

mere fact that a slaughter house, either wholesale or wholesale-retail does not happen to be in the immediate vicinity of another slaughter house does not mean that they do not compete.

Q. What is the trade practice? A. We have found that in certain times a chicken market or butcher store in the Bronx will buy from Brooklyn. We have found that dealers in Manhattan will buy from the Bronx, so instead of as in the earlier days, feeling that a competitor was simply a man in the immediate vicinity of another slaughter house, we find that the five boroughs compete with one another and that within the borough there is competition over the whole borough.

Q. You heard Mr. Heller's question as to whether or not it was not true that the closest competitor of the A. L. A. Schechter Poultry Corporation was two miles away from him? A. Yes.

Q. Suppose there were a dozen wholesale and retail slaughter house operators within the immediate vicinity of the A. L. A. Schechter Corporation, would you say that there would be competition between the wholesale and retail slaughter house markets and the A. L. A. Schechter Poultry Corporation?

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

Mr. Heller: I object to the form of the question, and in the second place, the witness said he did not know where the nearest competitor was located.

The Court: He has already said there would be competition between any live

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poultry markets; I believe that answers the question.

Mr. Rice: Yes, I think it does.

Q. Has the Live Poultry Code Authority received any report as to volume of sales from the slaughter houses located in Brooklyn since the Code went into effect?

Mr. Heller: That is objected to as not binding on us.

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The Court: I will let him prove the volume of sales.

Mr. Heller: Exception.

A. May I hear the question again?

(Question repeated by the stenographer.)

A. It has.

Q. And has the volume of sales of various markets located in the vicinity of the A. L. A. Schechter Poultry Corporation market been recorded on this list which you prepared upon the request of counsel for the defendants? A. Yes.

Q. And where did you take these figures from?
A. From our weekly reports from these slaughter houses.

Mr. Rice: I offer this in evidence.

Mr. Heller: That is objected to, your Honor; we have not had a chance to compare the books of the different competitors with reference to the amount of their sales, and it is not binding on us.

Mr. Rice: I recognize that if counsel objects to this method of proof as to the volume of sales by the competitors of the

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A. L. A. Schechter Market, then we must offer the best evidence.

The Court: Yes.

Mr. Rice: However, I do offer in evidence the list of markets competing with the A. L. A. Schechter Poultry Corporation requested by counsel for the defendants.

Mr. Heller: I will be happy to accept it providing the names and addresses are given alongside of each competitor, I will be happy to take it then.

Mr. Rice: These addresses are quite as available to counsel for defendants as they are to us, the names are given here.

Mr. Heller: I want the jury to have the entire situation before them, the names and addresses.

The Court: You can write out a list with the addresses. Counsel says he won't object to the facts if the addresses are given.

Mr. Heller: I am satisfied to take the names on here, but I want the addresses.

The Court: All right; let somebody put the addresses in.

The Witness: The addresses are right here.

Q. The bailiff has just handed me a list of addresses; does this include the list of people that are on this list, their addresses? A. It does.

Mr. Rice: Then, if your Honor, please, I offer this list of addresses as part of the exhibit.

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Mr. Heller: Oh, no, I want it all in one.

The Court: You will get it all confused. Let somebody make another list and put the addresses on. Counsel says he won't object.

Mr. Rice: Very well; I will offer this in evidence and I think—

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Mr. Heller: Not this; it has figures on here of other merchants, that are not binding on us. Make a new list with these names and the addresses and leave this other matter off, and I will take it.

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

HYMAN W. GARDNER, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

1782 Q. What is your occupation, Mr. Gardner? A. I am a veterinarian.

The Court: What?

The Witness: I am a veterinarian.

Q. What position do you occupy? A. I am a veterinarian for the Department of Health at the present time, and also in private practice.

Q. How long have you been a veterinarian? A. Fifteen years.

Q. What training did you have prior to becoming a veterinarian?

Mr. Heller: I will concede that he is qualified, your Honor.

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1783

Mr. Rice: Very well.

The Court: Have you a degree?

The Witness: Yes, sir, from Cornell,
D.V.M.

Q. Dr. Gardner, did you visit the A. L. A. Schechter Poultry Corporation Market at 858 East 52nd Street, Brooklyn, on June 28, 1934? A. I can tell from my report. I did not visit that particular corporation's market. I visited a poultry slaughter house at 858 East 52nd Street, operated by, according to their permit, by Alex and Martin Schechter.

Q. By Alex and Martin Schechter? A. That was what the records of the Department were.

Q. Do you know—what do you know that market as? A. I know it as a poultry slaughter house run by the Schechter Brothers.

The Court: June when was that?

Mr. Rice: June 28th.

The Witness: May I see those F. F. A.'s?

Q. Do you know that market as the Rugby Live Poultry Market? A. I believe I have heard it used, but I never considered it by that name. They call those markets by so many names. I go according to the permit.

Q. How did you happen to go to that market? A. Well, we were making inspections in Brownsville or East New York, and I was with Mr. Forthsmith of the Poultry Code Authority, and I was letting him take me around—

Q. Speak up so the jury can hear you. A. And I was letting him take me around to the poultry slaughter houses he wanted to go to, so we had been, I think, on a previous inspection

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of some of them in Brownsville, and this particular day we thought we should go down to Schechter's place on Rockaway Avenue and the Schechter's place at East 52nd Street, and then on our way back we would cover some more markets in Brownsville.

The Court: Is that 851 or 852?

The Witness: It is 858 East 52nd Street.

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A. (Continuing.) The first place we went to was 991 Rockaway Avenue; the 52nd Street was the second place.

Q. You went to 991 Rockaway Avenue? A. Yes, sir.

Q. Whose market is that? A. Well, we were—the Health Department was under a misunderstanding there. The permit used to read Sam Schechter, but I always knew the man in charge, or the owner of the place, to be Joseph Schechter. I think that was straightened out afterwards with the Department. The permit—I don't know, they claimed that the market was owned by this Sam Schechter, but Joseph Schechter was the—oh, I don't know—the silent partner or indirect proprietor, or whatever it is, I don't know, but Joseph Schechter was the man who operated the place, the man that I always had dealings with.

Q. Who had the permit from the Health Department? A. A man by the name of Sam Schechter. I cannot designate him.

Q. Do you know who was operating the market there? A. Joseph Schechter.

Q. Do you know whether he had a permit to operate a slaughter house market? A. Not under his name.

Q. Do you know whether he had any permit? A. Not that I know of, no, sir.

Q. Do you know whether the Schechter Live Poultry Market, Inc., had any permit? A. No, they never had a permit under that name.

Q. Do you know that Joseph Schechter did not have a permit? A. Not under his name.

Q. I say, do you know that he did not? A. Yes, sir, I know that he did not.

Q. Do you know that the Schechter Live Poultry Market, Inc., did not have a permit to operate a slaughter house at 991 Rockaway Avenue? A. I know that they did not.

Q. But you do know that Sam Schechter had a permit to operate a slaughter house at 991 Rockaway Avenue? A. If that man lived, or if that man existed, it was under that name.

Q. You know there was a permit issued—
A. To Sam Schechter.

Q. (Continued.) —to a man by that name? A. Yes.

Q. What did you do at 991 Rockaway Avenue? A. Well, I went into the place, and the first thing I did was to begin to look at the poultry in the place, and I spotted a basket that was in the back of the poultry house. That basket was—in a poultry slaughter house, when you see a basket with stuff in it back of the place, you get suspicious, so I looked at the basket of poultry and I asked the man in charge, I think it was the bookkeeper—Mr. Joseph Schechter wasn't there at the time—told him I would like to look this stuff over, and I think they got another coop, empty coop, and we began to go over this poultry, and out of, I think there must have been fifteen chickens in the basket, out of fifteen I think I condemned six chickens which I considered unfit for food.

1792

Hyman W. Gardner—By Govt.—Direct

Q. Just a moment. How many were in the basket? A. There must have been a dozen or fifteen chickens, poor birds.

Q. Don't you have a record of the exact number? A. No. In my report I put down that I condemned six chickens as being unfit for food. They were isolated in a spindle coop as unhealthy or poor poultry. There must have been a dozen or fifteen chickens in the basket, I don't think there were any more than fifteen could go into the basket.

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Q. What was the condition of the six chickens you condemned as unfit for human consumption? A. Two of them had a condition which I diagnosed as salpingitis, and they also showed evidence of peritonitis, because while I should consider those birds unfit for food on ante-mortem inspection, I made a post-mortem inspection and found two birds that had pot belly—members in the trade call that by several names, and I was suspicious of them because about 80 per cent. of the birds of that type are unfit for food; when you open them up you generally find a salpingitis condition, peritonitis, and I opened those birds

1794

up and sure enough, they showed evidence of peritonitis, they had salpingitis, that means that the ovary ducts were inflamed and they must have ruptured and allowed a certain material to seep out into the abdomen and developed pot belly.

Q. Could the inferior condition of those chickens be recognized by anybody? A. Any man in the trade would recognize these birds as pot bellied birds. They call them by another name, if I may use it. It is a vulgar expression, but they use it and they know it.

Q. Is it too vulgar to use it in this court room? A. Yes, I think so.

Q. Very well. You have described the condition— A. Those are only two of the birds.

Q. (Continued.) —of two of the birds? A. Yes, sir. Two of them I condemned for extensive bruises and fractures, and two others I condemned for emaciation. By emaciation, of course, there may be a difference of opinion, but I consider a bird as practically—that has practically no flesh on its breast, as emaciated; one that would practically—there would be no nutrition, no nutritive value from a bird like that, and I would consider it emaciated.

Q. These six birds that you condemned, did you readily recognize them as unfit for food? A. Yes.

Q. In your opinion would any man in the poultry trade readily recognize them as unfit for consumption? A. Yes.

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

Q. What did you do with the birds? A. Why, I asked to have them denatured and there was no antiseptic on the place.

Q. Do the Board of Health, Health Department rules, require that a can of disinfectant be kept at all slaughter houses? A. Yes, sir, to denature any of the birds—

Q. Was there a can of disinfectant there? A. Not at the time I was there.

Q. What happened? A. Why, they went out to get some disinfectant, and we had some other work to do, and there was another gentleman there by the name of—of the Code Authority—by the name of Muscan, so we—I decided—I

1798

Hyman W. Gardner—By Govt.—Direct

asked him to stay there and see that the birds were disinfected, while I left with Mr. Forthsmith, and then on our way back we stopped off to make sure they were disinfected, and they were, because we did not want to wait until they obtained the disinfectant.

Q. Did you do anything yourself at that market, 991 Rockaway Avenue? A. No. By the way, if I can answer, Mr. Schechter wasn't there at the time that I was making the condemnation. The bookkeeper, I think, didn't want me to condemn these birds, or he didn't want me to destroy them.

Mr. Heller: I object.

The Court: Strike out what the bookkeeper didn't want to do.

A. (Continuing.) Mr. Schechter wasn't there at the time, but he came later and he was present, but he wasn't present when I condemned the birds.

Q. He was present when you finally condemned the birds? A. He had no objection to it, he made no objection to it, rather.

Q. Did you make out a report at that time? A. Yes, a score card, we call it.

Q. Is it your duty as an inspector of the Department of Health to make out such a report? A. In most of the cases, yes. In practically all I make out my score cards.

Q. What is done with this so-called score card? A. I make this out in triplicate, and when I get home, if there are any F. F. A.'s, facts for arrest, if there are any F. F. A.'s to be made out, why, I make them out right from my score card; two of them are sent in to the Department

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Hyman W. Gardner—By Govt.—Direct

1801

and one of them, of course, to the owner, and two of them are sent to the Department, together with the F. F. A., the facts for arrest.

Q. And what did you do with the F. F. A.? A. That goes to the Department and they do whatever they see fit. They prosecute or they bring them up before a trial board or whatever they deem fit.

Q. And is it kept as part of the records of the Health Department? A. Oh, yes.

Q. Now, do you have the F. F. A. that you made out at 991 Rockaway Avenue? A. Yes, sir.

Q. With you? A. Yes, sir, this is it (indicating).

Mr. Rice: I offer it in evidence.

Mr. Heller: No objection.

The Court: There is some writing on the other side Mr. Heller examined.

The Witness: That is the diagnosis.

Q. You put the diagnosis of each chicken that is deemed unfit for food? A. It says, "Reason for condemnation" and then I give the reason.

1803

(Marked Government's Exhibit 27 in evidence.)

Q. What did you do after you had made out this F. F. A. at Joe Schechter's place at 991 Rockaway Avenue? A. I did not make it out there. I only made out the score card, at home I made out the F. F. A.

Q. And what did you do after you left Joe Schechter's place? A. I left him the score card and I went to 858 East 52nd Street, Mr. Forsmith and myself.

Q. Benjamin Forsmith went with you? A. Yes, sir.

1804

Hyman W. Gardner—By Govt.—Direct

Q. What did you do there? A. I inspected poultry on the place and if my memory serves me right Mr. Forsmith asked have you any culls here and one of the Schechter brothers said we have a little stuff in the back and I immediately went to the back where we found a few poor birds.

Q. Just a minute—

Mr. Heller: Why not let him answer that.

1805

Mr. Rice: Because I desire to present my evidence in order.

Q. Before you went to the back, when you first entered the place, did you say anything to any of the Schechter brothers? A. I don't remember, I may have said something.

Q. Did you see any of these four men there (indicating the four defendants)? A. I saw two of them. There may have been more but I saw the two sitting there at the end (indicating).

Q. Which ones? A. At my right, to the two end nearest there (indicating).

Q. This gentleman in the back (indicating)? A. Yes, sir, that is the one.

Mr. Heller: The witness is indicating Mr. Alex Schechter.

Q. And who else? A. The gentleman nearest him there next to him (indicating Mr. Martin Schechter).

Q. Now did you say anything to either of them when you first came in there? A. I may have, but I don't remember.

Q. You don't recall it? A. No.

Hyman W. Gardner—By Govt.—Direct

1807

Q. Then what happened? A. Well, I inspected these poor birds in the back, there may have been a half a dozen of them, and I was suspicious and I went over them carefully and I condemned four of those few in the back. Three of them for emaciation and one of them for roup and emaciation. By that I mean there were discharges from the eyes and nose and it had diphtheric membranes, yellow patches that any slaughter house poultry owner would recognize.

Q. And how many chickens were in the container that these four that you condemned were in? A. There were only about six.

Q. And you condemned four out of the six? A. Yes.

Q. And were the four that you condemned readily recognizable as unfit for food? A. Yes, they called them culls themselves, but I would like to explain something about this cull business.

Q. Just a minute, we do not want any explanation about that now, it will only confuse things. Were they unfit for food? A. Yes, sir.

Q. All four of them? A. Yes.

Q. And were the six chickens that you saw at Joe Schechter's place unfit for food? A. Yes,—you mean the others at the other place?

Q. Yes. A. Oh, certainly.

Q. Now would you say that any man in the poultry trade would recognize these four birds as unfit for food? A. Yes.

The Court: He said about the six before, but I will let you ask about the four.

Q. About the four. A. Yes, sir. If they thought that they were fit for food they would object to my condemning them.

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1810 *Hyman W. Gardner—By Govt.—Direct*

Q. What happened after that? A. After I condemned then I went into the office to make out my score card and when the Schechter brothers saw me making out the score card—

Q. Now just a minute, when you say Schechter brothers, do you mean those two whom you have identified? A. Yes, when they saw me making out the score card they became quite peeved with Mr. Forsmith.

1811 Q. What did they do or say? A. I cannot remember all the language—I cannot remember all the language, but they got into a very heated argument, they got into a heated discussion with Mr. Forsmith.

Q. We want to know what happened. A. Well, I cannot recall everything, but I know this much, as long as I condemned the birds everything was all right, but as soon as they found out that I was writing it up they became excited, especially with Mr. Forsmith, and they used abusive and violent language.

Q. Who is Mr. Forsmith? A. He is of the Poultry Code Authority.

1812 Q. And you say they used abusive language?

Mr. Heller: If your Honor pleases, I move to strike that out “abusive language.”

The Court: Yes, tell us what was said.

The Witness: They were heated words.

The Court: Well, give us the substance.

The Witness: This is your day and you are on top today, but you will be down tomorrow and we will be on top, and one thing led to another.

Q. Well, tell us as much as you remember. A. I would rather not say anything. I want to tell

the truth and I cannot remember the exact words. I am not trying to hide anything—I want to tell the truth, but I cannot remember the exact words, but I know they became all heated up and they got into a hot argument and they became abusive to him.

Mr. Heller: I move that that be stricken out.

The Court: Strike out the “abusive.” Mr. Witness, you cannot tell us your conclusions. You must tell us in substance what was said.

Q. Was anybody calling anybody else any names?

Mr. Heller: I object to that as leading.

The Court: Oh, he can ask that question of a man who has forgotten something. Objection overruled.

Mr. Heller: Exception.

The Witness: He may have called him——

The Court: Not what they may have done. Tell me, was it a one-sided argument or was it an argument into which they all participated?

The Witness: It was one-sided because Mr. Forsmith tried to be as polite and as nice as he could be under the circumstances.

The Court: Well, tell us what did they say to him and what did he say to them?

The Witness: I cannot remember, your Honor.

Q. Did they do anything? A. No, not physically, I was afraid that they would, but they did not.

1816

Hyman W. Gardner—By Govt.—Direct

Q. Did you examine the premises to see whether there was a can of disinfectant at that particular slaughter house No. 858 East 52nd Street?

Mr. Heller: We are not being charged in this indictment with not having cans of benzine or disinfectant present, whatever it may be, in this slaughter house.

The Court: That isn't one of the offenses charged here.

Mr. Rice: All right.

1817

Q. What happened after you condemned these four birds? A. They were, if I remember right—that is another thing that I do not remember. I think they had disinfectant in the place, and they denatured the birds or I wouldn't have left the premises unless they did, or I would have left somebody there to see that the stuff was disinfected. So I think that they disinfected these birds.

Q. As a matter of fact didn't they go out and buy some disinfectant? A. At this particular place?

1818 Q. Didn't they do that and bring it in? A. Maybe they did, and maybe I waited until they got back. I remember at the other place, 991 Rockaway Avenue, they didn't have it, and they had to go out and get it. We waited a while, and then went away and told somebody to see that the stuff was disinfected.

Q. Did you make up an F. F. A. there for the four unfit chickens that you found at the A. L. A. Schechter Poultry Corporation? A. At the A. L. A. and the other Schechter place, yes.

Q. At 858 East 52nd Street I am asking you about. A. Yes, at that place.

Hyman W. Gardner—By Govt.—Cross

1819

Q. Is this the F. F. A. you have in your hand?
A. Yes, sir.

Q. And that record is kept in the same way as
the previous exhibit? A. Yes, sir.

Mr. Rice: I offer that in evidence.

Mr. Heller: No objection.

(Marked Government's Exhibit 28 in
evidence.)

Mr. Rice: That is all.

Cross examination by Mr. Heller:

1820

Q. Doctor, when you visited the first place at
991 Rockaway Avenue, about how many coops of
chickens did you find there on the floor? A.
Well, I don't remember, there were some coops
of poultry.

Q. This was on a Thursday, wasn't it? A. I
think it was on a Thursday, yes, sir.

Q. That was quite a busy day in the market,
was it not? A. Yes, sir.

Q. Would you say that you found about 100
stacks of chickens? A. Oh, no, not a hundred
stacks, I do not think that many.

1821

Q. About how many did you find? A. There
may have been 50 coops of poultry there.

Q. And there were about 30 to 40 birds in a
coop? A. That many, yes, sir.

Q. So there would be about between two and
three thousand birds there approximately, is that
right? A. Fifty—two thousand birds, yes, sir.

Q. You looked at those birds, did you? A.
Well, I gave them ante-mortem inspection, what-
ever I could see by just looking at them.

Q. I do not mean those in the basket, I mean
those in the coops. A. I looked at those too.

1822 *Hyman W. Gardner—By Govt.—Cross*

Q. You saw them all there, didn't you? A. I saw them, yes.

Q. And you found them to be healthy? A. Apparently they were healthy as far as I could see.

Q. They had the labels of the Inspection Service on them, did they not? A. They were inspected by the Bureau of Agricultural Economics.

Q. All those birds that you claim were unfit were in a separate basket, is that right? A. Yes, sir.

Q. Which you say was away from the coops? A. In the back of the room.

Q. In the back of the room? A. Yes, in the back of the slaughter house.

Q. You didn't find any customer come in and make an offer for those birds while you were there, is that right? A. No, sir, not at that time.

Q. You didn't see anyone buy them, did you? A. Not at that time.

Q. You do not know whether they were for sale or not? A. If they are on the premises as far as the Health Department is concerned the presumption is they are for sale.

Q. You mean that is your presumption? A. Absolutely, because otherwise the man should condemn those birds at once if he sees they are sick, he should condemn them immediately.

Q. They could be condemned an hour later, couldn't they? A. They should be condemned as soon as they know them to be unfit; the fact that they were in the basket indicated that they had been handled.

Q. And found to be diseased chickens? A. Then they should have destroyed them.

1823

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Hyman W. Gardner—By Govt.—Cross

1825

Q. And they had evidently taken them away from the other coops and put them in a separate place? A. They probably culled them out—

Q. When they found they were unfit? A. Yes.

Q. So they put them aside in the basket to be destroyed? A. No, not for that, no, you are going too fast.

Q. All right, let us take it slower. A. They probably considered those birds poor birds, and they probably—

Q. That is your opinion. A. And they probably meant to sell them at a lower price—

Q. That is your—

Mr. Rice: I object to counsel interrupting this witness.

The Court: Let him finish his answers.

Q. You can't read a person's mind in advance, can you? A. The Health Department—

Q. Please answer my questions one at a time. Do you propose to testify here as an expert as to the operation of one's mind? A. No, sir.

Q. All right, as far as you were concerned, all you know is that these six birds or eight or ten were separate and apart from the healthy chickens, is that right? A. They were.

Q. Is that correct, in a separate room? A. Not in a separate room, no, sir, in the same room.

Q. In the back of the room? A. In the back of the sales room.

Q. Away from these other coops? A. Yes, sir, that is right.

Q. You saw no customer, you saw no customer come in and make a bid for these chickens, did you? A. No.

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Hyman W. Gardner—By Govt.—Cross

Q. With reference to the other place, 858 East 52nd Street, how many coops were there in that place? A. I do not remember exactly.

Q. Would you say there also were two or three thousand birds? A. I would say that many coops were there, yes, sir.

Q. And those coops were there on the floor? A. I went over them, gave them an ante-mortem examination.

Q. You found them apparently healthy? A. I found them apparently all right.

1829

Q. You found the inspection slips on the coops? A. Yes.

Q. And those birds you say were culls were in a separate basket, is that correct? A. I do not call those birds culls. I say they were culled out, but I do not call them culls because people, different people mean—

Q. Different things? A. Have a different opinion as to what constitutes a cull. The Code Authority considers a cull as a bird unfit for food. I do not use the term. I say they were culled out.

1830

Q. In other words they were taken out from the other birds? A. Yes, sir.

Q. They were taken out from these other coops? A. Yes, sir.

Q. And were in a basket apart? A. Yes, sir.

Q. There was no customer that made a bid for those at the time, was there? A. No, sir.

Q. Isn't it a fact that that is the usual situation in most markets? A. What is the usual situation?

Q. Don't you find culls in many markets? A. Yes.

Hyman W. Gardner—By Govt.—Cross

1831

Q. Separated? A. Yes, and if I find them I will condemn them.

Q. There is a possibility, is there not— A. But it is a practice though—

Q. I am just asking you a question here, you find that condition, do you not, in different markets?

The Court: That wasn't an answer to the question, you do not need to state what the practice is as you weren't asked that.

1832

Q. You find that condition in different markets, from time to time, do you not? A. Yes, sir.

Q. And you condemn them? A. Yes, sir.

Q. A lot may happen between the time a chicken gets into a place up to the time of sale? A. Yes, sir.

Q. They are live chickens? A. Yes, sir.

Q. They might be diseased in transit? A. Surely.

Q. You do not condemn a man for culling out diseased chickens or unfit chickens, do you? A. I really do not get that, what was it?

1833

Q. Do you condemn a man for culling out culs from the coop? A. I do not condemn the man, no—

Mr. Heller: That is all.

The Witness: I condemn the chicken if it is unfit for food.

Mr. Heller: That is right. That is all, that is all.

Mr. Rice: That is all, Doctor.

(Witness excused.)

1834 *Benjamin Forsmith—By Govt.—Direct*

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

Direct examination by Mr. Rice:

Q. What is your business, Mr. Forsmith? A. I am employed by the Code Supervisor.

Q. What Code Supervisor? A. Live Poultry Code.

Q. In what capacity? A. My official title is Industry Liaison Officer; my duties are varied.

Q. How long have you been employed by the Code Authority? A. Since about May 1st.

Q. 1934? A. 1934.

Q. What were your duties since you came into the employ of the Code Authority, when you first came into the employ? A. Investigator.

Q. Were you directing other investigators to a certain extent? A. Yes.

Q. Just what did you do in that capacity? A. Well, I would assign people to various territories; I was training the investigators into the practices of the industry.

Q. What type of investigations did you make? A. Observation mostly.

Q. Investigating what type of violations? A. Violations of the Code, the provisions of the Code.

Q. What particular provisions? A. All of them.

Q. And you are familiar with all of the provisions? A. I am.

Q. Of the Live Poultry Code? A. I am.

Q. Do you know Joseph Schechter? A. I do.

1835

1836

Benjamin Forsmith—By Govt.—Direct

1837

Q. Will you point him out? A. That is Joseph Schechter. (Indicating Joseph Schechter, the defendant.)

Q. Identifying the defendant, Joseph Schechter. Do you know what market he operated from May 16, 1934, on? A. Yes.

Q. What market did he operate? A. 991 Rockaway Avenue, the Schechter Live Poultry Company, Inc.

Q. How do you know that? A. From information given to me by his brother.

Q. What brother?

1838

Mr. Heller: I object to that and I move to strike it out; I move to strike out the answer.

The Court: I will strike it out in so far as—wait a minute, I cannot do that. If it is connected up as a conspiracy, if a conspiracy should be established, why then the actions or the statements of any one would bind the others. If there is no conspiracy it would not bind them. But what brother do you mean?

1839

The Witness: Meyer Schechter.

The Court: Is he here?

The Witness: Yes, sir.

The Court: Which one is it?

The Witness: He is standing.

The Court: That is indicating the defendant Martin Schechter, isn't it? Is that correct?

Mr. Heller: I do not know.

Mr. Rice: We will show that this man has two aliases.

The Court: I do not care anything about that. He is indicating Martin Schechter.

1840

Benjamin Forsmith—By Govt.—Direct

Q. You call this man Martin Schechter Meyer Schechter? A. I do.

Q. Why? A. I have always known him as Meyer Schechter.

Q. Have you ever heard him called Martin Schechter? A. I have.

Q. Where? A. In the market.

Q. Have you ever heard him called by any other name? A. No, sir.

Q. When did you ascertain these facts as to the identity of Joseph Schechter and the Schechter Live Poultry Market, Inc.—

1841

Mr. Heller: Let us get down to the meat of it, Judge. If you want a concession that he is interested in the corporation, I will give it to you.

Mr. Rice: Interested in what corporation?

Mr. Heller: The Schechter Live Poultry Market, Inc. at 991 Rockaway Avenue.

Mr. Rice: Very well.

The Court: From when?

1842

Mr. Heller: From this inspection.

Mr. Rice: Will you concede also, Mr. Heller—

The Court: Just a minute. Do not ask him in the presence of the jury.

(Discussion off the record.)

Q. Do you know whether the Schechter Live Poultry Market, Inc. operated the poultry slaughter house market at 991 Rockaway Avenue, Brooklyn, on May 16, 1934? A. I do not.

Q. You do not? A. No.

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1843

Q. Do you know whether they operated the live poultry slaughter house market some time after that date? A. I do.

Q. From what date? A. About June 1st.

Q. You know they have operated since June 1, 1934? A. I do.

Q. Up to what date? A. Not up to today.

Q. Well, about what time? A. About a month ago, I believe.

Q. Today is October 22nd. A. Some time in August I think they closed up.

Q. Do you know what poultry market is operated at No. 858 East 52nd Street, Brooklyn? A. I do.

Q. What market is it? A. It is—

Mr. Heller: As of what date, Mr. Rice?

Mr. Rice: As of today.

Mr. Heller: I—

Q. May 15, 1934? A. The A. L. A. Schechter Live Poultry Corporation—that was one name. They had another name, the Rugby Live Poultry Company.

Q. How do you know that? A. That was the legend the truck bore.

Q. Do you know what individuals were operating the A. L. A. Schechter Poultry Corporation at 858 East 52nd Street, Brooklyn, on May 15, 1934? A. I do.

Q. What individuals? A. They were Alex, Aaron and Meyer.

Q. That is Martin? A. Martin.

Q. Can you identify each of them? A. Alex, he is the last man there, that is Alex, and in front of him is the one that I call Meyer, and Aaron is directly in front alongside of him.

1844

1845

1846

Benjamin Forsmith—By Govt.—Direct

Mr. Rice: Identifying the three defendants named.

Q. Do you know whether or not Alex, Martin and Aaron Schechter have operated the A. L. A. Schechter Poultry Market at that address since May 15, 1934? A. Will you repeat that, please, Mr. Rice?

Q. Do you know whether those three defendants have operated that market at that address since May 15, 1934? A. That is my belief.

1847

Q. Do you have any knowledge? A. I have been there, and I have seen them in the premises.

Q. When? A. On May 24th, May 29th, May 31st, and June 28th.

Q. Of 1934? A. Yes, sir.

Q. And you have seen all three of those individuals there at those times? A. At some time, yes, sir.

Q. Now, did you have any conversation at any time with Meyer or Martin Schechter with regard to the individuals who operated the A. L. A. Schechter Live Poultry Corporation? A. I did.

1848

Mr. Heller: Are you taking that subject to connection, your Honor?

The Court: Of course, if none of those were present—

The Witness: I had a conversation.

Q. What was that conversation? A. May 24th. I was instructed to go to the premises on 52nd Street to find out who operated each market. When I got there I found Meyer Schechter there, and he gave me the information.

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1849

Q. What information did he give you? A. He told me that his father, David Schechter, operated the Snediker Avenue Market under the name of Mogen David Live Poultry, and that Joseph Schechter operated the Schechter Live Poultry Corporation.

Q. At what address? A. 991 Rockaway Avenue, and that the A. L. A. was operated by Meyer and Alex and Aaron Schechter.

Q. Now, when you say Meyer Schechter you mean the man that has been named as the defendant under the name of Martin Schechter? A. That is right.

Q. When you were at the A. L. A. Schechter Live Poultry Corporation at 858 East 52nd Street, Brooklyn, on May 24, 1934, did you do anything else besides get this information that you have just stated? A. Yes, I walked through the plant and I observed some empty coops there and I took some identifying numbers from them.

Q. How many empty coops? A. 21 empty coops, and I took three numbers off the inspection labels.

Q. And do you have those three numbers that you took off the inspection labels? A. Yes, sir.

Q. And you mean that there were inspection labels on the coops? A. Yes.

Q. And you recorded the numbers? A. Yes.

Q. And have you them with you? A. Yes, sir, they are here. (Witness handing paper to counsel.)

Q. Can you tell us what those three numbers are?

Mr. Heller: I object; there is no relevancy here as to that.

1850

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1852

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Mr. Rice: We are going to connect this up through a chain of proof, showing the sale of uninspected poultry.

Mr. Heller: I ask your Honor to tell the jury at this time to disregard counsel's statement.

The Court: Yes, Gentleman of the Jury, disregard counsel's statement. There is no charge at this time—

1853

Mr. Rice: If your Honor please, there are; Counts 4 and 5 charge the sale of uninspected poultry.

The Court: All right; it relates to Counts 4 and 5, is that it?

Mr. Heller: This is May 24th that he is talking about, your Honor.

The Court: That is what he says.

Mr. Heller: I don't know what that has to do with May 28th.

The Court: It might or it might not. Objection overruled.

Mr. Heller: Exception.

1854

Q. This was May 24, 1934? A. Yes, sir.

Q. And what were those numbers that you took down from the inspection labels that you saw on three of the 21 empty coops? A. The numbers are 19411-69934 and 68439.

Q. What prompted you to take those numbers down?

Mr. Heller: That is objected to.

Mr. Rice: Very well; I will withdraw that.

Q. What did you do after you took those numbers down? A. I left the premises.

Q. You left the premises? A. Yes.

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1855

Q. Did you return to the premises later on?
A. On the 29th of May.

Q. On the 29th of May? A. Yes.

Q. What did you do on May 29, 1934? A. I arrived at the premises about quarter of seven A. M. and proceeded right through the premises until I reached what is known as the store room in the rear of the premises, and I found 59 baskets of live poultry, none of the baskets bearing any inspection labels.

The Court: What date was this?

1856

Mr. Rice: May 29th.

Q. Did you examine the 59 baskets? A. I did.

Q. Did you examine them for inspection labels?
A. I did.

Q. What did you find? A. I found no inspection labels on any of the baskets.

Q. Are you sure that there were no inspection labels on any of those baskets? A. I am.

Q. Approximately how many pounds of poultry are normally contained in a basket?

Mr. Heller: That is objected to as no proof of what was in these baskets. 1857

The Court: That is right.

Mr. Rice: He just stated they contained live poultry.

The Court: If he can tell us what they contained, all right, if he knows. They might question how he knows it. If he knows it, if he has had experience, he may answer.

A. About 50 pounds.

Q. Sometimes a little more than that? A. Sometimes a little less.

1858

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Q. What is the range of the amount of poultry contained in a so-called basket? A. There are usually 12 birds packed into a basket, when they are fowl, and the average weight is probably 4 pounds apiece.

Q. Do these baskets sometimes contain 60 or 65 pounds of poultry? A. They sometimes do, yes, depending on the season of the year.

Q. What does the season of the year have to do with it? A. Well, they pack them a little heavier in the cooler months.

1859

Q. What else did you see at the A. L. A. Schechter Poultry Corporation's premises on May 29, 1934? A. I observed the 21 coops that had been in the same spot as they were on May 24th, had been—were full of live poultry.

Q. When you were there on May 24th was there any poultry in these 21 coops? A. There wasn't.

Q. And you took down three of the inspection label numbers? A. That is right.

Q. When you returned on May 29th what did you do? A. I checked the three numbers that I had with the coops there and found they were alike.

Q. That is, you checked these three numbers? A. Yes, sir.

Q. Were they the identical numbers? A. They were.

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

Q. Were the 21 coops in the same position that you had seen them? A. They were.

Q. On May 24th? A. They was.

Q. And they were all full of poultry? A. Yes, sir.

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1861

Q. What else did you do? A. I spoke to one of the employees and I said to him, "Sammy"—

Mr. Heller: I object.

The Court: Never mind what you said to any of the employees.

Q. Were any of the defendants there? A. Yes, all three of them.

Q. Which three? A. Aaron, Alex and Meyer.

Q. Did you talk with any of them? A. Yes.

Q. Whom did you talk to? A. Alex, Al.

1862

Q. Nobody else? A. No.

Q. Were Aaron and Martin Schechter present when you talked with Alex? A. They are, yes, part of the time.

Q. What was said by Alex Schechter when you say the brothers, Martin and Aaron, were present? A. I asked him where the inspection labels were for the 59 baskets in the back store room.

Q. Give us the whole conversation. A. And whether he could show me the inspection labels for the poultry contained in the 21 coops that I thought were uninspected poultry, and he said that the inspection certificate was in the possession of his brother, Joseph Schechter.

1863

Q. Now, Joseph Schechter is the man that you have identified as the man operating the slaughter house market at 991 Rockaway Avenue? A. That is right.

The Court: Who was this you asked, which one?

The Witness: Alex.

Q. You asked Alex if you could see the inspection labels? A. Yes.

1864

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The Court: That is what he said.

Mr. Rice: Very well.

Q. Did he say anything else? A. Inspection certificate.

Q. Inspection certificate? A. That is it.

Q. Just what is that? A. That is a certificate issued by the inspectors when they inspect a load of poultry, a car of poultry, certifying that they have inspected that, in addition to the labels that are pasted on the coops, baskets.

1865

Q. What else, if anything, was said between you and Alex at the time that Aaron and Martin Schechter were present? A. Well, I asked him—he told me that he had them inspected and that his brother had the certificate, and I said, "Well, if they were inspected, how come they don't have any labels on the baskets or the coops?" He didn't answer me.

Q. He did not answer you? A. No.

Q. Was there anything else said by either of you? A. Yes, I said to him, "I understand that when you closed last night there were 18 coops of poultry on the floor at four o'clock and there are 62 coops on the floor right now. Where did you get this poultry?"

Q. What did he say? A. He said some of it came in at five o'clock in the afternoon and some of it came in about ten o'clock in the afternoon, it was all inspected, "and my brother has the certificates."

Q. What brother? A. Joe.

Q. Did he say Joe? A. Yes.

Q. Did Aaron and Meyer—Martin Schechter, participate in this conversation? A. They just stood by.

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1867

Q. They stood by during the entire conversation that you have related? A. Yes.

Q. Were you talking with them as well as with Alex Schechter? A. Yes, I was addressing myself to all three.

Q. What else did you see in the premises on that day? A. Nothing else.

Q. Did you see any more poultry? A. Yes.

Q. What else, besides 59 baskets? A. There were all told 62 long coops of poultry on the floor.

Q. Approximately how many pounds of live poultry is contained in a coop? A. About 170 pounds.

Q. Would you say that is the approximate amount of poultry contained in these live poultry coops? A. There was no way of me telling how many pounds were in each coop. That is the practice to, keep about 170 pounds of fowl in a coop.

Q. What is the size of these coops? A. Three by six.

Q. What altitude? A. About 14 inches. Of course, they are divided right in the middle into two sections.

Q. About how many chickens are contained in each section of a loaded coop? A. About 18.

Q. About 18 normally? A. Normally.

Q. About 36 chickens in the entire coop? A. Depending upon the size of the poultry. If they are of the heavier grade, fowl, they would be less; lighter grade, there would be more.

Q. What did you do after that, Mr. Forsmith? A. I proceeded to the 991 Rockaway Avenue plant. I found Joe Schechter seated in his automobile outside the door.

1868

1869

1870

Benjamin Forsmith—By Govt.—Direct

Q. Did you have any conversation with him?
 A. I did.

Q. Anybody else present? A. No, sir.

Q. What was the conversation? A. I asked him whether he had inspection certificates covering the poultry at 858 East 52nd Street.

Q. Did you designate the amount? A. No.

Q. What was the entire conversation? A. He says, "Why do you ask?" I said, "There are 59 baskets that have no labels. There were 21 coops that I had seen empty on the previous visit that I think have uninspected poultry. Have you got the certificates for it?" And he said he did have. I asked him whether he would show it to me and he said he would not.

Q. Did you see the inspector's certificate? A. I did not.

Q. At no time? A. No, sir.

Q. Did you have any other conversation—
 A. None.

Q. (Continuing.) —with Joseph Schechter at that time? A. No, sir.

1871

Q. Did you do anything else at Joseph Schechter's market? A. No, sir.

Q. What did you do then? A. I went to the corner and called Dr. Ives' office to find out if there had been any poultry inspected for either of the Schechter plants, and they told me there had been 65 baskets inspected for Joseph Schechter at 991 Rockaway Avenue, Brooklyn, at 5 o'clock on Monday night at the Wallabout Market in Brooklyn.

Q. Did you ascertain whether the 59 baskets had been inspected? A. I was informed that only 65 baskets were inspected.

Q. Did you see these 65 baskets of poultry in addition to the 59 baskets? A. I did not.

1872

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1873

Q. Did you see that amount of poultry that would be contained in 65 baskets? A. I did not enter the premises at 991 Rockaway Avenue.

Q. I see. When is the next time that you visited either one of the Schechter establishments? A. The same afternoon about one o'clock on the 29th.

Q. And who was with you, did anybody go with you? A. Yes, sir.

Q. Who? A. I went with William Wright, one of our investigators.

Q. What did you do there? A. I wanted him to verify the three numbers I had taken as identifying these three coops.

Q. What did you do there? A. I handed him the numbers and I says, "I want you to look at 3, 4 and 5 coop of the third stack from the back, and I want you to find out if these are the same numbers as are on the inspection labels of those coops."

Q. What did he do? A. Well, he went over and he says, "Yes, that tallies."

Q. Did you do anything else there? A. That is all.

Q. Did you see anything else? A. No.

Q. When was the next time that you went back to the Schechters' market at 858 East 52nd Street, Brooklyn? A. On May 31st.

Q. And who did you go with? A. With Mr. Wright.

Q. What did you do? A. We got to the premises about 6 A. M. on Thursday morning, the 31st. We stayed at the place until they started to slaughter poultry from these three coops that we had started to identify.

1874

1875

1876

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Q. From these three coops as to which you had taken the numbers? A. That is right.

Q. What did you see? A. We saw them having this poultry slaughtered for the account of one Abe Brot.

Q. Did you see the sale? A. We did.

The Court: What date was this?

Mr. Rice: May 31st.

1877

Q. Do you know anything about the size of the Schechter establishments? A. I do.

Q. As compared with other markets in Brooklyn? A. I do.

Q. What is the comparative size? A. Well, at this time are you referring to the present time?

Q. No, I am referring to the month of May, at the time you made these visits in 1934. A. I would say the Schechter establishment, particularly the East 52nd Street plant, is the largest wholesale slaughter house in Brooklyn.

Q. The largest one in Brooklyn? A. Yes.

1878

Q. When is the next time that you visited either one of the Schechter establishments? A. On June 28th.

Q. Did you go with anybody? A. I did.

Q. Who? A. Dr. Gardner.

Q. The man that just left the witness stand? A. I do not know, I wasn't in the room.

Q. You were not in the room. How did you happen to go there? A. We were working in liaison with the Department of Health in order to eliminate—

Q. Speak out louder, we all want to hear you. A. We were working in liaison with the Department of Health in order to determine whether

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1879

there was unfit poultry being slaughtered and sold, and we had been doing that for about two weeks prior to June 28th.

Q. Just what was the procedure on the part of you and Dr. Gardner of the Health Department? A. Well, we started out the week prior to June 28th, I think it was the 21st, and we started in on the Brownsville section of Brooklyn, Brownsville and East New York section of Brooklyn, and we visited the poultry slaughter houses in that section and examined the merchandise there for unfit poultry. The third week we were there we couldn't cover much territory because Dr. Gardner had a court case on and we had to stop at about 9:30. We only started about 8 A. M., so we only covered about eight or ten plants.

Q. Did you find any unfit poultry in those eight or ten plants? A. We did not.

Q. Did you look for it carefully? A. We did.

Q. Then when did you resume that tour of inspection? A. Well, we resumed on the 22nd, but we did not find, we did not visit poultry slaughter houses on the 22nd, we went direct to these chicken stores—

Q. Never mind about that, when did you start with the wholesale, with the slaughter house markets again? A. On the 28th of June.

Q. And where did you go on the 28th? A. We first re-inspected the places that we had visited the week previously.

The Court: That is the 28th of what?

Mr. Rice: Of June.

The Witness: Of June.

The Court: All right, this relates to Count No. 36?

Mr. Rice: I think 2 and 3.

The Court: All right.

1880

1881

1882

Benjamin Forsmith—By Govt.—Direct

A. We first re-inspected the places that we had visited the week previously.

Q. On June 28th, 1934, you are speaking of now? A. Yes. Then we reached the plant of David Schechter on Snediker Avenue, and we found no violations there.

Q. That is the Mogen David Live Poultry Market? A. That is right.

Q. That is a retail establishment? A. Both retail and wholesale.

1883

Q. That is not operated either by Joseph Schechter or Alex Schechter or Martin Schechter? A. That is right.

Q. Then what did you do? A. Then we visited the plant at No. 991 Rockaway Avenue.

Q. And that is whose market? A. That is operated by Joseph Schechter.

Q. And what did you do there? A. When I arrived at the plant I found one of our investigators stationed there.

Q. What is his name? A. Jack Musican. I proceeded into the premises and I observed a spindle basket of live poultry about half way into the plant.

Q. Go ahead and tell us what you were telling. A. I observed this spindle basket of live poultry about half way into the plant, on the left-hand side against the wall. I said to Dr. Gardner the poultry in that basket does not appear to me to be good poultry.

Q. Never mind what you said to Dr. Gardner.

Mr. Heller: I don't object to it.

The Court: You don't object?

Mr. Heller: No, your Honor.

The Court: All right, go ahead.

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1885

The Witness: I said to Dr. Gardner that this did not appear to be edible poultry and he had one of the men in the plant take them out. Before he did he said what have you got in the basket and he said we have got some culls and he said why don't you kill them off and he said we are waiting for Joe Schechter to return and he said well kill them all, they are no good, they are not fit to eat. He says "I want you to examine them first." He examined them and of the eight birds in the basket he destroyed six.

1886

Q. And what was done with them after they were destroyed? A. Dr. Gardner wanted him to denature them and the employees refused to do it.

Q. Did Joseph Schechter come into the place while you were there? A. He did.

Q. And was there any conversation between you and Dr. Gardner and Joseph Schechter? A. Dr. Gardner spoke to Joseph Schechter and told him that he would have to denature these birds.

1887

Q. And what did Joseph Schechter say? A. He said he did not, that he wanted to take them back to New York.

Q. He said he wouldn't do it? A. That's right.

Q. Now was there any disinfectant in the premises?

Mr. Heller: I object to that question.

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

Q. What happened? A. Well, Dr. Gardner insisted that this poultry be denatured and he prevailed upon Joseph Schechter that he should have them denatured.

1888

Benjamin Forsmith—By Govt.—Direct

The Court And were they?
 The Witness: I don't know, your Honor.

Q. Was there anything else that happened in Joe Schechter's market? A. Nothing else.

Q. What did you do then? A. We proceeded to the plant at East 52nd Street.

Q. The A. L. A. Schechter Live Poultry Corporation? A. Yes.

Q. And who did you see there? A. All three brothers, Meyer, Alex and Aaron Schechter.

1889

Q. And did you go there with Dr. Gardner? A. Yes.

Q. And what did you do or say on entering the premises? A. We got there and Alex Schechter asked me what we were doing there. We said that we were making a general inspection to find out if he had good poultry in a sanitary condition in his place.

Q. And did either you or Dr. Gardner ask any questions when you came into the plant? A. Yes, I asked Alex if he had any culs on the premises and he said he did not have any.

1890

Q. And was anybody else there at the time when Alex said that? A. No.

Q. Well, was either Aaron or Martin there? A. They were in the premises there, but not in the front of the premises, not near the door. They were in about the middle of the premises.

Q. And were they within hearing distance? A. I think Aaron was within hearing distance, about ten feet.

Q. And did he look at you when you came in? A. Yes.

Q. Did Martin look at you when you came in? A. I don't remember.

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1891

Q. Well, when Alex Schechter made this statement, what was Aaron Schechter doing? A. I believe he was fixing one of the coops right near the door.

Q. And was he looking at you? A. When are you referring to?

Q. When Alex made the statement that there were no culls in the premises? A. Yes, he kind of half turned around.

Q. Well, at the time that Alex made the statement, is that it? A. That's right.

Q. And then what happened? A. Dr. Gardner walked through the plant, through the sales room, and I stood talking to Alex Schechter. Dr. Gardner came back and he says it appears to be all right.

Q. Tell us everything that happened. A. Well, I walked through, I walked right clean through to the storage room and I observed a coop—I observed a lot of empty coops, but I observed one coop—

The Court: Where?

The Witness: In the storeroom in the rear of the premises. 1892

Q. And what was the position of the coop? A. It was stacked against the wall.

Q. Anything on top of it? A. Yes, there was about five coops in that stack and there was one coop containing about 20 Leghorn fowl and underneath that I noticed a coop that contained about 6 fowl which appeared to me to be unfit birds.

Q. What did you say? A. I went back and I said, "What have you got in the back room?"

Q. To who? A. To Alex.

1894

Benjamin Forsmith—By Govt.—Direct

Q. You went back to Alex, that man that told you there were no culs in the place? A. Yes, and Dr. Gardner was with him.

Q. And what did you say to Alex? A. I said what have you got in the back room and he said I have some culs.

Q. He said that he had culs? A. Yes.

Q. Then what happened? A. Dr. Gardner immediately ran to the back of the premises.

Q. Did you go with him? A. Yes.

Q. What happened? A. All three of us went—that is, three Schechters, myself, went with Dr. Gardner.

1895

The Court: Three Schechters, and you mean which ones?

1896

The Witness: Al, Aaron and Meyer, [redacted] Meyer Schechter opened the coop, took an ax and opened the coop, and he handed Dr. Gardner the birds, and he destroyed four of them. Two of them he said were on the border line, they could be condemned or they could be passed, they were doubtful, but he would let them go. Four were destroyed and denatured.

Q. Right then and there? A. Yes.

Q. Did they have—very well. I will withdraw that. Then what happened? A. Then Dr. Gardner walked right into the sales room, rear part of the sales room, and took his book out, his report book and proceeded to write out his report, and the Schechters noticed that he was writing out an F. F. A., and they started to yell and holler and swear, and ask him not to do it. He says—

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1897

Q. Just a minute, now. Tell us who said what. A. Every one of them. The three of them said, "Don't give us no F. F. A.; don't write this out."

The Court: What else did they say?

The Witness: Dr. Gardner said, "I cannot help it. I found unfit poultry and I have got to make a report on it." And they turned to me, and each one of them said, "If you tell him not to do it, he won't do it."

I said, "I am not interfering in Dr. Gardner's duties."

Then they started in to yell at me, swear at me, and threaten me.

Mr. Heller: I object.

The Court: Strike out the word threaten.

1898

Q. What was said.

The Court: What did they say to you?

A. Well, they—do you want me to use the exact language?

1899

Q. Yes. A. Well, they called me a son-of-a-bitch; told me he would break my neck; Meyer Schechter still had an ax in his hand, that he had opened the coop with in the back, and he threatened to bury it in my skull.

Q. What did he say? A. He said, "I will take this ax," he said, "and I'll bury it into your skull." He said, "You'll never get out of this place alive."

Dr. Gardner—

Q. How about Aaron, what was he doing? A. I couldn't make out what he was doing. I was kind of upset myself.

1900

Benjamin Forsmith—By Govt.—Direct

The Court: Anybody between you and the door?

The Witness: Well, the door was probably 70 feet away from me.

Q. What was Dr. Gardner doing during this time? A. Dr. Gardner edged out to the door and I—

Q. Tell us all about this conversation. A. And I proceeded—I proceeded out after Dr. Gardner. Dr. Gardner had gone into the office to finish writing his report, and they came in after me, particularly Al Schechter, and he commenced to threaten me again, that he would break my neck—

The Court: Don't use the word "threatened." I have already told you that.

Q. Don't use the word "threatened."

The Witness: I did not hear you.

The Court: I told you that and struck it out. Tell us what they said.

1902

The Witness: He said to me that I'll never leave the place alive, that he would break my neck if he got this ticket from Dr. Gardner. Dr. Gardner turned to me and said, "Ben, what are we going to do?" He said, "These fellows seem to be pretty excited." So I suggested—

The Court: Where were the defendants then?

The Witness: Well, Al was in the office and Aaron got away right outside the door of the office, so in order to pacify them, I said to Dr. Gardner, I said, "All right, Doc, just make a note that they

Benjamin Forsmith—By Govt.—Direct

1903

are amongst other apparently healthy birds." I said, "That is the best," and I said, "It don't appear as if you just had them isolated."

Dr. Gardner said, "That's a pretty good idea, and get away from this." And he wrote that information on his report. Then we walked out of the office. And they still commenced—they still used the same language, told me they were going to chase me out of the business. Al Schechter says that I would never live to do this again. Meyer Schechter says that he would get even on me; that I would find myself in some ash heap some day.

Q. Was anything said about the Code Authority? A. Said that they would chase Peterson out of business, he would have to pack—

Q. Who said that? A. Meyer Schechter said that Peterson and myself would have to pack our bags and go back to Washington; we were on top now, that they would get the best of us yet. And I explained to the three of them that we were just doing our duties; that if we had found nothing we wouldn't have done anything, as we were acting the same way in every other plant we visited. At that time I noticed Mr. Justis of the Agricultural Adjustment Administration, the auditor's office, come in just about that time, and he walked into the office, and I said to the Schechters, three of them, I says, "You are at liberty to go right with me and observe the method we use; it is the same in every plant that we inspect; we go over the plant in the same way, and if you want to come with me, you could come with me right now, and I would show you

1904

1905

1906 *Benjamin Forsmith—By Govt.—Direct*

how we do it; we were not picking you out any different from anybody else."

Q. Then what happened? A. Well, Meyer Schechter volunteered to go, and he was dressed in overalls, and I says, "Well, change your clothes and I will take you with me." So Al says, "No, I will go with you." I said, "Come on, you are perfectly welcome," and the three of us got into the car, Dr. Gardner, Al Schechter and myself, and proceeded on the rest of our route.

1907 Q. Did you have any discussion with Al Schechter on the way? A. Not a word.

Q. What was the next thing you did? A. Well, we were supposed to go to, I think it was, Oster's place, yes, Oster's place, and then to Frenzel's place, but Dr. Gardner insisted that I make another stop at Joseph Schechter's plant, because he was not exactly sure that the poultry had been properly denatured, so I stopped at Joseph Schechter's plant first. Dr. Gardner went into the plant to observe whether the poultry had been properly denatured, and Al Schechter and myself went over to an automobile in which Joseph Schechter was seated, and Al Schechter explained to Joe Schechter what had happened. Joe Schechter said to Al, he says, "What are you getting excited about? What is the use of kicking up a fuss? What are you afraid of?" He says, "If we are prosecuted," he says, "if we are convicted," he says, "we will use the \$7,000 that we owe the commission merchants to pay for our attorneys and pay whatever fine is assessed against us.

Q. Joe Schechter said that? A. Yes, sir.

Q. That is Joe Schechter? A. Yes.

Benjamin Forsmith—By Govt.—Direct

1909

Q. And Alex Schechter was standing by him?
 A. Yes, sir.

Q. He was talking with Alex Schechter? A.
 Yes, sir.

Q. Tell us the whole conversation. A. That
 is the conversation. I said, "Come on, are you
 going with me?" Joe Schechter said, "There is
 no use going with him, no, you go ahead your-
 self."

Q. After Joe Schechter told Alex Schechter
 that there is no use getting afraid, they would
 use the \$7,000 that they owed the commission
 men to pay for any violation, did Alex Schech-
 ter say anything? A. No, he didn't say a word.

Q. Did he do anything? A. No, he said I
 could go ahead myself, he wasn't going with me.

Q. Then he didn't go with you? A. No, sir.

Q. Did you do anything else at Joe Schech-
 ter's place? A. Seated in the automobile with
 Joe Schechter was one Max Resnick.

Q. Did he say anything? A. No, not a word.

Q. You are sure of that? A. Oh, yes.

Q. Mr. Forsmith, do you recall the meeting
 of the industry called by the Code Authority on
 May 15, 1934? A. I do.

Q. Were you present? A. I was; not at the
 actual meeting.

Q. You were there at the place where the
 meeting was held? A. Yes, sir.

Q. Did you see the various people who went
 into the meeting? A. I did.

Q. Did you see any of the defendants go into
 that meeting? A. I did.

Q. Will you tell us which ones you saw? A.
 I saw Alex Schechter.

1910

1911

1912 *Benjamin Forsmith—By Govt.—Direct*

Q. Point out Alex. A. Alex is the last one. Meyer Schechter, I saw him, and Aaron Schechter right alongside of Meyer; not Joe Schechter.

Q. You didn't see Joe Schechter? A. No.

Q. But you saw the other three defendants, did you? A. I did.

Q. Did you see them go into the meeting? A. I spoke to Aaron Schechter.

Q. What was your conversation? A. I asked him, I told him that I was trying to communicate with him for about a week so he would come up and sign the minutes of the election meeting held at the Federal Building on the 23rd of April.

Q. You remember that distinctly? A. Yes, I had been instructed to look for him.

The Court: Did he go with you?

The Witness: No; he said he would be up at the first opportunity.

Q. Had you ever discussed the Live Poultry Code with Joseph Schechter prior to the adoption of the Code? A. Very little.

Q. Had he ever mentioned it to you, or had you ever mentioned the proposed code to him? A. He has mentioned it to me and I have mentioned it to him, yes.

Q. Prior to the adoption of the Code? A. That is right.

Q. Approximately when? A. About January or February.

Q. Of 1934? A. That is right.

Q. After the meeting of May 15, 1934, this meeting of 800 people of the industry— A. That is right.

Benjamin Forsmith—By Govt.—Cross

1915

Q. When was the first time thereafter that you saw Alex, Martin and Aaron Schechter? A. On the 17th of May I saw—

Q. Two days later? A. Yes, I saw Al Schechter.

Q. Did you mention the Code or did they mention the Code? A. Yes, I visited the plant on 52nd Street.

Q. What mention was made by either side of the Live Poultry Code? A. I asked him if he had any trouble with any of the provisions of the Code, how business was going.

Q. Who did you ask? A. Al Schechter.

Q. Were Martin and Aaron Schechter there? A. No.

Q. What did Alex say? A. He said everything was going off fine.

Q. Did you discuss any particular provisions of the Code? A. I did.

Q. What? A. Straight killing.

Q. Anything else? A. No.

Mr. Rice: That is all.

Cross examination by Mr. Heller:

1916

Q. Mr. Forsmith, you have nothing against the Schechters personally, have you? A. I have not.

Q. You are merely here testifying as a Government witness? A. That is right.

Q. Whatever you said was honestly the truth as far as you remember it? A. That is right.

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

Q. Were you ever in this poultry business? A. Yes, sir.

Q. Before you came onto the Board, on the Code Authority? A. I am not on the Code Authority.

Q. You are an inspector, are you? A. Yes.

1917

1918 *Benjamin Forsmith—By Govt.—Cross*

Q. Liaison officer? A. That is right.

Q. What does that mean? A. I am an employee of the Code Authority.

Q. What do you understand by liaison officer? A. I do not understand anything by that.

Q. You do not? A. No.

Q. That is your title? A. Yes, there are no code authorities in the Live Poultry Code—

Q. Just a minute, now. Did you understand my question? A. Yes.

1919 Mr. Heller: Will the stenographer please repeat the question?

(The stenographer repeated as follows:
“Q. What do you understand by liaison officer?”)

Q. Is that your title? A. That is my title.

Q. Now, on East 52nd Street, did I understand you to say on direct examination that Dr. Gardner first made an inspection and he found nothing there? A. That is right.

Q. And then you checked up on Dr. Gardner? A. I went further, I went into the storage room.

Q. And you made a close search? A. No; he did not go into that part of the premises.

Q. Do you know the question that I just asked you? A. He did not find it.

Q. You were the first one to find it? A. That is right.

Q. And you called it to his attention? A. That is right.

Q. You did not trust this search? A. I would not say I would not trust his search.

Q. You were not satisfied with the search? A. He did not understand the tricks of the trade like I do.

Benjamin Forsmith—By Govt.—Cross

1921

Q. You understand all the tricks? A. Yes.

Q. Where were you in business before? A. At No. 395 Lexington Avenue.

Q. Is that Manhattan? A. No, Brooklyn.

Q. Were you a competitor of the Schechters?

A. No.

Q. Have you any interest in the business now? A. No, sir.

Q. Did you turn it over to any relatives? A. I did.

Q. Who? A. My brother.

Q. And you are on the Code Authority? A. Yes.

1922

Q. Getting a salary? A. Yes, sir.

Q. How much? A. Fifty dollars a week.

Q. And did you at any time get any more than fifty dollars a week? A. Well, I get twenty-five dollars allowance for my automobile and incidental expenses.

Q. So you are drawing seventy-five a week?

A. Yes.

Q. And that money comes to you from the industry? A. The Industrial Advisory Committee.

1923

Q. I mean in the way of assessment—

Mr. Rice: Now, if your Honor pleases, Mr. Peterson was cross examined at length the other day and Mr. Peterson stated that all of the funds come from the industry.

The Court: I do not think you need to go much further into that, Mr. Heller.

Q. Is it your recollection that at 52nd Street you found coops in the back of the storage room, coops filled with chickens? A. When?

1924 *Benjamin Forsmith—By Govt.—Cross*

Q. At the time you were with Dr. Gardner for the inspection. A. I did not say I found coops filled with chickens.

Q. Well, how many coops filled with chickens were in the back room? A. There was one coop that had approximately 20 leghorn fowl, and another coop below that that had about 6 unedible birds, in my opinion.

Q. In your opinion? A. Yes.

Q. Now, you know what an unedible bird is, do you? A. I do.

1925 Q. And did you make a memorandum of what transpired on that day? A. I did.

Q. And did you specify whether or not, in your memorandum, the coops that the chickens that were condemned were in were isolated? A. Yes.

Q. Did you make such a memorandum? A. Yes.

Q. That is true, isn't it? Now, do you say that on May 24th you were at the Schechters three or four times that day? A. Once.

1926 Q. On the 25th how many times? A. I wasn't there.

Q. On May 29th? A. Yes, sir.

Q. You started at 6:45 in the morning? A. That is right.

Q. And you came back three times? A. No, sir.

Q. How many times? A. Once.

Q. How many times did you inspect the Schechter's places in the month of May, from May 16th on? A. Probably three or four times.

Q. May 16th is the time the Code became operative in the industry? A. Yes.

Benjamin Forsmith—By Govt.—Cross

1927

Q. And on the 17th you had already been at the Schechter's? A. I was in that area.

Q. You have no particular grudge against them, have you? A. No.

Q. And you were in great fear when the Schechters asked Dr. Gardner to make a memorandum? A. Yes, sir.

Q. You were in a great fear—

Mr. Rice: What do you mean by that?

Mr. Heller: I will withdraw that question.

1928

Q. Now, when you made the find in the back of the room—the store room—of these chickens, did you say that one of the Schechters immediately threatened you at that time? A. No, sir.

Q. Nothing was said then? A. No, sir.

Q. You came up front? A. No, we did not come up front.

Q. Where did you go from there? A. To the rear of the salesroom.

Q. What do you mean by the salesroom? A. Where the poultry is held for sale and slaughtered.

Q. In other words, the salesroom in a poultry market is really the place where the poultry is stored? A. Supposedly.

Q. It is an open, big room; about how big is that room? A. About seventy feet.

Mr. Rice: Which place is this at?

Mr. Heller: 52nd Street.

The Court: You are talking now about the room where poultry is sold and slaughtered?

Mr. Heller: Yes.

1929

1930 *Benjamin Forsmith—By Govt.—Cross*

Q. That is designated as the salesroom? A. Yes, sir.

Q. What is the size of that? A. 22 by about 70 feet exclusive of the killing room and the slaughtering room.

Q. It is a big room? A. Yes.

Q. And it has a big gate before you can come in? A. Yes.

Q. And a truck can pull in? A. I imagine so.

Q. So that in the middle of the room someone picked up a hatchet and threatened to kill you? A. Not in the middle of the room, no one in the middle of the room picked up any hatchet and threatened to kill me. He had an axe in his hand when he opened that coop of culls.

Q. He took the axe and opened the coop? A. Yes.

Q. Now, where did he take the axe from? A. I don't know.

Q. Did you see him take it? A. No.

Q. Did you ask him to open the coop? A. We wanted it opened.

Q. Did you have him under your observation all the time? A. Who?

Q. The person who had the axe, Meyer? A. Not particularly, no.

Q. You just asked that the coop be opened? A. That is right. Meyer got the axe and opened the coop.

Q. And he had the axe with him? A. That is right.

Q. And then he came back? A. Yes.

Q. And how far had he proceeded from the storage room—— A. Are you talking after he opened the coop?

1931

1932

Benjamin Forsmith—By Govt.—Cross

1933

Q. Before the argument ensued—how far did he proceed from the storage room with the axe in his hands? A. I don't get your question.

Q. Well, what happened after he opened the coop? A. The poultry was slaughtered.

Q. You mean condemned? A. No, first it was slaughtered.

Q. What poultry? A. These unedible birds.

Q. For what purpose? A. To be destroyed and denatured.

Q. For the purpose of ascertaining whether they were diseased? A. No, that could be ascertained before they were slaughtered.

Q. Did you have to slaughter them to denature them? A. Why, naturally.

Q. Well, what happened after that? A. Then Dr. Gardner proceeded to the rear of the salesroom.

Q. Where is that? A. Right adjoining the storeroom.

Q. Back of the store? A. Yes.

Q. Back of the entire plant? A. No, there is a big wide door between the salesroom and the storeroom, a door probably about 15 feet wide.

Q. Do I understand after the chickens are slaughtered they go out of the storeroom? A. Yes.

Q. Then where did you go? A. I followed Dr. Gardner to a little alcove right in the rear of the salesroom.

Q. What transpired there? A. Dr. Gardner proceeded to write out his report, his F. F. A.

Q. And do you know whether he wrote it up at that place? A. He did.

Q. Isn't there a little office in the place? A. There is a little office in the front of the premises.

1934

1935

1936

Benjamin Forsmith—By Govt.—Cross

Q. Right in front? A. Yes, sir.

Q. The complaint wasn't written out in the office, was it? A. Not entirely.

Q. Part of it was written out in the rear? A. That is right.

Q. Did he then and there take the axe and threaten you with it? A. Al Schechter was the one that started to do that.

Q. That was right at that place? A. Yes, sir.

Q. What did he say? A. Well, he called me a son-of-a-bitch and a bastard, told me he would break my neck, told me he would break my arms, told me he would break my legs.

Q. Did he put his hands on you? A. No, he did not.

Q. Did he hit you with the ax? A. No, sir.

Q. Did he strike you? A. No, sir.

Q. Nothing was done to you? A. No, except I backed up against the wall so no one could get behind me.

Q. You backed up against the wall? A. Yes.

Q. With your hands up? A. Oh, no, I didn't have my hands up.

Q. Did he make any attempt to strike you? A. Well, he waved the ax and the other fellow waved his arms.

Q. How far was he from you when he waved the ax? A. Probably a foot.

Q. Just one foot? A. Yes, sir.

Q. Did you feel his breadth? A. Yes, sir.

Q. Right on top of you? A. Yes, sir.

Q. And you didn't run away? A. I couldn't run away, they had my back against the wall.

Q. Who did? A. All three of them.

Q. They surrounded you there, is that it? A. That is right.

1937

Benjamin Forsmith—By Govt.—Cross

1939

Q. They wouldn't let you go? A. They had me surrounded, and then Dr. Gardner went back to to the front of the building.

Q. He ran out, did he? A. Yes.

Q. Into the office? A. Yes.

Q. And he stayed in the office, did he? A. That is right.

Q. He didn't run for a policeman, did he? A. No.

Q. He didn't— A. Dr. Gardner is a police officer himself.

Q. He did not make any arrest, did he? A. No.

Q. He remained in the front office? A. Yes.

Q. That was the place where he continued to write out his report, was it? A. When he got there, yes.

Q. You got in there safely, did you? A. That is right.

Q. No harm done to you? A. Well, I was pretty scared.

Q. You were pretty scared, but you didn't run away, you went into the office. A. I went into the office.

Q. The office is right next to the exist? A. Yes.

Q. Just a foot or two, isn't it? A. About five feet.

Q. You weren't running away in your car? A. I went in the office.

Q. The gate wasn't locked, was it? A. No, sir.

Q. Nobody locked you in there? A. No, sir.

Q. Nobody prevented you from leaving the premises? A. Oh yes, they surely did.

Q. They went ahead of you? A. Yes.

1940

1941

1942 *Benjamin Forsmith—By Govt.—Cross*

Q. Ran right up to the gate? A. Yes. And then I got into the office and edged out of the office, when I could.

Q. Which one of the Schechter brothers went through the gate ahead of you? A. Mr. Al Schechter followed me in.

Q. Did he throw you into the office? A. He didn't throw me, no.

Q. He followed you in? A. He followed me right in there, I ducked into the office.

1943 Q. What do you mean you ducked? A. I wanted to get in where they wouldn't have so much opportunity to surround me again.

Q. You felt the office was a haven for you, is that it? A. Yes.

Q. A place of safety? A. Yes.

Q. And that was the office? A. That is right.

Q. They didn't close the door on you, close you in? A. No.

Q. They didn't shut the door? A. He come in right behind me.

Q. And it was there that Dr. Gardner was writing out his report? A. Yes.

1944 Q. Did he get it written out? A. After I suggested to Dr. Gardner that he add the additional phraseology of—

Q. What phraseology did you ask him to write? A. That amongst those apparently healthy birds he found these birds.

Q. That was a lie, was it? A. That was Dr. Gardner's findings.

Q. Is that the truth? A. Yes.

Q. It was the truth? A. Yes; I didn't agree with it, though.

Benjamin Forsmith—By Govt.—Cross

1945

Q. So when they made the demand that that be written in there— A. They didn't make the demand.

Q. You suggested that it be put in there so that you could get out of there? A. It was Dr. Gardner's idea, I did not agree with it.

Q. You were afraid for your life? A. Yes.

Q. After he put that in they were satisfied, were they? A. No, not quite.

Q. Not quite satisfied? A. That is right.

Q. But they left you get out of there? A. I did get out.

1946

Q. You were not afraid then? A. I am not afraid of them equally.

Q. You were not afraid of them getting into your automobile with you? A. No, not one man against one, provided the other fellow didn't have an ax.

Q. You are not afraid of any one of the Schechters, are you? A. Not individually, no.

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

Q. You know them for a good many years?

A. I know Joe Schechter a good many years.

Q. Did you ever see him hurt anybody? A. No.

1947

Q. Did you ever see him kill anybody? A. No.

Q. Did you ever see him in any fist fights? A. No.

Q. You said on direct examination that on May 24th, I believe that is the date, you took certain labels off of coops. A. I didn't take the labels off.

Q. The numbers off the coops, pardon me. A. Yes.

Q. That was May 24th? A. That is right.

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

1948 *Benjamin Forsmith—By Govt.—Cross*

Q. Will you tell us the purpose of doing that? A. Well, it kind of struck me funny that these coops were all cleaned up and fit after the poultry had been slaughtered out of them, and the coops had not been moved.

Q. Do you do that on all occasions? A. Whenever I am suspicious, yes.

Q. You were suspicious of the Schechters? A. Of that incident I was.

Q. Of that particular incident? A. Yes.

Q. Did you tell them that you were going to take the numbers off? A. I did not.

Q. You did that separate and apart, did you? A. Yes, sir.

Q. You were all alone when you did that? A. I was in there by myself, yes.

Q. You did it all by yourself? A. I did not.

Q. You sneaked in? A. I did not

Q. Who was there? A. I had gone into the office previously, and they knew that I was there, I had sent word that I was there.

Q. You went into the office first? A. Yes.

Q. And then you told them you wanted to go into the back part? A. I just walked in.

Q. Have you any interest in that place? A. That is being a Code Authority investigator, that is all.

Q. Were any chickens being slaughtered then? A. No.

Q. Was any business being conducted? A. No.

Q. You just walked in the back? A. Yes.

Q. Did you have any trouble with any of the Schechters at that time? A. There was only one Schechter present at that time.

Q. Which was that? A. Meyer Schechter.

Q. He was in the office? A. He was in the office.

1949

1950

Benjamin Forsmith—By Govt.—Cross

1951

Q. And he wasn't walking through the plant?

A. That is right.

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

Q. What happened with the coops—

The Court: I suppose we had better stop with that, it is about one o'clock. Gentlemen, do not allow anybody to talk to you about this case, do not discuss it among yourselves, keep your minds open until it is finally submitted; be back at two o'clock.

1952

(Adjourned to 2:00 P. M.)

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

BENJAMIN FORSMITH, resumed the stand.

Cross examination continued by Mr. Heller:

Q. Mr. Forsmith, will you explain to the jury what happens with those labels—what happens to the coops after they empty the poultry? A. Well, if the coops are their own, they just keep them.

1953

Q. They keep them? A. Yes.

Q. Then when another inspection is had, they are relabeled? A. No, they take the coop back; supposed to clean the coop, disinfect it.

Q. As far as labels are concerned? A. As far as coops are concerned.

Q. I am talking about labels. A. And they are supposed to put a new label on, yes.

Q. That is, the inspector does? A. Yes.

1954 *Benjamin Forsmith—By Govt.—Cross*

Q. Occasionally he pastes one over the other? A. That is right.

Q. Do you know there is a company that buys these coops? A. No, sir.

Q. You don't know that? A. No, sir; the company does not buy them, no; the company rents them.

Q. In other words, those are rented coops? A. These coops are rented coops, yes.

Q. They do not belong to the Schechters? A. They did not, no.

1955 Q. And you rent these coops from time to time from this company for the purpose of putting chickens in there? A. I do not know just what Schechter does, what arrangement Schechter has with the company for it.

Q. That is the usual business, isn't it? A. It is not.

Q. Did you ever buy coops, rent coops? A. I did not.

Q. You never rented coops? A. No.

Q. Do you know of any other market men who rent coops? A. I don't.

1956 Q. Is it done at all? A. Yes, commission merchants.

Q. So that the same coops are used from time to time, are they not, after they are disinfected? A. The coop company rents the coops to the commission merchants.

Q. They do not destroy them after one load of merchandise is packed in there and emptied, do they? A. They do not.

Q. Regular crated coops, boards, nails in them? A. Slats.

Q. And so that when you are through with one shipment you disinfect it and then you bring it

Benjamin Forsmith—By Govt.—Cross

1957

back again down to the market and load it? A.
No, sir.

Q. What do you do with the coops after they
are emptied? A. Supposed to bring them to the
yard of the coop company.

Q. What do they do with them? A. They re-
pair them.

Q. And after repairng them? A. Disinfect
them and clean them.

Q. And then they are used all over again? A.
Maybe sometimes that week and sometimes a
month later.

Q. But they are used from time to time? A.
That is right.

Q. Depending on the number needed? A. Yes.

Q. And the number to be used, and the num-
ber of the demands? A. That is right.

Q. Is it infrequent that a market man will
keep coops in their premises for a few days af-
ter they are empty? A. Generally they like to
get them out as fast as they can.

Q. There is nothing to stop them keeping them
for a few days, is there? A. No, sir.

Q. You have a brother, haven't you? A. Yes, 1959
sir.

Q. And he was employed by the Schechter
Brothers, wasn't he? A. Yes.

Q. And he was fired the day after the Code
came into effect? A. I don't know.

Q. Is he still with them? A. No.

Q. Do you know when he was fired? A. No.

Q. You are sure that he was fired? A. Oh,
yes.

Q. Do you know when he was last employed
by them? A. No.

Q. You never see your brother? A. Oh, I do,
occasionally.

1958

1960

Benjamin Forsmith—By Govt.—Cross

Q. Did you talk to him at any time about the Schechters? A. No.

Q. Did you ever mention anything about his employment with them? A. No.

Q. Now, I understood you to say that when you came to 991 Rockaway Avenue you found Mr. Joseph Schechter in an automobile? A. When is that?

Q. After you left the 52nd Street place. A. On what date?

Q. On the date that you were there. A. I was there on June 28th.

Q. Well, when was it you found Joseph Schechter in an automobile? A. On two occasions.

Q. What are the dates? A. May 29th and June 28th.

Q. Do you know what he was doing in the automobile? A. No.

Q. Do you know that he was crippled? A. I know that he had had an accident.

Q. Don't you know that he had to have crutches to get around? A. No.

Q. You never saw him with crutches? A. No.

Q. You never saw him with a cane? A. I believe I did see him with a cane.

Q. Didn't you see him as late as June 18th with a cane, at the office of Mr. Peterson? A. I don't remember whether he had a cane.

Q. Did you see him after May 29th with a cane or with crutches? A. I cannot say.

Q. But on each occasion you saw him you saw him in an automobile? A. On those two occasions.

Q. It was not in his place of business? A. No.

1961

1962

Benjamin Forsmith—By Govt.—Cross

196^c

Q. Did you say that the 991 Rockaway Avenue place closed in August? A. I saw him in his place of business on June 28th, I want to correct that.

Q. Not in his automobile? A. Not in his automobile.

Q. Are you sure about that? A. That is right.

Q. Now, you say that the place closed in August of 1934? A. I believe that is the time.

Q. Wasn't it July 4th? A. I am not sure.

Q. Did you go to the place after that? A. I did not.

1964

Q. After June 23rd you never went to see him? A. Not June 23rd at all, June 28th.

Q. You did not go near him after that? A. That is right.

Q. Well, when was it that he told you that he was going to use this \$7,000 of the market men's money to pay for his defense? A. He did not tell it to me, he told it to the brother Al in my presence.

Q. Had the prosecution begun already on that day? A. I cannot say; I had nothing to do with the prosecution.

1965

Q. Did Mr. Peterson tell you to go out and get evidence against these boys? A. He did not.

Q. Did I understand you to say that in the latter part of May, you made a tour of all the market people; is that correct? A. That is right.

Q. And you did the same thing with reference to the Schechters on your own volition? A. No, sir; I was an investigator ordered to cover all the slaughter houses or as many as I can.

Q. And to see how things were functioning? A. That is right.

Q. Now, that was when? A. When the Code started.

Benjamin Forsmith—By Govt.—Cross

1966

Q. May 16th? A. Yes.

Q. On May 17th you did that? A. Yes, sir.

Q. And those were instructions merely to go from place to place? A. The only time I got any further instructions was on the 23rd of May, when Mr. Dale told me to go to the Schechter's plant to find out who was operating each plant.

Q. And did he tell you for what purpose? A. No, he just told me to go and get it. He did tell me that there had been complaints about the Schechters.

1967

Q. He wanted you to get their names? A. He told me further that the Schechters had stated that they intended to violate the Code.

Q. He told you that on the 23rd? A. Yes, sir.

Q. Now, you are sure about May 23rd? A. That is right.

Q. You say as late as January or February of 1934, before this Code came into effect, you had had a discussion about it with Joe Schechter? A. I discussed this with Joe Schechter amongst nearly every operator in the industry.

Q. You knew him at that time? A. Yes, I did.

Q. Friendly with him? A. Yes.

Q. Is he respected in the industry? A. I couldn't be qualified to say.

Q. You don't know anything bad about him? A. I know he is a chiseler, if you mean that.

Q. What do you mean by a chiseler? A. He will take advantage of every opportunity, to take advantage of his competitors.

Q. You mean he would like to make a dollar? A. I don't mean that, no.

Q. You don't mean that? A. No, not making a dollar. Trying to make a living, making a

1968

Benjamin Forsmith—By Govt.—Cross

1969

lar, does not make a man a chiseler, but a man who will take advantage of anybody that is a chiseler.

Q. He has taken advantage of people as early as January? A. Since I have known him.

Q. Do you remember any time when he helped you financially years ago? A. He never helped me financially at all.

Q. He did not help you in your business? A. No. He was a customer of mine and he was a chiseler when he was a customer.

Q. And didn't he get you credit from anybody? A. No.

1970

Q. You are positive? A. Positive.

Q. And you are not in business now? A. I am not.

Q. About how many inspectors did you have in the month of June under your supervision? A. About ten—eight—ten.

Q. Month of June? A. Yes.

Q. Sure about that? A. Yes.

Q. Just about what time do the most of the slaughter houses kill their chickens? A. Depends on the day of the week. Monday, Tuesday or Wednesday, from seven to eight a. m.

1971

Q. In the morning? A. That is right.

Q. On Thursday? A. From about six o'clock in the morning.

Q. Until when? A. Five o'clock in the afternoon.

Q. And on Friday? A. Six in the morning, to twelve noon.

Q. Do anything on Saturday? A. Just Saturday night.

Q. Anything on Sunday? A. Some sections of the city do.

1972

Benjamin Forsmith—By Govt.—Cross

Q. In the Borough of Brooklyn? A. The Brownsville and East New York sections of Brooklyn.

Q. They do that? A. Yes.

Q. About how many slaughter houses do you observe, come under your supervision? A. I don't understand. What do you mean under my supervision?

Q. Under yours, and your investigators. A. Every slaughter house in the metropolitan area.

1973 Q. How many? A. There are approximately 325 I would say.

Q. There isn't any question with reference to 325, that on Monday most of the work is done between six and seven? A. Seven and eight.

Q. No question about it during the same hour on Tuesday? A. That is the slaughtering period?

Q. Yes. A. Yes.

Q. And on Wednesday? A. That is right.

Q. All with the exception of Thursday? A. That is right.

1974 Q. And how many inspectors did you have posted at the Schechters' places in the month of June? A. In the month of June I had—I didn't post anybody. All postings was done by our attorney, who was director of compliance.

Q. He posted some of them? A. Yes, he did.

Q. How many? A. He posted three.

Q. Three out of ten were posted at the Schechters? A. That is right.

Q. When was the day that you spoke of when you went—when one of the Schechters held a hatchet in his hand? A. Oh, June 28th.

Q. On June 28th? A. That is right.

Q. Did you come to that place after June 28th? A. I did not.

Benjamin Forsmith—By Govt.—Cross

1975

Q. 52nd Street? A. I didn't—that was 52nd Street—I didn't.

Q. Didn't come there then. Did you send anyone else then? A. No, I had nothing to do with the investigators whatsoever.

Q. Do you know whether any were sent there after that day? A. I don't believe there was. There was one there on June 28th.

Q. Same day? A. I arrived at 991 Rockaway Avenue and right away I met our investigator there and he informed me the Schechters had thrown our investigator out of 52nd Street premises.

1976

Q. On the same day? A. Yes.

Q. They used a hatchet again? A. I don't know what they done. When I asked Al Schechter where our man was, he said he got tired of waiting and went away.

Q. You asked him on that day? A. Yes.

Q. What time of day was that? A. About 8:30—about 10:30.

Q. Was it after the first incident? A. No, that was just the commencement of the first incident, when I arrived at the premises.

1977

Q. That was before this incident occurred? A. Yes. I asked him where our investigator was. He said he had tired of waiting around and gone home.

Q. So you did send one investigator there in the morning? A. I had not.

Q. One was there? A. Supposedly.

Q. You knew about it? A. I only knew when I got to 991 Rockaway Avenue I found out the Schechters had thrown our investigator out of the premises.

1978

Benjamin Forsmith—By Govt.—Cross

Q. From whom did you find that out? A. Our investigator at 991 Rockaway Avenue.

Q. There was one there at the time? A. There was.

Q. On June 28th? A. That is right.

Q. And you asked him about it? A. I did not ask him about it. He volunteered the information.

Q. Was he present at 52nd Street when the other investigator was thrown out? A. He wasn't, I don't believe so.

1979 Q. He got his information from someone else? A. That is right.

Q. Passed it on to you? A. I don't know where he got his information, but that is what he passed on to me.

Q. That is how it came to your knowledge? A. Yes.

Q. You did not see it with your own eyes? A. I did not.

Q. Then you went to the 52nd Street place, is that correct? A. I did.

1980 Q. So that we have three there plus the doctor, making it four, on that morning, is that correct? A. It is not correct.

Q. What is the fact? A. There was one man there and the doctor and myself. That makes three.

Q. And the other one at 991? A. Well, he was at 991 Rockaway Avenue.

Q. That makes it four. A. Four where?

Q. At the two places. A. Yes.

Q. Anybody at Snediker Avenue? A. There was no one there when I arrived.

Q. Do you know whether there was anyone there that day? A. I couldn't say.

Q. Did you say on direct examination on the 29th you asked the Schechters how was it— A. Will you be specific as to your dates, what month?

Q. 29th I am talking about. A. The 29th of what?

Q. May 29. You said you had a conversation with the Schechters. A. Yes?

Q. Did you tell them then that he had a certain number of coops the day before? A. I did.

Q. Will you give us that conversation again? A. I said I understand that you had 18 coops on the premises at four o'clock yesterday. I said I observe now—

Q. Meaning the 28th? A. The 28th. I observe now 62 coops in addition to the 59 baskets in the rear of the premises.

Q. Who told you they had so many coops on the 28th? A. One Sam Cohen, an employee of the Schechters.

Q. He told you that? A. He told me that they had 18 coops when he went home at four o'clock.

Q. When did you ask him that? A. On the 29th.

Q. You came there on the 29th in the morning? A. Yes.

Q. What time? A. Quarter of eleven.

Q. And the first thing you did was ask Sam Cohen how many coops they had the day before? A. No.

Q. When did you ask him that? A. After I went and observed the 59 baskets in the back of the premises I noticed the empty coops that I had identified were full of poultry and bore no current inspection labels on any of them. I asked Sam Cohen what was there in the premises

1984 *Benjamin Forsmith—By Govt.—Cross*

when he left Monday evening, and were them 21 coops full or empty when he left the place, and he told me that these 21 coops were empty when he left the premises on Monday at 4 o'clock.

Q. Am I right in understanding you to say that 21 coops had no labels at all on them? A. They did have labels on them dated May 23rd.

Q. Beg pardon? A. Dated May 23rd.

Q. Is it possible to keep chickens from the 23rd to the 29th? A. Possible, yes, but there were no chickens there when I noticed the coops on the 24th.

Q. Did you count all the chickens there on the 24th? A. I did not, but I observed these 21 coops were empty.

Q. Do you know what you observed at any other place on the same day? A. On the 24th?

Q. Yes. A. No, I did not go to any other place, I was sent primarily to find out some information from Schechters.

Q. When you inquired at the Inspection Service whether there were any baskets inspected that day you got the information there were 65 inspected? A. That is right.

Q. And how would the inspection labels appear, would they be pasted on the baskets, how would they appear on the baskets? A. Either pasted on one of the cross pieces or one of the long pieces.

Q. Is it possible to take out chickens from the coops and place them in the baskets? A. Is it possible to take chickens out of a coop and place them in a basket?

Q. Yes. A. Of course.

1985

1986

Benjamin Forsmith—By Govt.—Cross

1987

Q. You do not know what was done in this case, do you, excepting what you found? A. Excepting what I believe was done.

Q. I am asking you do you know exactly what was done before your coming there? A. I have reason to believe that I know what was done, yes.

Q. That is your personal opinion? A. No, I believe that they received poultry from Philadelphia and did not have them inspected.

Q. Did you go to Philadelphia to find out whether they did or not? A. I did.

1988

Q. You went to Philadelphia, did you? A. I did, surely.

Q. Made a special trip there? A. Yes, twice.

Q. And you found out that this poultry was not inspected? A. I did, and found out who it was that bought it, who they bought it from, who delivered it, where it went and the order that was received.

Q. Did you examine this poultry? A. When?

Q. On the 29th. A. I looked at it, yes.

Q. Did you find anything wrong with it? A. No.

1989

Q. All good stuff? A. Apparently.

Q. You didn't find any diseased chickens in there, did you? A. I did not.

Q. Now, Dr. Gardner left a ticket, when he left an F. F. A. at the premises, did you receive a summons? A. No.

Q. Do you know that Dr. Gardner issues summonses? A. He has no authority as I understand to issue summonses.

Q. He has no such authority? A. No.

Q. Although he is a public health inspector? A. That is right, the officers of the Board of Health, the inspectors do not have authority to issue summonses.

1990 *Benjamin Forsmith—By Govt.—Cross*

Q. You know that to be a fact, do you? A. I am informed that it is to prevent graft, at one time it happened that the men who did that were taking graft, and in order to prevent that they are not allowed to issue summonses now.

Q. You mean the Health Department inspectors were grafting? A. At one time, yes.

Q. Isn't it a fact that Schechter said to you, "Why do you give me a ticket when we place this stuff separate and apart from the other stuff because we did not mean to sell it"? A. He did not.

Q. Didn't he say something like that to you? A. Of course not.

Q. Are you sure when Dr. Gardner asked the Schechters whether they had any culls, that the answer was they did not? A. Dr. Gardner did not ask them, I asked them.

Q. Are you sure of that? A. I am positive.

Q. And if Dr. Gardner said he did he wasn't telling the truth? A. He was just mistaken, that is all.

Q. You give him the benefit of the doubt? A. That is all.

Q. But you were right? A. I believe I am.

Q. There is no question about that? A. That is right, that is my procedure in every place that I visit, to ask first if there are any culls.

Q. And you saw that there were quite a number of crates with poultry in, did you not? A. When?

Q. On the 29th. A. The 29th of May?

Q. Yes. A. That was the time that there was uninspected poultry—

Q. I am referring to the time when you found the hidden basket. A. That was June 28th.

Benjamin Forsmith—By Govt.—Cross

1993

Q. Then let us take June 28th, that was on a Thursday? A. That is right.

Q. There was a lot of poultry in the premises, was there not? A. There were probably about 40 coops or 50 coops of poultry.

Q. About how many chickens would that be? A. Divide that by about 35.

Q. About 2,000 would you say? A. About 1,700 that would be.

Q. Do you know that Dr. Gardner had inspected all those crates? A. I know that he didn't inspect them, he just walked down the line and looked at them casually.

Q. He didn't condemn any from the crates, did he? A. We weren't going around looking at the chickens in those crates to condemn them, when a man has a few diseased birds in a crate that may happen. We were looking for isolated birds that they had placed apart in the premises. It may be possible for a man to have a sick chicken among 25 in a crate or among 35 and not know it. What we were primarily interested in was whether or not they had isolated any of the birds, because then we knew that they had examined them and found that the chickens were sick.

Q. Had any sale taken place when you were there? A. No, sir.

Q. Your assumption was that they would be sold? A. What is that?

Q. Was that your assumption? A. That is the Board of Health's assumption.

Q. You didn't see any sale take place, did you? A. I did not.

Q. You are sure about that? A. That is right.

1994

1995

1996 *Benjamin Forsmith—By Govt.—Cross*

Q. You have made quite a number of inspections at different times? A. I have.

Q. What is the nearest place to 52nd Street? A. I really believe the nearest place to 52nd Street is 991 Rockaway Avenue.

Q. About how far away is that? A. About twelve blocks I would say offhand.

Q. That is the Schechter Market? A. That is right.

Q. That is the nearest one? A. That is right.

1997 Q. How far away is Brownsville, the next one? A. Well, I would call all that Brownsville. Some people call it East Flatbush, but I call it all Brownsville.

Q. Isn't that East Flatbush, East 52nd Street? A. That is East Flatbush.

Q. 858 East 52nd Street? A. That is two blocks off Utica Avenue.

Q. Near Foster Avenue? A. That is right.

Q. An isolated place? A. Kind of, yes.

1998 Q. Did I understand you to say on direct examination that when Dr. Gardner asked Joe Schechter for permission to kill those chickens, he said he wanted to take them to New York? A. Dr. Gardner asked nobody's permission; Dr. Gardner ordered this poultry to be destroyed.

Q. He said he would not do it? A. Joe Schechter was not on the premises.

Q. There was something on direct examination that you said about someone wanting to take the poultry to New York. A. Joseph Schechter arrived after the poultry had been destroyed, and he said the reason he did not want to denature them was because he wanted to take them to New York and receive a credit.

Q. From a commission merchant? A. Yes; but that is not the practice—

Q. I didn't ask you that, did I? A. No, I volunteered that.

Q. He told you that he wanted to take them to New York? A. Yes.

Q. And that is all that transpired then, wasn't it? A. That is right.

Q. Do you know what an accommodation sale or purchase is? A. I do not.

Q. Did you ever hear of it in your industry? A. No.

2000

Q. Did you ever hear of a man going to a market and buying some stuff for somebody else, for accommodation? A. I never heard it called that.

Q. Is that done at any time? A. Not to my knowledge.

Q. You are quite familiar with this industry? A. Yes.

Q. You have been active in the business for quite some time? A. I represented this industry for the last four years.

2001

Q. And you have testified in cases of disputes between poultry people? A. I have.

Q. Always in the middle of things? A. Since 1931 I was representing the industry, petitioning the Federal Trade Association to declare fair trade practices in this industry.

Q. Were you at any time a representative of the Association that was composed of the— A. Yes, sir.

Q. And the members were required to pay \$500 a year? A. No, sir, they weren't required to pay anything; they paid according to the volume of business.

2002

Benjamin Forsmith—By Govt.—Cross

Q. Schechter never wanted to come into your organization, did he? A. Yes, he has been a member at various times.

Q. You say he has been a member at various times? A. Yes; he signed an application to pay \$400 a year some time in 1933, I believe around November.

Q. And did he become a member? A. Yes.

Q. Was he admitted? A. There was no such formality; you were a member if you were willing to pay the dues.

2003 Q. And he was a chiseler because he would not pay the dues? A. No, I didn't say that.

Q. You would not call him a chiseler for that? A. No.

Q. Did you, at a meeting recently, state that the only one that benefited by this Code was you and Peterson? A. Of course not.

Q. Did you ever meet at the Acme office? A. Did I?

2004 Q. Were you present at a meeting there? A. There was no meeting, there might have been a conference.

Q. Were you present? A. What date?

Q. When was the recent one that you had? A. About four weeks ago.

Q. Were you chairman of that meeting? A. There was no chairman.

Q. Were you at the head of the meeting? A. The meeting was for the purpose of getting the industry's reactions to certain amendments to the Code.

Q. And did you at that meeting state that you and Peterson were the only ones getting the benefit of the Code? A. I don't remember making that statement.

Benjamin Forsmith—By Govt.—Cross

2005

Q. You wouldn't say no, would you? A. I would not say no.

Q. Do you know the Jewish name for Martin? A. I don't; I know him as Meyer.

Q. Well, isn't it the fact that the Jewish name for Martin— A. I don't know whether or not Martin is a Jewish name.

Q. Have you ever heard the name Martin used in connection with Jewish names? A. Yes; Meyer is not a Jewish name.

Q. It is not? A. No.

Q. You have never heard of the word Meyer? A. I have heard it; it is not a word, it is a name. It may be a German name, a man may be a German and named Meyer.

Q. First name? A. Absolutely; there is no law against it.

Q. Do you know that it is characteristic of Jewish and Italian people to talk with their hands, not infrequently? A. Yes.

Q. And when Schechter was holding that hatchet and was trying to explain about the coops he did this with his hands (indicating)? A. He was using those hands, but he wasn't doing any gesticulating, he was ready to attack me and it just needed the drop of a pin to start a fight there and somebody would have been hurt.

Q. It only needed the drop of a pin to do that? A. Yes, and it was my presence of mind by keeping quiet.

Q. And you disarmed him by being silent? A. By being quiet, right.

Q. Now, did I understand you to say that you brought back a different investigator for the

2006

2007

2008

Benjamin Forsmith—By Govt.—Cross

purposes of checking the numbers that you took down on a piece of paper? A. That is right.

Q. You did not believe yourself? A. I wanted to be sure I was correct.

Q. You wanted corroboration? A. That is right.

Q. And you wanted to make sure that you could pin them on him? A. No. The enforcement of the Code is not one of my duties.

Q. Well, does your salary depend on the Code being in existence? A. Naturally my salary with the Code.

Q. If there were no Code, you would not be getting any salary? A. I would not be getting any salary with the Code.

Q. You have no business now, have you? A. Not now, no, sir.

Q. Do you remember meeting at the Park Manor recently? A. No, sir.

Q. No such place? A. I never met in the Park Manor.

Q. How about the Park Mansion? A. I never heard of the Park Mansion.

Q. You don't know anything about it? A. I don't know of a Park Mansion.

Q. Do you remember a meeting when the question of price fixing was discussed? A. Price fixing?

Q. Yes. A. No question of price fixing.

Q. Do you remember when it was discussed? A. Do you mean the hearing called by the Agricultural Adjustment Administration?

Q. No, a meeting at which you were present which I understand was at the Park Manor, but that may be not right, but do you remember that recently? A. I do not.

2009

2010

Irving H. Dale—By Govt.—Direct

2011

Q. Was there any such discussion at any time during the last month or two? A. What discussion?

Q. About price fixing? A. No, never anything about price fixing.

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

Redirect examination by Mr. Rice:

Q. Mr. Forsmith, on these occasions when you went to 991 Rockaway Avenue and 858 East 52nd Street, were you there in connection with your duties as an investigator for the Live Poultry Code Authority? A. Yes, sir.

2012

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

IRVING H. DALE, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

2013

Q. Mr. Dale, what is your profession? A. I am a lawyer.

Q. How long have you been a lawyer? A. Three years.

Q. With whom are you associated? A. Arthur M. Loeb.

Q. Were you and Mr. Loeb retained as counsel for the Live Poultry Code Authority? A. We were.

Q. Commencing when? A. From the early part of May of this year.

Q. How long did you continue in that capacity? A. Until about two weeks ago.

2014

Irving H. Dale—By Govt.—Direct

Q. Were you present at the meeting of the Live Poultry Industry at the Code Authority office on May 15, 1934? A. I was present at such a meeting. It was not at the Code Authority office. It was in the Federal Building.

Q. It was in the same building as the Code Authority's office? A. Yes, a large assembly room.

Q. Approximately how many people from the industry were present? A. Well, the room was crowded. There must have been about seven or eight hundred people there, I guess.

Q. Do you know who the speakers at that meeting were? A. Yes, I can recall. Mr. Peterson spoke, Mr. Loeb spoke, Mr. Wexler—

Q. Who is Mr. Wexler? A. Mr. Wexler is the National Recovery Administration representative on the Industrial Advisory Board. He is Professor of Law at Columbia University. There were two gentlemen from Washington who spoke, I don't recall the name of one of the gentlemen, but the other was Mr. Termohlen, and I believe there was a Mr. Slocum, if my memory is accurate, but I am not sure.

Q. Do you know whether printed copies of the Live Poultry Code were brought to the meeting? A. I brought them there myself.

Q. What was done with them? A. They were placed up—well, the room there is a court room, I think, the room they use for the naturalization of citizens, and there is a bench, and a large place in front—

Mr. Heller: May I know what purpose this is all for?

The Court: I do not know what it has to do.

2015

2016

Irving H. Dale—By Govt.—Direct

2017

Mr. Rice: If your Honor please, your Honor will recall that when Mr. Peterson was on the stand I asked him about this meeting for the purpose of showing notice to the Schechters. At that time we had not demonstrated that the Schechters were present at that meeting, but the last witness, Mr. Forsmith, has stated that he saw Alex, Martin and Aaron Schechter present at that meeting. Now, we propose to show that the essential provisions of the Code were explained to that meeting.

2018

Mr. Heller: What purpose is that for? The Code has been enacted; it is law, and that is all. That settles this question.

The Court: Ignorance would not be any excuse.

Mr. Rice: No, but I believe your Honor has ruled on the assumption previously that notice to these particular defendants—

The Court: Yes, you had one who was secretary of some meeting.

2019

Mr. Heller: Yes, that was an organization meeting.

Mr. Rice: Yes. Now we propose to show that at this meeting the Government officials and the Code Authority officials explained the straight killing provision.

The Court: All right, but show some of them were there first. If they were, I will let you show that.

Mr. Rice: We have just shown that through the testimony of Benjamin Forsmith, who testified that he talked with Aaron Schechter at that meeting, and that he saw Alex and Martin Schechter at that meeting.

2020 *Irving H. Dale—By Govt.—Direct*

Mr. Heller: I will let him do it. It does not make any difference.

The Court: He did not see Joseph.

Mr. Heller: No, he did not.

The Court: That is what he says.

Mr. Rice: That is right.

Q. Did you hear the addresses? A. Yes.

Q. Given by the various speakers? A. Yes, I did.

2021 Q. What were the subjects discussed by these speakers? A. The provision—the more important provisions of the Code were explained in some detail. The straight killing provision was emphasized, the inspection provision, the prohibition against the sale of culls. Professor Wexler explained the labor provisions, the hours of work and the rate of pay that was required. Mr. Loeb spoke, and in the course of his speech he pointed out that the Code was law and that the sanction behind it was both criminal and civil. The meeting lasted for quite a while, and the main tenor of the talks was an explanation of the meaning of the various provisions of the Code.

Q. Was the straight killing provision thoroughly discussed? A. Yes.

Q. At the meeting? A. Yes, it was.

Q. Was the Code provision explained to the meeting? A. Yes.

Q. How about the provision prohibiting the sale of uninspected poultry? A. That was very clearly explained to the persons present.

Q. And the provision prohibiting the sale of poultry unfit for human consumption? A. That was explained; in fact, the inspection and the culls provisions were the ones that were most heavily stressed.

Q. You said that Mr. Wexler discussed the labor provisions? A. Yes, he did.

Q. What did he say with respect to the labor provision? A. He pointed out the difference in hours of work between those imposed by the commission men and those of the slaughter houses. The slaughter houses are allowed to have their employees work eight hours more per week than commission men. He also pointed out the minimum rates of pay, and at that time made a suggestion that if there was any conflict between the union contract and the Code provisions, that it might be a good idea for the members of the industry to start considering some solution of such a conflict.

Q. After that meeting of May 15th, what did you do as associate counsel of the Allied Poultry Code Authority?

Mr. Heller: That is objected to. No relevancy.

Mr. Rice: I merely want to know his functions.

The Court: He wants to tell what his functions are, but what he did, we are not concerned with, except as it relates to these defendants.

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Q. What were your functions? A. I assisted Mr. Loeb in all matters there, but I was directly in charge of all investigations, supervised them personally.

Q. You supervised all of the investigations? A. Yes, sir.

Q. Did you supervise the investigation against the Schecter brothers? A. Yes.

Q. Did you attend a conference at Leroy Peter-
son's office on June 18, 1934? A. I did.

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Irving H. Dale—By Govt.—Direct

Q. Who was present at the conference? A. Mr. Heller, Mr. Joseph Schechter, Mr. Alex Schechter, Mr. Peterson, Mr. Loeb, Professor Wexler, Mr. Forsmith and myself.

Q. How long did the conference last? A. I believe it started about quarter to four or four o'clock and lasted to about 5:30 or quarter to six.

Q. Were you present there at all times? A. I was there during the entire conference. Professor Wexler and Mr. Forsmith and Mr. Peterson left about twenty minutes or half an hour before it was over, but we continued talking.

Q. Did you prepare a memorandum of this conference? A. Immediately after it was over I called a stenographer and dictated a memorandum.

Q. What was said by Joseph Schechter at this conference? A. Well, it is a little bit difficult to pick out what was said by each one because they both did quite a good deal of talking.

Q. Both who? A. Both Joseph Schechter and Alex Schechter. Mr. Heller was rather quiet at the beginning, he didn't start talking until rather later.

I believe the first thing that was discussed was the question of whether Joseph Schechter had a New York City permit to operate his slaughter house. He stated at that time that the permit was in the name of his brother, Sam Schechter, Sam Schechter had gone out of business, turned it over to him entirely about the middle of May, or I think it was just shortly about a week before Decoration Day in May, and since that time he had been sole proprietor, operator and owner of that slaughter house, but he had never bothered having the permit changed.

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The next thing that was discussed, I may be a little wrong in the order of things, but I believe the next thing that was discussed—

Q. Just a moment, before we pass that. Did Joseph Schechter say whether or not he or the Schechter Live Poultry Market, Inc. had a permit to operate a slaughter house at 991 Rockaway Avenue? A. He did, he said they had not—

Mr. Heller: I must object to the form of the question, he knows what took place, he made a memorandum right there, let him testify from his own memory as to just what happened.

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Q. What else did Joseph Schechter say on this first topic as to a Board of Health permit? A. Joseph Schechter said that he did not have a permit nor the corporation, I believe it was the Schechter Live Poultry Market, Inc., but that the permit had been in the name of Sam Schechter, and was still in that name. Sam Schechter was his brother, and he stated that Sam Schechter had left that place and taken over a retail butcher or poultry store in Coney Island, I think on Brighton Beach Avenue.

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Q. What was the next topic that was discussed? A. I believe then Mr. Peterson asked Joseph Schechter whether he had not stated in the telephone conversation within two or three weeks before that that he had been violating the Code every minute and intended to continue to do so, and Joseph Schechter said he had made such a remark, but that he made it because he was losing money. There was some slight conversation about that, but if I remember rightly that was all that was said about that fact.

2032 *Irving H. Dale—By Govt.—Direct*

Q. Was anything said about the relation between Joseph Schechter on the one hand and Alex, Martin and Aaron Schechter on the other hand?

Mr. Heller: May I ask your Honor to direct counsel not to lead the witness?

Mr. Rice: I submit that that is not essentially leading.

2033 The Court: I know, but this man should be able to testify to all the conversation. A witness who is called upon to testify should tell the conversation. If he fails to state it all, then his attention may be directed to specific things.

Mr. Rice: Very well, your Honor.

The Court: Tell the whole conversation; he should not be led.

2034 Q. State any other part of the conversation in which Joseph Schechter participated. A. I believe it was Mr. Loeb who asked Joseph Schechter whether he had any connection in the slaughter house at 858 East 52nd Street, Brooklyn, and Joseph Schechter at that time stated he guaranteed the accounts for that slaughter house, because they had no credit standing, and apparently he had a credit standing. During the entire conversation whenever questions about 858 East 52nd Street, were asked, or about the operations of that place were asked, Joseph Schechter answered, and he seemed to be the dominating force in that family at that place—

Mr. Heller: I object to what he seemed to be.

The Court: Strike out what he seemed to be.

A. (Continuing.) —there was some conversation, if I remember correctly, about straight killing. Mr. Loeb asked, I think it was Alex Schechter, whether he was complying with the straight killing provision, and I believe that Joseph and Alex stated that they had been straight killing for several days after the Code went into effect, but that they had stopped doing it and that they were not killing straight at that particular time. There was also—Mr. Loeb asked Alex Schechter whether they made it a practice at 858 East 52nd Street to dispose of their culls and Alex Schechter stated that they did not destroy the culls because they did not see why the loss should fall on them, that they had bought the culls from a commission merchant and he should take the loss, and he said that the culls, that is the unfit poultry accumulated there during the week and on Friday they sold to the colored trade at a very cheap price—I don't recall what price he said he sold them to the colored trade at.

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I believe that it was along about this time that either Joseph Schechter or Alex Schechter suggested that if they filed their reports and paid their assessments would that cure whatever had happened before then. Just before this time, Mr. Peterson, Mr. Forsmith and Professor Wexler left, and there remained Mr. Heller, the two Schechters, Mr. Loeb and myself, and Mr. Loeb at that time informed Mr. Heller that he could not say anything as to any violations that had occurred in the past because the matter was out of his hands, that is, as to those, he had already communicated with Washington and informed the Department of Agriculture and the Department of Justice of what had happened.

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Irving H. Dale—By Govt.—Direct

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Mr. Heller then said—let me see if I can get this straight now—oh, yes, I then pointed out to Mr. Heller that there had been too much stress already laid in their conversation about their assessments and reports and that in so far as we are concerned that was the smallest and the least violation that we had information about. Then Mr. Heller said in view of the fact that information had been forwarded to Washington he was worried whether, as a legal matter, his clients, paying the assessments and filing the reports, whether that might not be deemed to their having consented to the Code and therefore would they waive any objection to it if they had. Mr. Loeb told him, that as a matter of law he did not believe that that fear was well founded and that he would not give any advice on that subject.

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Mr. Loeb then suggested that he would consider it overnight, advising Mr. Peterson to receive reports and assessments from the Schechters without prejudice. Mr. Heller said that he did not think that that would be enough to satisfy him and Mr. Loeb said that he did not feel that Mr. Heller's fears were well founded and he did not want to commit himself that he either would make the suggestion to Mr. Peterson but that he, Heller, was to think it overnight and let him know the next day. That is my memory of that conversation.

Q. Now do you recall any other topics that were discussed? A. That's all I can recall without refreshing my recollection.

Q. And would your recollection be refreshed by looking at the memorandum that you prepared immediately after the conference? A. Yes.

Q. Will you look through the memorandum and see whether there were any other topics discussed at this time? A. Yes, I see here that at the very opening of the conference, Joseph Schechter stated that he had been out of the poultry business for a considerable length of time and he had apparently had an accident in which he had broken his leg, and he stated that about the time the Code went into effect he went back into the poultry business because he believed that with the Code he would be able to make some money out of it.

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Q. Now have you covered all of the topics? A. Just let me look this over. Oh, yes, another thing that was discussed was the ways in which the various members of the Schechter family participated in the poultry business. I believe Joseph Schechter stated that at the A. L. A. Schechter Live Poultry Corporation at 858 East 52nd Street, Alex Schechter, Martin Schechter and Aaron Schechter directly participated and controlled, and that he owned and operated the place at 991 Rockaway Avenue and that the father, David Schechter, operated the slaughter house at 589 Snediker Avenue, Brooklyn, and that several of the other brothers were interested in the retail poultry businesses and butcher stores in Brighton Beach, I think two stores on Brighton Beach Avenue. And here is another thing that I forgot to mention; at the very beginning of the conversation, both Joseph and Alex Schechter stated that they had not known they were bound by the Code, or that they were covered by the Code until about two weeks before this conference at which time they had discussed the matter with Mr. Heller, their attorney, and he had told them that he believed they were bound by the Code.

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Irving H. Dale—By Govt.—Direct

Q. You mean they said they had discussed this matter with Mr. Heller two weeks before June 18th? A. Yes.

Q. And then Mr. Heller said what? A. This time he told them that they were bound by the Code and were required to live up to its provisions.

Q. Anything else? A. Yes, they stated prior to that time that they did not know that. Mr. Loeb questioned them a little bit about that and then they stated they had known about the Code from the very beginning. Joseph Schechter stated that it was the fact that the Code was going into operation that brought him back into the poultry business. Another thing that Alex Schechter stated was that they had complied with the Code the first few days, or the first week after May 16th, but that had resulted in a sharp falling off of business. He stated that their business had dropped down to twenty-eight or twenty-nine thousand pounds a week, that is, at the time of the conference, but that the first week the Code was in effect it had taken a much sharper drop than that. I don't recall what figure he gave, and I did not include it in my memorandum, so I would not want to say what he did say about that.

Mr. Joseph Schechter asked Mr. Peterson whether it would be proper for a group of slaughter houses in Brownsville, that is, in the Brownsville section of Brooklyn, to form an association for the purpose of fixing prices, and Mr. Peterson told him that was a matter they had better consult their own counsel about, he would not want to give them any advice on such a subject. I believe that is about all.

Mr. Rice: That is all.

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Irving H. Dale—By Govt.—Cross

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Cross examination by Mr. Heller:

Q. Mr. Dale, did I understand you to say that you were, on June 18th, co-counsel with Mr. Loeb for Mr. Peterson? A. Well, not co-counsel. I worked for Mr. Loeb and I would have the title of associate counsel. I spent my full time there with Mr. Loeb.

Q. At the premises at Washington Street? A. Yes.

Q. The Federal Building? A. In fact, we were right in Mr. Peterson's office.

Q. And you say you are no longer with the Code Authority? A. No.

Q. You and Mr. Loeb resigned? A. That is correct, about two weeks ago.

Q. And isn't it a fact that Mr. Loeb asked for \$800 to prosecute this—

Mr. Rice: Oh!

Mr. Heller: Just a minute, please.

Q. Isn't it a fact that you and Mr. Loeb asked \$800 to prosecute the case from the commission merchants?

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Mr. Rice: Oh!

The Court: Oh, no, that goes to his credibility.

A. No.

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

Q. Did Mr. Loeb do it without your knowledge?

A. No, because there was some conversations about our assisting Mr. Rice, and I handled most of those conversations myself. Mr. Loeb was out of town for a few days and was busy in the office the rest of the time.

Q. You are sure the sum of \$800 was not mentioned? A. Quite sure.

2050 *Irving H. Dale—By Govt.—Cross*

Q. No part of \$800 was mentioned? A. No.

Q. No sum or figure? A. A higher figure was mentioned.

Q. I beg your pardon? A. A higher figure was mentioned.

Q. What was the figure that was mentioned? A. \$900, but not from the commission men.

Q. From whom were you to get that money? A. We asked Mr.—Mr. Peterson asked us how much we would charge to assist Mr. Rice in the course of his prosecution of this case. We asked him—after some conversations a final fee of about \$900 was agreed upon, which we were to be paid for assisting Mr. Rice in the cause of his prosecution.

Q. And Mr. Peterson asked you that? A. What?

Q. Mr. Peterson asked you that? A. No; I had my conversation with Mr. McFall, Mr. Peterson's present counsel.

Q. Was Mr. Peterson present at that time, all the time? A. I do not know; all the conversations were on the telephone.

Q. Didn't I understand you to say Mr. Peterson wanted to know what you would charge? A. That was a mistake; no, it was Mr. McFall.

Q. He is the present counsel for Mr. Peterson? A. That is right.

Q. He superseded you? A. Yes, he took my place.

Q. Now, Mr. Dale, you said you were in charge of all the investigations with reference to the Schechter case while you were there, is that right? A. That is right.

Q. I understand that prior to June 18th the matter had been referred to Washington by you? A. Yes.

Irving H. Dale—By Govt.—Cross

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Q. Can you tell us when? A. I couldn't fix the exact date, Mr. Heller; it was several weeks before that. Mr. Loeb and I both took a trip to Washington at which we discussed this matter.

Q. Would you fix that about June 1st, as the day? A. No, I do not think it was as early as that.

Q. About two weeks before the 18th? A. About a week or two before the 18th; I am not sure of the date. If I could look up my office memorandum I might fix it more accurately.

Q. At that time the Code was in operation for about a period of two weeks from May 16th? A. That is right.

Q. You had already gone to Washington on the Schechter case? A. That and other matters had taken us down to Washington.

Q. And you had placed the matter in the hands of the Washington office, is that correct? A. Well, I do not quite know what you mean by placing it in their hands.

Q. You had filed certain papers and had conversations with them about the Schechter matter? A. That is right; had conversations and discussions about it.

Q. Mr. Dale, do you know, do you remember the purpose of my coming to see you, Mr. Loeb and Mr. Peterson? A. You mean on June 18th, or that prior conference?

Q. June 18th; was that prearranged by me? A. Yes, you arranged that conference.

Q. I was there to see you a few days before June 18th? A. Yes.

Q. I came up to see you about adjusting the entire situation? A. You came up to see us about speaking to Schechters, and we said at that time

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2056 *Irving H. Dale—By Govt.—Cross*

that we would be very happy to speak to you about that at any time.

Q. On June 18th, I discussed with you the law questions involved? A. Yes, the legal phase of it.

Q. With Mr. McDonald, Mr. Loeb and Mr. Peterson? A. Yes, Mr. Peterson sat there for a while.

Q. Then I arranged for an additional conference for June 18th? A. No, you arranged the original conference several days before that, and on account of an appointment of yours it was cancelled.

Q. That is right, but I finally came up on June 18th with the Schechters? A. That is right.

Q. You knew that my purpose was to discuss the entire situation? A. That is what you said.

Q. I didn't bring them up to testify against themselves, did I? A. I do not think you did.

Q. I didn't tell you that they were going to testify against themselves, did I? A. No, you did not; that is right.

Q. You didn't tell me that you were going to question them about the operations of their market, did you?

Mr. Rice: I do not see how that is material.

A. No, there was no discussion about questioning them. You said you wanted the Schechters to come up and discuss the situation, and we said we would be very happy to talk it over with them.

Q. You didn't tell me that you were going to make any memoranda of what transpired after I left, did you? A. No, I did not.

Q. You gave me no inkling about that? A. No, I assumed that as a careful lawyer you would know that I was going to do that.

Q. I would know that? A. I mean just as a matter of being careful.

Q. You mean that I should have been fearful as to what they said when they came up there, that that would be your position? A. The word "fearful" does not describe it; if you have an important conference at your office you make a memorandum of it, that is what I mean.

Q. You mean I should have been guarded before I came in there? A. Oh, no, not at all.

Q. Lest you have a trap for me? A. No.

Q. It wasn't a trap for me? A. No.

Q. You didn't let me know that you were going to make a memorandum of what Mr. Schechter said, did you? A. We did not have to do that.

Q. But you did make a memorandum after we left? A. Certainly.

Q. You didn't say you were going to make it, did you, you didn't tell me about that? A. There was no obligation upon me to tell you that. We had a conference, and I sat down after the conference was over and dictated a memorandum as to what happened.

Q. You are a member of the Bar, aren't you? A. Certainly.

Q. Did you show any courtesy to me, professional courtesy? A. Of course I did.

Q. Did you extend it to me by telling me that you would make a memorandum? A. I extended every professional courtesy that one lawyer extends to another.

Q. You mean you gave me a seat, is that what you mean? A. That is not what I mean, no. I

2062 *Irving H. Dale—By Govt.—Cross*

told you that we were going to discuss the matter, and it was at your suggestion that we discussed the matter, and I told you that it had been referred to Washington.

Q. You mean you didn't throw me out, is that the professional courtesy that you extended? A. That is not it at all; you do not word it accurately. I did not tell you that we had made a memorandum. First of all, I could not, because you left when I started to make the memorandum.

2063 Q. You say you make memorandums of every conference that you have? A. Every conference had on any important subject, every conference that we have about a code violation you will find a memorandum of it in the files of our offices. That practice has existed right along.

Q. So that if Mr. Peterson said that he merely talks to a person without a stenographer being present, or a memorandum being taken with regard to the violations, he did not state the facts accurately? A. No, there is no stenographer present. Very often the memorandum is nothing more than the statement that Mr. So-and-So was in today to discuss straight killing and it was explained to him, and put in the file.

Q. Now, you gave a copy of your memorandum to Mr. Peterson? A. I showed it to him, I think, but I am not sure.

Q. Do you know whether he has an exact copy of your memorandum? A. I made several copies —you mean whether he has it personally?—I know it is in the files in the office.

Q. Did you send one to Washington? A. Yes.

Q. The same day? A. No.

Q. What time did the conference break up?
A. About 5:30 o'clock to 6 o'clock.

Irving H. Dale—By Govt.—Cross

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Q. And then you dictated your memorandum?
A. That is right.

Q. And when did you finish? A. The next morning; I did not want to keep the girl there that night.

Q. And how long did you keep her in there?
A. Just five or ten minutes.

Q. And do you know what the office hours are under the N. R. A.? A. Yes.

Q. 9 to 5? A. No, not necessarily; 10 to 6 is just as good.

Q. And your girls come in at ten o'clock? A. This particular girl, I don't know. But I know that she had not done her eight hours that day because we try not to keep them longer than that.

Q. You do keep them there? A. I don't know, Mr. Heller, I do not keep watch on their hours.

Mr. Rice: Now, if your Honor pleases, it seems to me utterly useless to try and find out here what the hours of the stenographers are in the office of the N. R. A. Code Authority.

The Court: I presume that he is proving that the memorandum was not made until the next day.

Q. You sat around when you dictated the memorandum? A. No, I did not. Mr. Loeb came in a few minutes later and I had the girl read it to him and I asked him whether it was accurate and he suggested a few changes where I had simply inaptly expressed myself.

Q. Well, now, immediately after the conference you dictated the memorandum and you made some mistakes about what transpired? A.

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Irving H. Dale—By Govt.—Cross

Not mistakes as to what transpired, just inartistic in English.

Q. You mean your language? A. That is all. It was just a rough memorandum of what had happened.

Q. And did it require accurate language? A. I read it to Mr. Loeb for the purpose of having him check on the accurateness of my memorandum.

Q. And he found you had made some few immaterial errors? A. In English.

2069 Q. Right after the conference? A. Yes, but my memory was accurate, though.

Q. Now you are sure that Mr. Peterson asked Mr. Schechter whether or not he had made a statement over the telephone on June 1st to the effect that he was violating the N. R. A. Code, and he said yes? A. Yes.

Q. And do you remember him asking that question? A. I do. I would not want to say that those were the exact words that he used, but he asked that question.

2070 Q. Did Mr. Peterson report to you on June 1st that he had such a conversation with him? A. Yes.

Q. And did you tell him to ask that question on the day that I was there? A. I don't know whether I told him or not, but I know that he asked it.

Q. Did you tell him it was necessary—you or Mr. Loeb—to make definite, to make sure that he was the person who said that on June 1st? A. He did not have to make it necessary, it was true, because Mr. Zasloff came into the office and gave me an affidavit that he had heard that conversation on the other end.