houses were sales in interstate commerce. When, as in this case, it is alleged that the defendants themselves trucked the poultry into the State of New York, instead of purchasing it from New York commission men, it seems to me that the first sale is analogous to the commission men's sale in *Greater New York Live Poultry Chamber of Commerce et al. v. United States*, supra. See also *Peoples Gas Co. v. Public Service Commission*, 270 U. S. 550; *Binderup v. Pathe Exchange, Inc.*, 263 U. S. 291; *Swift & Company v. United States*, 196 U. S. 375.

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As to the remaining thirty-nine substantive Counts, it is not alleged that the violations and transactions in which they occurred were in interstate commerce, but that the transactions in which they occurred affect interstate commerce.

The poultry to which these counts relate was purchased by the defendants from the New York commission men. The interstate movement of the poultry ceased prior to the sale by the defendant wholesalers.

In each count the allegation as to the general interstate commerce in live poultry, and the effect

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of the violations upon commerce, are sufficiently alleged.

Counts 41-50, both inclusive, relating to payment of illegal wages, and Counts 51-59, both inclusive, relating to excessive hours, all contain allegations that such violations enable defendants to obtain unfair advantages over competing wholesalers, encourage and cause other wholesalers to engage in the same practice, and all other practices prohibited by the code, and thereby obstruct and prevent the accomplishment of the purposes of the Code and the Recovery Act, cause a disruption in the normal flow of interstate commerce in live poultry, and divert interstate shipments thereof.

Counts 34-37, both inclusive, relating to coercion and intimidation; Count 38, relating to false reports; and Counts 39-40, both inclusive, relating to withholding reports, are alleged to obstruct the enforcement and defeat the purposes of the Code, and thereby cause competitive evils disrupting the normal and orderly flow of interstate commerce in poultry. The allegations in each of these counts as to the disruption of the normal and orderly flow of interstate commerce in poultry are sufficient.

Counts 24-35, both inclusive, relating to the straight killing provision of the Code are alleged to defeat the purposes of the Code, cause interstate shipments of ungraded poultry, demoralize the price structure and diminish shippers' returns. The allegations in each of these counts are sufficient.

Counts 4 and 5, and the portion denominated as Count Sixth to Count Twenty-third, both inclusive, relate to the sale of uninspected poultry.

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The allegations as to the effect on interstate commerce of selling uninspected poultry seem to me to be much more direct.

Count 60, relating to sales to persons not licensed, contain sufficient allegations as to the effect on interstate commerce.

Counts 2 and 3, relating to the sale of poultry unfit for human consumption, as alleged, present cases in which the effect upon interstate commerce is very direct.

**443**

That proof of some allegations in some counts may be difficult furnishes no reason for rejecting the counts, as all questions relating to the proof are to be determined on the trial.

The first count alleging conspiracy is alleged with great detail and is sufficient to charge the crime.

In an indictment for conspiracy it is not necessary to charge the object of the conspiracy with the same particularity as in the charge of the substantive offense.

Section 3 (f) of the National Recovery Act (40 U. S. C. 413) provides as follows:

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“When a code of fair competition has been approved or prescribed by the President under this chapter, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.”

By the use of the words “or affecting interstate commerce,” it is apparent that Congress

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intended to assume all of the jurisdiction that it had under the commerce clause of the Constitution.

The indictment sufficiently alleges Interstate Commerce and the effect of violations on such Commerce Clause, as required by the Act.

It is immaterial whether or not the poultry was moving in interstate commerce at the time of the violations, if Congress had constitutional power to prohibit conduct "affecting" interstate commerce in the manner alleged in the indictment.

By Article 1, Section 8, of the Constitution, there is conferred upon Congress the power "To regulate Commerce with foreign Nations, and among the several States," and "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Although the Federal Government is one of the enumerated powers, its enumerated powers are supreme and paramount to the reservation of state powers. *Ryan v. Amazon Petroleum Corporation*, *supra*; *Gibbons v. Ogden*, 9 Wheat. 1; *Houston & Texas Ry. v. United States*, 234 U. S. 342; *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *Colorado v. United States*, 271 U. S. 153; *United States v. N. Y. Central R. R.*, 272 U. S. 457; *Alabama v. United States*, 279 U. S. 229; *Minnesota Rate Cases*, 230 U. S. 352.

Under the Commerce Clause Congress may regulate local transactions burdening or inextricably intermingled with interstate commerce. *Local 167 v. United States*, 291 U. S. 293; *Swift & Company v. United States*, *supra*; *Stafford v. Wal-*

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lace, *supra*; United States *v.* Ferger, 250 U. S. 199.

Congress may regulate intrastate commerce if necessary to make effective its regulation of interstate commerce. Wisconsin R. R. Comm. *v.* C. B. & Q. R. R. Co., 257 U. S. 563; Minnesota Rate Case, *supra*; United States *v.* N. Y. Cent. R. R., 272 U. S. 457; Alabama *v.* United States, *supra*.

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Congress has never before legislated as to general trade practices merely "affecting" interstate commerce.

That, however, does not show that it does not have the power.

As I have before said, the Recovery Act is an emergency measure and represents a change in social theory.

**450**

That theory applied by the Sherman Anti-Trust Act was that competition would best preserve a free and orderly flow of interstate commerce, while by the Industrial Recovery Act, that social theory has been modified by the provision of a system of supervised regulation of trade practices affecting interstate commerce.

With the choice of means we have no concern; that rests with Congress, and it well may be that in the emergency things which were of small importance in normal times, have now become of considerable importance, requiring a wider exercise of power.

The only question now to be considered is whether Congress had constitutional power to prohibit conduct "affecting" interstate commerce.

In *Gibbons v. Ogden*, *supra*, which was the first case in which the Commerce Clause was considered, Chief Justice Marshall, at page 9, said:

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"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution."

And at pages 7 and 8, he said:

"It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States \* \* \*,"

"\* \* \* The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government."

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The Sherman Anti-Trust Act prohibits conspiracies "in restraint of trade or commerce", and has been interpreted as applying only to conspiracies unreasonably or substantially restraining interstate commerce. *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 601.

In the Recovery Act the intent of Congress was to extend criminal jurisdiction so as to reach

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all cases where violations of approved codes affect interstate commerce, whether or not they substantially or unreasonably restrain such commerce.

Of course, the violations must substantially affect interstate commerce and not be merely incidental.

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Notwithstanding the difference between the Sherman Act and the Recovery Act, the following cases under the former Act seem to me to show the constitutional power of Congress to regulate conduct affecting interstate commerce.

In *Stafford v. Wallace*, 258 U. S. 495, the validity of the Packers and Stockyards Act, which empowered the Secretary of Agriculture to regulate stockyards so as to prevent unfair practices and monopoly, to fix commission charges, to require reports, to make regulations for feeding, etc., was sustained.

The Court, by Mr. Chief Justice Taft, said, at page 521:

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“Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it.”

In *Northern Securities Co. v. United States*, 193 U. S. 197, it was held that the Sherman Act, in prohibiting the acquisition by a holding company of the stock of two competing interstate railroads, was constitutional, and rejected the contention that Congress could not forbid indi-

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viduals from disposing of their corporate stock or other property.

In *Bedford Co. v. Stone Cutters Assn.*, 274 U. S. 37, a combination on the part of members of a national labor union, to refuse to install stone quarried by non-union shops in Indiana, was held to be a conspiracy in restraint of interstate commerce, and Mr. Justice Sutherland, at pages 46 and 47, said:

“That the means adopted to bring about the contemplated restraint of commerce operated after physical transportation had ended is immaterial. (Citing cases.) The product against which the strikes were directed, it is true, had come to rest in the respective localities to which it had been shipped, so that it had ceased to be a subject of interstate commerce, \* \* \* In other words, strikes against the local use of the product were simply the means adopted to effect the unlawful restraint.”

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In *Chicago Board of Trade v. Olsen*, 262 U. S. 1, the Grain Futures Act under which Congress undertook to regulate futures contracts on grain exchanges was held constitutional, notwithstanding the fact that the making of grain futures contracts were local, and it appeared that most of such contracts were settled by offsetting contracts rather than by actual delivery of grain. At page 40, the Court, by Mr. Chief Justice Taft, said:

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“Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.

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By reason and authority, therefore, in determining the validity of this Act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided."

In *United States v. Patten*, 226 U. S. 525, an indictment under the Sherman Act, charging defendants with a conspiracy to corner the cotton market by purchasing all available cotton futures contracts, was upheld.

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In *Lemke v. Farmers Grain Co.*, 258 U. S. 50, a North Dakota statute requiring grain buyers to obtain state licenses and to submit to a system of grading and inspection, was held to be an unconstitutional encroachment upon the federal commerce power, because most of the grain so purchased by local buyers was regularly shipped into other states.

In *Thornton v. United States*, 271 U. S. 414, the Animal Industry Act, which provided for quarantining and disinfecting cattle in the various states, for the purpose of preventing the spread of animal diseases from one state to another, was upheld.

In *United States v. Ferger*, 250 U. S. 199, an Act of Congress making it a federal offense to issue forged or fictitious interstate bills of lad-

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ing was upheld, and at page 203, the Court, by Mr. Chief Justice White, said:

"Thus both in the pleadings and in the contention as summarized by the Court below it is insisted that as there was and could be no commerce in a fraudulent and fictitious bill of lading, therefore the power of Congress to regulate commerce could not embrace such pretended bill. But this mistakenly assumes that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (*In re Debs*, 158 U. S. 564), and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of congress to regulate, although they are not interstate commerce in and of themselves."

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In *Railroad Commission of Wisconsin v. Chicago B. & Q. Railroad Co.*, supra, Congress upheld an order of the Interstate Commerce Commission directing railroads in Wisconsin to increase their interstate rates, in order that the railroads would receive a reasonable return

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from their intrastate traffic, in conformity with the purposes of the Transportation Act of 1920.

In *Colorado v. United States*, *supra*, an order of the Interstate Commerce Commission requiring a railroad to abandon a part of its intrastate railroad lying wholly within one state, over the objection of the state, was sustained.

See also *Transit Commission v. United States*, 289 U. S. 121.

In *Minnesota Rate Cases*, *supra*, the scope of the interstate power of Congress is described.

467 In *Northern Securities Co. v. United States*, 193 U. S. 197, 337, the Congressional policy behind the Sherman Act is described, and the action of Congress sustained.

In *Hammer v. Dagenhart*, 247 U. S. 251, the Child Labor Law was held unconstitutional, but there was no showing in that case that the practice sought to be regulated had any effect upon interstate commerce.

Whether Congress may or may not have chosen the best method of dealing with the problems within its province is not a subject for consideration by this Court, it is sufficient if the method be reasonable and not palpably arbitrary or capricious.

468 If Acts of Congress have a reasonable relation to proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied. *Nebbia v. New York*, 291 U. S. 502, 537.

The Recovery Act in dealing with transactions affecting interstate commerce, of course deals with violations which substantially affect interstate commerce, and not with violations which

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are merely incidental, and as so construed is constitutional.

The allegations of the indictment in the case at bar show substantial violations, not merely incidental violations, which affect interstate commerce, in poultry, an article of food, by those who dealt in no small way, but in thousands of pounds thereof.

Defendants urge that the Act does not provide for punishment for violation of the Act itself, but of the codes approved by the President, and therefore the indictment does not adequately charge the violation of any federal statutes.

This it seems to me is too narrow a view to take, because by the Recovery Act Congress made disobedience of such a code a misdemeanor, and imposed a penalty; therefore to commit such a misdemeanor is to violate the Recovery Act, which is a federal statute.

As to the various grounds stated in the demurrer on which it is contended that the indictment is defective, it will be better to consider the counts generally with reference to all of such grounds.

The first count is for conspiracy. The object to be accomplished is stated, and that object is the commission of certain described acts, which are made misdemeanors by the Recovery Act, and are therefore offenses against the United States. The plan or scheme is alleged, and there is also alleged the business relations of the defendants, which formed the means for accomplishing the object, and finally the agreement or understanding.

There are also alleged a large number of overt acts.

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The charge of conspiracy cannot be aided by the statement of the overt acts, nor is there any necessity therefor in this case, as the charge is sufficiently made in this case.

In an indictment for conspiracy, the rules of criminal pleading do not require the same degree of detail in stating the object of the conspiracy, as if it was one charging the substantive crime. *Thornton v. United States*, 271 U. S. 414, 423; *Williamson v. United States*, 207 U. S. 425, 447.

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The form of the indictment for conspiracy used in the case at bar is sufficient. *Joplin Mercantile Co. v. United States*, 236 U. S. 531, 534; *United States v. Seidman*, 45 Fed. (2d) 178.

The first count is not duplicitous or otherwise objectionable, because it alleges a conspiracy to commit more than one offense, under different sections of a statute. The conspiracy is a single crime, even though it be to commit a number of offenses. *Frohwerk v. United States*, 249 U. S. 204, 209; *Knoell v. United States*, 239 Fed. 16, 20; Cert. Denied, 246 U. S. 648; *United States v. Eisenmenger*, 16 Fed. (2d) 816.

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A defendant may be charged with conspiracy, in one count, to commit offenses under different statutes. *Ford v. United States*, 273 U. S. 593, 602; *Anderson v. United States*, 273 Fed. 20, 28; Cert. Denied, 257 U. S. 647.

Counts 2 and 3 defendants contend are defective and charge no crime, in that defendants are charged with selling an unfit chicken, and not with selling a chicken unfit for human consumption.

Defendants are in error and must have overlooked paragraph 7 of the indictment. This paragraph was by reference incorporated in

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Counts 2 and 3, and provides, "Culls and poultry unfit for human consumption hereinafter will be collectively called unfit poultry or unfit chickens; and other poultry will be called healthy poultry or healthy chickens." Therefore by the words "unfit chickens" there was described a chicken unfit for human consumption.

Defendants contend that Counts 4 to 23, inclusive, are defective and charge no crime, in that it is alleged that chickens were sold or purchased without having the same inspected or approved in accordance with any rule, regulation, or ordinance of the City of New York.

There is no allegation in the indictment that there is such a rule, regulation, or ordinance.

This objection is good unless this Court will take judicial notice of the ordinances of the City of New York.

Of course, this Court will take judicial notice of regulations of Federal Departments, and of the laws and judicial decisions of the several states of the Union. *Martin v. Baltimore & Ohio Railroad*, 151 U. S. 673; *Lamar v. Micou*, 114 U. S. 218, 223; *Hanley v. Donoghue*, 116 U. S. 1, 6; *Kaye v. May*, 296 Fed. 450, 453.

The Greater New York Charter is a statute of the State of New York, and section 1172 of that Charter provided that the New York Sanitary Code shall be a part of the New York City Ordinances, and the New York Sanitary Code, requires inspection of all poultry brought into the City of New York.

The New York State Courts take judicial notice of an ordinance enacted pursuant to a statute which provides for it, and the Court through its notice of the statute, will judicially

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notice that which the statute contemplates. *Beman v. Tugnot*, 5 Sand. 153; *Schrumpf v. People*, 14 Hun 10, 12.

An amendment to the Greater New York Charter, enacted as a State Law May 5, 1917, removed any doubt there might be as to whether State Courts should take judicial notice of City Ordinances. It provides:

“All courts in the City shall take judicial notice of City Ordinances.”

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The State Courts have held, under this provision, that the New York Supreme Court, the highest court of original jurisdiction in the State, sitting in New York City, will take judicial notice of City Ordinances. *Greenberg v. Schlanger*, 229 N. Y. 120, 122; *Wirth v. Burns*, 229 N. Y. 148, 150; *People v. Waldron*, 170 N. Y. Supp. 773, 776; *Cohen v. A. Goodman & Sons*, 178 N. Y. Supp. 528, 530.

That objection is not sustained.

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With reference to Counts 24 to 36, defendants contend that they are defective and charge no crimes, in that said counts charge a violation of Article 7, Section 14 (Violation of Straight Killing), and that it is not stated in the indictment that the selections were not made for the purpose of determining whether or not said chickens were culls or diseased, and that the indictment is further defective in that said Article and Section do not make it a crime to reject individually healthy chickens. That the requirements of Straight Killing are unreasonable, and that a merchant cannot force a purchaser to buy chickens of the seller's choice.

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A violation of the Article and Section is made a misdemeanor by the Recovery Act. The allegations are that the chickens selected were sold, and certainly that negatives the selection for the purposes of determining whether they were culls or diseased, and the allegation as to rejection shows that the sale was made in other than straight killing.

In view of the allegations as to the effect on interstate commerce, of other than straight killing, I cannot, as a matter of law, determine the requirements of straight killing to be unreasonable. In passing, let me say that the code does not deal with the purchaser but with the seller.

Assuming as I must on this demurrer the truth of the allegations, the objection is not sustained.

Counts 34 to 37, inclusive, sufficiently allege Anti Racketeering under subdivision 1 of Section 21, Article 7. They allege what was done by defendants, the name of the person to whom the acts were directed, the place where, and the date when.

The defendants are in error. The Article is not limited to acts done to members, but to acts done by members of the industry, and their objection is not sustained.

As to Count 38, the indictment does state in what respects the reports were false, and certainly does state that they related to the sale of poultry. Article 8, Section 3, does call for the making of the report. The making of a false report is not a compliance with the requirement, but a violation of a provision of the code, under Section 3 of the Recovery Act.

The objection is not sustained.

The objection to Count 39 is without merit, as paragraph 8 of the indictment, which is incor-

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porated by reference, alleges that the defendants, during a time much longer, but during the time in question, have been engaged in maintaining, operating and conducting, on their own behalf, and on behalf of each other, wholesale slaughter house business at 991 Rockaway Avenue, Brooklyn, New York, and at 858 East 52nd Street, Brooklyn, N. Y.

The failure to make a report was a violation of the code provision.

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The objection is not sustained.

The objection to Count 40 is sustained.

There is no allegation in that count that any employees of the defendants worked during legal holidays or Jewish holidays, or on emergency maintenance or repair work during the period alleged in the indictment, and the only report required by Article 4, Section 3, is of employees who worked during legal holidays or Jewish holidays, or on emergency, maintenance, or repair work.

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The objection to Counts 41 to 50, inclusive, that there is no allegation that the payment of less than 50¢ an hour was in any pay period is met by the allegations that the pay of less than 50¢ an hour to the person mentioned was for each hour worked by the employee.

The allegation that the person was employed by them in the wholesale slaughter house operated by them, is sufficient to show he was engaged in the industry. The objection is not sustained.

The objection to Counts 51 to 59 inclusive, that they do not charge a crime, in that they do not charge that the employee was engaged in the industry, is met by the allegation that the person was employed by them in the wholesale slaughter

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house operated by them, which is sufficient to show that he was engaged in the industry. The objection is not sustained.

The objection to Count 60, which has to do with a sale of live poultry to a person not licensed, is not sustained. This is a violation of the code, and that is all we are concerned with. By that count there is no attempt made to punish any one for a failure to obey State laws or Municipal Ordinances requiring him to obtain a license.

The license required is alleged to be that required by the Ordinances of the City of New York, and by the rules and regulations of the Board of Health of the City of New York, of which we will, for the reasons hereinbefore assigned, take judicial notice.

The defendants did not, in their brief, specifically refer to what are called Counts 6 to 23, both inclusive, but the demurrer generally covers them.

The numbering of the Counts 6 to 23, inclusive, and then without separate allegations but in one paragraph only, charging eighteen separate sales without inspection, not allocating any particular sale to any particular count, is in effect to charge eighteen separate distinct offenses in one count. No one can tell which one of the sales is charged under any particular count, and the defendants are put in the position where they cannot defend as to any particular offense, under any one count, but must defend as to eighteen separate defenses. If duplicity was sought to be avoided by simply enumerating the numbers of the so-called counts, while alleging all offenses together, then that

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object was not accomplished, as the manner in which it is alleged is duplicitous.

Each count of an indictment must in and of itself charge a crime, and you cannot charge eighteen crimes in one count by simply giving that count eighteen numbers. Any such method of pleading is too vague and general to be pleaded as res judicata or former jeopardy.

This error is not one merely of form and therefore to be ignored, under Revised Statutes 1025 (18 U. S. C. 556), but is an error which greatly prejudices the defendants.

It is to be noted that a separate and distinct offense, arising out of the same circumstances which form the basis of the so-called Counts 6 to 23, both inclusive, is properly pleaded in the Fifth Count.

Except as to that portion of the indictment denominated as Sixth Count to Twenty-third Count, both inclusive, making eighteen in all, and the Fortieth Count, the indictment is not defective on any of the grounds specified in paragraphs, 2, 5, 6, 9, 10, 11, 13 and 18 of the demurrer.

The demurrer is sustained as to that portion of the indictment denominated as Sixth Count to Twenty-third Count, both inclusive, being eighteen counts in all, and to the Fortieth Count, for the reasons hereinbefore assigned, and the demurrer is in all other respects, and as to all other counts, overruled.

Settle order on one day's notice.

U. S. D. J.

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**Notice of Motion for Bill of Particulars**

493

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

*against*

JOSEPH SCHECHTER, *et al.*

494

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of Martin Schechter and Joseph Heller, both duly verified the 29th day of August, 1934, and upon all the records and proceedings heretofore had herein, a motion will be made by the undersigned at the United States District Court, in and for the Eastern District of New York, at the Courthouse, Postoffice Building, Washington Street, Brooklyn, New York, at a Stated Term for motions, in Room 312, on the 4th day of September, 1934, at 10:30 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing that the United States of America furnish a Bill of Particulars to the defendants herein, of the items specified in the affidavit in support of this motion for a Bill of Particulars, which is material and necessary to the defendants, and for such other and

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496        *Notice of Motion for Bill of Particulars*

further relief as to this Court may seem just and  
proper in the premises.

Dated, New York, August 29th, 1934.

Yours, Etc.,

JOSEPH HELLER,  
Attorney for Defendants,  
O. & P. O. Address,  
51 Chambers Street,  
Borough of Manhattan,  
City of New York.

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To:

LEO J. HICKEY, Esq.,  
United States Attorney,  
For the Eastern District of New York,  
Brooklyn, New York.

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Affidavit of Martin Schechter in Support of      499  
Motion for Bill of Particulars

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
*against*  
JOSEPH SCHECHTER, *et al.*

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500

State of New York,      }ss.:  
County of New York,      }

MARTIN SCHECHTER, being duly sworn, deposes  
and says:

That he makes this affidavit in support of the  
motion for a Bill of Particulars.

That he makes this affidavit on behalf of the  
defendants herein as though the application is  
made by each of the defendants separately. The  
reason for making this application for all of the  
defendants is to avoid the multiplicity of mo-  
tions.

501

It is absolutely necessary to procure a Bill of  
Particulars in order to help prepare the defend-  
ants' defense to the indictment herein, and to  
avoid surprise on the day of trial. The defend-  
ants desire to be more particularly informed as  
to matters which will aid them in their defense.  
The application is made in good faith, is neces-  
sary and indispensable.

502

*Affidavit of Martin Schechter*

The following particulars are necessary:

503

1. Let the government state as to what it claims is the percentage of live poultry consumed in the Metropolitan area of New York State as described in the indictment out of the total amount of live poultry consumed in the United States.

2. Let the Government state what is the approximate total amount of poultry consumed by all of the States indicating what percentage of the total output each state of the Union consumes.

3. Let the Government state specifically what were and are the uneconomic and destructive practices of the live poultry industry of the Metropolitan area, what the Code seeks to eliminate.

504

4. Let the Government state what it means by its claim that there was a widespread competitive marketing and industrial evils of the live poultry industry making the adoption of the Code necessary.

5. Let the Government state in what way these evils demoralized the entire price structure in the live poultry industry of the Metropolitan area and other poultry markets throughout the United States.

6. Let the Government enumerate what are the other poultry markets throughout the United States and where are they located.

7. Let the Government indicate in what way the practices in the Metropolitan area impeded, diverted and harmfully affected the interstate commerce of live poultry.

8. Let the Government state when the alleged evils above described commenced and when they ceased.

9. Let the Government give comparative percentages showing in what way the interstate commerce was affected by the alleged evils, during the period of its existence.

10. Let the Government state in what particular places in the Eastern District of New York did the defendants feloniously, unlawfully and wilfully conspire to commit the offenses against the United States, stating the time and place, and who of the defendants were present when the conspiracy and confederation to commit the offense against the United States, took place.

11. State in what way the conspiracy charged against the defendants encouraged and caused other violations of essential provisions of the Code in a large number of other members of the live poultry industry.

12. State who the members of the other industries are who were encouraged in violating the provisions of the Code and state in what way the other members violated the Code.

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*Affidavit of Martin Schechter*

13. State how such encouragement diverted interstate shipments of live poultry and how and in what manner disrupted the normal flow of interstate commerce coming into the State of New York.

509

14. Let the Government state as to the manner in which the chickens sold to Harry Stauber or another as set forth in Counts 2 and 3, were unfit, describing the nature of the disease or the manner in which it is claimed they were unfit, and stating how the defendants named in Counts 2 and 3, derived knowledge that the chickens sold to the individual mentioned in Counts 2 and 3, knew that the chickens so sold were unfit, and whether a sale actually took place.

15. State what price was charged per pound for the sale of the chickens described in Counts 2 and 3, to Harry Stauber and another.

510

16. State in what way the sale of said chickens to Harry Stauber and another, described in Counts 2 and 3, affected interstate commerce of poultry, and in what way the sale of said chickens encouraged and caused the sale for human consumption of unfit poultry by other slaughter house men; in what way the sale of other chickens described in Count 2, affected the market price of other poultry; in what way the sale of the chickens described in Counts 2 and 3, demoralized the market value of other chickens.

*Affidavit of Martin Schechter*

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17. State whether the chickens transported in the manner described in Count 4, are claimed to be diseased chickens, or healthy chickens.

18. State in what way the purchase of said chickens as described in Count 4, affected interstate commerce.

19. State in what way uninspected poultry, if healthy, causes an increase in the transportation of unfit poultry into New York from other States.

512

20. State to whom it is alleged the poultry was sold as described in Count 5, giving the names and addresses, dates and the amount of poultry purchased by each individual as described in Count 5 of the indictment.

513

21. State in what way the sale of the said poultry as described in Count 5, affected interstate commerce; in what way the sale of healthy poultry although uninspected affects interstate commerce; in what way the same helps to create frauds; in what way the sale of the poultry described in Count 5, caused a misrepresentation of the true weight of the said poultry; in what way the said sale of said poultry described in Count 5, causes an increase in transportation of unfit poultry and a decrease of healthy chickens in the State of New York, from other States.

22. Let the Government show with reference to Counts 24-33 inclusive, in what way a participation of selection of

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*Affidavit of Martin Schechter*

515

chickens as described in said Counts, affected interstate commerce and in what way the acts of the defendants, or either of them, in selling selected chickens, affected the grading of poultry after the same had already been at the place of the defendants' business; in what way said acts caused competitive practice; in what way said acts demoralized the price structure; in what way the sale of said selected chickens affected the price for the sale of other chickens contained in the coops from which the alleged chickens were selected and sold; in what way the selection of the chickens described in said counts caused shippers within the State of New York to sell and ship ungraded poultry, and in what way the sale of said chickens as described in said counts caused the prices to be diminished in so far as the shippers of the said poultry were entitled to the same.

516

23. Let the Government state with reference to Counts 34-37 the following:

State the exact language used by the defendants or either of them which the Government claims constitutes threatening, coercive and intimidating language.

State exactly what gestures were used by the defendants or either of them as described in said last counts.

State in what way said acts of the defendant or either of them affected interstate commerce in the live poultry industry, and in what way said acts caused competitive marketing and industrial

evils, and in what way the said acts obstructed the free flow of interstate commerce into the State of New York, and in what way said acts diminished the volume and value thereof, and disrupted the ordinary flow thereof.

24. Let the Government state with reference to Count 38, in what way the reports filed were false, fictitious, and in what way the acts of the defendants affected interstate commerce, and in what way said acts diminished volume and value thereof, and disrupted the ordinary flow thereof.

518

25. Let the Government state with reference to Counts 38-39, inclusive, what were the acts of the defendants or either of them that caused competitive marketing and industrial evils, and in what way the said acts obstructed the free flow of interstate commerce into the State of New York, and in what way said acts diminished the volume and value thereof, and disrupted the ordinary flow thereof.

519

26. With reference to Counts 41-59, inclusive, let the Government state the name of the person it is alleged received illegal wages and worked excessive hours; exactly what work and the nature of employment said employee or employees performed; the exact amount of hours worked each day and each week; the exact amount of wages received per day, hour and week; in what way the defendants by the acts alleged to have been committed in the

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*Affidavit of Martin Schechter*

above counts enabled them to obtain unfair advantages over all other slaughter houses, thereby encouraging and causing other slaughterhouse men to engage in the same and all other practices prohibited by said Code; stating who such slaughterhouse men are, giving their names and addresses.

521

27. A—State the exact violations or acts committed by other slaughter house men as a result of the defendants' encouragement, and in what way the defendants by their acts as described by the Government in Count 60, caused a disruption in the cause of flow of interstate commerce.

27. B—In what way the said acts caused a decrease in the interstate transportation of poultry.

522

WHEREFORE, it is prayed that the motion herein for a Bill of Particulars, be granted.

MARTIN SCHECHTER.

Sworn to before me this 29th }  
day of August, 1934. }

JOSEPH HELLER  
Notary Public.

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**Affidavit of Joseph Heller in Support of  
Motion for Bill of Particulars**

523

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

*against*

JOSEPH SCHECHTER, *et al.*

524

State of New York, }  
County of New York, }ss.:

JOSEPH HELLER, being duly sworn, deposes and says:

That he is the attorney for the above-named defendants. That he makes this affidavit in support of the motion for a Bill of Particulars.

The defendants pleaded "Not Guilty" on their indictment on August 1st, 1934. A demurrer was filed on August 11th, 1934. Thereafter, on August 16th, 1934, a demurrer was argued, brief was submitted, and a supplemental brief was submitted on August 18th, 1934. A decision on the demurrer was rendered on August 29th, 1934, as reported in the Law Journal.

525

Aside from the fact that your deponent was engaged day and night in the preparation of the brief and supplemental brief, no motion for a Bill of Particulars could have been made from August 18th, 1934 till the making of this application this day, for the reason that the defendants

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*Affidavit of Joseph Heller*

had no standing by way of demanding a Bill of Particulars on matters which they claim they should not be called upon to plead. It was unknown up to this time as to whether or not the demurrer to some of the Counts would be sustained or not. As a matter of fact, the demurrer was sustained to 19 of the 60 Counts. Upon receiving the decision of the Court, your deponent immediately prepared his motion for a Bill of Particulars, and respectfully prays that the motion be granted.

527

JOSEPH HELLER.

Sworn to before me this 29th }  
day of August, 1934. }

MEYER KLASNER  
Notary Public.

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**Order Denying Motion for Bill of Particulars**

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At a Stated Term of the United States District Court held in and for the Eastern District of New York, at the Federal Building, Borough of Brooklyn, City, State and Eastern District of New York, on the 14th day of September, 1934.

Present—Hon.

*United States District Judge.*

530

UNITED STATES OF AMERICA,  
*Plaintiff,*  
*against*  
 JOSEPH SCHECHTER, *et al.*  
*Defendants.*

Cr. 36041

A motion having been filed by the above-named defendants for a Bill of Particulars and the same having come on to be heard before me, and after hearing Joseph Heller, Esq., in support of said motion, and Leo J. Hickey, Esq., United States Attorney, for the Eastern District of New York, by Walter L. Rice (Special Assistant to the Attorney General), of counsel, in opposition thereto, and after reading and filing all of the papers, and after due deliberation, it is

531

ORDERED, motion denied except that the Government should be required to state which Counts of the indictment will be the subject of proof upon the trial.

MORTIMER W. BYERS,  
 United States District Judge.

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**Bill of Exceptions**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,  
*Plaintiff,*  
*v.*

533

JOSEPH SCHECHTER, MARTIN  
SCHECHTER, ALEX SCHECHTER,  
AARON SCHECHTER, A. L. A.  
SCHECHTER POULTRY CORPORA-  
TION and SCHECHTER LIVE  
POULTRY MARKET, INC.,  
*Defendants.*

Before—Hon. MARCUS B. CAMPBELL, U. S. D. J.,  
and a jury.

Brooklyn, N. Y., October 17, 1934.

534

**APPEARANCES:**

WALTER L. RICE, Esq., Special Assistant to  
the Attorney General.

Hon. LEO J. HICKEY, United States Attorney,  
Eastern District of New York.

H. STEWART McDONALD, JR., Esq., Special  
Attorney, Agricultural Adjustment Ad-  
ministration.

JOSEPH HELLER, Esq., Attorney for the De-  
fendants.

(A jury was duly empaneled, selected and  
sworn, and two alternate jurors selected and  
sworn.)

The Court: Now proceed, Gentlemen.

Mr. Rice: If your Honor pleases, the Government offers in evidence a certified copy of a certificate of incorporation of the Schechter Live Poultry Market, Inc. I understand that counsel for the defendants would not require authentication of this document.

Mr. Heller: That is correct. We have no objection.

The Court: Without objection, it may be received.

(Marked Government's Exhibit 1 in evidence.)

536

Mr. Rice: The Government now offers in evidence a certified copy of a certificate of incorporation of the A. L. A. Schechter Poultry Corporation.

Mr. Heller: No objection.

The Court: Without objection, it may be received.

(Marked Government's Exhibit 2 in evidence.)

Mr. Rice: I now offer in evidence a copy of certificate of doing business under the trade name of the Rugby Live Poultry Market, operating at No. 858 East 52nd Street, Brooklyn, New York.

537

Mr. Heller: I do not see its materiality here as yet. I do not deny that it is authentic, but I do not see what materiality that has in this case.

The Court: I do not know.

Mr. Heller: At this time I object to it as being wholly immaterial, irrelevant and incompetent.

Mr. Rice: I will be glad to point out its materiality at this point. The Rugby Live Poultry Market operates at the identical address of the

538

*Bill of Exceptions*

A. L. A. Schechter Poultry Corporation. Those two establishments operate under those two trade names indiscriminately, either the Rugby or the A. L. A. Schechter Poultry Corporation. We propose to show that the evidence as to the Rugby applies to the A. L. A. Schechter Poultry Corporation.

The Court: If he objects to it, I think you had better offer some evidence as to those facts before you offer the certificate.

539

Mr. Rice: Do I understand Mr. Heller wants evidence on that fact?

Mr. Heller: As to what?

Mr. Rice: That the Rugby Live Poultry Market Corporation is the trade name of the A. L. A. Schechter Poultry Corporation, that it operates at the same address and is operated by these defendants.

Mr. Heller: That is correct.

Mr. Rice: You want proof of that?

Mr. Heller: Yes.

Mr. Rice: Very well.

540

The Court: That is withdrawn then temporarily?

Mr. Rice: May I have this marked for identification?

The Court: Mark it for identification, surely.  
(Marked Government's Exhibit 3 for Identification.)

Mr. Rice: I offer in evidence a certified copy of the certificate of incorporation of Mogen David Live Poultry Market, Inc.

Mr. Heller: There is no objection to that except subject to connection. I haven't any objection to the document, but I still do not know what the purpose is, but the document itself I have no objection to.

The Court: Is that true of the first one also?

Mr. Heller: No, the Rugby I have no knowledge of.

The Court: I just want to get it straight; this last one you have no objection to?

Mr. Heller: This last one I have no objection to, subject to connection.

The Court: Very well; it may be marked.

(Marked Government's Exhibit 4 in evidence.)

Mr. Rice: I offer in evidence a card, which is a copy of the authorized signatures of the A. L. A. Schechter Poultry Corporation account maintained in the Manufacturers Trust Company. The card indicates that Alex Schechter, as president, and Louis Schechter, as secretary are authorized to sign checks for the A. L. A. Schechter Poultry Corporation.

542

Mr. Heller: I will concede those are the facts, but I do not know why it is material to offer this now. When the time comes I will have no objection, if it is material. I will concede those facts, but I do not know why it is material at this time.

Mr. Rice: I offer the card in evidence.

543

The Court: There isn't anything to show, unless it is for the purpose of identification of some signature.

Mr. Heller: I will have no objection that these two are the officers authorized to sign.

The Court: I will take—

Mr. Heller: Subject to connection at the proper time.

The Court: If you do not subject to it as a fact, I will take it because it may relate to something else.

Mr. Heller: That is all right.

(Marked Government's Exhibit 5 in evidence.)

544                   *Leland D. Ives—By Govt.—Direct*

Mr. Rice: I now offer in evidence a certification by the officers of the A. L. A. Schechter Poultry Corporation to the effect that the president and secretary of the A. L. A. Schechter Poultry Corporation are authorized to act on behalf of that corporation—sign checks and so forth.

545                   Mr. Heller: I have no objection to the document being offered in evidence for whatever purpose the Government wants it; for whatever is in there. I do not want, however, to limit it to any particular purpose.

The Court: I will take it because these are the defendants and it shows who represents them. It can be marked.

(Marked Government's Exhibit 6 in evidence.)

Mr. Rice: Now if your Honor pleases our first witness is Dr. L. D. Ives.

The Court: Very well, call your witness.

546                   LELAND D. IVES, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

*Direct examination by Mr. Rice:*

Q. Dr. Ives, what is your occupation? A. I represent the Bureau of Agriculture Economics of the United States Department of Agriculture in the inspection of live and dressed poultry in the metropolitan area and the eastern States.

Q. And what is the particular position that you occupy today? A. I am senior marketing specialist by designation, but supervisor of the Live Poultry Inspection Service.

Q. Now will you explain what the Live Poultry Inspection Service is? A. The Live Poultry In-

*Leland D. Ives—By Govt.—Direct*

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spection Service is an Inspection Service inaugurated at the request of the poultry industry in New York because of a regulation of the Health Department that all poultry coming into New York City for sale must be inspected.

Mr. Heller: I object, your Honor, to so much of the answer which says, "because of a regulation," and so forth.

The Court: Yes.

Mr. Heller: I move that that part of the answer be stricken out.

The Court: Strike it out.

548

Q. When was the Joint Inspection Service inaugurated? A. November 15, 1926.

Q. And under what Act of Congress was it inaugurated? A. Under the Act of May, 1926.

Q. Have you been operating as supervisor of the Joint Inspection Service since that Service came into existence in 1926? A. Yes, since its inception.

Q. And you have had a staff under you since that time? A. Yes, sir.

Q. What is your staff? A. At present there are 13 members on the live poultry and seven on the dressed poultry consisting of eleven veterinarians and nine laymen.

Q. What training do your members have before they are permitted to inspect poultry?

549

Mr. Heller: That is objected to.

The Court: Overruled.

Mr. Heller: Exception.

A. The veterinarians of course must be graduates of accredited recognized colleges granting a degree of veterinary in medicine, but the lay-

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*Leland D. Ives—By Govt.—Direct*

men who operate under the supervision of the veterinarians must have sufficient practical experience in taking the crop weight or judging the crop weight of poultry and distinguishing the different diseases of poultry to receive a license from the Secretary of Agriculture after my recommendation that they are suitable.

Q. Are all of your inspectors of live poultry licensed in this manner? A. They are.

Q. Before they obtain their license what sort of training are the inspectors subjected to?

551

Mr. Heller: That is objected to unless they received their training under this witness.

Q. Do they receive their training under you, Dr. Ives? A. Yes, sir.

Q. Will you describe that training? A. For the crop weights that they are supposed to judge in examining poultry, they receive that by actual experience of taking individual chickens, and each one in turn judging the weight by feeling of the size of the crop.

552

Q. Will you explain what a crop is? A. A crop is simply dilatation of the esophagus that holds the food temporarily until it is through into the gizzard for digestion or into the stomach.

Q. Do you know of any more common term for the word crop, any layman's term? A. Crop is a layman's term.

Q. Isn't it called the craw? A. Sometimes, yes, it is called the craw too.

Q. You were explaining the training received by your inspectors prior to the time that they are licensed. Will you explain just what that training is? A. As I say, the training is to judge the size of each crop by feeling of them,

and after—they all go through the same system of judging—and after these crops are judged by the different inspectors at different days, those same birds are killed, they are identified, each one of those crops taken out and actually weighed on scales to see whether they correspond with the judgment of the inspectors by feeling or palpation, in other words. Now, if they come close enough to the actual weight when they judge it, why, we recommend that they get a license but until they do come accurately to the actual weights, why, we don't give them a license.

554

Q. What training do they have designed to teach them to ascertain poultry diseases?

Mr. Heller: I object to the form of the question.

Mr. Heller: I object to that question as to form, and it calls for a conclusion. Let the witness state——

Mr. Rice: All right, all right, I will withdraw the question.

Q. Dr. Ives, do your men have any training prior to receiving a license on the subject of poultry diseases? A. Well, of course, the veterinarians all get their training in colleges. Laymen get their instructions under the supervision of the veterinarian assigned purposely to instruct them in that line.

555

Q. What is the character of that training? A. The character of that—they take them to the terminals where the actual sick birds come in, or the cars come in, and the birds are picked out by the veterinarians and brought to the laboratory which we had for the first three years of our existence, and they were brought there

556                  *Leland D. Ives—By Govt.—Direct*

and kept in cages and we watched developments. They were also taught by our specialist that we had for the first three years, for that purpose.

The Court: Are you a veterinarian?

The Witness: Yes, sir.

Q. What was your training, your personal training? A. Well, my personal training in meat inspection was in the Bureau of Animal Industry.

557                  Q. Which is a bureau of what department? A. Of the United States Department of Agriculture. For twenty years I was with them on meat inspection, and in 1926 I was transferred to the Bureau of Agricultural Economics, to take charge of the inspection of poultry, which had just started, and I received my principal education in poultry at the time we started with our poultry specialist, whom we had for that purpose.

Q. Will you describe your system of inspecting the freight poultry that comes into New York? A. Well, on arrival at the yards in the morning—

558                  Q. What yards do you mean? A. The freight yards, where the poultry arrives in cars.

Q. Will you describe what those freight yards are, where they are, and what they are called? A. Well, they are called the Live Poultry Terminal at 60th Street and Eleventh Avenue in New York City, which is the largest one.

Q. That is the New York Central Terminal? A. That is the New York Central Terminal.

Q. That is on Manhattan? A. Manhattan Island.

Q. At 60th Street? A. Yes, sir.

*Leland D. Ives—By Govt.—Direct*

559

Q. Are there also terminals in New Jersey?  
 A. There is the Lackawanna Terminal at Hoboken and the Erie at Weehawken, and the Pennsylvania at Jersey City, and the Central Railroad of New Jersey at Communipaw.

Q. How about the Baltimore & Ohio? A. Well, the Baltimore & Ohio and the New Jersey Central is the same location.

Q. The poultry arrives at those five terminals that you have mentioned? A. Yes, sir.

Q. Now will you explain your system of inspecting the freight poultry that arrives at those terminals? A. When the inspectors arrive at eight o'clock in the morning they must receive an application for the inspection of a car by the applicant; it is a written application—

560

Q. Who are the applicants? A. The commission merchants of New York City, or Greater New York.

Q. The poultry commission merchants? A. The poultry commission merchants are the applicants.

Q. You say they make an application for inspection of a particular carload of poultry? A. They must make a written application to us for inspection.

561

The Court: They are the consignees, are they?

The Witness: Yes, sir.

Q. They receive the poultry from whom? A. From the shipper of live poultry in the West.

Q. All right. Now, what happens after the commission man makes his application for inspection of a particular carload of poultry? A. The inspector receives an application and if it is made out in proper form, why, he proceeds

562                  *Leland D. Ives—By Govt.—Direct*

to the car, the number of which is on this application, and there he inquires from the car man in attendance the point of origin, the different classes of poultry which he has in his car, the date he left there, what he fed them en route, how many he lost en route, and several other questions, simply for information as to the point of origin and quality of the poultry.

563                  Q. And what does the inspector do with that information? A. That information is all entered on the certificate, an official certificate which is written at the termination or conclusion of each inspection; this official certificate is written showing the character of the poultry at this particular time.

Q. And is it part of the inspector's duty to make out this certificate? A. He is required by our regulations to make out a certificate on each inspection.

564                  Q. And what do they do with the certificate? A. It is made in duplicate by the inspector at the railroad yards. The original is given to the applicant or the commission merchant, and a copy is sent to the office, from which four other copies are typed and sent; one each to the receiver—that would be the shipper, and the Board of Health.

Q. The New York City Board of Health? A. Yes, the New York City Board of Health, and one to our Washington office, and one on file in our own office.

Q. By the Washington office do you mean the office of the Bureau of Agricultural Economics of the Department of Agriculture? A. Correct.

Q. Now, are you required to keep these records that you have spoken of? A. Yes, sir.

*Leland D. Ives—By Govt.—Direct*

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Q. And that is regularly done in the course of your functions? A. We have a copy of every certificate that was ever written.

Q. Does your office compile statistics on the total number of cars of live poultry coming into New York by freight? A. Yes, sir.

Q. And those records are kept in the manner that you have described? A. Yes, sir.

Q. Now will you describe the inspection service as it relates to the express poultry and truck poultry? A. Express poultry—we have a very limited amount arriving here. That is, we get very requests for inspection. We do inspect regularly at Communipaw, express poultry that arrives by the Railway Express Agency and that is delivered to any consignee in the West Washington market, that is inspected at the time of delivery. The truck poultry, poultry brought in by trucks, as a rule that is received in the West Washington Market or the Wallabout Market in Brooklyn. We have a few other minor points where we inspect, but those are the two principal one.

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Q. Will you name all of the points where you regularly inspect truck poultry? You have named the Wallabout Market. A. The Wallabout Market in Brooklyn, and the Lackawanna Terminal at 25th Street and the East River, I guess it is, or the Bay, in Brooklyn are the only two places designated. In Manhattan there is West Washington Market and the railroad terminals of the New York Central Railroad at 60th Street. In the Bronx we have East 149th Street, the Bronx Terminal, we have the Harlem Terminal at 135th Street and Park Avenue. I do not recall if there

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*Leland D. Ives—By Govt.—Direct*

are any more, but in Jersey, of course, we have all the railroad terminals in Jersey City.

Q. All of the railroad terminals that you have mentioned? A. Yes, sir.

Q. How long does it take for you to furnish an inspector after a request has been made to inspect poultry at a particular place other than a railroad terminal? A. As a rule the requests for inspection of truck poultry come in about eleven o'clock, and we give them an inspection around twelve or one, that is about as early as we can do it on account of the principal amount of inspection being made at the railroad terminals, and our regulations require that those that apply first must be served first.

Q. Suppose a request for an inspection comes in at three o'clock in the afternoon, after your inspectors have finished inspecting at the railroad terminals, then about how long does it take you to supply an inspector for truck poultry? A. The first one would probably be three-quarters of an hour, but, if there were more after that, there wouldn't be any time, because we would have an inspector there waiting for the others.

Q. Do you maintain inspectors at the railroad terminals throughout the business part of the day? A. Yes, sir.

Mr. Rice: May I ask that this paper be marked for identification?

(Marked Government's Exhibit 7 for Identification.)

Q. Dr. Ives, I hand you Exhibit 7 for Identification and ask you whether you can tell us what that document is? A. This is a detailed

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report of the number of carloads of live poultry received at New York during the year 1929.

Q. And that refers only to freight poultry coming in? A. Yes.

Q. In the year 1929? A. Yes, sir.

Q. Do you know how those figures are computed? A. These figures are taken from the individual certificates written by the inspectors on the different roads.

Q. As you have already described? A. Yes, sir.

Q. Now, is Exhibit 7 for Identification a public document? A. Yes, sir. 572

Q. And is it kept in the regular course of the Government's business? A. Yes.

Q. And do you know whether or not the figures on Exhibit 7 for Identification are correct? A. I would swear that they are correct, yes, sir.

Mr. Rice: I now offer Government's Exhibit 7 for Identification in evidence.

Mr. Heller: If your Honor please, may I ask one question beforehand?

The Court: Yes, go ahead. 573

*By Mr. Heller:*

Q. Is this the original from your records, or is this a copy? A. This is a copy made from the originals.

Q. Did you make it up personally? A. No, sir.

Mr. Heller: Now, if the Court pleases, I object to this going into evidence as not being the best evidence.

The Court: The Government could have a certified copy, they do not have to offer the original, they can have it certified.

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Mr. Heller: Is this a certified copy?

Mr. Rice: Is it my understanding that counsel is going to ask us to produce a certified copy of this Government document?

Mr. Heller: Unless I have some assurance of the correctness of this. I do not want to put you to the trouble, unless I have some assurance that this is an exact copy.

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The Court: Ask him if he has compared it. Did you compare that with the original, is it correct?

The Witness: I personally haven't compared this one, but I am absolutely certain that it is correct.

Q. Dr. Ives, Exhibit 7 for Identification is a mimeographed table? A. Absolutely.

Q. What is it mimeographed from? A. It is mimeographed from the original, that is, copied from our daily reports and checked before it is sent out.

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Q. When was it mimeographed? A. Mimeo-graphed in January, 1930.

Q. At that time were you supervisor of the Inspection Service? A. Yes, sir.

Q. Was it your duty to check the accuracy of these tables? A. I wouldn't say it was my duty, but we did it.

Q. You did it? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. And at that time were they correct? A. Absolutely.

Q. Duplications of the original? A. Absolutely.