

Clyde N. Justice—By Govt.—Direct

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Q. And the amount actually sold? A. 160,073.

Q. Which is a difference of how much? A. Fifty thousand-odd pounds.

Q. Now, this 30,000 pounds were not reported actually sold? A. Yes.

Q. But the total amount of so-called accommodation sales is less than 50,000 pounds, is it not?

Mr. Heller: Now, wait a minute, will you?—

The Court: It is a matter of argument. He says that of the fifty thousand-odd pounds not reported, thirty-odd thousand pounds were accommodation sales. If you take three from five you have two, that is, I imagine so.

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Q. Now, you prepared one further table which is marked No. 4 and labeled "Comparative average prices of total sales, and sales to special customers," did you not? A. I did.

Q. How was that prepared? A. From the records.

Q. Just what figures did you use? A. This is made from their sales records, from May 16th to June 11th, which shows an average sales price for the day. It shows the average sales price to certain customers for that day, and it shows the high price for the day and the low price for the day, and it shows the average cost price for the week.

Q. The average cost price for the week of all the poultry? A. Yes.

Q. And that is taken from one of those prior exhibits? A. Yes.

Q. Now, what do you compare that with? A. With their average sales price for the week to the special customers.

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Q. To the so-called accommodation customers, is that right? A. Right.

Mr. Rice: I offer it in evidence.

Mr. Heller: The only thing I object to on this is the conclusion of the witness.

The Court: What conclusion?

Mr. Heller: What he found to be the average and what is less and what is more.

The Court: That is a comparison, that is no conclusion.

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Mr. Heller: If your Honor will see, there is some writing there in red (indicating).

The Court: That is what the books show, that is what he says they show, I don't know.

Mr. Heller: He says that he took certain figures from the books and then he juggled them around, and then he came to this conclusion.

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Q. Now, that notation in lead pencil at the bottom of the exhibit? A. Yes.

Q. That statement is correct, is it? A. Yes, sir.

Mr. Rice: I offer it in evidence.

(Marked Government's Exhibit 41 in evidence.)

Q. These statements in red pencil, foot-notes explanatory alongside of the column headed "Average sales price to special customers," what is this word "special" what? A. Fowl and broilers.

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Q. "Of fowl and broilers." Your foot-note reads as follows: "Average selling price fowl and broilers combined, all sales made to special customers computed by the weeks." Is that true?

A. That is correct.

Q. And your foot-note to the next column, which is labeled, "Average cost of both fowl and broilers," your footnote reads as follows: "Average purchase price of fowl and broilers combined computed by the weeks," is that a correct statement? A. Correct.

Q. What is this figure opposite the last red pencil mark? A. 6; that has no reference to anything, it is merely a memorandum.

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Q. This reads: "Prices charged Mogen David Live Poultry Company and Joseph Schechter equal or exceed average price charged to others, almost all prices made to Mogen David Live Poultry Company and Joseph Schechter equal or exceed low prices for the day." Are those statements correct? A. That is correct.

Q. And you have made these statements on the basis of an examination of the exhibits now in evidence? A. That is correct.

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The Court: Does he indicate on there who the special customers are?

The Witness: No, sir; I did not.

Q. Who are those special customers? A. Mogen David and Joe Schechter.

Q. And that includes all of the purchases during that period of time from May 16th to and including June 11th to Mogen David and Joseph Schechter? A. That is right.

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

Q. The so-called accommodation customers? A. That is right.

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Mr. Rice: Exhibit 41 is entitled "Comparative average prices of total sales and sales to special customers"—

The Court: Don't you think that you had better put on there the names of the special customers?

Mr. Heller: I haven't any objection to their putting down the names.

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The Court: I think that would be better; put them in, and then when the jury looks at it, they will know what it is; this way they do not know anything about it.

Mr. Rice: Could we say "so-called accommodation customers"?

The Court: Let him put the names of the special customers out; he can put it in there anywhere, down below, or any place.

Q. Will you write that notation on Exhibit 41, Mr. Justice, or you might put it under here, right here?

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The Court: Put it on anywhere, as long as it gets in there; then the jury will know what it means.

(Witness marks on Exhibit 41.)

The Court: Now you can look at it, Gentlemen.

Mr. Rice: I just want to read these eight figures—

The Court: Do you want to look at it?

Mr. Heller: That is all right. I think a jurymen wants a recess now.

The Court: We will take a recess. You have offered that?

Mr. Rice: Yes, it is already in evidence.

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The Court: It is offered and received without objection. Gentlemen, we will have a recess now for five or ten minutes. Do not allow anybody to talk to you about the case.

(Recess.)

Mr. Rice: Gentlemen of the Jury, Exhibit 41 is entitled "Comparative average prices of total sales and sales to special customers." The special customers are the Mogen David Live Poultry Company and Joseph Schechter. Now, for the week ending May 18, 1934, the average cost of the poultry was 16.14 cents, and the sales price, to so-called accommodation customers, was 16.45 cents. The following week the average cost price was 16.28 cents, and the average sales price was 17.11 cents. The third week, the average cost price was 16.33 cents and the average sales price was 15.75 cents. The fourth week the average cost price was 16.41 cents and the average sales price to these accommodation customers was 17.05.

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Q. Mr. Justice, did you have any conversation with Leo Schimmel while you were at the A. L. A. Schechter Live Poultry Market? A. I did.

Mr. Heller: I object, your Honor, as not proper rebuttal.

Mr. Rice: I submit it is. The defendants called Leo Schimmel to testify on cross examination that he did not go to Mr. Justice and tell Mr. Justice that he was being over-worked and that he wanted

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Mr. Justice's help. That is not a collateral issue.

Mr. Heller: It was your cross examination, not mine.

Mr. Rice: Yes, but this, your Honor, is a direct issue in the case.

The Court: I do not see that you can examine on that now. You have the slips that he gave to Mr. Justice in evidence.

Mr. Rice: But I should like to show, your Honor, that Leo Schimmel went to this witness on several occasions.

The Court: I don't think you can. They did not show it. You on your cross examination asked him about it, and it goes to his credibility.

Mr. Rice: Does your Honor make the same ruling with respect to a conversation that Leo Schimmel had with Mr. Justice just three days ago? We should like to prove—

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The Court: I do not see how you can do that; this is not in the presence of these defendants, and they are not bound by it. You asked him questions on cross examination and he gave you answers. I think you are concluded by that, and it goes to his credibility, but I do not think you can show a conversation with him—

Mr. Rice: That may very well be right, your Honor. May I state it this way to your Honor? On direct examination of Mr. Schimmel, Mr. Heller brought forth the statement that Schimmel was not over-worked and that he worked when he pleased, and that the Schechters did not

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require him to work any particular hours, and that he was treated well. Now, on cross examination I pressed that question further, and I asked him whether it was not true that he went to Mr. Justice to complain that he was being over-worked and that he was working seventy-five hours a week, and getting underpaid, and that he wanted the Code Authority to do something about it.

Mr. Heller: His answer was no, and you are bound by it.

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Mr. Rice: I was required to ask those questions in order to lay a foundation for contradicting it. I can contradict him on the ground that he was testifying as to a direct issue in the case and not a collateral issue. It is for that reason that I submit that we should be permitted to offer the conversation.

The Court: I don't see how you can.

Mr. Rice: Very well.

The Court: You have the slip, that is in evidence, and I don't think you can interrogate on that.

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Cross examination by Mr. Heller:

Q. When you testified on direct examination the other day you gave us the following two figures: Reported, 106,659 pounds, and sales made and computed by you, 115,861 pounds. What was wrong? Was there anything wrong with those figures? A. On my previous examination I was quoting from a schedule which I made which did not include the sale of ducks.

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Q. So when you made a copy of the records of the Schechters you left out the items of ducks? A. I included only the fowls and broilers, by instruction.

Q. Now, you went back and you found an item that you had left out? A. I didn't find it; I knew it was there all along.

Q. You didn't include it? A. No, not in the first analysis.

Q. Is a duck poultry? A. It is duck.

Q. Well, is it considered poultry?

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Mr. Rice: We will concede that it is.

Q. Did you have any particular reason for leaving it out from your records? A. On my first analysis I was asked to make an analysis of fowl and broilers only.

Q. That is all? A. That is all.

Q. And since that time did you have the defendants' books in your possession? A. I had a copy of them.

Q. The copy that you offered in evidence the first time? A. That is right.

Q. What you had in your possession is Exhibit 36, is that correct? A. That is right.

Q. And from this record, Government's Exhibit 36, you reconstructed these different exhibits that you offered in evidence before, is that correct? A. That is correct.

Q. You did not reconstruct these exhibits from the books themselves? A. I reconstructed them from my transcript of the books.

Q. From your own transcript? A. That is right.

Q. And did your transcript contain the number of ducks? A. That is right.

Q. It did contain it? A. Surely.

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Q. At the time you made it? A. Surely.

Q. Will you look at your records, Government's Exhibit 36, and tell us what was sold to M. D. L. P. Corporation on June 11th, 1934?

A. June 11th?

Q. Yes. A. M. D. L. P.?

Q. That is right, June 11th. A. Here is one sale of 987 pounds, and 167 pounds.

Q. And do you know at what prices these items were sold? A. The 987 pounds were sold at 14½ cents, the 167 pounds were sold at 21½ cents.

Q. Do you know what kind of poultry that was? A. I have no idea, except it says fowl and broilers.

Q. Then there is something said in the books about broilers and fowl? A. Yes, they are segregated.

Q. They were segregated? A. Yes.

Q. And your computation was made by taking into consideration the total amount of fowl and the total amount of broilers, adding the prices and taking the average? A. Some computations were, some were not. Some were made separate as to fowl and broilers.

Q. Can you from your exhibits tell us the total number of poundage of fowl sold to Joseph Schechter or to the Mogen David? A. Yes.

Q. You have such a computation? A. Yes.

Q. And you have a computation for the average price of the total amount of fowl separate and apart from the other? A. Right.

Q. All right, show us that. A. On June 11th the same sale, 987 pounds of fowl at 14½ cents, 167 pounds of broilers at 21½ cents.

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Q. You added the two together? A. No, I have them separate.

Q. Did you add all of the broilers in one—did you add them altogether in one column? A. All the sales?

Q. Yes, all the sales to Mogen David. A. Yes; they sold 6,395½ pounds of broilers, and they sold 26,602 pounds of fowl.

Q. Have you got the specified price for each sale alongside those figures? A. Yes.

Q. From day to day? A. Yes.

4403 Q. Also with reference to broilers? A. Yes, sir.

Q. Haven't you them? A. That is correct.

Q. Now, give us the average price sold for each separate quality of merchandise. A. I can figure it for you.

Q. Did you figure it up? A. No.

Q. You haven't figured it up? A. No, I haven't figured it up. Do you want me to?

Q. You haven't compiled those figures? A. No, I have not done that but—

4404 Q. Just a moment, we will come to that. What figures have you compiled? A. Well, here is a schedule that shows the daily sales from May 16th to June 11th, and that shows the pounds sold each day, the amount, the high price for the day, the low price for the day and the average price for that day.

Q. Does that show the high price paid for fowl as distinguished from ducks? A. I do not show in this schedule duck at all.

Q. Does it show the difference in price between fowl and chickens? A. I have it between broilers and fowl which is all their books show.

Q. You have no distinction between fowl and chickens, have you? A. The books do not mention chickens.

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Q. Did you ever in your life see a sales slip, did you ever see a sales slip? A. Oh yes.

Q. Did you ever look at those? A. Never made any particular examination of them, I have seen them.

Q. Did you ever examine anything else but poultry books? A. Oh yes, I have examined—

Q. You are an accountant? A. Yes.

Q. Did you ever see department store books? A. Yes, sir.

Q. Do you know what a sales ticket is? A. Yes, sir.

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Q. You look at a sales ticket in order to ascertain the price merchandise is sold for? A. Yes.

Q. Did you examine those of Schechters? A. I looked at a few of them, not many, I test-checked a few of them.

Q. What do you mean by test-checked? A. I examined a few to see if they agreed with the sales book, and they did.

Q. Just a few? A. Just a few.

Q. You remember how many they had there of those sales tickets? A. They had quite a lot of them.

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Q. Quite a number? A. Yes.

Q. Take a look at one of them, let us take June 8th, tell us what this sales slip represents. A. What is on it?

Q. Yes, what does it represent? A. It shows so many pounds of Rock broilers.

Q. At a certain price? A. Well, I don't know —yes, I see the price now.

Q. What else does it show? A. That is all that this one slip shows.

Q. Will you let me see it? A. The pounds, the price and the classification, Rock broilers.

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Q. Is that all that was sold that day? A. Well, there is three items of Rock broilers.

Q. There are three kinds of Rock broilers, are there, at three different prices? A. Well, I do not know whether that is—there are three different items.

Q. There are three different items that appear on that sales slip? A. Three entries, yes.

Q. And at three different prices? A. Well, not at three different prices.

4409 Q. Look at those little circles— A. They show two different prices of three different items.

Q. So there are two grades of Rock broilers at two different prices? A. I would conclude so, yes.

Q. That depends on the quality, doesn't it? A. I don't know what it depends on.

Q. You do not know anything about the chicken business? A. Very little.

4410 Q. Well in examining sales slips for a department store you might run across one sales slip for a suit at \$25, and another for \$22, isn't that possible? A. That is right.

Q. And another one for \$50? A. That is right.

Q. Am I right in saying in determining an average price you would take the one at \$50 and the one at \$22 and the one at \$15 and add them up— A. If I only had two grades or two classifications I would just add them up and divide them by two.

Q. Suppose you had 6 classifications? A. That would be different.

Q. You would take each classification separately? A. That is right.

Q. And determine the price of each classification? A. That is right.

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Q. Do you know what the different prices are there, the different grades of chickens? A. No.

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

Q. You lumped them all together? A. I put them down just as the books showed, the two classifications fowl and broilers only; that is all the books showed.

Q. You mean the sales books? A. Yes.

Q. You didn't look at the charge book? A. I didn't look at these tickets.

Q. Yes, and these tickets tell you exactly what was sold, the kind of poultry, the price and the quantity, do they not? A. Well, I see by this ticket it shows Rock broilers.

Q. You did not compute your statistics from these sales tickets, did you? A. No.

Q. Now I show you Defendants' Exhibit J and ask you to point out what is wrong with that exhibit, find one mistake. A. Find what?

Q. Find anything that is wrong with that exhibit.

Mr. Rice: What exhibit has he got?

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The Court: What is Exhibit J, one page or the whole exhibit?

Mr. Heller: The one exhibit, it is all totaled up.

The Court: Look at all the pages of Exhibit J.

The Witness: I have no idea what might be wrong with it.

Q. You have no idea whether it is right or wrong. A. No, sir.

Q. Did you see Leo Schimmel prepare that, were you sitting by him when he was doing that? A. I did not pay any attention to it.

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Q. Did you sit with him while he was getting that data from the books? A. I sat there a few minutes, just a few minutes.

Q. You did not check it? A. No, sir.

Q. Would you want to check it and see whether there is anything wrong? A. I would have to.

Mr. Heller: Very well, I wish you would point out exactly what is wrong with that statement.

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Mr. Rice: Just a moment, is our witness being asked to contradict something that has been prepared by their accountant? I do not see what the purpose is.

Mr. Heller: If he can do so I would like him to do it.

Mr. Rice: Are you pushing him through the jumps to see whether he is a good accountant?

Mr. Heller: I am not jumping at all, I am taking it step by step.

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Mr. Rice: I do not see the purpose of this, your Honor, I do not see the relevancy.

Q. By merely looking at it can you tell us whether there is anything wrong with that statement? A. I could not.

Q. You couldn't say whether it was right or wrong? A. I could not.

Q. Am I right you could not—

Mr. Rice: May I see the exhibit?

Q. Do you remembr definitely making the statement yesterday that there was 106,650 pounds reported and you found 151,861, do you remember that? A. Well, I do not remember, whatever it was that was right.

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Q. And do you remember saying that you did not take into consideration these accommodation sales when you computed that figure? A. No, I had no idea what were accommodations or what were not accommodation sales because the books do not show.

Q. Taking June 8th, for instance, same date, can you tell us what was paid for this particular merchandise to the commission merchants? A. 25½ cents and 21, apparently.

Q. That was paid to the commission merchants? A. Well, I wouldn't know.

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Q. You did not see the purchase records, did you? A. Their purchase records?

Q. Yes. A. Yes, their books.

Q. You saw itemized bills? A. They had no itemized bills.

Q. You saw a total, didn't you? A. I saw the amount purchased from each seller.

Q. Right, and the total value? A. And the total value and in total pounds only.

Q. Among those particular items there might have been several different qualities of merchandise? A. Oh, yes.

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

Q. And from your examination of those records you could not ascertain whether those consisted of broilers at 18 cents? A. No.

Q. Or leghorn fowl at 8 cents or 6 cents a pound? A. No.

Q. You took the total— A. The only thing I could do was to arrive at the average cost price.

Q. In other words, when you found a purchase of 10,000 pounds of poultry from a certain commission merchant and alongside of that you

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saw, we will say, \$2,000, you divided the 10 into the 2, is that right? A. That is correct.

Q. And you came to the conclusion that the average purchase price for each item to be 20 cents? A. Well, that would be the average price.

Q. As far as you were concerned? A. (No answer.)

Q. Now, among that 10,000 poultry there may have been some leghorns purchased at 8 cents a pound, isn't that right? A. That is correct.

Q. There may have been purchases of the chicken at 20 cents a pound? A. Yes.

Q. There may have been some poultry at 30 cents a pound? A. That is correct.

Q. As far as you were concerned you did not know what that total figure was made of? A. I did not.

Q. Isn't that correct? A. That is right.

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

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Mr. Rice: If your Honor please, I wish to offer in evidence a certified copy of the minutes of the meeting on a proposed amendment or series of amendments to the Live Poultry Code, dated August 17, 1934.

The Court: How is that material, Mr. Rice? Anything after the indictment does not make any difference.

Mr. Rice: It is material, if your Honor please, for the purpose of showing that the sale of uninspected poultry affects interstate commerce. We have a ten-page sworn statement here by

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Frankel, who was the first witness for the defense. Now we believe that we have laid the foundation for contradicting a certain statement made by Mr. Frankel on direct examination and on cross examination, and we should like to offer in evidence—

The Court: His attention was not called to it, was it?

Mr. Rice: Yes, it was called to it, and we stated at that time we had sent to Washington for a certified copy of the minutes of this hearing; we did not have the minutes available at that time. His attention was called to it, and I cross examined him thoroughly upon the basis of the information given to me as to what Frankel had testified there. Now I merely wish to offer the transcript of those proceedings in evidence to show what Frankel did testify. We have had a certified copy of these minutes prepared, and it is my understanding that Mr. Heller will not require the production of the official stenographer to testify that he recorded the statements accurately.

Mr. Heller: The proper way to proceed is to ask Mr. Frankel whether he made such a statement or he did not.

Mr. Rice: And he was asked that.

Mr. Heller: And you are bound by the answer he gave you. I am not responsible for a record made here over a week ago. I know nothing about this.

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Mr. Rice: I submit we are not bound by what Mr. Frankel says, where it is responsive to his testimony on direct examination, particularly when that testimony is a direct issue in the case. Now, the testimony which he gives here is testimony to the effect that the sale of uninspected poultry does affect interstate commerce. He testified that it does not. Now, that is a direct issue in the case, not a collateral issue, and I submit we can contradict the witness provided we have laid a proper foundation, and we laid that foundation on cross examination by asking him whether he did not testify to the contrary down at the hearing on the proposed amendments to the Code. He denied that he had so testified. Now we produce the official record of the proceedings to show just what he did testify.

The Court: Is there anything more than his testimony in this?

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Mr. Rice: Oh, yes.

Mr. Heller: The Lord only knows what is in there.

Mr. Rice: I am quite willing—

The Court: There is nothing which could be material but his testimony.

Mr. Heller: Not even his, because the man would have the right to be confronted by the questions.

The Court: I rather think that is so.

Mr. Heller: There might have been an error, there might have been a lot of things. The man is entitled to explain those things. I think Mr. Rice has told you the story, the jury has heard it, it is

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all in now. He has made a speech. It is all in.

The Court: I think the man should have been confronted with the testimony.

Mr. Rice: Of course, we did our very best at that time.

The Court: Nobody is criticizing you, it is not even indirect criticism, but, as a matter of law, he would have to be confronted with his testimony in and of itself, not a paraphrase of it.

Mr. Rice: My understanding of that rule of evidence, if your Honor please, is that that is not essential where you are contradicting the witness on a material issue.

The Court: I think it is because he has the right to be confronted with it. Mayhap he would deny he ever said such a thing and raise an issue. Somebody might come in and say to me, "Didn't you say such and such a thing," generally, and, now, that would not be confronting me because if the testimony was presented I might show very clearly that the understanding that the question had was not the one that I had intended to convey. I do not believe that is so, Mr. Rice.

Mr. Rice: Your Honor, I do not want to press this point too far, but may I illustrate my point by this: Suppose there had been no transcript of Mr. Frankel's testimony, but supposing that Benjamin Forsmith, we will say, had been in the room when he testified, and

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while Mr. Frankel is on the stand Benjamin Forsmith tells me that Frankel testified to the contrary?

The Court: That is right, but you could not ask him whether he testified to the contrary. You would have to ask him did he testify as follows, which would be the substance of what Forsmith had told you.

Mr. Rice: Yes, sir.

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The Court: Now, you did not ask him that because you did not have it. It wasn't any fault of yours. You asked him generally whether he testified in a certain way. That is not confronting him with the testimony. I do not think you are entitled to do it.

Mr. Rice: I did question him on the basis of the best information I had.

The Court: You did the best you could.

Mr. Rice: Yes.

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The Court: But I do not believe that is sufficient. This man is not a defendant. If it were a defendant, it would be entirely different, because then their attitude might be reached, but this man was not. This simply goes to his credibility, and I really think if you are going to do that, you have to confront him just the same as you had a witness here and asked him whether he testified before the Grand Jury and he read it. That is quite different.

Mr. Heller: Will your Honor instruct the jury to disregard counsel's remarks?

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Motions

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The Court: The jury will disregard the remarks of counsel, and disregard the comments of the Court, all of it. Whatever counsel says is not evidence. Only that is evidence which I allow here, and when I say anything is stricken out, or when I say I do not allow it, you disregard it and pay no attention to it at all. You pay attention only to that which is allowed.

Gentlemen of the Jury, do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you. Be back in your seats at ten-thirty tomorrow morning.

Adjourned to October 30, 1934, at 10:30
A. M.

United States of America *vs.* J. Schechter, *et al.*

Brooklyn, N. Y., October 30, 1934.

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Met pursuant to adjournment at 10:30 A. M.; present as before.

The Court: Do you have any more testimony?

Mr. Heller: No. The defendants rest and renew their motion to dismiss and for the direction of a verdict of not guilty—

The Court: I guess you do not want to renew your motion until we see if they have any rebuttal.

Mr. Rice: The Government has no rebuttal.

The Court: No rebuttal. Then you make your motion?

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Motions

Mr. Heller: Yes, I renew my motion to dismiss and for a directed verdict on all the grounds stated by me at the end of the Government's case on the whole case, and on the exceptions taken during the trial.

The Court: I am going to grant your motion to dismiss as to Count No. 45, Count No. 47, Count No. 49 and Count 50. I think that is correct, isn't it?

Mr. Heller: That is correct.

4439 The Court: Counts 45, 47, 49 and 50; and Counts 54, 56, 58 and 59.

I do that on the ground that on the testimony of Mr. Schimmel it is at least open to doubt that the number of hours that he worked on those four counts, or the wages that he was paid on the four other counts, was more as to the hours or less as to the wages than the law provides. That has no reference to the other counts, only those particular counts.

4440 As to all of the other counts, and as to all of the other motions, they are denied, and you have an exception as to the denial of each motion as to all counts except those that I have enumerated.

Mr. Rice: If your Honor please, may the jury be advised that those specific counts are the counts as to which Schimmel testified he went away for the week-end?

The Court: That is what I meant to tell them; those are the four counts for illegal hours, and the four counts for illegal wages, and Schimmel testified as to each one of those counts that he had gone away for the week-end on Friday, which, perforce, reduced the number of hours that he worked in each instance. And for that reason I am removing those from the consideration of the jury, those eight counts.

*Summation***4441**

Mr. Heller: Will your Honor also tell the jury that the fact you deny my motion as to the other counts—

The Court: I had not finished.

Mr. Heller: I beg your pardon.

The Court: I said as to all other counts and as to all other aspects of your motion it is denied and you have an exception to each of my denials. And then I tell the jury my denial of the motion of the defendants indicates no expression of opinion on my part on the facts; it simply means that I think there is a question of fact presented, and that question of fact must be decided by you gentlemen and not by me.

Mr. Rice: If your Honor please, may the record show that there is no Government Exhibit 18?

The Court: Yes, that is correct. Government Exhibit 18 was withdrawn; I think we had that on the record before.

Mr. Rice: Yes, that was supplemented with the Sanitary Code of another date.

The Court: That is correct, Government's Exhibit 18 was an earlier copy of the ordinance, and as Government's Exhibit 17 was the later one that was in effect at the time, Government's Exhibit 18 was withdrawn. That is correct.

(Mr. Heller sums up to the jury, during which the following occurred:)

The Court: You cannot tell the jury about a penalty; that rests on the conscience of the Court. You cannot discuss the penalty for the violation of any section; that rests upon the conscience of the Court.

Mr. Heller: I didn't mean it that way.

4442**4443**

4444*Summation*

The Court: However you mean it, you are trying to tell them what punishment is attached to any one of these offenses; that is not the province of the jury.

Mr. Rice: If your Honor please, in view of what has already been said by counsel, would it be proper for your Honor to instruct the jury now—

The Court: I will instruct them that what has been said as to punishment rests on my conscience, and that can't be discussed by the jury. You do not determine punishment, you determine questions of fact.

(Mr. Heller continued his summation to the jury, during which the following occurred:)

Mr. Heller: Gentlemen of the Jury, would you like to be put behind the bars for a thing like this?

The Court: Now, about the bars, they do not do that—the sentence rests upon my conscience, not theirs.

(Mr. Heller thereupon concluded his summation to the jury.)

The Court: Gentlemen, we will adjourn until two o'clock. Make it prompt. Gentlemen, do not allow anybody to talk to you about this case. If you hear anybody near you saying anything that might lead up to the case, walk away. Do not look at any of the newspaper articles about the case. Do not discuss the case between yourselves and do not form any opinion until it is finally submitted to you by me in my charge. Come back at two o'clock promptly.

Recess until 2 P. M.

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*Charge to Jury***4447**

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

(Mr. Rice summed up to the jury on behalf of the Government.)

The Court: Now, Gentlemen, do not allow anybody to talk to you about the case. If you hear anybody talking about it, move away, do not listen to it. Do not read anything about it; don't discuss it between yourselves; do not form any opinion until I finally submit it to you with my charge tomorrow.

Be back tomorrow morning at ten-thirty, and then the case will be submitted to you for your consideration.

Adjourned to Wednesday, October 31, 1934, at 10:30 A. M.

4448

Brooklyn, N. Y., October 31, 1934.

Met pursuant to adjournment at 10:30 A. M.; present as before.

Charge to Jury**4449**

CAMPBELL, D.J.:

Gentlemen of the Jury, I would like to have your attention. I will give you some paper, there will be a large number of counts here and you will have to pass on each count, and I therefore suggest that you keep some record of what each count is, otherwise I do not know how you will be able to arrive at some conclusion. You may make any kind of notation that will be intelligible to you so that you will be able to pass on the various counts. You may arrange

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Charge to Jury

amongst yourselves for the taking of such notes as you may desire.

These defendants are presented before you upon an indictment, thirty-three counts of which will be submitted to you.

This indictment is but a charge; it is a method whereby the defendants are placed upon trial. Guilt cannot be found simply because an indictment is presented. Guilt, if found, must be found as the result of proof offered on the trial.

4451

These defendants, as all other defendants, under the wise and humane provisions of our laws, are presumed to be innocent. That presumption is with them right up to the time when you, by your verdict, determine whether the presumption has been rebutted or sustained. And it is the duty of the Government to prove the guilt of each defendant as to each crime charged and each element necessary to constitute that crime beyond a reasonable doubt. Reasonable doubt, Gentlemen, is exactly what its name implies; not some mere whim or preconceived prejudice, not a prejudice against the law, not a prejudice against the defendants, but a fair doubt on the evidence, a doubt for which you can give a reason satisfactory to your consciences.

4452

The first count is the count of conspiracy. That will be sufficient to identify it. That count in substance is alleged as follows:

“On April 13, 1934, on application to the President of the United States, by trade associations and groups representing all branches of the Live Poultry Industry of the Metropolitan Area of New York, and after due notice to all persons in said Industry, and after public hearing

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*Charge to Jury***4453**

on behalf of said Industry, the President, by authority of and in accordance with the provisions of the Act of June 16, 1933 (Public, No. 67, 73rd Congress), commonly known as and hereinafter called the National Industrial Recovery Act, duly approved the Code of Fair Competition for the said Live Poultry Industry, hereinafter called the Code, said approval being made effective as of April 23, 1934."

4454

The provisions of that Code are set forth in an exhibit which has been presented on this trial.

And it is further alleged as follows:

"For many years last past, up to and including the date of the filing of this indictment, a large and important part of the trade and commerce among the several states of the United States has consisted in the shipment of live poultry from, among others, the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin, and the District of Columbia, to and into the State of New York, which said trade and

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4456*Charge to Jury*

commerce is now hereinbelow described in further detail.

4457

"Approximately 77% of the live poultry consumed in the Metropolitan Area (consisting of the five boroughs of New York City, the counties of Rockland, Westchester, Nassau and Suffolk, in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut), hereinafter called freight poultry, is shipped by freight over interstate railroads into the State of New York from the states of origin, mentioned in paragraph 2 above, to commission merchants doing business in the State of New York, who sell and deliver said poultry, as agents for and on behalf of the shippers in other states, to wholesale and retail slaughterhouse men in the State of New York. Approximately 50% of the freight poultry arrives at railroad terminals in the State of New Jersey, and the remainder thereof arrives at railroad terminals in the State of New York. The Commission merchants sell to the slaughterhouse men a large part of said poultry before it arrives at said terminals, and a large part of the remainder thereof immediately after it arrives. Freight poultry which is thus sold is delivered by the commission merchants from the freight cars at said railroad terminals directly to the trucks of the slaughterhouse men and immediately thereafter trucked to the slaughterhouses.

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1487

Charge to Jury

4459

The freight poultry which is not thus sold at said terminals is trucked by the commission merchants from said terminals to their places of business in West Washington Market in the City of New York, where a large portion thereof is promptly transferred from the commission merchants' trucks to the trucks of slaughterhouse men purchasing such poultry, and the rest is unloaded at West Washington Market and thereafter sold to slaughterhouse men as soon as such purchasers can be found. Slaughterhouse men in turn sell such freight poultry to retail poultry dealers and butchers located in the Metropolitan Area in the States of New York, New Jersey and Connecticut, and slaughter said poultry promptly after selling the same.

4460

"Approximately 23% of the live poultry consumed in the Metropolitan Area, hereinafter called trucked and express poultry, is transported into the Metropolitan Area either by truck or railway express to the said commission merchants, who in turn promptly sell and deliver it to slaughterhouse men, or is transported by truck or express directly to the slaughterhouse men, who in turn sell it to retail poultry dealers and butchers located in the Metropolitan Area. Approximately 84% of such trucked and express poultry is transported into the State of New York from the states of origin mentioned in paragraph 2 above.

4461

4462*Charge to Jury*

"All such live poultry, including freight poultry and trucked and express poultry, is highly perishable and is sold and delivered usually within 24 hours after arrival in the State of New York, passing through the various channels above described from the point where it comes into the State of New York to the point where it is sold by slaughterhouse men, continuously and without substantial delay other than such as is necessitated by inspection, unloading, and finding purchasers.

4463

"The uneconomic and destructive practices of the Live Poultry Industry of the Metropolitan Area existing prior to the approval of the said code caused widespread competitive marketing and industrial evils in the Live Poultry Industry and demoralized the entire price structure in the Live Poultry Industry both in the said Metropolitan Area and in substantially all other poultry markets

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throughout the United States, thereby, impeding, diverting, and harmfully affecting the interstate commerce in live poultry described in Paragraphs '2', '3', '4' and '5', above, and the interstate commerce in live poultry throughout the United States. The price structure and trade practices of the Live Poultry Industry of the Metropolitan Area govern and control the price structure and trade practices in substantially all other poultry markets throughout the United States. The said Code regulates the interstate commerce described in Paragraphs '2', '3', '4' and '5' hereinabove

1489

*Charge to Jury***4465**

and throughout the United States by setting up the standards of fair competition for the Live Poultry Industry of the Metropolitan Area, in accordance with the provisions of said National Industrial Recovery Act.

"Culls and poultry unfit for human consumption hereinafter will be collectively called unfit poultry or unfit chickens; and other poultry will be called healthy poultry or healthy chickens.

"Throughout the period of time from January 1, 1934, up to and including the date of the filing of this indictment: the A. L. A. Schechter Poultry Corporation has been a corporation duly organized and existing under the laws of the State of New York, and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the Schechter Live Poultry Market, Inc. has been a corporation duly organized and existing under the laws of the State of New York and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the said A. L. A. Schechter Poultry Corporation and the said Schechter Live Poultry Market, Inc., and Joseph Schechter, Martin Schechter, (alias Meyer Schechter, alias Louis Schechter), Alex Schechter, and Aaron Schechter, (alias Abe Schechter) have been engaged in maintaining, operating, and conducting on their own behalf and on behalf of each other wholesale slaughterhouse business

4466**4467**

4468*Charge to Jury*

at 991 Rockaway Avenue, Brooklyn, N. Y.
and at 858 E. 52nd Street, Brooklyn,
N. Y."

It is further alleged:

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"Joseph Schechter, Martin Schechter,
Alex Schechter, Aaron Schechter, the A.
L. A. Schechter Poultry Corporation, and
Schechter Live Poultry Market, Inc.,
hereinafter collectively called said defendants,
are hereby made defendants in the
First Count of this indictment. Said defendants,
together with other persons to
the Grand Jurors unknown, well knowing
all matters of fact in this indictment set
forth, beginning on or about May 16,
1934, and continuously thereafter up to
and including the date of filing this in-
dictment, within the Eastern District of
New York, did unlawfully, feloniously,
and wilfully conspire with each other to
commit a large number of offenses
against the United States, to wit, to
violate the said National Industrial Re-
covery Act and the said Code; that is to
say, they combined, agreed, confederated,
and conspired with each other:

4470

"(a) To knowingly, unlawfully and
wilfully sell for human consumption unfit
poultry, in violation of Article VII, Sec-
tion 2, of said Code; and

"(b) To knowingly, unlawfully and
wilfully sell poultry which had not been
inspected or approved in accordance with
any rule, regulation or ordinance of the

1491

*Charge to Jury***4471**

area where said poultry was sold, in violation of Article VII, Section 22, of said Code; and

“(c) To knowingly, unlawfully and wilfully use, in the wholesale slaughtering of poultry, methods of slaughtering other than ‘straight killing’ or killing on the basis of official grade, and to knowingly, unlawfully and wilfully allow persons purchasing poultry for resale to make selections of individual chickens where such selections are made for purposes other than the elimination of culls and unfit chickens, all in violation of Article VII, Section 14, of said Code; and

4472

“(d) To knowingly, unlawfully, and wilfully commit and threaten to commit acts of violence, coercion and intimidation, in violation of Article VII, Section 21 (1), of said Code; and

4473

“(e) To knowingly, unlawfully and wilfully submit to the Code Supervisor false and fictitious reports relating to the range of daily prices and volume of sales for various kinds, grades and qualities of poultry sold by them during the week prior to said reports, and to knowingly, unlawfully and wilfully fail, refuse and decline to submit to the Code Supervisor proper reports concerning the same, both in violation of Article VIII, Section 3, of said Code; and

“(f) To knowingly, unlawfully and wilfully fail, refuse and decline to furnish

4474*Charge to Jury*

to the Code Supervisor any reports concerning the number of hours worked by employees, in violation of Article III, Section 4, of said Code; and

“(g) To knowingly, unlawfully and wilfully pay their employees less than 50¢ per hour, in violation of Article IV, Sections 1 and 2, of said Code; and

4475

“(h) To knowingly, unlawfully and wilfully permit their employees, other than those engaged in emergency, maintenance or repair work, to work more than 48 hours per week during periods other than Jewish holidays or legal holidays, in violation of Article III, Section 1, of the said Code; and

4476

“(i) To knowingly, unlawfully and wilfully interfere with, hinder, obstruct and prevent the Code Supervisor from performing and carrying out the powers and duties vested in him by said Code, including the power and duty to administer said Code, to supervise the performance of the provisions thereof, and to receive and investigate complaints of alleged violations of the provisions thereof, all in violation of Article VI, Section 1, (b-1) and (b-2), of said Code.”

The Grand Jurors then allege overt acts, and I wish you would keep those words “overt acts” in your minds. You do not need to write that, just keep it in your minds, because I will advert to that later.

1493

Charge to Jury

4477

"And the Grand Jurors aforesaid do further upon their oaths aforesaid present that to effect the objects of said conspiracy and in furtherance thereof, said defendants committed the following overt acts:

"(a) On or about June 25, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Martin Schechter and the A. L. A. Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption an unfit chicken to Harry Stauber or some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York.

4478

"(b) On or about June 27, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter and the A. L. A. Schechter Poultry Corporation sold for human consumption two unfit chickens to a retail poultry dealer by the name of Wagshul (his exact name being to the Grand Jurors unknown), maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York.

4479

"(c) On or about June 28, 1934, the said defendants did have in their possession at 858 East 52nd Street, Brooklyn, New York, with the intent and purpose of selling the same for human consumption, four unfit chickens.

4480*Charge to Jury*

"(d) On or about June 28, 1934, said defendants did have in their possession at the said wholesale slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, with the purpose and intent of selling the same for human consumption, six unfit chickens."

This is all part of the first count.

4481

"(e) On or about May 26, 1934, said defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of selling the same within the City of New York, approximately 5,200 pounds of live poultry which they had failed and neglected to have inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

4482

"(f) On or about May 28, 1934, said defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of selling the same within the said City of New York, approximately 7,144 pounds and 59 baskets (each said basket containing approximately 60 to 65 pounds) of live poultry which they had failed and neglected to have inspected

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*Charge to Jury***4483**

or approved in accordance with any rule, regulation or ordinance of the said City of New York.

“(g) During or about the week commencing May 26, 1934, the defendants sold in Brooklyn, New York, to persons to the Grand Jurors unknown, the aforesaid quantity of approximately 12,344 pounds (the aforesaid 5,200-pound lot plus the aforesaid 7,144-pound lot) of said uninspected live poultry described in paragraphs (e) and (f) hereinabove, or a substantial part thereof, without having the same inspected in accordance with any rule, regulation or ordinance of the City of New York.

4484

“(h) On or about May 29, 1934, at said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants sold the said 59 baskets of uninspected live poultry referred to in paragraph (f) hereinabove, to the Mogen David Live Poultry Market, Inc., and/or to David Schechter at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

4485

“(i) On or about June 20, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants premitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Wagshul

1496

4486*Charge to Jury*

(his full name being to the Grand Jurors unknown), maintaining places of business in Brooklyn, New York, and permitted said Wagshul to reject individual healthy chickens and to slaughter the chickens so selected.”

These are all Count 1. There will be many other counts besides, but this is Count 1, I am reading.

4487

“(j) On or about June 22, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of business at 961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens and to slaughter the chickens so selected.

4488

“(k) On or about June 28, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Sam Tanowitz, maintaining a place of business of 5303 Church Avenue, Brooklyn, New York, and permitted said Sam Tanowitz to reject individual healthy chickens and to slaughter the chickens so selected.

1497

Charge to Jury

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“(l) On or about June 28, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens and to slaughter the chickens so selected.

4490

“(m) On or about June 25, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue, Brooklyn, New York, and permitted said Morris Rabinowitz to reject individual healthy chickens and to slaughter the chickens so selected.

4491

“(n) On or about June 27, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code

4492*Charge to Jury*

Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

4493

"(o) On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

4494

"(p) On or about June 29, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter, and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one Benjamin Forsmith, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and

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*Charge to Jury***4495**

other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Forsmith from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

"(q) On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, the aforesaid Joseph Schechter did use threatening, coercive and intimidating language and gestures to one Jack Musicant, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

4496

"(r) On or about June 28, 1934, the aforesaid A. L. A. Schechter Poultry Corporation and Martin Schechter did submit to the Code Supervisor weekly reports for each week from the week ending April 30, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind, grade and quality of poultry sold by said defendants during the period covered by each of said reports.

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4498*Charge to Jury***4499**

"(s) Each and every week after the week ending May 18, 1934, to and including the date of the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechter, Martin Schechter and Aaron Schechter did pay to a person employed by them in the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), wages amounting to less than 50¢ per hour for each hour worked by the said employee.

4500

"(t) Each and every week after the week ending May 18, 1934, to and including the date of the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechter, Martin Schechter and Aaron Schechter did cause and permit a person employed at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), to work at the said slaughterhouse in excess of 55 hours per week, the said employee not being engaged in emergency, maintenance or repair work, and the said violations occurring during periods other than Jewish holidays or legal holidays."

The Grand Jurors further allege:

"All of the live poultry purchased and sold by said defendants is transported into the State of New York from other

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Charge to Jury

4501

States. Said defendants purchase a substantial portion of said live poultry at the said railroad terminals in New York and New Jersey immediately after its arrival at said terminals from States other than the States of New York and New Jersey, and truck said poultry directly from said terminals to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after said poultry has arrived at said terminals. Said defendants also purchase a substantial portion of said poultry in Philadelphia, Pennsylvania, and truck it directly therefrom to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after it is thus brought into the State of New York. All of the live poultry referred to in the overt acts described in sub-paragraphs (e), (f), (g), and (h) of paragraph 10 hereinabove was thus trucked from Philadelphia, Pennsylvania, to Brooklyn, New York, and sold in interstate commerce at the wholesale slaughterhouses of said defendants in Brooklyn, New York, to retail poultry dealers and butchers.

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"The violations and the transactions referred to in sub-paragraphs (e), (f), (g), and (h) of paragraph 9 hereinabove are in the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 hereinabove; and all of the violations and transactions referred to in

4504*Charge to Jury*

paragraph 9 hereinabove, which the said defendants conspired to commit and engage in, affect said interstate commerce in the following manner, that is to say:

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“(a) Prior to the adoption of said Code widespread competitive, marketing and industrial evils existed in the Live Poultry Industry of the Metropolitan Area. The existence of such evils obstructed the free interstate flow of live poultry into the State of New York from other states, substantially diminished the total volume and value thereof, disrupted the orderly flow thereof, and contaminated and demoralized the character thereof. Said Code prohibits such evils and was adopted and approved for the purpose of correcting said evils.

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“(b) The conspiracy to commit the offenses described herein has encouraged and caused the violations hereinabove described and other violations of essential provisions of said Code by a large number of other members of the Live Poultry Industry in the Metropolitan Area, and has thereby diverted substantial interstate shipments of live poultry and has caused a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and has thereby obstructed and prevented the accomplishment of said purposes of said Code.

“(c) The defendants’ sale for human consumption of unfit poultry causes the

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*Charge to Jury***4507**

transportation in interstate commerce of unfit poultry, which poultry would otherwise be destroyed prior to said interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

“(d) The defendants’ sale for human consumption of unfit poultry encourages and causes the sale for human consumption of unfit poultry by other slaughterhouse men in said Metropolitan Area, and thereby causes the transportation in interstate commerce of substantial amounts of unfit poultry which would otherwise be destroyed prior to such interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

4508

“(e) Unfit poultry is sold at prices substantially lower than the prevailing market prices for healthy poultry, and in many instances unfit poultry is sold under misrepresentations as to its edibility. Such misrepresentations and such sales at prices under prevailing market prices as aforesaid tend to demoralize the market value of healthy poultry, to cause confusion in the orderly marketing of live poultry through the channels of interstate commerce described in paragraphs 2, 3, 4, and 5 of this indictment, to reduce substantially the prices paid to the persons shipping poultry into the State of New York from other states, to diminish the consumption of live poultry

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4510*Charge to Jury*

in the Metropolitan Area, and to reduce the volume of live poultry shipped into the State of New York from other states.

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“(f) The diseases which contaminate unfit poultry are in many instances transferable to healthy poultry, and the shipment in interstate commerce of such unfit poultry in the same crates and in the same cars with healthy poultry tends to taint, damage and infect the healthy poultry moving in interstate commerce and render the same inedible and unfit for human consumption.

4512

“(g) The purpose of inspecting poultry prior to the sale thereof in the City of New York is to eliminate unfit poultry and to detect and prevent various frauds whereby the true weight of poultry is misrepresented in the interstate transportation and delivery of live poultry from shippers outside the State of New York directly to commission men and slaughterhouse men within the State of New York.

“(h) The sale of uninspected poultry aids the commission of the aforesaid frauds and causes an increase in the transportation of unfit poultry into New York from other states and a decrease in the transportation of healthy chickens into the State of New York from other States.

“(i) The purpose of Article VII, Section 14 of said Code, requiring ‘straight killing’ or killing on the basis of official grade, is to encourage and promote the practice of grading poultry according to

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Charge to Jury

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quality, and packing, shipping and selling such poultry on the basis of official grade, and to prevent the evil competitive practices and demoralized and uneconomic price structure resulting from the sale at reduced prices of healthy poultry rejected in the course of selective killing. The use in the wholesale slaughtering of poultry of any method of slaughtering other than 'straight killing' and the practice of permitting purchasers to make selections of individual chickens from particular coops or half coops tends to defeat these purposes and to cause the shipment and delivery to commission merchants and slaughterhouse men in New York by shippers in other states of ungraded and inferior poultry and to diminish the price obtainable by such shippers for poultry of higher quality, and to demoralize the entire price structure.

4514

"(j) The payment by said defendants of wages at a rate less than 50¢ per hour to employees working in the transactions relating to the purchase, handling and sale of poultry described in paragraph 11 hereinabove, as prohibited by Article IV, Section 1 and 2 of said Code, and permitting such employees to work more than 48 hours per week, as prohibited by Article III, Section 1 of said Code, enables said defendants to obtain unfair advantages over other slaughterhouse men and thereby encourages and causes other slaughterhouse men to engage in the same and all other practices prohibited

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4516*Charge to Jury*

by said Code, including those referred to in sub-paragraphs (a) to (i) of paragraph 9 hereinabove, and thereby obstructs and prevents the accomplishment of the purposes of said Code, diverts substantial interstate shipments of live poultry, and causes a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states.

4517

"(k) The commission by said defendants of acts of violence, coercion and intimidation as prohibited by Article VII, Section 21 (1) of said Code, their submission to the Code Supervisor of false and fictitious reports, and their failure to submit reports, both in violation of Article III, Section 4 and Article VIII, Section 3 of said Code, and their interference with and obstruction of the Code Supervisor in accomplishing the powers and duties vested in him by said Code, in violation of Article VI, Section 1 (b-1 and B-2) of said Code, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, including those referred to in sub-paragraphs (a) to (j) inclusive of this paragraph, and thereby directly causes a disruption in the free and orderly flow of interstate commerce in live poultry coming into the State of New York from other states."

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Charge to Jury

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That is the first court. That is what the Government in the first count charges. The conspiracy here charged is to commit offenses against the United States. To violate the act here in question is made a crime by the National Industrial Recovery Act. Therefore, an offense against the United States, for the violations which it is charged the defendants combined, agreed and confederated and conspired with each other to commit, would affect interstate commerce. Unless such offenses affects interstate commerce, this court would not have jurisdiction; but if they do so affect interstate commerce, this court has jurisdiction.

In this count we are not dealing with what are called substantive offenses. The crime charged in this count is not the crime of doing these several acts in violation of the Code. The crime charged here is the confederating, the agreeing, the combining together to do the acts alleged, in violation of the Code. The gravamen of the offense here charged is the meeting of the minds of the defendants, the conspiring, the confederating and the agreeing together of them on a preconcerted plan, which has an object, which has a method of accomplishment, and as to which the defendants have the means of accomplishing the same, if they have entered into any such agreement.

If they have committed any of the offenses alleged here, and those offenses have simply been evidenced as dissociated acts, without any agreement or understanding on their part in advance that they would do these things, why, of course, that would not be conspiracy.

In order to arrive at this conspiracy it was not necessary for them to sit around the table and

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4522*Charge to Jury*

adopt resolutions. No formal act of that kind was required. The meeting of the minds could occur as the result of a conference, the meeting of the minds could occur as the result of the plan which they perfected; and their acts can be and must be considered in determining whether or not there was any agreement, whether or not there was any confederation, whether or not there was any conspiracy on their part.

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In order to be guilty of a conspiracy they do not all have to enter into it at the same time provided they enter into it before the overt acts are committed. They may come in at different times, but they must always come in. If they do come in, into the carrying out of the same plan, they do not all have to play the same part. Some may do certain classes of acts, some may do other classes of acts, but all the classes of acts performed must be related to the common plan, to a plan which they have conceived and which they have agreed amongst themselves to put in practice.

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Even if all this agreement is had, there still would be no crime of conspiracy unless it was vitalized by an overt act. That is why I called your attention to the words "overt act." Then I read to you what the Government has alleged as overt acts. Of course, anybody may agree with another that they are going to do things, and they are wrong things to do, and they are violations of law, but if they do not do anything in pursuance of that, there is no crime. They did not all have to commit the overt act. If the conspiracy was entered into, if their minds met, if there was a common agreement on this plan, on the method of operation, then the act of any one

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Charge to Jury

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conspirator, any one overt act they are alleged to have committed, would vitalize the conspiracy. Furthermore, as you undoubtedly heard during the trial, there was testimony given of acts by different defendants. Unless there was a conspiracy, anything that was said, or anything that was done, by any one of the defendants, would bind only him, and the others could not be bound by what he said or what he did. Each one would have to stand for himself. But if a conspiracy has been entered into, and you so find, then the act of any one, or the statement of any one, of the conspirators at any time during the life of the conspiracy would bind all the others.

That is plain? Do you understand what I mean?

You understand here that there has been much which has been enumerated, as the Government has charged. The Government has called witnesses, you have heard those witnesses testify, and those witnesses testified that the things here enumerated affected interstate commerce; that class of acts had its effect and did effect interstate commerce. Some of those men were economists. One of them in particular claimed to be an experienced man in addition to his qualifications as an economist. They testified at length. I am not going to recite to you any testimony unless it is necessary to make clear my ruling on any particular question. The facts have been discussed by both counsel fully and ably. You have heard them all. There is no necessity of my going over them.

Because I may refer to any fact in the case does not mean it is any more important than any others; the fact that I may have failed to

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Charge to Jury

refer to any facts in the case does not mean that they are any less important than another. You are to consider all the facts. As I have stated, any facts that I refer to at all will be simply as I may find necessary to state in order to make clear my rulings on the questions of law.

Opposed to the Government's evidence was the evidence of the men called by the defendants, all of whom said that their experience was practical experience. Has the Government sustained its contention? Do these several acts that have here been recited affect interstate commerce? It is for you to say.

Of course, it is not the size of the act that is controlling, because the offense may be large or the offense may be small. The question is whether the acts affect interstate commerce in a large way or in a small way. I will advert to that later on when I come to the counts of the substantive crime.

Do these acts that are here alleged affect interstate commerce? You have all the evidence. You can determine for yourselves whether these acts, if done, would affect interstate commerce in the poultry trade. If so, then you must come to the consideration of whether there has been a conspiracy as I have described it to you.

If there was such a conspiracy entered into by these men it must have been done knowingly, unlawfully and feloniously. That thing is knowingly done when you know the nature and the consequence of the act which you are performing; that thing is unlawful which the law says you shall not do; that thing is felonious which is in disobedience of law in a substantial way, tending to felonious action.

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Charge to Jury

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Did they enter into any common purpose, all of them, or some of them? There must be at least two to conspire because one man cannot conspire with himself. Did any two or more of them enter into any such conspiracy as is described here, and were the things which they conspired to do things which would affect interstate commerce if they did enter into a conspiracy? And, if that is so, did any one or more of them, in pursuance of that conspiracy and for the purpose of effecting the object of the same, commit any one of the overt acts which are alleged in this indictment? They did not have to commit them all. Any one would be sufficient to vitalize a conspiracy. That is understood, is it, gentlemen? You understand this distinction? Because I am going on now to the substantive crime.

Substantive crimes have to do with the commission of the particular offense in and of itself. Conspiracy does not; conspiracy has to do with an agreement, a confederation, a meeting of the minds to do and commit offenses, and it is not necessary that they be successful in their conspiracy. It is sufficient, if such a conspiracy be entered into, that they commit some one of the overt acts alleged to vitalize the same.

We will now come to the overt acts, and you may keep a note, you may make a slight memorandum, so you can distinguish them. I am now, of course, as before, reading to you what the Government charges. You realize, of course, that what I have read and am about to read is not evidence. You understand that, do you, gentlemen? That is their charge. Does the evidence they offer sustain that charge? The burden, of course, is on the Government to sustain

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4534*Charge to Jury*

it beyond a reasonable doubt. The defendants offered their evidence. It is only on all the evidence that you can say whether the count was sustained. These overt acts which we now come to have to do with the particular acts charged. These have nothing to do in themselves with any conspiracy. It is the doing of the act itself with reference to these counts that is to be considered.

In addition to allegations as to approval of the Code, the effect of violations on interstate commerce, and the effect of the alleged violation of the act or acts alleged in each count, the following counts in substance charge as follows:

Count 2nd. On or about June 25, 1934, at 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Martin Schechter and the A. L. A. Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption an unfit chicken to Harry Strauber, or to some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York, in violation of Article VII, Section 2, of the said Code.

Reading these substantive counts, there may be, as you will observe, a duplication in the section of the overt acts that were charged under the first count, that of conspiracy. They are separate and distinct, because in the first count, as I instructed you, it was the conspiracy itself, and the recital of the overt acts was only for the purpose of vitalizing the conspiracy; whereas here, each of these substantive crimes that I will describe to you that is charged in the indictment is separate and distinct, of and by itself, and it is possible that the defendants may not be guilty

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*Charge to Jury***4537**

on any of the counts; it is possible that the defendants may be guilty on some counts and not on others, and it is possible, of course, that the defendants may be guilty on all the counts. The fact that there is a charge of conspiracy and that one of the overt acts charged thereafter is charged as a substantive crime does not prevent guilt on both conspiracy and the substantive crime if the evidence warrants it.

The Code provisions relating to Count 2, that you are taking a note of, I assume, are as follows:

Article VII of said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited.

Sec. 2. "Inedible products.—Knowingly to purchase or sell for human consumption culls or other product that is unfit for human consumption."

Article II, Section 16, defines culls as follows: "The term 'culls' means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry, at New York."

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Count 3rd. On or about June 27, 1934, at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, and A. L. A. Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption two unfit chickens to a retail poultry dealer by the name of Wagshul (his full name being to the Grand Jurors unknown) maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York,

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in violation of said Article VII, Section 2, of said Code.

Count 4th. On or about May 28, 1934, the defendants Martin Schechter, Alex Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation transported from Philadelphia, Pennsylvania, to the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York, 59 baskets of live poultry; and knowingly, wilfully and unlawfully sold all of said 59 baskets of live poultry to the Mogen David Live Poultry Market, Inc., and to David Schechter, at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the City of New York, in violation of Article VII, Section 22, of the said Code.

Article VII of said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry, and are hereby prohibited."

Sec. 22. "Inspection of poultry.—The sale of live poultry which has not been inspected and approved in accordance with the rules, regulations, and/or ordinances of the particular area."

The Sanitary Code of the City of New York in force at the time in question and the regulations made pursuant thereto which have been offered in evidence provide for inspection.

Count 5th. The defendants Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation transported approximately 5,200 pounds of live poultry on

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Charge to Jury

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or about May 26, 1934, and approximately 7,144 pounds on or about May 28, 1934, from Philadelphia, Pennsylvania, to the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York, and knowingly, wilfully and unlawfully sold a part of same to a person to the Grand Jurors unknown, during or about the week commencing May 26, 1934, the exact date and amount of such sale being to the Grand Jurors unknown, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the City of New York, in violation of said Article VII, Section 22, of said Code.

I have already read to you what that article provides.

Count 24th. On or about June 20, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a retail poultry dealer by the name of Wagshul (his full name being to the Grand Jurors unknown), maintaining places of business in Brooklyn, and permitted said Wagshul to reject individual healthy chickens, in violation of Article VII, Section 14, of said Code.

Article VII of the said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited."

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Charge to Jury

Sec. 14. "Straight killing.—The use in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds."

Article II, Section 15, defines straight killing as follows:

Sec. 15. "The term 'straight killing' means the practice of requiring persons purchasing poultry for resale to accept the run of any half coop, coop, or coops, as purchased by the slaughter house operators, except for culls."

Section 16 of that Article defines culls as follows: "The term 'culls' means poultry unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry at New York."

Let me say to you in passing, so you will not be at all disturbed, you may find skips, as you do there, from the fifth count to the twenty-fourth count. Later on you will find some counts that are omitted. Those counts are out; they are not before you for consideration. The only counts before you for consideration are those on which I am instructing you. So you won't be confused, you went to the fifth and then skipped to the twenty-fourth. The intervening counts are not before you for consideration.

The next count is the 25th: On or about June 22, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Martin Schechter, Alex Schechter, and the A. L. A. Schechter Poultry Corporation permitted and participated in selections

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*Charge to Jury***4549**

of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of business at 961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens in violation of said Article VII, Section 14, of said Code, which I have read to you.

Count 26th: On or about June 28, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation, permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher by the name of Sam Tanowitz, maintaining a place of business at 5303 Church Avenue Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14 of said Code, which I have read to you.

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Count 27th: On or about June 28, 1934, at the said slaughter house at 991 Rockaway Avenue, Brooklyn, New York, the defendants Joseph Schechter and Schechter Live Poultry Market, Inc. permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens,

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in violation of said Article VII, Section 14, of said Code, which I have read to you.

Count 28th: On or about June 25, 1934, at the said slaughter house at 991 Rockaway Avenue, Brooklyn, New York, the defendants Joseph Schechter and Schechter Live Poultry Market, Inc., permitted and participated in, selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue, Brooklyn, New York, and permitted said Rabinowitz to reject individual healthy chickens, in violation of said Article VII, Section 15, of said Code, which I have read to you.

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Count 29th: On or about June 21, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and A. L. A. Schechter Poultry Corporation permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher (whose name is to the Grand Jurors unknown), maintaining a place of business at 304 Troy Avenue, Brooklyn, New York, and permitted said butcher to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code.

Count 30th: On or about June 21, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and A. L. A. Schech-

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*Charge to Jury***4555**

ter Poultry Corporation permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name of Tanowitz—that is another Tanowitz count—maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code.

Count 31st: On or about June 26, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and A. L. A. Schechter Poultry Corporation, permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name of Sam Tanowitz—another one—maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14, of the said Code, which I have read to you.

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Count 32nd: On or about June 26, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and the A. L. A. Schechter Poultry Corporation, permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to butchers by the name of Sol Levine and Sam Schechter, maintaining places of business at 257 and 509 Brighton Beach Avenue,

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Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code, which I have read to you.

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Count 33rd: On or about June 27, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and A. L. A. Schechter Poultry Corporation, permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to butchers by the name of Sol Levine and Sam Schechter—that is another count—maintaining places of business at 257 and 509 Brighton Beach Avenue, Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens, in violation of said Article VII, Section 14, of the said Code, which I have read to you.

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Count 34th: On or about June 27, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the defendant Martin Schechter, in violation of Article VII, Section 21 (1) of the said Code, did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor, and engaged in investigating violations by the defendants herein and members of the Live Poultry Industry of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3 of said Code,

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with purpose and intent and effect of preventing said Alampi from performing his duties above set forth, and to enable Alex Schechter, Aaron Schechter, the A. L. A. Schechter Poultry Corporation, and said defendant Martin Schechter to commit said violations and other violations of said Code.

Article VII of the said Code provides: "The following practices shall be decreed to be and shall constitute unfair methods of competition on the part of the members of the industry, and are hereby prohibited."

Sec. 21. "Anti-Racketeering.—The following practices and acts shall be considered violations of this Code. (1) Any act of violence, coercion, extortion, or intimidation, or any threat, conspiracy, combination, or concerted action to commit any act of violence, coercion, extortion or intimidation."

Article II, Section 2, defines "member of the industry" as follows:

Sec. 2. "The term 'member of the industry' includes without limitation any individual, partnership, association, corporation, or other form of enterprise engaged in the industry, either as employer or on his or its own behalf."

The violations referred to by article and section numbers of the Code which it is alleged Alampi was investigating, related to hours of employment of employees, wages paid to employees, the various provisions of the Code hereinbefore defined as to sale of unfit poultry, sale of uninspected poultry, and straight killing.

Count 35th: On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York,

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the defendants Aaron Schechter, Alex Schechter, and Martin Schechter, in violation of Article VII, Section 21 (1) of said Code, did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi—you see, there are two involving Philip Alampi, two succeeding days—an investigator employed by and on behalf of the Code Supervisor and engaged in investigating violations by the defendants herein of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3 of said Code, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and to enable the defendants herein to commit said violations and other violations of said Code.

I have read to you the Code provisions that relate to it.

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Count 36th: On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Alex Schechter, and Martin Schechter, in violation of Article VII, Section 21 (1) of said Code, did use vile, threatening, coercive and intimidating language and gestures to one Benjamin Forsmith, an investigator employed by and on behalf of the Code Supervisor, and engaged in investigating violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3, of the said Code, with the purpose, intent and effect of preventing said Forsmith from performing his duties above set forth, and to enable the defend-

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Charge to Jury

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ants herein to commit said violations of said Code, and I have read to you the Code provisions.

Count 37th: On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, the defendant Joseph Schechter, in violation of Article VII, Section 21 (1) of said Code, did use threatening, coercive and intimidating language and gestures to one Jack Musicant, investigator employed by and on behalf of the Code Supervisor, and engaged in investigating violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3, of said Code, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth, and to enable the defendant herein to commit said violations and other violations of the said Code, and I have read to you the Code provisions.

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Count 38th. On or about June 28th, 1934, the defendants A. L. A. Schechter Poultry Corporation and Martin Schechter, did submit to the Code Supervisor weekly reports from each week from the week ending May 19, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind and grade of poultry sold by them during the periods covered by each of said reports, in violation of Article VI, Sections 1 and 2 and Article VIII, Section 3, of said Code.

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Article VII, Sections 1 and 2 of said Code, relate to the administrative duties of the Code

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Supervisor and Industry Advisory Committee, and Article VIII, Section 3, provides as follows:

Sec. 3. "Listing sales prices.—Every member of the industry shall submit a weekly report to the Code Supervisor. Such report shall show the range of daily prices and volume of sales for each kind, grade or quality of produce sold by the member of the industry during the reported week. I have already given you the definition of the term 'member of the industry.' "

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Count 39th. The defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., have at all times heretofore wilfully, knowingly and unlawfully failed and refused to submit weekly reports or any reports whatever relating to the range of daily prices and volumes of sales for each kind, grade or quality of produce sold by them for the period from June 11, 1934, to and including the date of filing this indictment, in violation of said Article VIII, Section 3, of said Code, and I have read to you that provision of the Code.

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For your information let me say—and this applies generally to this whole indictment—the date of filing of the indictment was July 26, 1934. So wherever the words "Date of filing the indictment" occur, they mean July 26, 1934.

Count 41st: During the week ending on or about May 18, 1934, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter, and Alex Schechter did pay a person employed by them in the wholesale

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*Charge to Jury***4573**

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

Article IV of said Code, in so far as is necessary for consideration herein, reads as follows:

Sec. 1. "No employee shall be paid in any pay period less than the rate of fifty (50) cents per hour. (d) Employers shall make payment of all wages in lawful currency or by negotiable checks payable on demand."

Sec. 2. "This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piecework, or other basis."

Count 42nd: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about May 25, 1934.

Count 43rd: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 1, 1934.

Count 44th: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 8, 1934.

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Count 46th: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 22, 1934.

Count 48th: This count is against the same defendants and for a violation of the same article and section of the Code, except that it is for the week ending on or about July 6, 1934.

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Count 51st: During the week ending on or about May 25, 1934, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, did cause and permit a person employed at the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), to work at the said slaughter house in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than the Jewish holidays, in violation of Article III, Section 1, of said Code.

Article III of said Code, so far as is necessary for consideration, reads as follows:

Section 1. "No employee shall be permitted to work in excess of forty (40) hours in any one week except as herein otherwise provided. (b) Slaughter house employees provided that they shall not work more than forty-eight (48) hours in any one week."

So the hours permitted for slaughter house employees are forty-eight hours per week.

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Count 52nd: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 1, 1934.

Count 53rd: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 8, 1934.

You will notice that two counts are omitted in there. 4580

Count 55th: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 22, 1934.

Count 57th: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about July 6, 1934.

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Let me call your attention, while we are at this point, to the fact that all of these allegations are on or about a certain date, and the date here alleged on or about is, in each instance, a Friday. The witness Schimmel, the bookkeeper, as to whose employment and payment these counts are directed, ended his week on Saturday. You will find that the indictment, for instance, speaks of the week ending on the 22nd, but in his testimony Schimmel speaks of it as the week ending the 23rd. When the Government uses the term "on or about," the day before or the day after is on or about, and so it is the same. So there will

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be no confusion between these dates, the dates in the indictment are all Fridays, and Schimmel's dates were all Saturdays, the day after.

Count 60th: On repeated occasions during the period from May 16, 1934, up to and including the filing of this indictment, the exact date of said occasions being to the Grand Jurors unknown, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter sold live poultry to Joseph Schechter and/or the Schechter Live Poultry Market, Inc., both of whom are persons not legally entitled to conduct the business of handling live poultry, and not having a permit, or license to handle, sell or slaughter live poultry, as is required by the ordinances of the City of New York and by the rules and regulations of the Board of Health of the City of New York, which said sales were in violation of Article VII, Section 15 of said Code.

Article VII of said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of the members of the industry, and are hereby prohibited."

Sec. 15. "Illegal sales.—The sale or resale of produce to any person not legally entitled to conduct a business of handling the produce of the industry (where a license or permit is required)."

Such permit is required by the ordinances of the City of New York and by the rules and regulations of the Board of Health of the City of New York, and is issued to the applicant and is not transferable.

We thus have thirty-three counts in all.

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*Charge to Jury***4585**

First count for conspiracy.

Second and third counts for sale of unfit poultry.

Fourth and fifth counts for sale of uninspected poultry.

Twenty-fourth to thirty-third counts (both inclusive) for violation of straight killing.

Thirty-fourth to thirty-seventh counts (both inclusive) for threats, coercion and intimidation obstructing enforcement of Code.

Thirty-eighth count for false reports.

Thirty-ninth count for withholding sales reports.

Forty-first to forty-fourth counts (both inclusive), forty-sixth and forty-eighth counts for payment of wages less than required by law.

Fifty-first to fifty-third counts (both inclusive), fifty-fifth and fifty-seventh counts for permitting employee to work more hours than allowed by law.

Sixtieth count for sales to persons not legally entitled to conduct the business of handling live poultry.

Each of those is a separate count and you must consider each one of them separately and you must consider each defendant named in each of said counts to determine whether or not that defendant has committed the act charged. You cannot group them together and say as one goes so go the others. Each is a separate charge, each charge a separate offense, and each must receive separate consideration.

The provisions of the Code are standards of fair competition for the trade or industry or subdivision thereof. Any violation of such standards and any transaction in or affecting

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4588*Charge to Jury*

interstate commerce or foreign commerce is an unfair method of competition in commerce within the meaning of the act. The provisions in question referred to the alleged sales of poultry unfit for human consumption, violation of provisions for straight killing, anti-racketeering, filing of false reports, failure to file reports, payment of less than minimum wages allowed to employees, causing or permitting employees to work excessive hours, as well as persons not having permits to operate slaughter houses. Do

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the provisions of the Code, or any of them alleged in the substantive counts to have been violated by any of the defendants, affect interstate commerce? You have heard the evidence. The Government has brought its witnesses here. They have told you that such acts do affect interstate commerce. There is no need of going over all the evidence. You have heard it. You have heard the charge read. You know whether or not the allegations of the first count of the indictment were sustained by the evidence offered by the Government. The defendants have

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brought witnesses here and they say that such acts as are inhibited by the Code do not affect interstate commerce. Where does the truth lie? It is for you to determine. Take all the evidence; take what the condition was before; take what the condition has been since; take the various steps; take the steps that were instituted before the Code; take all the evidence together, and from all that evidence does it appear that the commission of acts in violation of the Code affects interstate commerce? If it does, then proceed to a consideration of these counts. Of course, if it does not, if you should find that it

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Charge to Jury

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does not affect interstate commerce, then, of course, we would be without jurisdiction, and the remedy would have to be pursued in some other place, because the jurisdiction of this Court is dependent upon interstate commerce being affected.

Did you understand me when I said that these represented standards? Do you know what that means? Of course, this is a large question. Do not make a mistake and put yourselves in a false position. It does not rest with this Court, it does not rest with you jurymen, to enter into a discussion as to whether you think the method that was selected was the best one, was the proper one, or whether it was improper. That is not our function. That rests with Congress. Congress had the right to select the method. They have selected this method.

The only question—this does not call for a discussion, as I said, of the merits of the scheme, that is not it—the only question with you is whether or not the witnesses for the Government who said that these acts which are prohibited affect interstate commerce were right, or whether the witnesses for the defendant who said that they do not affect interstate commerce were right. Which side of the question seems to you to be supported by the most convincing evidence? It is not the number of witnesses at all; it is the weight of the evidence. That is a question of fact. And I want to urge you gentlemen to decide it on the evidence, not on some views that you may have on the subject outside of the case, which, of course, play no part here. There is a place reserved for the expression of those views but it is not here in this court.

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4594*Charge to Jury*

The poultry which was brought in by truck from Philadelphia was moving in interstate commerce, and the poultry when sold by the commission merchants to the defendants, or any of them, was in interstate commerce, but it is not material whether the poultry was or was not at the time alleged in any of the several counts actually moving in interstate commerce. The question is whether the violations, or any of them, affected interstate commerce in any of the ways alleged in the indictment. Of course, the violation must have been substantial and not merely incidental. That does not mean, however, that the extent of the violation is the controlling factor, as violations may be large ones or small ones, and it would be a violation, even though it be a small one, if the act committed was clearly in violation of a provision of the Code and not merely incidental thereto. Of course, if the violation be a small one in the carrying on of a large business, that fact should be considered with the other facts in determining whether the violation was wilful, because it is possible where there is a large transaction of business and some small violation that that might in itself not be wilful. That must be considered with all the other facts. It is only to be considered, as I have said, and although small, and however small a violation it is, if it is a violation of a provision and it affects interstate commerce, then that is what the act says shall not be done.

You understand that, do you, gentlemen? Of course, it must be understood that the whole commerce in poultry would not be upset and disturbed by the act of any one individual un-

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Charge to Jury

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less it was of such a size as to create almost an explosion, and the law did not fix any such qualification as that. The law says that if those acts are done which it says shall not be done and which are acts which affect interstate commerce, then it is not the size of the act; it is the act in and of itself that is the violation. Do you understand me? Is that plain?

The Code of Fair Competition having been approved by the President under the terms of the statute, and that was conceded, any violation of any provision thereof knowingly, wilfully and unlawfully committed, in any transaction in or affecting interstate or foreign commerce is a crime.

These defendants stand before you not all, but some, in one count, and others in other counts, in all thirty-three separate and distinct offenses. One is the conspiracy; that is not a substantive crime. Thirty-two of them are substantive crimes, certain definite violations of the Code. It is for you to determine whether as to any, some, or to all of them, the Government has sustained beyond a reasonable doubt proof of the commission of the offense. These counts are not the same as the conspiracy, where there must be two persons. One could be guilty of any one of these substantive crimes because they are crimes in and of themselves. And it is of importance because the defendants took the stand, and one of them, Martin Schechter, at least, in describing his position at the scales, put himself outside of the room in which the selections of the chickens and the slaughtering were done. You have the testimony of the Government witnesses as to where these defendants were at the

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Charge to Jury

time the several offenses charged in these separate counts were committed, and you must determine whether any one or all of the defendants so charged did participate in the crime. If any one of the defendants, although at or about the place, was not in a position to see what was going on, then, of course, it would have to be shown that he knew what was being done and that it was a general course and general practice; otherwise, as to that offense, the evidence might not sustain the charge as to that particular thing.

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I am not going into the evidence because you have heard the evidence on both sides; you have heard the Government's witnesses describe how these things happened, where the defendants were at the time they happened. It is for you to say. I simply called your attention to the fact that Martin Schechter made that statement in order to make plain to you what I mean by my instructions that you must consider each count with reference to each of the defendants to see whether or not the defendant is properly charged in that particular crime.

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Of course, these offenses must have been done, to be crimes, wilfully, knowingly and unlawfully. That thing is wilfully done which you do of your own volition, not under any duress or compulsion; that thing is knowingly done when you know the nature and the consequence of the act which you are performing (all men are presumed to know the nature and consequence of their acts); and that act is unlawful which the law says you shall not do.

This case is important, they are all important, this is important to the Government, on the one

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Charge to Jury

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hand, and it is important to the defendants on the other hand. There is no question about that. There are many counts and they require your very careful consideration. There have been a number of things which have come into the case which I must call to your attention. In the first place, one witness, who was called by the defendant, was asked on the stand whether he had ever been convicted of a crime, to which he answered yes. There must be no mistake about the purpose for which that is allowed. That is not any proof of the commission of any of the offenses charged in this indictment, and we are not trying these defendants for any offense for which that witness was convicted. Let us get that straight. The sole purpose of allowing that question to be put to him was this: that the law says the jury has a right in determining the weight and credence they will give to the testimony of any witness to decide whether they will give the same weight and credence to the testimony of a person who has been convicted of a crime that they would to any other citizen who has not, all things being equal. That is the purpose of that; that is the sole purpose. You have a perfect right to consider that in weighing the testimony of that witness, but that is the only purpose for which you may make use of it.

There has come up here the question of accommodation sales. There is nothing mentioned in the Code about accommodation sales. There is nothing mentioned in the ordinance with reference to inspections about accommodation sales. It is undoubtedly true that if a person, as the agent of another, made a purchase of produce, chickens, in Philadelphia, and brought it into

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Charge to Jury

Brooklyn and delivered it forthwith to the person whose agent they were, there would not be any crime because they, on the way, did not have it inspected, for the duty of having it inspected would be the duty of the principal to whom it was delivered. However, if poultry is purchased outside of the State, brought into the State and thereafter sold, whether it is sold with or without profit, if an actual sale takes place, that sale is putting into circulation that produce in this State; under the laws that produce should be inspected before it is sold. When you come to the question of these accommodation sales, so-called,

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there is evidence here in the books—and it is for you to say whether they were accommodation sales for another purpose—which I will call to your attention. It was contended here, I have not examined the books, it is for you to examine them, it was contended here that the books showed a small profit on these so-called accommodation sales. If that is so, then they lose all question of accommodation, because, no matter how small the profit, they were sold for a profit.

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Whether these defendants acted on the belief, in making their reports, that these accommodation sales might properly be omitted from the reports, acted on the advice of counsel, that would go to the question of whether they wilfully made false reports. We are away from the inspection proposition now; we are dealing with the reports, whether they in good faith and belief, omitted these accommodation sales, and were advised by counsel they could be omitted, and they were actually sales where no profit was received. That is something that may be and properly should be considered in determining whether the failure to include them in the reports was

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Charge to Jury

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wilful, whether it was done wilfully and knowingly and unlawfully.

If, however, there was a profit, then there was not an accommodation sale, and if it appears that the total amount which was not reported of the business, that is, if it appears that the total amount of the business was some one hundred and fifty-odd thousand pounds and the account was for one hundred and six thousand, there was a difference of some forty-five thousand pounds, but that the accommodation sales so claimed amounted to less than forty-five thousand, then that difference, of course, would not be covered by accommodation sales; and even although it was believed that accommodation sales could properly be omitted, that would not be an excuse for the omission of about twelve thousand pounds difference. That is presenting that situation to you as to these accommodation sales. Important? Surely. Were they acting in good faith? Was it something that somebody would know was wrong? That goes to the question of whether they wilfully did it or knowingly did it. But if the amount reported, plus the accommodation sales, was less than the total amount, why, then, of course, that total would count on the question of wilfulness and knowledge. It would have to be considered with reference to that.

Gentlemen, there have been many witnesses called in this case. You had the opportunity of observing the manner and demeanor of each of those witnesses. It is for you to say how much you are going to believe of what each witness testified to, and that is the only way you can decide this case, first to determine what you are

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Charge to Jury

going to believe as to what each witness testified to. You observed their manner and demeanor when they testified when the defendants took the stand. As to each witness, did they all, did any of them or did they not, impress you as being anxious to tell the truth, not trying to evade, not trying to hide anything? But giving you the truth as they saw it, with the differences that there always will be in the stories of human beings, because it could hardly be expected of two witnesses, if they are testifying honestly, to ever describe a thing in exactly the same way. We see different things at different angles, but, with the honest difference that there may be, did the witnesses here, all of them, impress you as truthful? If so, then comes the question of reasonable probability.

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What is the reasonably probable and true story? Who is probably telling the truth? Are the witnesses for the Government telling the truth? Are the witnesses for the defense, including the defendants, telling the truth. Wherever there is a conflict in their testimony (you have had a number of things as to which they differed, I don't care to advert to any particular count, but you have had a number of counts where there is a difference, you have had a number of counts where the defendants and their witnesses took a position different than that of the Government),—wherever there is a conflict in their testimony, which is the reasonably probable true story, which story told here has the earmarks of truth? That which is reasonably probable is generally true too, not always, of course, for there are exceptions to every rule, and there are exceptions to that one, but it is a great aid

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Charge to Jury

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in determining the truth to weigh its reasonable probability. So do that here.

Of course, as an aid to your determination, you have the right, if you believe that any witness has taken that stand and wilfully and knowingly testified falsely to a material fact,—not some immaterial thing, but a material fact,—to disregard all of the testimony of that witness. You are not bound to do it, because you may accept that which you believe to be true and reject that which you believe to be false. But that is a rule of human reasoning that you probably apply every day in your lives in business, perhaps unconscious of the fact that there was any such rule, but it is so.

Let me urge you here, gentlemen, not to take a stilted position. Do not come here and place yourselves on a pedestal and think because you are a juror you have to act in a way which is different than the way you act naturally. That is not so. You are called from out of the mass of the people to bring to bear your independent judgment here and to use the same methods of determining the weight and credence you will give to the testimony of any of these witnesses that you have developed in your intercourse with the world at large. You know how you determine whether you believe people when they talk to you about material things, and you have a right to apply that same rule here. That is what you are here to do, act as perfectly natural human beings, in deciding this question.

The defendants took the stand and the defendants called witnesses who testified to their good character. Good character is an asset. Good character sometimes, in some classes of

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4618*Charge to Jury*

cases, is sufficient to raise reasonable doubt, but good character must not be considered alone an to the exclusion of all other evidence. Evidence of good character is just one class of evidence in the case that must be considered with all the other evidence in the case in determining the weight you will give to it.

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Gentlemen, let us have one thing certain and definite before we close, and that is this: There is a fair division of labor between you and me. You are the sole judges of the facts. You need not try to find out—if you think you can or if it exists—whether I have an opinion on the facts or not. If you think that you know that I have one and what it is, disregard it. I am not responsible for the determination of the facts. That rests on your consciences. That is what you have sworn to do, determine the facts for yourselves on the evidence and on the law as I give it to you, and that brings me back to my part in the division of labor. You are bound to accept my instructions on the law, whether you believe they are the law or not. If I make an error of law, it can be corrected; but you are presumed to have accepted my instructions on the law, and if you do not do that, but determine the law for yourselves, and then render a verdict and make a mistake, nobody on earth can correct your error because it cannot be apparent; it is hidden under the presumption that you followed my instructions.

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Take the law as I have given it to you and decide the case on that law. This is not a case for sympathy, this is not a case for vengeance. You have no concern with what follows your verdict at all. Your only concern is with your verdict and that it shall be a fair verdict on the

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Charge to Jury

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evidence and on the law as the Court has given it to you. All other matters connected with this case are beyond your concern. You need not pay any attention to them. You have nothing to do but determine the questions of fact and then let the rest take care of itself.

I hope I have made myself clear. If there is anything you do not understand now, if you will just tell me, I will be glad to explain it to you as well as I can before you go out.

Mr. Heller: May it please your Honor, I except to so much of your charge as does not adequately explain to the jury what is meant by affecting interstate commerce. I ask your Honor to charge that the indictment as you read it states that the defendants' conduct in each particular count alleged, tended to and did diminish the total volume or value of the commerce that comes into the State, that their particular conduct disrupted the orderly flow thereof and diminished and demoralized the character thereof, and unless the jury finds that their conduct did such a thing, their act did not affect interstate commerce.

The Court: I have already charged them. I read it at great length, the whole indictment. I told them that the charge in the indictment is what the Government is required to prove and asked the jury to determine whether the Government has proved its case. I am not going to charge separate parts. I made that charge plain and distinct, and I think the jury understood it. I read the whole of the first count, too.

Mr. Heller: Exception. And I ask your Honor to charge that what I just said applies to each particular count separately; they must be considered separate and apart.

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Charge to Jury

The Court: I have already charged them at very great length. Each count, of course, depends upon the acts affecting interstate commerce. I find no necessity for further charging the jury.

Mr. Heller: Exception. I also ask your Honor to charge the jury that the jury must find that on or about May 16th a conspiracy was entered into between these defendants—

The Court: I thought there was a more inclusive provision, that between certain dates.

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Mr. Heller: Just May 16th, on or about.

The Court: Well, they did not have to do it on that day. On or about May 16th is the beginning of the conspiracy, as I remember it. What is your clause?

Mr. Heller: Page 7.

The Court: Let me see it. I cannot carry this all in my head.

Mr. Heller: Page 7.

The Court: On or about May 16, 1934, and continuously thereafter,—the conspiracy is alleged to have been formed May 16th,—up to and including the date of the filing of the indictment. So that would mean that the conspiracy would have had to be formed before the commission of the overt acts. I instructed the jury on that at great length.

I am afraid we confused it.

I said to you, gentlemen, that the time of the conspiracy, the formation of it, is alleged to have been on or about May 16, 1934, and as to each defendant, quite naturally, they must have become a part and parcel of the conspiracy before the commission of the overt act, or they would not be responsible for anything except that

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Charge to Jury

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which transpired after the time they became members of the conspiracy, if there were any, and the time of filing the indictment was the 26th of July, 1934. And the conspiracy,—I will make it plain,—the conspiracy ended on that day, the day of the arrest, but the filing of the indictment, we will say, is the end of the conspiracy.

Mr. Heller: I also ask your Honor to charge that under Article III a normal work day shall not exceed eight hours on any day except Thursday and Saturday, when it shall not exceed twelve hours.

The Court: Yes, I will charge that, if you want me to.

Mr. Rice: Your Honor has in mind that the offense charged is the offense of working in excess of forty-eight hours a week.

The Court: That is right.

Mr. Rice: We did not charge the offense of working in excess of any particular hours for any particular day.

The Court: That is right. I have told the jury at great length the charge was forty-eight hours minimum a week.

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Is that all?

Mr. Heller: Yes, sir.

The Court: All right; then the jury will retire.

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(To counsel): Will you both get together your exhibits and both of you look at them? Once in a while something gets in and then there is always confusion. Each of you has his exhibits and each of you please inspect your papers and give them to the jury so there will be no question that anything goes to them that is not properly in.

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Charge to Jury

Mr. Rice: Your honor, in order that there may be no confusion, is it understood that the two alternate jurors—

The Court: I am going to discharge them—I want you to get your papers together first—I am going to discharge them, that is correct. Get your exhibits all ready.

Mr. Heller: My papers are on the table.

The Court: Then we will discharge Jurors Nos. 13 and 14.

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(The jury retired at 12:40 P. M.)

(The jury returned at 3:20 P. M., at which time the following occurred:)

The Court: I have received a note from you gentlemen reading, "Will you please give us the Judge's charge relating to conspiracy?" Do you mean that you want to have the whole count read over or my charge after I had finished reading the count?

The Foreman of the Jury: After you had finished reading the count.

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The Court: You mean after I had finished reading the count; then you mean the charge; is that what you want? You do not want the whole count read over, is that right? When I read the count of the indictment then I followed it with the charge.

The Foreman: That is correct.

The Court: You want to start with the charge, following the reading of the count?

The Foreman: Yes, sir.

The Court: Then the stenographer will read the charge on conspiracy following the reading of the count of the indictment, Count 1.

(Whereupon the stenographer read to the jury from page 1580, line 5, to and including page 1586, line 4, of this record.)

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*Charge to Jury***4633**

The Foreman: That is all we wanted.

(The jury again retired at 3:50 P. M.)

(The jury was sent to dinner at 6:30 P. M.
and instructed to be back at 8:00 P. M.)

AFTER RECESS, 8 P. M.

(Met pursuant to adjournment at 8 P. M.;
present as before.)

(The jury continued their deliberations.)

(At 11:30 P. M. the following occurred:)

The Court: We will take a recess until ten o'clock tomorrow morning. I will let the defendants go on their bail. They must be here tomorrow morning at ten o'clock. I am now sending the jury to a hotel for the night.

(Recessed to Thursday, November 1, 1934, at
10 A. M.)

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United States of America *vs.* J. Schechter, *et al.*

Brooklyn, N. Y., November 1, 1934.

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(Met pursuant to recess at 10:00 A. M.; pres-
ent as before.)

(The jury continued their deliberations.)

(The jury returned at 11:30 A. M.)

The Court: As I understand your request, you want the testimony of Leo Schimmel, witness for the defense, read to you, and then you want to know what week Exhibit 37 refers to, and by Exhibit 37 do you mean the slip which had on it the number of hours?

The Foreman of the Jury: That is correct, your Honor, just want to know the date of that slip and the date that slip applied to.

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Charge to Jury

The Court: I will answer that and then the stenographer may read to you. That slip referred to what the witness Schimmel described as the week ending June 23rd. Is that the one you mean?

The Foreman: That is correct.

The Court: That week is described in the counts as to hours of labor and as to wages paid as the week ending on or about June 22nd, and "on or about," as I said to you, includes the day before or the day after.

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The count that relates to the amount of wages paid during the week ending June 22, 1934, is the forty-sixth count, and the count that relates to the hours of labor on the week ending as alleged on or about June 22, 1934, is the fifty-fifth count. Forty-sixth, as to the rate of wages; and the fifty-fifth as to the hours of work.

The Foreman: Your Honor, that is all we want to know. We do not need the testimony.

The Court: You asked for the testimony.

The Foreman: It was in his testimony. I believe that was mentioned in his testimony.

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The Court: There is no question that that is correct?

Mr. Heller: I assume whatever your Honor said is all right.

The Court: Where is the exhibit? If there is any question, we will have none. Where is the exhibit?

Mr. Heller: The exhibit does not have the date on it. That is the reason I believe the jury wants to know.

Mr. Rice: That is correct.

The Court: Find Exhibit 37. We will have no argument about it at all

1547

Verdict

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Mr. Heller: There isn't any argument. I say whatever your Honor says is correct.

Mr. Rice: I agree that that is correct too, your Honor.

The Court: It was the week ending June 23rd, as testified to by Schimmel, and the indictment says on or about June 22nd. I instructed you about that before in the main charge, that there was a difference of a day, in that the indictment was "on or about" and Schimmel's testimony was a date, his being Saturday, the other being "on or about Friday." Is that all?

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The Foreman: That is all we want to know.

(The jury retired at 11:40 A. M.)

(The jury returned at 11:50 A. M.)

The Clerk of the Court: Gentlemen of the jury, have you agreed upon a verdict?

The Foreman of the Jury: We have.

The Clerk: Case of the United States against Joseph Schechter, Martin Schechter, Alex Schechter and Aaron Schechter, how do you find—

The Court: Wait a moment. And A. L. A. Schechter Corporation.

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The Clerk: And the A. L. A. Schechter Corporation and the Schechter Live Poultry Corporation, how do you find the defendants, guilty or not guilty, on the first count?

The Foreman: Guilty.

The Clerk: On the second count?

The Foreman: Guilty.

The Clerk: Third count?

The Foreman: Not guilty.

The Clerk: Fourth count?

The Foreman: Guilty.

4642 *Verdict*

The Clerk: Fifth count?
The Foreman: Guilty.
The Clerk: Twenty-fourth count?
The Foreman: Guilty.
The Clerk: Twenty-fifth count?
The Foreman: Guilty.
The Clerk: Twenty-sixth count?
The Foreman: Guilty.
The Clerk: Twenty-seventh count?
The Foreman: Guilty.
The Clerk: Twenty-eighth count?
4643 The Foreman: Guilty.
The Clerk: Twenty-ninth count?
The Foreman: Guilty.
The Clerk: Thirtieth count?
The Foreman: Guilty.
The Clerk: Thirty-first count?
The Foreman: Guilty.
The Clerk: Thirty-second count?
The Foreman: Guilty.
The Clerk: Thirty-third count?
The Foreman: Guilty.
The Clerk: Thirty-fourth count?
4644 The Foreman: Not guilty.
The Clerk: Thirty-fifth count?
The Foreman: Not guilty.
The Clerk: Thirty-sixth count?
The Foreman: Not guilty.
The Clerk: Thirty-seventh count?
The Foreman: Not guilty.
The Clerk: Thirty-eighth count?
The Foreman: Guilty.
The Clerk: Thirty-ninth count?
The Foreman: Guilty.
The Clerk: Forty-first count?
The Foreman: Not guilty.

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Verdict

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The Clerk: Forty-second count?

The Foreman: Not guilty.

The Clerk: Forty-third count?

The Foreman: Not guilty.

The Clerk: Forty-fourth count?

The Foreman: Not guilty.

The Clerk: Forty-sixth count?

The Foreman: Guilty.

The Clerk: Forty-eighth count?

The Foreman: Not guilty.

The Clerk: Fifty-first count?

The Foreman: Not guilty.

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The Clerk: Fifty-second count?

The Foreman: Not guilty.

The Clerk: Fifty-third count?

The Foreman: Not guilty.

The Clerk: Fifty-fifth count?

The Foreman: Guilty.

The Clerk: Fifty-seventh count?

The Foreman: Not guilty.

The Clerk: Sixtieth count?

The Foreman: Guilty.

The Clerk: You say you find the defendants, Joseph Schechter, Martin Shechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Corporation and the Schechter Live Poultry Corporation guilty on the first count—

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The Court: As they are named.

The Clerk: Guilty on the first, second, fourth, fifth, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-eighth, thirty-ninth, forty-sixth, fifty-fifth and sixtieth counts, and not guilty on the third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, forty-first, forty-second, forty-third,

4648

Verdict

forty-fourth, forty-eighth, fifty-first, fifty-second, fifty-third and fifty-seventh, and so say you all?

Mr. Heller: May I poll each juror?

The Court: Do you want to poll on each count?

Mr. Heller: No, sir.

The Court: Just on the verdict as rendered?

The Clerk: Mr. A. Schmidt, how do you find the defendants, Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Corporation, and the Schechter Live Poultry Corporation, guilty or not guilty, on the first count?

Mr. Schmidt: Guilty on certain counts, I don't just remember.

The Court: He said he did not want them polled as to each count. He wanted to know if they agreed with the verdict as presented. What do you want?

Mr. Heller: As to each count and each defendant.

The Court: You will have to take each count; there are different defendants.

Mr. Schmidt: Guilty on Count 1, guilty Count 2, not guilty Count 3, guilty Count 4, guilty Count 5, guilty Count 24, guilty Count 25, guilty Count 26, guilty Count 27, guilty Count 28, guilty 29, guilty 30, guilty 31, guilty 32, guilty 33, not guilty 34, not guilty 35, not guilty 36, not guilty 37, guilty, 38, guilty 39, not guilty 41, not guilty 42, not guilty 43, not guilty 44, guilty 46, not guilty 48, not guilty 51, not guilty 52, not guilty 53, guilty 55, not guilty 57, guilty 60.

The Clerk: Irving H. Wills.

Mr. Wills: No. 1, guilty; 2, guilty—

Mr. Heller: Just ask each one whether they agree with the first juror.

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*Verdict***4651**

The Clerk: As to Irving H. Wills, do you agree with the verdict as the Foreman gave it?

Mr. Wills: I do.

The Clerk: Mr. James F. Woods.

Mr. Woods: As given.

The Clerk: James H. Whitehead.

Mr. Whitehead: As given.

The Clerk: Edward Kavanaugh.

Mr. Kavanaugh: As given.

The Clerk: Joseph Robinson.

Mr. Robinson: As given.

The Clerk: Morton Baumgarten.

4652

Mr. Baumgarten: As given.

The Clerk: Thomas V. Martin.

Mr. Martin: As given.

The Clerk: James Roxby.

Mr. Roxby: As given, with one proviso, that on that Count 1, the principal count, we found him guilty on one section of that item.

The Court: No; you find him guilty on the count.

Mr. Roxby: The last one, I think it is Section I, that has not been read, and I would like to put it in; otherwise the list as read is complete.

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The Court: You said you agreed on a verdict. If you have not agreed, why, I want to know it. You said you agreed upon a verdict. The verdict on the first count was announced as guilty. Is it or is it not? Have you or have you not agreed?

The Foreman: We have agreed guilty on Count 1.

Mr. Roxby: Well,____

The Clerk: Mr. Roxby, how do you agree as to the verdict on the first count, guilty or not guilty?

Mr. Roxby: Guilty under those conditions that I have stated.

4654

Verdict

The Court: Now, guilty or not guilty? You came in and said you had agreed upon a verdict. Have you agreed or haven't you?

Mr. Roxby: We have agreed.

The Court: Then what do you find, guilty or not guilty, on that count?

Mr. Roxby: Guilty; otherwise as read.

The Court: Is that your verdict? Your verdict is guilty on the first count?

Mr. Roxby: That is my verdict.

4655 Mr. Baumgarten: If he is guilty on this charge (i), does that consider the entire—

The Court: The count is presented. You said you agreed upon a verdict. Now, if you have not agreed on it, and if you have agreed on the others, we will send you back on that.

Mr. Heller: I think the jury did not understand Count 1. They may require further instructions.

The Court: They did not ask for it and you are not in position to ask for it.

Have you agreed on that or have you not?

Mr. Roxby: Yes, sir.

The Clerk: Samuel Blank.

Mr. Blank: As given.

The Clerk: Joseph Sommers.

Mr. Sommers: As given.

The Clerk: Noel Andrews.

Mr. Andrews: As given.

The Court: Now there is no doubt about it, you have agreed on a verdict of guilty on the first count, that is right, it is?

(Several jurors answered "Yes.")

The Court: No doubt about that? That is the verdict?

The Foreman: That is the verdict.

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Motion to Set Aside Verdict

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The Court: You gentlemen in the back, that is your verdict, guilty, that is, the seventh and the ninth? That is correct, is it?

Mr. Roxby: Correct.

Mr. Baumgarten: Yes, sir.

The Court: Then there is no question.

Mr. Heller: I move, on behalf of the defendants, to set aside the verdict on the ground that it is contrary to the evidence, contrary to the law, against the weight of evidence, and on all the exceptions taken during the trial, on your Honor's refusal to declare a mistrial, on the further ground that your Honor refused to charge as requested, on the exceptions taken during the course of the trial—

The Court: I deny each one. You have an exception to the denial of each one.

Mr. Heller: I have not finished (Continuing.) —on your Honor's failure to dismiss the indictment and to direct a verdict of not guilty at the end of the Government's case, and on the whole case, and I move again to dismiss the indictment.

I move further to set aside the verdict on the ground that the Government has failed to establish conspiracy as alleged in the first count of the indictment which was submitted to the jury.

I further move in arrest of judgment and in arrest of sentence, on the ground that the indictment, including all the counts thereof, fails to state any offense against the United States of America.

I move to set aside the verdict on the ground that the Government failed to show any crime, express or implied, on the part of the defendants to participate in the conspiracy alleged in the indictment, and on the further ground that

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Motion to Set Aside Verdict

the jury's verdict was not sustained by the evidence; on the further ground that there was not credible or other evidence to support the jury's verdict.

I move to set the verdict aside on the ground that the guilt of the defendants was not established beyond a reasonable doubt.

I move to set aside the verdict on the ground that the acts proven did not constitute a crime, or the crime charged in the indictment, and particularly did not constitute a violation of any Federal Statute.

I further move to dismiss on the ground that the jury did not quite understand the meaning of the charges against the defendants herein.

The Court: The jury has been inquired about it. Is there any doubt in your mind as to the guilt on the first count? That is understood?

The Foreman: No doubt.

The Court: I am asking you two: Any question at all about it?

Mr. Roxby: No.

Mr. Baumgarten: Guilty.

The Court: The motions are denied, each of them.

Mr. Heller: Exception.

The Court: And you have an exception to each denial separately. I deny each and every motion and give you an exception to each of them separately.

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*Minutes of Sentence***4663**

Brooklyn, N. Y., November 9, 1934.

10:30 A. M.

(Appearances as before.)

The Court: The sentence of the Court as to Joseph Schechter is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of three months in the House of Detention in New York and fined \$1,000 on Count 1, and that you be fined \$100 on each of Counts 27, 28 and 39. That makes in your case three months' imprisonment and \$1,300 in fines in all.

As to Alex Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of two months in the House of Detention in New York and fined \$500 on Count 1, and that you be fined \$100 each on Counts 4, 5, 25, 31, 32, 33, 39, 46, 55 and 60, making two months' imprisonment and \$1,500 in fines in all.

As to Aaron Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of one month in the House of Detention in New York and fined \$500 on Count 1 and that you be fined \$100 on each of Counts 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 39, 46, 55 and 60, making one month's imprisonment and \$2,000 in fines in all.

As to Martin Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of one month in the House of Detention in New York and fined \$500 on Count 1, and that you be fined \$100 on each of Counts 2, 4, 5, 24, 25, 26, 29, 30,

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Government's Exhibits 1-6

31, 32, 33, 38, 39, 46, 55 and 60, making one month's imprisonment and \$2,100 in fines in all.

I will fine the Schechter Live Poultry Market, Inc., \$25 on each of Counts 1, 27, 28 and 39, making \$100 in fines in all.

As to the A. L. A. Schechter Poultry Corporation, I will treat them the same way and fine them \$25 on each of Counts 1, 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 38, 39, 46, 55 and 60, making \$425 in fines in all.

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Government's Exhibits 1, 2, 3 and 4

These exhibits represent certificates of incorporation of (1) Schechter Live Poultry Market, Inc.; (2) A. L. A. Schechter Poultry Corp.; (3) Mogen David Live Poultry, Inc., and (4) certificate of doing business of Rugby Live Poultry Market. These entire exhibits may be submitted to the appellate court without printing.

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Government's Exhibit 5

Signature card of A. L. A. Schechter Poultry Corp. with Manufacturers Trust Co. requiring signatures of Alex Schechter and Louis Schechter. This exhibit may be submitted to the appellate court without printing.

Government's Exhibit 6

Bank resolution of A. L. A. Schechter Poultry Corp. signed by Alex Schechter, president, Louis Schechter, secretary, Aaron Schechter, treasurer, for deposit with Manufacturers Trust Co. This entire exhibit may be submitted to the appellate court without printing.

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Telephone - Barclay 5240Market News Service
53 Park Place-Room 902-New York

STATES	FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1929 (CARLOTS)												TOTAL 1929	TOTAL 1928
	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER		
LOUISIANA - MASSACHUSETTS														
ALABAMA	11	22	24	37	23	16	10	12	2	1	15	8	181	176
ARKANSAS	43	40	40	52	45	34	38	35	10	7	10	15	369	410
COLORADO	7	9	5	2	5	4	7	11	5	9	12	10	86	89
FLORIDA	-	-	1	1	-	-	-	-	-	-	-	-	2	-
GEORGIA	12	29	28	60	27	14	3	3	-	-	2	1	179	151
ILLINOIS	53	36	28	36	40	46	61	76	105	140	119	140	880	874
INDIANA	49	29	19	39	42	51	72	84	107	164	156	151	963	842
IOWA	24	4	2	1	-	19	44	45	46	64	44	61	354	586
KANSAS	59	28	27	27	30	32	22	37	45	45	28	42	422	474
KENTUCKY	31	32	46	67	41	23	17	22	23	27	31	37	397	741
MICHIGAN	-	-	-	-	-	-	1	1	4	-	-	-	6	6
MINNESOTA	6	-	-	1	-	4	9	14	20	36	25	16	131	164
MISSISSIPPI	7	28	21	15	9	1	1	1	-	-	6	1	90	188
MISSOURI	127	78	82	122	120	112	173	235	211	216	182	216	1,874	1,896
NEBRASKA	101	55	40	36	60	87	89	112	136	168	125	147	1,156	1,078
NEW MEXICO	2	3	5	3	-	-	-	-	-	-	-	-	13	4
NEW YORK	-	-	-	-	-	-	-	1	-	-	-	-	1	1
NORTH CAROLINA	30	34	60	52	19	11	11	10	6	4	1	2	240	158
NORTH DAKOTA	-	-	-	-	-	-	-	3	7	24	21	2	57	33
OHIO	9	2	-	1	-	16	18	16	44	77	80	72	335	343
OKLAHOMA	112	100	103	99	72	61	49	75	51	40	37	36	835	873
PENNSYLVANIA	3	5	9	-	2	1	3	2	1	2	9	7	44	36
SOUTH CAROLINA	11	17	23	28	19	8	5	4	1	1	-	3	125	41
SOUTH DAKOTA	19	8	6	5	9	10	24	19	32	45	48	48	273	313
TENNESSEE	77	101	125	203	114	50	51	46	22	19	34	42	884	1,060
TEXAS	55	67	58	51	42	29	12	6	2	1	16	9	348	436
UTAH	-	-	-	-	1	3	-	-	-	-	-	-	4	-
VIRGINIA	2	4	3	16	6	2	3	3	1	-	9	7	56	68
WISCONSIN	2	1	-	-	3	15	31	20	30	35	27	11	175	219
WYOMING	2	1	-	1	-	1	-	-	1	1	3	3	13	5
TOTAL - 1929	854	733	760	955	729	650	754	893	912	1,126	1,040	1,087	10,493	
TOTAL - 1928	896	947	1,006	931	913	801	754	904	989	1,056	1,095	975	11,267	11,267

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics Tel-Cortland 7-9800		WEIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1930 (CARS)												Market News Service Room 810, 80 Centre Street-New York	
STATES		: JANUARY :	FEBRUARY :	MARCH :	APRIL :	MAY :	JUNE :	JULY :	AUGUST :	SEPTEMBER :	OCTOBER :	NOVEMBER :	DECEMBER :	TOTAL	
ALABAMA	9	17	28	23	17	4	3	5	2	-	6	5	129		
ARKANSAS	20	31	34	51	33	26	25	44	18	12	16	39	349		
COLORADO	9	13	12	6	8	8	5	4	6	5	5	1	32		
DELAWARE	-	-	-	-	1	-	-	-	-	-	-	-	4		
FLORIDA	2	-	2	-	-	-	-	-	-	-	-	-	4		
GEORGIA	4	18	19	25	12	-	-	-	-	-	-	1	79		
ILLINOIS	101	56	52	60	54	59	84	106	156	135	146	165	1,174		
INDIANA	69	37	31	45	56	59	90	86	163	167	128	174	1,168		
IOWA	46	11	13	6	19	63	87	66	94	64	48	85	604		
KANSAS	51	39	47	44	45	33	29	36	60	47	27	51	509		
KENTUCKY	21	15	38	32	66	30	26	58	49	42	30	54	511		
MARYLAND	-	-	2	-	-	-	-	-	-	-	-	-	2		
MINNESOTA	14	7	4	1	2	10	18	13	10	21	10	13	123		
MISSISSIPPI	5	11	20	18	7	-	2	2	2	-	5	4	76		
MISSOURI	124	97	113	150	129	159	192	231	219	201	192	212	2,019		
NEBRASKA	105	81	67	55	64	79	87	95	131	130	75	110	1,082		
NEW JERSEY	-	-	-	-	1	-	-	-	-	-	-	-	2		
NEW MEXICO	1	1	-	-	-	-	-	-	-	-	-	-	107		
NORTH CAROLINA	12	21	23	21	12	4	2	2	2	-	3	5	55		
NORTH DAKOTA	-	-	-	-	-	-	-	3	19	25	7	1	305		
OHIO	18	2	1	1	4	14	14	8	42	57	90	54	763		
OKLAHOMA	84	119	134	119	67	47	31	26	29	23	23	61	12		
PENNSYLVANIA	2	-	-	-	-	1	-	2	4	1	-	2	49		
SOUTH CAROLINA	8	8	10	13	7	-	2	-	-	-	-	1	214		
SOUTH DAKOTA	35	13	7	5	8	18	15	6	13	33	31	30	642		
TENNESSEE	46	47	76	135	119	51	29	26	25	10	37	38	332		
TEXAS	45	73	67	66	34	18	6	1	1	-	4	12	91		
VIRGINIA	5	10	13	12	5	3	1	5	4	1	18	14	10		
WISCONSIN	2	-	-	-	2	18	32	24	36	39	25	10	183		
WYOMING	1	-	-	-	-	1	1	-	-	1	-	-	4		
TOTAL - 1930	841	735	813	954	772	705	781	849	1,085	1,014	986	1,142	10,677		
1929	854	733	760	955	729	650	754	893	912	1,126	1,040	1,087	10,493		