

W. T. Termohlen—By Govt.—Direct 1177

Mr. Heller: We take judicial notice now that is not the fact.

Mr. Rice: We will not discuss the law now.

The Court: I will do that and determine what the law is.

Mr. Heller: At this point I think we ought to know that that is not the fact.

The Court: I do not think that that is what the witness was called upon to answer anyhow.

1178

Q. We do not want to know what the Industrial Recovery Act says.

The Court: We want to know what you did.

Q. Yes, just what happened prior to the adoption of the Live Poultry Code.

Mr. Heller: I do not understand that what happened is proper, anything might have happened in this world in the last year or two.

1179

The Court: He has already testified that the industry requested the Code, what more do you want? Do you want statistics or something of that kind? Let us get to it.

Q. Do you have an official Government record of the various steps taken by this industry prior to the adoption of the Code? A. Yes.

Q. Will you produce it? A. I have one that—

Mr. Heller: I object.

1180

W. T. Termohlen—By Govt.—Direct

The Court: That is whether the industry requested it.

Mr. Heller: He has answered that they have.

1181

The Court: I do not really see what all this has to do with it; if they requested the Code, all right. Now, if he made any investigation, if he knows anything about the conduct of business or anything of that sort, that is all right, but whether John Smith or John Jones or somebody else went to Washington to ask him about it, I do not think that means anything.

Mr. Rice: Very well.

Q. Prior to the adoption of the Code on April 13, 1934, was there a hearing on the part of members of the industry? A. Yes.

1182

Mr. Heller: I object to that.

The Court: That is part of the allegations, that a hearing was had. There seems to be some requirement for a hearing and he can testify to that. It is so alleged anyhow, so what is the use of shaking heads about it.

Mr. Heller: I mean that we have no testimony that he was present.

The Court: I do not know, he has asked him and he is supposed to answer as to what he knows as a matter of fact.

Q. Were you present at that hearing? A. Yes.

Q. In what capacity? A. As a representative of the General Crop Section of the Agricultural Adjustment Administration.

W. T. Termohlen—By Govt.—Direct

1183

Q. Did you sit at the chairman's table at that hearing? A. I did.

Q. You participated in all of the meetings of that hearing? A. Yes.

Q. How long did the hearing last? A. Approximately two days.

Q. And who was represented at that hearing? A. Representatives of the various groups of the trade—

Mr. Heller: A hearing was had and that ends it, that is the requirement.

1184

The Court: No, he can ask whether the industry was represented or not; that is all he has testified to; whether the industry participated, he can ask that. What harm does it do?

What has all this to do with it, Mr. Rice? There was a hearing, there is a Code. What difference does it make who was there, unless you want to show that some of the defendants were there.

Mr. Rice: Precisely that is what we want to show.

1185

The Court: Then let us get right to it, do not let us waste a lot of time about it. If the defendants participated in the hearing that of course is material, no doubt about it.

Q. Prior to the hearing were notices sent out from Washington to members of the live poultry trade in New York City? A. Yes.

Q. Did you see those notices? A. Yes.

Q. I hand you a certified copy of a notice and ask you whether that was the notice that was sent out to the live poultry trade of New York City? A. Yes.

1186

W. T. Termohlen—By Govt.—Direct

Mr. Rice: I offer this certified copy of the notice in evidence.

Mr. Heller: Objected to on the first ground there is no testimony that he mailed them out, and we are not a party to this document.

Mr. Rice: May I call your Honor's attention to the fact that this is a certified copy, actually signed by Mr. Henry A. Wallace, Secretary of Agriculture?

1187

The Court: That is correct, but does that prove that it was mailed? That is the notice, there is no doubt about it, a certified copy of the notice, but does that prove that the notice was mailed to anybody?

1188

Q. Do you know whether or not this notice was mailed out to people in the live poultry trade of New York City? A. It was; I requested that it be mailed out. We prepared a list of the members of the industry, working in co-operation with two groups here in the industry, and mailed this notice plus a copy of the proposed Code to be discussed to that entire mailing list.

Q. Was a copy of the mailing list prepared at that time? A. Yes.

Q. And has a copy of it been kept? A. Yes.

Q. I hand you a second document and ask you whether or not that is a certified copy of the mailing list to whom the notice was sent? A. That is correct.

The Court: Under your supervision?

The Witness: Yes, sir, under my supervision.

W. T. Termohlen—By Govt.—Direct

1189

Mr. Rice: Now I offer in evidence first the certified copy of the notice.

Mr. Heller: May I ask a question before it is offered in evidence?

The Court: Very well.

By Mr. Heller:

Q. Did you personally deposit these notices in the mail? A. No, I wouldn't do that personally.

Q. You didn't go with the girl to deposit them in the mail, did you? A. I have faith in our people that when we give them orders to do certain things that they will do them.

Q. As a matter of fact you merely gave an order that they be mailed? A. I know that those were sent out.

Q. You hope that they were sent out? A. I am certain that they were sent out.

Q. Did you see the girl mail them? A. I had one of my men check to see that they were sent out the day after we sent them to the mail office.

Q. Did you actually see someone deposit that mail directed to the person to whom it was addressed? A. No.

Q. You can't say as to whether the person did or did not deposit the mail except from what they told you? A. I have enough faith in our employees to know that they will.

1190

1191

The Court: I do not think you have proved mailing, have you? You have a certified copy of the notice, you have a certified copy of the list, but the mere fact that somebody made a list is not proof of mailing.

1192

W. T. Termohlen—By Govt.—Direct

Mr. Rice: Do I understand that counsel wants us to bring the mailing clerk down here from Washington, D. C., to prove the fact that these notices were put in the mail box?

1193

Mr. Heller: As far as I am concerned, if you want to prove mailing to anyone else in this world, I have no objection, but not as to us. I do not know whether you mailed it to us or not. I do not know anything about this. I do not know the purpose of this.

The Court: That does not prove the mailing.

Mr. Heller: I do not like to put you to the trouble, but this is immaterial.

Mr. Rice: Very well, we will subpoena the mailing clerk from Washington, D. C., and produce her.

The Court: Do you want to mark it for identification?

1194

Mr. Rice: Yes, I will mark the notice first and the mailing list second.

(Notice marked Government's Exhibit 19 for Identification, and mailing list marked Government's Exhibit 20 for Identification.)

Q. Mr. Termohlen, when documents are mailed from your office at the poultry unit of the Agricultural Adjustment Administration, what is your custom in having such letters or circulars mailed? A. It depends on the type of letter or circular. If I may give a concrete illustration—

The Court: Take letters like this one.

W. T. Termohlen—By Govt.—Direct 1195

The Witness: Yes, sir.

The Court: This is what we are interested in.

The Witness: A notice of this type, after it is prepared, we take this list to our Mails and Files and request them to send this material to each and every person on that list. Now, in order to make certain that it has been sent out on the particular day that we request it, if we order it sent out on the 7th of January, on the 8th, because there is a great deal of work, a great deal of stress, I have one of my men go up to the office and see that that material was mailed out.

1196

Q. Is that your usual custom in your office?

A. That is true with this type of material.

Q. And is that the duty of the particular member of your staff that you have referred to? A. Yes.

Q. And was that custom followed in this particular instance when the notice of the hearing was sent out? A. I gave personally orders to have that same custom followed out.

1197

Mr. Rice: Now, if your Honor please, I submit that these documents—

The Court: That does not prove mailing at all. He told somebody to do it, and he told somebody else to see it was done. Personally he knows nothing about it.

Mr. Rice: I thought, if your Honor please, proof of custom—

The Court: Proof of custom of doing something does not prove it was done.

1198

W. T. Termohlen—By Govt.—Direct

Mr. Rice: Very well.

The Court: Somebody knows. It may possibly be the man he sent to check it up knows. He does not know anything about it. He has two reports from two different people. He knows nothing about it. That is not proof of mailing.

Q. I hand you, Mr. Termohlen, a certified copy of press release dated January 6, 1934—

1199

The Court: What?

Q. (Continuing)—entitled—

Mr. Rice: Press release.

Q. (Continuing)—entitled, "Hearing set on Code for New York live poultry industry," and I ask you whether or not you have ever seen that document before? A. Yes.

Q. Will you tell us precisely what it is? A. It is a brief statement that was issued by our office of information, press service, sent to the various newspapers, farm publications—

1200

Mr. Heller: I object to his reading this. It is wholly immaterial and incompetent.

Mr. Rice: The witness has not been reading it.

The Court: It was just something released to the newspapers.

Mr. Rice: Yes.

Mr. Heller: Yes.

The Court: Nobody has to take notice of what is in a newspaper unless it is a notice published according to law. They might issue it to individuals and some

W. T. Termohlen—By Govt.—Direct

1201

people might publish it and some others might not.

Mr. Rice: Correct, but we propose to establish the chain of proof showing it was published.

The Court: But that is not anything that is required by law. That is not notice to anybody. Somebody may read it, but it isn't notice. If any of these men were present, why don't you prove they attended?

1202

Q. Mr. Termohlen, you stated that at the time the notice, which is Government's Exhibit 19 for Identification, was sent out to the Live Poultry trade, that it was accompanied by a proposed code. I ask you whether or not this is a mimeographed copy of the proposed code which accompanied that notice?

Mr. Heller: If your Honor please, we have already had a ruling on the notice.

The Court: Yes; he could not very well answer that until you prove that the notice was sent. If this is the notice referred to—

1203

Mr. Rice: Oh, I understand; I withdraw the question.

Q. Is this the proposed code that is referred to in the notice which has been marked Exhibit 19 for Identification? A. Yes.

Q. And did you give directions to have mimeographed copies of this proposed code, accompanying the notices that were sent out? A. I did.

1204 *W. T. Termohlen—By Govt.—Direct*

Q. To all of the people on the mailing list contained in Government's Exhibit 20 for Identification? A. I did.

Mr. Rice: I now ask that this be marked for identification.

(Marked Government's Exhibit 21 for Identification.)

Q. Now, you say that you were present at the hearing on the Live Poultry Code? A. Yes.

1205 Q. And what date did that take place? A. January 17th.

Q. 1934? A. 1934.

Q. And were minutes kept of that hearing? A. Yes.

Q. By whom? A. By reporters, court reporters, who were employed by the Government for that purpose.

Q. Do you know whether or not the court reporters were instructed to take down every word? A. They are.

Q. And the whole proceeding was recorded? A. That is right.

1206 Q. And how long did the proceeding last? A. As I recall, approximately two days.

Q. Do you recall about how many pages of testimony were taken? A. I never counted them.

Q. I hand you this thick volume, about three inches thick, and I ask you whether or not that is a record of the hearing? A. Yes, sir, that is a record of the hearing, the official record.

Q. And is this particular document kept in your office? A. This docket is kept in what we call the hearing clerk's office.

Q. Of what? A. Of the Agricultural Adjustment Administration.

W. T. Termohlen—By Govt.—Direct

1207

Q. And does he have any duty to keep such a docket? A. Yes, sir.

Q. As to this Code? A. Every code in which we deal and have a hearing.

Q. Every code with which the Agricultural Adjustment Administration is concerned, is that right? A. Yes, sir.

Q. What else does this document contain, besides the minutes of the hearing? A. It contains various briefs which were submitted on the part of the various groups in the industry, those briefs having been submitted either at the hearing or within ten days after the hearing. We are required by our rules and regulations and our law to allow ample time after a public hearing for members of the industry to file further briefs regarding the content of the Code of Fair Competition.

Q. Is this docket open for public inspection? A. Yes, sir.

Q. And were additional copies of the minutes prepared? A. I believe there are about four copies.

1208

Mr. Heller: This docket is not in evidence and the witness is describing everything in it, your Honor.

Mr. Rice: For the purpose of laying a foundation to offer it in evidence, your Honor. We must find out what the document is before we can offer it in evidence as a public document.

The Court: I do not know what the whole thing has to do with it. If it shows that any of these men were present and participated, all right, but we are not concerned with the whole question of the

1209

1210

W. T. Termohlen—By Govt.—Direct

arguments that led up to this Code. We know that the Code was approved, and the arguments therefore were all merged in. No matter what they thought of it before, when it was adopted it became the Code, and everything that took place before that is merged in it, but you have shown that there was a hearing, and that is all right. Now, if you want to show that any one of these defendants participated in that, and it is in that record, that is all right, but aside from that, why go into all of the argument about the Code?

1211

Mr. Heller: Does he want a concession that the Code was adopted?

Mr. Rice: Will you make the concession that the Code was duly adopted?

Mr. Heller: Of course, I will concede that the Code was adopted, and of course duly, because it was signed by the President. I will concede that.

1212

Mr. Rice: The law requires that the Code be adopted according to a certain decision.

The Court: I understand all that. Mr. Heller is willing to concede that it was adopted in compliance with the statute. Whether the statute was good or not is not the point, but that the Code was adopted in conformity with the statute. That is his concession.

Mr. Heller: That is right, your Honor.

Q. Now, Mr. Termohlen, are you familiar with poultry diseases? A. I took several courses in poultry diseases, and bacteriology, chemistry, and all that relates to the disease factor. I have

W. T. Termohlen—By Govt.—Direct

1213

had quite a little experience in handling diseased birds.

Q. And you, of course, are not a veterinarian?

A. No.

Q. I believe you said in your earlier testimony that you had developed a process of preventing the spread of certain poultry diseases? A. That is true.

Mr. Heller: I didn't hear it.

Q. Have you had such experience? A. Yes, I have.

1214

Q. And will you explain what that experience was? A. In August of 1925, there was a very serious outbreak of a disease that we have heard referred to here today as gaps, or infectious pharyngitis or infectious laryngotracheitis.

Mr. Heller: If the Court pleases, if the witness made a discovery in 1925, to cure a disease, I do not think it is pertinent in this case in 1934.

The Court: He was asked to give the experience he had had with certain diseases and he started to tell you. The objection is overruled.

1215

Mr. Heller: Exception.

Q. Go ahead and finish, Mr. Termohlen. A. It happened in this work for this particular company, working with a produce house who are concentrators of poultry, that one of the customers had a very serious outbreak in August. I went to this plant. Very little was known about this disease up to this time.

Mr. Heller: I object to what was found in somebody's plant in 1926.

1216

W. T. Termohlen—By Govt.—Direct

The Court: But how is he going to tell you of his experience without explaining how? It may be a roundabout way, but still it is relevant.

Q. Tell us what your experience was, briefly, without referring to any particular company.
A. Well, it is very difficult to get at the chain of events. This disease is still in effect today, not as bad as it was at that time.

1217

Q. What part did you play in it? A. That is what I am trying to tell you.

1218

Q. Go ahead. A. With this disease, this outbreak at this particular organization, I was called in, I worked for several days, studying the various symptoms, trying to develop a method to prevent heavy death loss. The day that I arrived in the plant, if I recall exactly, there were a few over 400 birds that died. Out of that I developed a method of handling the birds when they came into the produce house, handling them while they were in the produce house, to prevent the spread of disease. Very simply I can explain it by saying that after I had found the course of the various symptoms that were involved, we were able to detect by outward appearance when those birds were coming down with a disease, and we developed the progressive stages of the disease; we knew at what time they should be taken out of the batteries, batteries, by the way, being the equipment that we use to handle the birds and feed them while we are handling them in the produce house. I developed that course of infection, and therefore we were able to take those birds out before they got to a place where they were unfit for human

W. T. Termohlen—By Govt.—Direct

1219

consumption. We also had to use certain feeding methods—

Mr. Heller: May I ask your Honor what the purpose of this examination is? What has this history about the diseases of the year 1926 got to do with the issues?

Mr. Rice: If counsel is satisfied to concede that this witness is an expert in poultry diseases, then we need go no further.

Mr. Heller: I take it that almost anyone is an expert. We heard from the other witness that he was not a veterinarian, he was not a doctor, but he is an expert. I take it this gentleman is an expert, and I will let him testify rather than go into the history of the United States.

1220

Mr. Rice: You concede he is an expert in poultry diseases?

Mr. Heller: Yes, I will concede he is also an expert on diseases.

The Court: Gentlemen of the Jury, do not discuss this among yourselves, do not permit anyone to discuss it with you, and keep your minds open until it is finally submitted to you. I am asked, Gentlemen of the Jury, to ask you not to read in the newspapers any articles relating to this case, and I think that is very good, because you are hearing it now yourselves. Do not read in the newspaper, if you see anything, any articles about this particular case. Rely on what you hear here.

1221

(Adjourned to Friday, October 19, 1934,
at 10 A. M.)

1222

W. T. Termohlen—By Govt.—Direct

Brooklyn, N. Y., October 19, 1934.

(Met pursuant to adjournment at 10 A. M.; present as before.)

W. T. TERMOHLEN, resumed the stand:

1223

Mr. Rice: May it please the Court I understand that counsel will stipulate with the Government that the mailing clerk of the Agricultural Adjustment Administration, Washington, D. C., if called, would testify that on January 6, 1934, he mailed mimeographed copies of the notice of hearing contained in Government's 19 for Identification to all of the parties named on the list contained in Government's Exhibit 20 for Identification, and that he inserted with the notice in each envelope to each person in that mailing list, a copy of the proposed Code of Fair Competition for the live poultry industry, which is contained in Government's Exhibit 21 for Identification.

1224

The Court: Mr. Heller, is that right?

Mr. Heller: Yes, your Honor.

Mr. Rice: I therefore offer Government's Exhibits 19, 20, 21 for Identification in evidence.

(Government's Exhibits 19, 20 and 21 for Identification received in evidence.)

Mr. Heller: In connection with my concession yesterday your Honor, as to the validity of the National Industrial Recovery Act I don't know if I made myself clear. That is of course without

W. T. Termohlen—By Govt.—Direct

1225

prejudice to the questions raised by our demurrer.

The Court: I think I stated that regardless of whether it was constitutional or otherwise you conceded that all of the steps required to be taken by the statute had been taken and that the Code was enacted in accordance with the provisions of that statute.

Mr. Heller: That is right, I just wanted to preserve my rights under the demurrer.

1226

The Court: That is understood—but there was no statutory question, the only question was the question of constitutionality or construction. Those you did not waive.

Mr. Heller: Those I wanted to preserve, your Honor.

1227

Mr. Rice: Now, with the consent of defense counsel I wish to read into the record as a portion of our evidence a provision of the Greater New York Charter, which is a statute of the State of New York. I read from Section No. 1172 of the Greater New York Charter under the Sanitary Code.

Mr. Heller: The concession goes only this far, your Honor, that the book that counsel is reading from is an authentic book, that is the statutory book, and I do not require any proof with reference to the authenticity of this statute, but our objection to the entire reading of the ordinance that he is going to read is that it has not been properly pleaded and we object on that ground.

1228

W. T. Termohlen—By Govt.—Direct

The Court: Well, so far as the Charter itself is concerned, that is a statute, there is no question about that.

Mr. Heller: No, your Honor, there is no question about that and I don't believe there is any necessity for reading it into the record.

The Court: Well, it perhaps saves me some time later on.

1229

Mr. Heller: Our objection is that it has not been pleaded in the indictment and we claim that you cannot take judicial notice thereof.

The Court: Well, that objection has been overruled and you have your exception. You however do not have any question about the authenticity?

Mr. Heller: No.

1230

Mr. Rice: I read from the statute entitled, "Sanitary Code. The sanitary code which shall be enforced in the City of New York the 1st day of January, 1902, and all existing provisions of law fixing penalties for violations of said Code are hereby declared to be binding and in force in the City of New York and shall continue to be so binding and in force except as same may from time to time be revised, altered or annulled, as herein provided," and then " * * * copies of the records of the proceedings of the said Board of Health, of its rules and regulations, by-laws, books and papers constituting a part of its archives now or hereinafter enforced, when authenticated by its secretary or secretary pro tempore, shall be presumptive evidence of the

W. T. Termohlen—By Govt.—Direct

1231

authentication and taken as presumptively correct in any court of justice or judicial proceeding when they may be relevant to the matter or point in controversy, to the facts and statements and recitals therein contained, and the Sanitary Code which is enforced May 1st, 1904, shall constitute a chapter of the Code of Ordinances of the City of New York."

Then, your Honor, I wish to read also the consent of defense counsel—

The Court: Under the same objections and the same rulings?

1232

Mr. Heller : Yes, your Honor.

Mr. Rice: I read from Section 19 of the Sanitary Code: "No live chickens, geese, ducks, or other fowl shall be brought into or kept, held, offered for sale, sold or killed in any yard, area, cellar, coop, building, premises, public market or other public place except the premises used for farming in unimproved sections of the City without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of said permit and with the regulations of said Board."

1233

I also desire to read Section 160 of the Sanitary Code.

The Court: With the same objections and the same rulings, with exceptions?

Mr. Heller: Yes, your Honor.

Mr. Rice: "Any calves, pigs, lambs, fish, birds and fowl"—"sale regulated"—"no calf nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human consumption

1234 *W. T. Termohlen—By Govt.—Direct*

which when killed was less than three weeks old.

“No pig nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human consumption which when killed was less than five weeks old.

1235

“No lamb, nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human food which, when killed, was less than eight weeks old, nor shall any meagre, sickly, or unwholesome fish, birds, or fowl, brought into said City or held, sold or offered for sale for human food therein.”

Direct examination by Mr. Rice:

Q. Mr. Termohlen, are you familiar with the economic laws of supply and demand? A. Yes, sir.

1236

Q. Have you studied the operation of the laws of supply and demand? A. Yes, I have.

Q. And do you know whether or not the economic laws of supply and demand always govern questions of price received for a commodity? A. They do not.

Q. What exceptions are there to the general rule that supply and demand does govern?

Mr. Heller: May we inquire in what industry?

Mr. Rice: Re late your discussion to the live poultry industry.

Mr. Heller: Is that limited to the live poultry industry?

Mr. Rice: Yes.

W. T. Termohlen—By Govt.—Direct

1237

A. For several years in studying price-making factors in the live poultry market, at times I was unable to determine exactly how supply and demand factors, as we think of them, actually affected prices. Going on the markets and studying the industry throughout the city I became convinced that at times unfair methods of competition and factors of sentiment—

Mr. Heller: I object to the characterization he is making of unfair methods. Let him state just what he found and where he found them.

1238

The Court: I suppose that is true. Just state what you mean. Instead of using the words "unfair methods," describe what methods of competition you found that affected it.

The Witness: All right.

Mr. Heller: Let him state when and where.

The Court: You can get that in cross examination if you do not get it before.

1239

Q. Tell us what these practices are that you refer to that disorganize the normal functioning of the laws of supply and demand. A. For an illustration, I visited several of the markets in the city—

Q. Just one moment, Mr. Termohlen, before you give us specific illustrations answer the question directly, tell us what competitive practices there are in the live poultry industry of New York which have tended to disrupt the normal functioning of the laws of supply and demand.

1240

W. T. Termohlen—By Govt.—Direct

Mr. Heller: I object to the form of the question. Counsel is calling for a conclusion without any basis for it.

1241

The Court: No, he is taking his statement; this witness stated that certain unfair competition existed. What we want, Mr. Termohlen, we do not want you to state that you found unfair competition produced those results, but just tell us what the things were. Do not pick out specific instances, tell us in general terms what was the kind of competition which you found affected it other than the laws of supply and demand.

The Witness: Combinations of groups in the trade for the purpose of affecting prices without any direct reference to the supply or actual demand, is one illustration.

1242

Q. Give us all of them, all of the competitive and trade practices which you found to exist in the live poultry industry and which tend to disrupt the normal functioning of the laws of supply and demand. You say that one of them is combinations in restraint of trade? A. That is right.

Q. What is another? A. Another one would be the selling of poultry that is unfit for human consumption.

Q. How does that tend to disrupt the normal functioning of the laws of supply and demand? A. Through the fact that people that have that type of poultry will offer it at a price that is considerably out of line with the going price. That results in their competitors, in order to meet their competition, posting a price in their

W. T. Termohlen—By Govt.—Direct

1243

place of business or offering their product for sale at that same lower price in order to meet that competition.

Q. And just what effect does that have upon the price level? A. Then that starts a vicious cycle which gradually will go out from that one center, and then affects the wholesale market, and then in turn affects the shipper—

Mr. Heller: I must object to this kind of testimony; they are mere conclusions. He is an expert on diseases of chickens, as I understood yesterday.

1244

The Court: He has qualified now as an expert on economics. Now, he is giving his version of what acts in the trade would affect the price.

Mr. Heller: I shall have to have some more testimony with reference to his qualifications as an economist.

The Court: All right.

Mr. Heller: I merely consented yesterday that he be qualified as an expert on diseases, not as an economist.

1245

The Court: I understand, but he has testified today that he has studied economics. Now, he was asked if he was familiar with it, and there was no objection. If you object to it I will let you examine him as to his qualifications.

Mr. Heller: I think the District Attorney should qualify him as an expert before he qualifies.

The Court: I understand, but I give you permission, if you question his qualifications you may examine him as to them,

1246

W. T. Termohlen—By Govt.—Cross

you may cross examine him as to that, only as to his qualifications.

Preliminary cross examination by Mr. Heller:

Q. Will you state what your qualifications are as an economist? What training have you had?

A. I received a master's degree in agricultural economics in Iowa State College in 1928; and as I said yesterday, since 1927 I have been a staff member until August 2, 1933, of the Agricultural Extension Session and Experimental Station at Iowa State College, as an economist.

Q. How long were you actually at the college that you speak of? A. I went on the staff in August of 1927—I went, it was in the fall of 1926 I became a part time research worker in the Agricultural Economic Section.

Q. For how long a period of time were you on the staff at the college as an instructor or as an assistant professor or as what? A. From August, from September of 1926 until August of 1927, I was a part time research worker specializing in poultry and egg marketing.

Q. Where was that? A. At Iowa State College at Ames, Iowa, from August of 1926.

Q. What did your research work consist of?

A. It consisted of studying the marketing of eggs and poultry in the State of Iowa, and their relation—

Q. It was limited to the State of Iowa, was it not? A. The study of outside prices and markets where we shipped our product to, and the per cent. of product that went to those markets.

Q. As far as it affected the State of Iowa?

A. As far as it affected the State of Iowa, that is true.

W. T. Termohlen—By Govt.—Cross

1249

Q. Were you on a paid staff as an instructor?
A. As a research worker.

Q. As a research worker? A. That is right.

Q. What compensation did you receive? A. At that time I got \$75 a month as part-time worker.

Q. Did you write a book? A. I prepared a thesis, Master's Degree thesis.

Q. In order to get your degree? A. That is right.

Q. That is an essay? A. Yes.

Q. Necessary for the procurement of a degree? A. That is right.

Q. Did you write any other book on the subject? A. Since 1927 I have written several bulletins.

Q. Bulletins? A. That is right.

Q. Did you write any books? A. Well, I have one in the course of preparation that I eventually hope to publish.

Q. The bulletins were written in connection with your work for the Government? A. For the State of Iowa.

Q. For the State of Iowa? A. That is right.

Q. What other training did you have thereafter? A. After August of 1927, I have been an extension worker and a research worker for the college up to August of 1933, in agricultural economics.

Q. For the State of Iowa? A. That is right.

Q. What other work did you do after that? A. Well, since August of 1933, I have been a member of the Agricultural Adjustment Administration.

Q. And your functions there are what? A. As, starting a year ago, as senior agricultural

1250

1251

1252

W. T. Termohlen—By Govt.—Cross

economist, and then in July of this year as principal agricultural economist.

Q. What are your functions? A. I have charge, as I said yesterday, of the poultry unit of the General Crop Section of the Agricultural Adjustment Administration.

Q. In your studies for the State of Iowa, during the period of 1926 to 1933, just what did you do? What do you mean by research work? A. Studied the effects of price upon our product; the effects of consumer demand upon our product there; the effects of various trade practices among our people there, and the effects of trade practices of people on the city markets; and the effect that they might have on our product there, the movement of our product through interstate commerce.

Q. What is the percentage of poultry shipped from the State of Iowa in comparison with other states? A. Iowa produces about 8 per cent. of all of the poultry.

Q. All of the poultry? A. That is right.

Q. Taking 100 per cent. as the unit? A. That is right.

Q. 8 per cent. is produced by the State of Iowa? A. That is right.

Q. And your study was limited to what effect that 8 per cent. would have on price structure? A. No, what effect the price structure in the city market would have on our prices in the country, and the movement where we should move our poultry and our eggs, and what kind of poultry and eggs we should move, and angles of that type.

Q. Now, in your studies of that, what did you take into consideration in determining where your poultry should be sold? A. The type of product that was desired on a market,

1253

1254

ing we could find out what kind of product was wanted on that market. I can give you a concrete illustration, if you wish it.

Q. Do. A. When we had the disease situation in Iowa in 1925, it was followed again in 1926, and 1927, some difficulties, and in 1928 we started a very definite program to educate our farmers as to the type of poultry that was wanted; educate our dealers. At that time I came to New York during my vacation and made a direct study of inspection here, of the type of poultry—

Q. What year was that? A. That was in 1928, sir, I believe in August and early September of 1928.

Q. Where did you come to when you came here? A. I came to one—one of the first places I went to was the office of Dr. Ives.

Q. The gentleman who testified here the first day? A. That is correct, and he let me have one of his men and I went to the 60th Street Market and I spent a couple of days examining cars.

Q. That was in 1928? A. Yes.

Q. In the Summer time? A. That was in the—

Q. During your vacation? A. Yes, August to early September.

Q. How long did you stay here? A. I was in New York for a week.

Q. When did you come back to this State? Did you thereafter come back to the State for further research? A. Back here?

Q. Yes. A. I have been back here practically every year.

Q. For how long a period of time? A. Varying from three to four days to as much as two weeks.

1258

W. T. Termohlen—By Govt.—Cross

Q. Each year? A. That is right.

Q. In connection with your studies or your research work for the State of Iowa? A. I did that in my vacations in order to better qualify myself.

Q. And beside Dr. Ives' office did you go anywhere else? A. Oh, yes, I went to every corner of the city and every part of the trade and visited to see how they handled the product.

Q. Just whom did you visit? A. Well, that is rather difficult to tell you directly.

1259

Q. What do you mean by every part of the city, every corner of the city? A. I went, for instance, to the 60th Street Market, I went to West Washington Market, and then I went to various parts of the city to visit slaughter houses, chicken stores and chicken stands.

Q. Do you remember any of the places you visited? A. I cannot tell you definitely.

Q. Did you do that every year you came into the city? A. Practically every time.

Q. You did the same thing every year? A. I would visit somebody on the market.

1260

Q. You mean West Washington Market? A. There, or go up to the East 60th Street Market.

Q. That was after 1928? A. That is correct.

Q. You came here and visited the West Washington Market or the Terminal? A. Yes, or I would go browse around the city, various sections, go into chicken stores, chicken stands, or the like, and see what they were doing, the type of poultry that was being sold.

Q. Could you ascertain whether that poultry came from the State of Iowa or Chicago or anywhere? A. I was not interested as to whether it came from Iowa alone, because we compete with the rest of the United States.

W. T. Termohlen—By Govt.—Direct

1261

Q. And your competition is limited to 8 per cent.? A. That is a pretty big percentage from one State.

Q. Where did your poultry go to, most to? A. Poultry goes throughout the entire United States, but a great deal of it comes to New York.

Q. Is the poultry good poultry that comes from your State? A. A lot of it is good poultry; some of it is poor poultry.

Q. Edible? A. Try to get it edible; not always, because the outlet some of the people have.

1262

Mr. Heller: I object to his qualifications.

The Court: Objection overruled.

Mr. Heller: Exception.

By Mr. Rice:

Q. Mr. Termohlen, you stated that 8 per cent. of the live poultry, or all the poultry produced in the State of Iowa. Did you mean 8 per cent. of all of the poultry produced in all of the United States? A. That is correct; on an average, that is true.

1263

Q. You were not referring to the percentage that Iowa poultry contributed to the New York consumption? A. No.

Q. Mr. Tenmohlen, you were describing the effect of the sale of diseased and unfit poultry upon the price received for poultry received in New York City. Will you complete your description of that? A. I believe that I had gotten up to the effects on the wholesale price. The fact that a tremendous number of people, as a result of even one unfair competitive practice, would not pay the price for poultry, that then is reflected through the commission man to the shipper

1264

W. T. Termohlen—By Govt.—Direct

who ships the product to the commission man through interstate commerce.

Q. How is this matter of price reflected from the wholesaler to the commission man and then to the interstate shipper? A. If the slaughter house man refuses to pay the price, the commission man is going to lower his price so that he can get together with that individual. As a result, your price structure drops.

1265

Q. What does that mean as to the amount that the interstate shipper receives for the commodity which he ships to New York? A. It means that he receives less.

1266

Q. What other effect does the sale of poultry unfit for human consumption in the New York market have upon this course of commerce? A. Because if the price level goes down people will seek then the type of poultry that they can send to the market at that particular price. You must remember that it is possible in the country to ship your product either in the dressing plants or ship it alive, and therefore very frequently it is found, and it is particularly true in the great Middle West, the dressing plants can dress a product and hold it in storage, but you cannot do that with live poultry because it is perishable. The better types of poultry could move logically into the dressing plants and the poor types move into interstate commerce. Then your flow of better types of poultry in interstate commerce is lower.

Q. As a result of what? A. As a result of this lower price level. Your movement then is lower. We must remember that it costs just as much to ship a pound of poor quality poultry as it does to ship and handle a pound of high quality poultry.

W. T. Termohlen—*By Govt.—Direct*

1267

Q. And what is significant of that? A. It definitely tends to obstruct the flow of commerce, because then that man has less chance to make a legitimate profit and he is going to seek other outlets for his product.

Q. Well, when a commission man is permitted to sell diseased poultry to a market man and the market man is permitted to sell it to a retailer or butcher, does that have any effect upon the demand for unfit poultry?

Mr. Heller: I object as not based upon the evidence and calling for a conclusion.

1268

The Court: Overruled.

Mr. Heller: Exception.

The Witness: The commission man has an outlet for poultry that is not edible; that means that some people in the country who are not using the most ethical practices will shift that kind of product into the market.

Q. Now, when the market man is permitted to sell unfit poultry to the retailer and the butcher in New York, does that create a demand for unfit poultry in the New York market? A. I would say that when they do that it actually results in lowering the demand for poultry as a whole in the market.

1269

Q. But first, does it create a demand for unfit poultry? A. Yes, naturally. There are some people that would sell that kind of stuff, and therefore they will buy it.

Q. But does it create a demand for unfit poultry when the market man is permitted to make sales of unfit poultry to the retail dealer and the butcher in New York? A. In times of

1270

W. T. Termohlen—By Govt.—Direct

economical stress it would particularly, because it gives the people an opportunity to put up prices that apparently are low and which would appeal to the consumer.

Q. What happens if the wholesale market man is permitted to sell his unfit poultry to poultry dealers and butchers? Will the wholesale poultry dealers and butchers resell it to the consumers—I mean the retail poultry dealers and butchers, will they resell it to the consumers?

1271

Mr. Heller: I object to the form of the question; counsel is suggesting the answer.

The Court: That is right.

Mr. Rice: I will withdraw the question.

Q. If the wholesale market man is permitted to sell his unfit poultry to the retail poultry dealers and butchers, what effect does that have upon the sale of unfit poultry to consumers? A. It means more will be sold to the consumers.

272

Q. Why? A. That man that buys that type of stuff from the wholesaler, he wants to have an outlet for it and therefore he tries to sell it to the consumer and does.

Q. And does that have a substantial effect upon the demand for unfit poultry in the New York market? A. Well, that product is there, and as more comes in somebody will buy it.

Q. Well, when one retail poultry dealer or butcher engages in the sale of diseased, unfit poultry, what does his competitor do? A. They do the same thing.

Q. What effect does that have upon the demand for unfit poultry purchased from the wholesale market man? A. Well, it makes the retailer

W. T. Termohlen—By Govt.—Direct

1273

and those people want to purchase more of it and it starts a cycle that gradually becomes worse.

Q. Well, what effect does that in turn have upon the market man's dealings with the commission man? A. He wants it and asks for a cheaper type of poultry.

Q. And what effect does that have upon the commission man's dealings with the interstate shipper? A. He tells the man in the country, "You can get away with this kind of stuff; ship it in to me. You can take advantage of your competitor."

Q. Is a substantial amount of unfit poultry shipped in interstate channels as a result of this cycle?

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

The Court: Overruled.

Mr. Heller: Exception.

A. My observations definitely indicate that there is quite a percentage that is so shipped.

Q. Now, does this chain of results that you have described have any effect upon the quality of the poultry which is sent to the live poultry trade as distinguished from the dressed poultry trade? A. It has a direct tendency to make a lower quality.

Q. What effect does it have upon the buyer in the country when he is faced with the alternative of shipping his poultry to the live poultry market or the dressed poultry market?

Mr. Heller: I must object, your Honor, to all these questions, on the ground that

1274

1275

1276

W. T. Termohlen—By Govt.—Direct

they call for a conclusion and that they are leading.

The Court: It is only an opinion. I think he ought to give an opinion; I rather think you might add to the question so it will be his opinion. I will overrule the objection.

Mr. Heller: Exception.

Q. Will you give us your opinion about it?

1277

Mr. Heller: I also object, your Honor, because there is no foundation for him to give such an opinion.

The Court: We are not going to bring him back two or three times. If it is not connected up it means nothing. I will instruct the jury if it is not connected up.

Mr. Rice: I will call your Honor's attention to the fact that already Mr. Tottis testified that 2 per cent. of all the poultry shipped into New York is unfit for human consumption.

1278

Q. Go ahead. A. A man in the country that ships poultry, if he can get a better price for a certain percentage of his poultry to the fellow who has the dressing plant, he will ship that part of his poultry to that firm, and then the other poultry that he has not an outlet to the dresser with, would be shipped into the city markets.

Q. Then you say the net result is that the people in the country will sell their unfit poultry to the live poultry market and defer their better quality poultry to the dressed poultry market, is that true? A. Right.

Q. Do you know whether poultry diseases are contagious? A. Infectious diseases of poultry are contagious.

Q. Do you know what effect the shipment of some diseased poultry in a carload would have upon the rest of the carload? A. If it is enough days in transit some of the other poultry might become sick with certain types of disease.

Q. Do you know whether it often happens that an infectious disease is spread from a few chickens in a carload to the entire car lot? A. Yes.

Q. Does that happen often? A. Quite frequently, if you happen to be in a period of epidemic.

Q. Now, you have spoken of gappers, just what are gappers? A. That is a bird that is infected with what we call infectious tracheitis, or laryngotracheitis.

Q. Is that a contagious disease? A. Yes, highly contagious.

Q. If there are several groups of gappers in one carload that is shipped into New York, what effect does that have? A. By the time that car gets in, many of the other birds are infected, and some of them die en route.

Q. Is that disease a fatal disease causing the death of a chicken? A. If allowed to go its full course it is generally, within a period of about seven or ten days as a maximum.

Q. Mr. Termohlen, you heard the testimony of Dr. Ives and Mr. Tottis regarding the inspection of live poultry in New York City? A. Yes, I did.

Q. Are you familiar with the Inspection Service? A. I am.

Q. What opportunity have you had to observe it? A. At various times in the last two years

1282

W. T. Termohlen—By Govt.—Direct

I have gone on the 60th Street Market with the inspectors, entered cars and followed their regular course of inspection.

Q. Do you know whether or not it is the practice to inspect every chicken, to examine or handle every chicken? A. Oh, no, it is not the practice.

Q. What is the practice? A. The practice is to make a sample inspection, handle certain chickens as was brought out, approximately 200 birds out of the car. It has been explained as to what a live car was, a picture was shown. There are 128 tiers in that car; 4 sections of the car with 32 tiers in each of the sections, 32 tiers. An inspector goes into the car; he never takes the same tier. In one car he may go in the lower deck at two points, in the middle deck and in the top deck on one side; on the other side he may go into the second deck, and three decks up, and he takes random samples going in here and there through the car.

1283

A person loading a car in the country does not know what section of that car they may make an inspection of. One time they did make it a practice to put their birds into one section of the car. Inspectors soon found that out, and the effect that this inspection service is here very directly makes people in the country be more careful of putting in poor types of poultry in the car.

The sample inspection method is done because it is the most effective way and it is satisfactory. I have made some study of inspection and grading, and the sample method is used in many products; for instance, grain.

W. T. Termohlen—By Govt.—Direct

1285

Q. They do not inspect each kernel of grain, do they? A. No, naturally not. They take a sample in the car, they take a sample of the various layers from the top to the bottom of the car in various parts of the car, making a composite sample of that. That is the same thing that is done, you might say, in a way with live poultry.

Q. How about the inspection of buttermilk and other farm products?

Mr. Heller: I object to that, your Honor. 1286

The Court: We are not dealing with buttermilk.

Mr. Rice: Very well, I will withdraw it.

Mr. Heller: We might assume that one out of four persons had a cold—

The Court: I have ruled.

Q. Do you know whether or not the live poultry inspector in New York looks over the entire carload in a general way?

Mr. Heller: He has already answered that, we have been over that for two days, your Honor. 1287

Mr. Rice: This witness has not answered it.

Mr. Heller: Yes, he said it was a sample inspection.

The Court: If he saw enough of them so that he can testify that they generally did, all right, but of course he is not engaged in that work.

Q. To what extent have you observed the New York inspection? A. Well, as I said several times I have been on the market and I watched

1288

W. T. Termohlen—By Govt.—Direct

inspectors and have gone with them. The first thing an inspector does is to walk out on the outside of the car. The car has been explained. He can see from the outside the general condition of that car and the birds. Then he goes in the car and walks up and down the aisles. If there is any suspicion of that car at all having a great deal of poor poultry in it he comes back several times after making his original inspection.

1289

Q. Have you studied the effect of failure to inspect live poultry on the New York market upon the market conditions? A. Failure to inspect poultry in the New York market would mean that people would take advantage of this market and more poor poultry would come to the market, and as a result you would directly affect your consumption of live poultry.

Q. Would it have any effect on the interstate shipment of poultry unfit for human consumption? A. Naturally, if a person knew it wouldn't be inspected here he would take advantage of the market and ship more poultry.

1290

Q. Would failure to inspect poultry have any effect upon feeding of poultry prior to unloading? A. Yes, it would have a very direct effect. A person would, a car man would, feed that car as they did years before inspection service went into effect, with all kinds of products, as was brought out, sand, gravel, cement, the use of wheat products that would plug the birds, all those things are common practices that used to be used before inspection service went into effect. That is also done in the country, if they do it here they do it in the country, and the birds get two doses of it.

W. T. Termohlen—By Govt.—Direct

1291

Q. Have you observed that in the country?
A. Yes; I worked in produce houses back in 1925 before this Inspection Service went into effect.

Q. Did you work in produce houses that were supplying live poultry for the New York market prior to the Inspection Service of 1926? A. That is right.

Q. What did you observe? A. Well, I found in some of the plants they had a bin of sand and gravel, and they would feed birds before they were loaded on a live car with that sand or gravel because they knew the car man was going to do the same thing when it was in transit. At other places they would have a bin of wheat products that they would use to feed the birds and constipate them, as it was brought out yesterday, plugging up the birds. That was a very common practice.

Q. Do you know whether that practice changed after the inspection went into effect in 1926? A. Yes. I do not believe you would find a bin of gravel in one house in the State with which I am familiar at the present time.

Q. The State of Iowa? A. That is right.

Q. Does that failure to inspect shipments of poultry coming to the New York market have any effect upon the price received by the interstate shipper? A. Yes, it will have an effect, because it was brought out by Dr. Ives that volume receipts picture is given to people in the country through the results of the inspection reports. If any large number of people would not have inspection, it would mean that a volume of poultry would come in that would not be properly pictured, and then the persons who study the supply side and the demand side would

1292

1293

1394

W. T. Termohlen—By Govt.—Direct

not get a true picture of the supply picture, and that would have a direct tendency to affect price. That is why, again, an unfair method may affect prices—tends to distort the market values.

Q. Are you familiar with the practice of straight killing as required by the Live Poultry Code? A. I made some study of it since this Code was proposed.

Q. In New York City? A. Yes.

1395

Q. What is the practice of straight killing? A. The practice of straight killing is to kill the poultry as it runs in the coop, the buyer being allowed to buy half a coop or a full coop, or several coops of poultry, and the poultry is killed on that basis rather than allowing the selecting of individual birds.

Q. Do you know what would be the effect of a uniform enforcement of the straight killing practice?

Mr. Heller: I object to that.

1396

Q. (Continuing.) Upon the type of poultry shipped into New York?

Mr. Heller: May it please your Honor, I object to this question. He has made a study of the situation for two or three months since this Code has been enacted. He certainly cannot testify, no human being can testify, what effect it will have in the future.

The Court: I do not think he means it that way.

Mr. Heller: That is what he asked him.

The Court: I understand, but I do not think that is what he means.

Mr. Rice: If your Honor please, we are prepared to show that prior to the adoption of the Live Poultry Code, members of this industry urged the adoption of the straight killing provision.

The Court: I understand. I mean, you are asking him especially what would be the effect. That is what counsel objects to.

Mr. Rice: Very well. I will rephrase the question.

The Court: Would it cause a change in practice,—of course, if that is what you are trying to get, he probably can tell you that.

Mr. Rice: That is precisely what I mean.

Q. Would the uniform enforcement of the straight killing practice in New York City effect a change in practice on the part of shippers? A. It is my opinion that if straight killing were thoroughly enforced and lived up to in the city, that the next step that would happen would be a request, very definitely, on the part of slaughter house operators, that the commission men reflect back to their farmers—or the shippers in the country, the demand that poultry be graded, and it is very easy to grade. It would not be difficult to grade a car of poultry in the country.

Q. At what time? A. It could be done in the country, provided they had a direct outlet for a graded product here in this market. That would mean a truer reflection of price based on value for quality to the people in the country,

1300

W. T. Termohlen—By Govt.—Direct

would give them a direct encouragement to raise a better quality product and more of it.

Q. Do you know whether the practice of selected killing has any effect upon the market price for live poultry in New York? A. Directly of the opinion that it does.

1301

Q. Will you explain it? A. A man comes into a slaughter house early in the morning to buy his poultry. If he selects poultry, and goes from coop to coop, maybe he wants 50 birds, and he picks four or five birds out of this coop and four or five birds out of another coop, he handles them roughly, sometimes may break a wing or a leg, because birds will very easily have their legs and wings broken, their bodies are bruised, and if he selected a certain number, the next man that comes in sees very soon that those birds have been selected, and he will not pay the price that the man who first came in paid for those selected birds, and as a result, by the end of the day, the slaughter house operator must take a considerable loss for the last birds that he sells than the first few that he has sold.

1302

Q. What is the net effect upon the aggregate price received for all the poultry, the good and the second rate poultry? A. The people with the birds that have been picked out, second or third pickings, have a bird, the quality of which is very little different than the first. They offer those for less price, and competitors then want to meet that competition and will not pay the price, and as a result the market level will drop.

Q. Does that have any effect upon the price received by the interstate shipper? A. If the price drops in here, the price drops in the country. Very close correlation to it.

W. T. Termohlen—By Govt.—Direct

1303

Q. You spoke of damage in handling the chickens during the process of selecting them from the coops. Is a chicken a delicate animal, more so than other live stock? A. Well, their bones are not very heavy, they are easy to break; it is easy to bruise the skin of the bird, tear the skin, and I think they are more delicate than cows and lambs and hogs, and products of that kind.

Q. Does the practice of selected killing have any effect upon the kind of poultry, that is, the quality of the poultry, shipped into New York? A. I think it does.

1304

Q. In what way? A. If value goes down because of that type of practice, they cannot pay the price for the poultry, and, naturally, there will be a tendency to not ship as good poultry into the market. It may be temporary, price levels affected, but later on there is an attempt to ship in better poultry again. We have that circle continuing.

Q. Do you know to what extent poultry is considered a cash commodity on the part of the farmers who raise the chickens? A. It is one of two cash commodities. That is, by cash commodity I mean a commodity that the farmer has some income from every week out of the year.

1305

Q. And does the sale of these cash commodities have any direct effect upon the products which the farmer buys? A. Yes.

Q. Currently? A. Yes.

Q. What effect? A. If the farmer does not get good return for his eggs and poultry, he buys less of the current products that he needs to buy, such as food supplies, clothes, shoes, gasoline for his car, and so forth.

1306

W. T. Termohlen—By Govt.—Direct

Q. How quickly is that effect reflected? A. It is reflected very quickly, because each week they get that income from their eggs and poultry.

Q. Just how quickly is it reflected, then? A. I would say practically immediately.

Q. Within a week? A. Yes.

Q. Mr. Termohlen, have you made a study of the receipts of freight poultry in New York? A. Yes, we study the receipts.

Q. Have you compiled a table showing the receipts of live poultry in New York from 1927 to 1933? A. Yes.

Q. From what figures have you obtained the material for this table? A. From the figures of the Division of Dairy & Poultry Products of the Bureau of Agricultural Economics.

Q. They are official Government publications? A. That is correct.

Q. I hand you this paper and ask you whether this is the table that you prepared of receipts in New York, of volume of receipts, from year to year? A. Yes.

Q. Do you know whether or not those figures are accurate? A. I am certain they are accurate.

Q. An accurate transfer of what is contained in the official public document designated at the footnote of that chart? A. Yes.

Mr. Rice: I offer the table in evidence.

Mr. Heller: I have no objection to the table itself, but the writing or characterization of the table we do not want it in.

Mr. Rice: With counsel's consent we will transfer this table with the footnote on two separate sheets of paper and substitute that for this exhibit. It is rather difficult to read it into the record because there are so many figures.

W. T. Termohlen—By Govt.—Direct

1309

The Court: Then why not just cut the top off and you will not need to substitute.

Mr. Rice: All right, your Honor.

(Marked Government's Exhibit 22 in Evidence.)

Q. Now, Mr. Termohlen, have you prepared a similar table showing the price per unit received for fowls, chickens, marketed in New York from the period commencing 1927 up through 1933?

A. Yes.

Q. And that has been prepared in the same manner? A. Yes.

Q. And this is the table, the one I have just handed you? A. That is correct.

Mr. Rice: I offer this table in evidence.
(Marked Government's Exhibit 23 in Evidence.)

Mr. Rice: May we have it understood, your Honor, that in view of the fact that we are offering only the table, that this table represents the transcript of the price per unit received for the various classes of poultry designated in the table, in the New York market?

Mr. Heller: I do not know what you mean by unit.

Mr. Rice: Per pound.

The Court: Does it appear on there?

Mr. Rice: It appears on the statement introducing the chart, that this relates to the New York market. It does not appear in the body of the table itself.

The Court: Then why not put a line right at the top reading, "Price Per

1310

1311

1312 *W. T. Termohlen—By Govt.—Direct*

pound—New York Market”? Othewise the jury when they get it will not know what it is.

Q. Mr. Termohlen, have you completed the relative value of all poultry marketed in New York in 1927 as compared with the value of all poultry—live poultry—marketed in New York in 1933?

1313 Mr. Heller: I object to that as too remote in period of time, your Honor, that it takes no cognizance of any considerations arising within that time.

The Court: Well, he has got to go back of 1926, I know that.

Mr. Heller: But there are so many other elements, your Honor, involved between 1926 and 1933, that we don't know anything about.

1314 The Court: That is right, but still I can see that he must go back of 1926 for some of his argument. I think I will take it, but the jury will have to take into consideration that there are many elements that might be presented in the difference between the earlier date and the present.

Mr. Heller: Your Honor is admitting it?

The Court: Yes, with that understanding.

Mr. Heller: Exception.

Q. What is your answer? A. I have prepared an estimate of the total value of 1927 as compared to 1933.

Q. And what was the approximate total value of all live poultry marketed in New York City

W. T. Termohlen—By Govt.—Direct

1315

in 1927 as compared with 1933? A. Approximately \$57,000,000 in 1933 and \$27,000,000—no, that is wrong, it is \$57,000,000 in 1927 and \$27,000,000 in 1933. That is approximately 47 per cent. of the value of 1927.

Q. That is, the live poultry sold in the New York market in 1933 is only about 47 per cent. of the value of the live poultry sold in the New York market in 1927? A. That would be my estimate.

Q. And what is that estimate based on? A. It is based on the receipts figures that have been submitted and the price of figures.

Q. Which have also been submitted? A. Yes, sir.

Q. And that is the volume of receipts of freight poultry in New York during this period of time, and the prices per unit over the same period of time?

The Court: When you speak of units you mean pounds?

Mr. Rice: Of price per pound, yes, your Honor.

1317

The Court: So we will have that understood. Whenever you say unit in this particular you mean pounds, is that right?

Mr. Rice: Yes.

Q. Now, Mr. Termohlen, has the Department of Agriculture prepared a chart from the official Government figures showing the relative receipts of live poultry and dressed poultry in New York during the period from 1921 through—up to and through 1933? A. Yes.

Q. And is this the chart that has been so prepared? A. Yes, it is.

1318

W. T. Termohlen—By Govt.—Direct

1319

Q. Will you explain what this chart is and how it was prepared? A. This chart is a result of the study that is being made by Mr. Sprague of the Division of Dairy and Poultry Products in the Bureau of Agricultural Economics. It shows on a percentage basis, or, economically speaking, what we term an index basis, it means that we take a period in this, for instance 1925 to 1929, and make an average of that period and call that 100. On that based period of 100, using it as a percentage figure, we chart the other years. In that way we can take two or three or four or five different commodities and different units, and reflect them by picturization—give a direct picture. In this instance the trend of population of New York is given in heavy type, that is a heavy black line and the trend of receipts of live poultry is given in a dashing line and dressed poultry is given in a dotted line. This shows that dressed poultry receipts have tended to go along with the population moving upward, in fact in recent years slightly above with the exception of 1932, and since 1927 the receipts of live poultry as they relate have gone down.

1320

Q. What are the lines labelled "Live Poultry" computed on, what figures? A. The figures that have been submitted back to 1919, the beginning of the Inspection Service—

Q. I mean what Bureau of the Government? A. Bureau of Agricultural Economics figures.

Q. They are official figures, are they, Mr. Termohlen? A. That is right.

Q. How about the figures for dressed poultry? A. The same.

W. T. Termohlen—By Govt.—Cross

1321

Q. And the line of dressed poultry you have on that chart is computed on the basis of official figures? A. That is right.

Q. How about the population trend in New York? A. That is taken from the Census Bureau.

Q. Official figures of the Census Bureau? A. That is right.

Mr. Rice: I offer this chart in evidence.

The Court: There being no objection it is received.

(Marked Government's Exhibit 24 in evidence.)

The Court: Do you want the jury to see it?

Mr. Rice: Yes.

The Court: All right, let them look at it.

(Exhibit handed to the foreman of the jury.)

1322

Q. Now briefly, Mr. Termohlen, what has been the relative trend in receipts of live and dressed poultry in New York during the past six years? A. Receipts of live poultry have been downward, and receipts of dressed poultry upward.

1323

Mr. Rice: That is all.

Cross examination by Mr. Heller:

Q. Where are chickens raised and who raises them? A. They are raised in every State of the United States; they are raised by farmers, general farmers, commercial poultry farmers.

Q. What does the quality of the chicken depend upon, whether it is good or bad, as far as the farmer is concerned? A. Several things.

1324

W. T. Termohlen—By Govt.—Cross

Q. Let us have them. A. The first thing, it depends on the value of the product, the price he gets.

Q. Before they are raised, that is what I want to know. A. Before they are raised?

Q. Yes, what does it depend upon whether a chicken is a five-pound chicken or a two-pound chicken or of good quality or tubercular before sale? A. The price that he gets for—

Q. You do not get my question—

1325

The Court: He wants to know, he is not talking about the price, he is asking about the chicken in and of itself, what determines its weight, its freedom from disease or its suffering from disease.

The Witness: That is right; the methods of handling, feeding, breeding and so forth; but those are the results in many ways of the price—

1326

Q. I didn't ask you about the results, we will come to that a little later, this is the foundation, let us get the foundation. That depends on the farmers, what feed he gives the chicken, how he raises it, how he exposes them? A. In the first step.

Q. That is right, so that before sale by the farmer he may ascertain whether a chicken is of good quality or of bad quality? A. That is correct.

Q. And then you say these chickens are sold from the farmers to certain individuals, sort of collectors of poultry in the different states? A. That is true.

Q. Do you know in your own State of Iowa how many farmers there are and how many

W. T. Termohlen—By Govt.—Cross

1327

chickens each particular farmer raises? A. Oh, I can give you a rough estimate of it; I do not try to keep those figures in mind all the time.

Q. Approximately. A. There are approximately 213,000,000 farmers in Iowa—

Q. 213,000,000? A. 213,000, pardon me, 213,000 farmers in the State of Iowa. The average size flock is about 160 birds, roughly.

Q. 160 birds per farm? A. Roughly, yes.

Q. Is that uniform in the other states, the same proportion? A. No.

Q. Have you made a study of other states as to how many farmers there are and as to how many chickens on an average each farmer raises? A. There are approximately five and a half million farms that raise poultry, I think roughly somewhere around 60 birds is the average over the United States.

Q. 60 birds per farm? A. That is correct, that is laying flocks.

Q. In other words the income of these farmers is measured as far as the chickens is concerned by 60 in number, leaving out all the other income that he may have? A. That is right.

Q. So that one farmer having 60 chickens may want to dispose of them because he is in need of money, while another may not do so, is that so? A. They very rarely dispose of all of them at one time.

Q. Would you say that if ten farmers in Iowa disposed of ten chickens apiece at a smaller price than that would affect ten farmers in a different state? A. Well, that same thing would probably be happening to ten farmers in another state.

1328

1329

1330 *W. T. Termohlen—By Govt.—Cross*

Q. If they disposed of ten chickens apiece, ten farmers in Iowa, would you say that that would affect the price that each farmer is to get for their chickens? A. I do not quite understand your question.

Q. Doesn't it also depend upon what a farmer is going to get, depending upon the location, how far he is from the source of demand, isn't that something to be taken into consideration? A. Freight costs.

1331 Q. That goes into the price structure, does it not? A. That is correct, as far as the farmer is concerned.

Q. So that a farmer situated further from the source of demand would have to charge a little less to make up for the freight, would he not? A. Normally that is correct.

Q. Do you know whether there is a Code adopted for any other place except for the metropolitan area of the City of New York concerning this industry?

1332 The Court: You do not really mean that, do you, the metropolitan area of the City of New York, do you?

Mr. Heller: Yes, that is the only Code that I know of, the State of New York, metropolitan area of the State of New York.

Mr. Rice: Not of the State of New York, there are three States, the State of New York, State of Connecticut and State of New Jersey.

Mr. Heller: One county of Connecticut, as I take it, and one county of New Jersey.

Mr. Rice: Two counties of New Jersey.

Mr. Heller: Two counties of New York.

Q. Do you know of any other Code governing the poultry industry? A. Yes, one other.

Q. Where? A. One that governs, the United States Commercial and Breeder Hatchery Code.

Q. A hatchery code? A. That is right.

Q. What does that mean? A. That covers those persons who commercially hatch chickens and then sell them in turn to farmers.

Q. Do you know of any code that has been promulgated for the City of Chicago? A. Not one that is promulgated. One that we are working on.

Q. It is not effective as yet? A. Not yet.

Q. The conditions that you speak of, they existed since the year 1926, or prior to that time? A. Some of them back before that time.

Q. So that—let us see. What date, about, what year? A. Are you speaking about—

Q. These general conditions that you say affected the industry here in the metropolitan New York area, here in New York or elsewhere.

Mr. Rice: I object to that question as being too indefinite to permit of an intelligible answer. I have no objection—

The Court: What is the question?
(Reporter repeated the last question.)

Q. (Continuing.) For how long did they exist?

The Court: I do not know what you mean exactly. I suppose you should interrogate him with reference to the point of time, the conditions that existed at some time, and did they exist here solely in New York, or were they throughout the country? If that is what you mean, I do not think he understands you.

1336

W. T. Termohlen—By Govt.—Cross

Mr. Rice: Furthermore, this witness has spoken of a great number of competitive practices and evil conditions, such as the sale of unfit poultry, sale of uninspected poultry, and I think the question should be divided up.

1337

Q. The conditions of unfit poultry, of sale of selected chickens, or of diseased chickens, are those conditions recent ones, or did they exist in the year 1926? A. I would say that some of them existed in 1926, but from all the evidence submitted to us by the people in the industry, they became more prevalent within the last two years.

Q. What conditions existed in the year 1926 that you spoke of on direct examination, that exist today? A. I don't quite get what you are driving at.

Q. You have stated that certain evil conditions exist and have existed for the past year, haven't you, on direct examination? A. That is right.

1338

Q. Now, tell us how many of those evil conditions, and describe them, existed prior to a year ago, and for how long a period they did exist? A. I think that straight—the selected killing, for instance, has become more prevalent each year, as I understand, since—for about ten years—within the last ten years it has become a more direct practice and each year that became worse.

Q. Do you know of any law that prohibited any man from selecting his chickens and selling whatever chickens he desired to in 1926, 1927, 1928 or 1929?

W. T. Termohlen—By Govt.—Cross

1339

Mr. Rice: I object to the interpretation of the law. That is a matter for the Court. I think that is immaterial, whether this witness knows the provisions of the law.

Mr. Heller: He testified to that as being an evil condition.

The Court: I will let him answer, if he knows of any law that relates to that in any way.

Q. Do you know of any?

1340

The Court: Generally.

A. I don't know of any law.

The Court: You are not an expert on law, are you?

The Witness: No, I know nothing about it.

Q. Do you know whether or not any provisions were made by your department to remedy this condition at the source of supply during the past five years? A. My department has only been in existence for a year, slightly over a year.

1341

Q. Then the statements that you have made concerning the industry are statements derived from information given to you by others? A. Partially.

Q. You have no personal knowledge of all the conditions, as stated by you on direct examination, existing during this entire period of time? A. Naturally, I have not lived in New York all that time. I would not know them all, but I have gotten my information from people that I feel have a direct knowledge of the industry.

1342 *W. T. Termohlen—By Govt.—Cross*

just like anyone who is a student of marketing must get his information from others.

Q. Can you tell me how many carloads of diseased chickens have come in during the past month from your State? A. I don't imagine there is any full car of diseased chickens that has come in.

Q. Can you tell me how many pounds of diseased chickens came in from the State of Iowa during each month of this year? A. No, I haven't tried to get that information.

1343 Q. Can you tell me how many pounds of diseased chickens have come in from any other State during the period of every month of this year? A. We could get that information from Dr. Ives' figures, which have been submitted.

Q. Have you any figures to show that so many pounds of diseased chickens have come in monthly and yearly for the past six years from each particular State? A. We could get that.

Q. Have you seen such figures? A. At various times I have seen figures of that type.

1344 Q. You have seen those figures? A. When discussing them with Dr. Ives in his office.

Q. When was that? A. I have been in his office several times in the last few months.

Q. Did you discuss that with him prior to the last few months? A. As far as my own State is concerned, yes.

Q. As far as the other States are concerned? A. I have not.

Q. Has he shown you, and have you examined statistics showing the exact number of pounds of diseased chickens that came in month by month and year by year from the various States

W. T. Termohlen—By Govt.—Cross

1345

of the United States to the City of New York?

A. Oh, he has his inspection reports.

Q. And the inspection reports, I take it, means the chickens that he killed in New York City before delivery to the market men, is that correct? A. That is right.

Q. That is, chickens that he found upon examination were unfit for human consumption, is that correct? A. That is right.

Q. That does not indicate how many number of pounds of diseased chickens came into the City of New York, does it? A. It gives a fairly good index.

Q. What do you mean by a "good index"? A. They can estimate from those figures the poundage that they actually handled and then relate those to the actual poundage that has come in, used as a sample.

Q. I take it, then, that the figures presented by Dr. Ives, namely, that so many pounds of chickens were destroyed, because upon examination they were unfit, did not actually represent the entire number of poundage of chickens that came in that were diseased? A. Well, that is natural. That would not represent the entire amount.

Q. Didn't I hear you testify on direct examination that by this sample inspection you get a good idea? A. Absolutely.

Q. As to whether a carload is diseased or not? A. Absolutely.

Q. So that upon the various inspections made by these various inspectors, and having ascertained that the rest of the carload is safe for human consumption, that the rest did not con-

1346

1347

1348

W. T. Termohlen—By Govt.—Cross

tain any diseased chickens, is that a correct statement? A. I don't get your question.

Q. The inspectors having inspected various carloads and having destroyed chickens that they thought were diseased or unfit for human consumption, would you then state that the rest are fit for human consumption? A. I don't believe that anyone has made a statement that all of the rest would be.

1349

Q. Would you say that the inspection is an inspection or merely a sample inspection under the circumstances? A. I would say it was a sample inspection, but very adequate.

Q. That is, it is an adequate inspection? A. Yes.

Q. Well, if it is an adequate inspection, would you now state that the balance of chickens which are passed with an inspection slip, are fit for human consumption? A. I would say no, but if a buyer that would buy a product coming out of a car that had had a good many birds taken out by the inspector, without careful examination, that is, a careful examination of the birds left, would not be truly representing the people to whom he sells.

1350

Q. Can you tell me what effect the inspection has so far as the purchaser is concerned? May he rely upon it before he eats his chicken? A. He should if the people in the trade are truly ethical.

Q. Do I understand you to say that there is an inspection required of all poultry that comes in for the purposes of detecting chickens that are diseased and unfit for human consumption; is that correct? A. That is right.

Q. And we are to rely upon such an inspection, are we not, or do you now state that it is inadequate, or no inspection? A. I state that it is adequate.

Q. Well, do you now concede that all of the chickens that have been inspected and passed as fit for human consumption, if nothing else happens to them in transportation, that such chickens are fit for human consumption? A. No, I do not.

Q. You still maintain the inspection is adequate when— A. From the standpoint of sound economy, yes.

Q. From the standpoint of health? A. And from the standpoint of health if the people are ethical in the trade and live up to those practices.

Q. Is John Jones, who buys a chicken from a dealer, is he adequately protected by the inspection laws as they exist today? A. What inspection laws are you talking about?

Q. The one you are talking about, the inspection at the railroad terminal. A. So far as the purchaser is concerned, there are other inspection laws.

Q. I said, is he adequately protected in relying upon the inspection service rendered by some agency of the Government when the poultry comes into the railroad yard? A. The person that buys it at the yard is protected.

Q. I am talking about the ultimate purchaser, John Doe, let us call him. A. Too much might happen.

Q. Then he is not? A. No; I think he does get a lot of protection as a result of it, though.

Q. You would not permit yourself to say yes or no, would you?

1354

W. T. Termohlen—By Govt.—Cross

Mr. Rice If your Honor pleases, I submit that is an unfair question in view of the very frank answers of this witness.

The Court: Well, he can ask him if he will say yes or no.

Q. Will you say yes or no? A. I don't see why I should to those types of questions.

1355

Q. Do you know and have you the statistics to corroborate your statement as to how many diseased chickens are actually delivered by the commission merchant to the wholesale slaughter house man? A. I hope to have those statistics as a result of the Code, but I do not have them now.

Q. Then your statement you made on direct examination that a certain percentage of diseased chickens, namely, 4 or 2 per cent.— A. I did not make that.

Mr. Rice: If your Honor pleases, counsel is confusing the testimony of this witness with the testimony of Mr. Tottis.

1356

Mr. Heller: All right; I will stand corrected.

Q. Is it your statement now or do you admit or do you believe that Mr. Tottis' statement is correct, that 2 per cent. of diseased chickens are eaten by people of the City of New York?

Mr. Rice: I submit that is not within the scope of the direct examination, your Honor. If counsel wishes to make him his witness for this purpose, I have no objection. I do object to the form of the question.

W. T. Termohlen—By Govt.—Cross

1357

Mr. Heller: I will make him my witness.

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

Q. Do you make that statement? A. Ask the question again, please.

Mr. Rice: If your Honor pleases, I object to the form of that question.

The Court: Yes, if he is your witness you cannot cross examine. Do not lead him.

1358

Mr. Heller: Very well, your Honor, I will withdraw the question.

Q. Can you state how many diseased chickens are actually consumed by the people of the City of New York? A. I cannot give you the actual number.

Q. You have not gone to the ultimate consumer and taken a statement each and every day and every hour of the day at every market and examined each and every chicken to ascertain whether it was diseased or not, have you?

1359

Mr. Rice: I object to the form of the question as well as the attitude of counsel, in view of the fact that he has made this witness his witness.

The Court: He only made him his witness for a particular purpose. Now he can ask this question. I will overrule the objection.

Mr. Rice: Very well, your Honor.

The Court: Of course, the answer is obvious.

1360

W. T. Termohlen—By Govt.—Cross

Q. What is the answer? A. Naturally, I haven't done that.

The Court: The answer is no, isn't it?

The Witness: Yes, your Honor.

Q. There is no human being in this world that can say whether or not one or two or one hundred pounds of diseased chickens are consumed by the public of the City of New York? A. Are you asking that as a question? You made a statement.

1361

Q. I am asking you that as a question. A. I would not know of anyone that could at present.

Q. Do you know how many of the alive chickens are consumed in the City of New York? A. What is that?

Q. Do you know what percentage of live chickens— A. You mean that come into New York?

Q. Yes, come in and are consumed. A. What percentage?

Q. What total amount are shipped from the various States? A. I haven't it right here, but I can find that out for you.

Q. Well, have you any idea? A. I cannot tell you directly because there are so many statistics that I am in no position at the present time to keep them all in my mind. I will get the information for you.

Q. Did you make an entire study of the situation before you came to court? A. I have made a study of the situation over a period of ten or eleven years.

Q. And you have given certain trends on direct examination? A. Yes.

Q. Don't you think that is an important factor to know? A. Those trends were, yes.

W. T. Termohlen—By Govt.—Cross

1363

Q. How about the percentage of chickens that are consumed, of the total output, in the City of New York? A. I still don't get your question. I gather that you want to know what percentage of all chickens raised in the United States come to New York and are consumed.

Q. Is 80 per cent. a fair number? A. New York doesn't get any 80 per cent. of all the poultry raised in the United States.

Mr. Rice: I am sure I don't know the figures, but I should like Mr. Termohlen to get them.

1364

The Court: I don't think anybody testified to that. I think they testified to the percentage that came to New York, that came from out the State and within the State, but nobody has testified here as to the percentage of all chickens raised in the country, that come into the City of New York.

Mr. Heller: I am referring only to live poultry.

Mr. Rice: Does Mr. Heller mean the live chicken, that is, alive at the time it first commences its journey? Suppose a chicken starts on a journey to a packing house. It is alive until it arrives at the packing house. Is that a dead chicken or a live chicken to Mr. Heller's idea?

1365

Mr. Heller: I am considering the chickens sold in New York City as live chickens.

Q. Do you know that? A. I cannot clutter my mind up with that type of figure. I know where to find the information and if somebody wants

1366

W. T. Termohlen—By Govt.—Cross

that, I will get it for them, but I don't carry it around in my head; I am not a human—

Q. I know, a walking Encyclopaedia? A. Yes.

Q. Now, have you ascertained what are the principal cities of the United States that consume live poultry? A. Besides New York, there is Chicago, Philadelphia and Boston.

Q. Those are the three principal cities? A. There are four, with New York.

Q. Coming for a moment to your chart, Government's Exhibit 24, did you personally examine the material which went into the making up of this chart? A. I have seen all of that material at various times; this particular chart one of my men has worked with that man.

Q. You have seen some material that went into it, is that correct, in the making up of this particular chart? A. That is right.

Mr. Rice: Will you refer to the exhibit number?

Mr. Heller: Government's Exhibit 24.

1367

Q. I understand you to say the trend of population in New York City, the metropolitan area, has gone up from the year 1921 to the year 1933?

The Court: You will pardon me, it is the metropolitan area in and about New York.

Mr. Heller: This notation here says population—

The Court: I understand, but the definition is the metropolitan area in and about New York.

Mr. Heller: I do not know of course whether that refers to that.

W. T. Termohlen—By Govt.—Cross

1369

Q. What does this refer to, does this refer to the metropolitan area or New York City? A. That refers to New York City here, where the receipts of poultry come in.

Q. Does that also embrace the other counties?
A. No.

Q. Merely New York City? A. I am sure of that.

Q. Do you know that 80 per cent. of the poultry that comes into the City of New York is consumed by the Jewish population? A. That is what has been estimated by various people.

Q. And about 5 per cent. by the Italian people?
A. That is what they estimate.

Q. And about 5 or 10 per cent by other nationalities? A. That is what the estimates are.

Q. And the American people consume approximately only, that is American stock, born here and raised here and their families, about 5 per cent. of the live poultry, is that correct? A. That is the estimate.

Q. Have you examined the immigration records as to how many foreigners have come into the City and State of New York from the year 1921 to 1933? A. No, I have not.

Q. Isn't it a fact that we have a quota, is that correct, do you know that? A. I understand that there is.

Q. You know that there is a limitation upon people coming in from other States, other states than the United States, is that correct? I mean Continental Europe. A. You mean other countries?

Q. Other countries rather. A. I know there is a limit.

1370

1371

1372

W. T. Termohlen—By Govt.—Cross

Q. And this line that shows there is an increase in population, you cannot explain, can you, whether that increase is of foreign stock or of American stock? A. I could not right at this moment, I could if I went into the figures.

Q. Have you examined those particular facts?

A. Not the census figures.

Q. Now, if there is not an increase of this foreign element that consumes these live chickens, then this line of increase in population would mean nothing, is that correct? You would have to analyze that, Mr. Heller. The fact that they have limited the number of people from certain countries coming in does not mean that the population make-up of the City, for instance, the Jewish population, has decreased, because we would have to take into account, we would have to go into the birth rate and so on, and we may find that the birth rate of the Jewish population was still on the upward trend and has not decreased.

Q. Then you would also have to examine the death rate? A. That is right.

Q. In both the Jewish population, the Italian and the rest? A. Yes, you would have to do that.

Q. But you are in no position to state now, are you, whether it went up or went down recently, that is the population of these foreign elements?

A. I wouldn't say.

Q. You haven't made a study of that, have you? A. I started yesterday to say we were beginning to make a very direct study of it.

Q. In other words, from this period on you are just going into all the details, is that correct? A. As far as I am concerned, not from this period on, but we have been developing this for three or four months.

1373

1374

W. T. Termohlen—By Govt.—Cross

1375

Q. But this relates here to 1931 and comes right up to 1933, is that correct? A. That is true.

Q. Do you know what particular people are consuming dressed poultry, whether they are Italians, Hebrew, Polish descent, American stock, do you know that fact? A. I would say most all types of people are consuming dressed poultry.

Q. Has your department any statistics showing the place and sale by names of purchasers of dressed poultry for the past four years? A. My department does not.

Q. Do you know of any department that has such statistics? A. I am not familiar with any studies of that particular type.

Q. Wouldn't that enter into your consideration as to whether or not it is fair to compare the dressed poultry industry with the live poultry industry? A. No, there must be something that is wrong when we have this direct downward trend there and an upward trend in other commodities.

Q. And you attribute that to trade practices? A. Oh, partially, not entirely.

Q. But you are willing to take those factors into consideration, are you not, other factors than trade practices? A. Naturally, any one of them.

Q. And they should be taken into consideration, isn't that so? A. If they are applicable.

Q. And that requires and necessitates study, is that correct? A. That is right.

Q. You know as an economist there are varying other factors that enter into price structure, do you not? A. What do you mean other factors?

Q. As to whether or not a commodity is to be sold at a certain price, it isn't always supply

1376

1377

1378

W. T. Termohlen—By Govt.—Cross

and demand, is it? A. Well, it is the measure of supply and demand, but depending upon how you interpret it, on which side.

Q. In other words, it is subject to several interpretations, is that correct? A. The mere fact that you have a certain supply and you have a certain consumption over here is measured by the movement of supply and demand, that isn't the entire index.

Q. That is right, you know there are other factors that must be considered? A. Yes, I said one of them is unfair practices.

Q. And there are others besides that, isn't that correct? A. Of course there are many economic factors that come in.

Q. Well, let us get to some of them. Do you know that during the year 1929 there were about 642 bank suspensions? A. I do not know the definite number, no.

Q. Do you know that in the year 1930 there were 1,345 in the United States of America and nothing in other states outside of the United States of America? A. I wouldn't say that today, a few years ago I might, but I can't right now.

1380

Q. Would you say there were—

Mr. Rice: Just a moment, if your Honor please, I object to this line of cross examination. Again if counsel wishes to make Mr. Termohlen his witness I have no objection to questions that are leading; Mr. Termohlen has not discussed economic conditions aside from the live poultry industry.

The Court: He is asking him now simply with reference to the live poultry industry—

Mr. Heller: That is right.

The Court: Whether those bank failures would have any effect upon it.

Mr. Heller: That is what I am coming to.

The Court: That is all he is dealing with now; I think he may ask him that, this is only as far as it applies to live poultry.

Q. Do you know that in the year 1932 there were 2,550 bank failures? A. I do not know that there were exactly that many.

Q. Do you know that in March of 1933 all the banks suspended activities? A. I recall that, yes.

Q. Now, hasn't that something to do in determining whether or not the value of chickens is up or down? A. General economic conditions have their effect.

Q. Isn't it a fact that the stock market conditions has something to do with the price structure and price index level during this entire period of time? A. That is right.

Q. All these factors must be taken into consideration, isn't that correct? A. They must, and also along with this the direct effect and influence that this thing may have upon people in the industry in making the price.

Q. Now, there were certain business failures during this entire period of time 1930 to 1933, were there not? A. Oh, I think that everybody knows that we have had a depression.

Q. And that had something to do with business conditions? A. That is true.

1384

W. T. Termohlen—By Govt.—Cross

Q. Isn't it a fact that banks have refused to make loans for the past four or five years and that has had some influence on business activities both in this line and in other lines? A. I do not think there is any question of whether it has had any influence.

Q. You know that deflation has something to do with business activities, has it not? A. I would assume it does.

1385

Q. You know that deflation in the issuance of checks or clearing of checks would have something to do with business conditions? A. All these economic structures have their influence.

Q. And those conditions have existed, have they not? A. That is right, but the strange part of it is that this thing has been going downward since 1927, and those things have only really been bad since 1929.

Q. When you say that in 1927 the value of chickens was \$57,000,000 and in 1933 it was \$27,000,000, you attribute that as an economist solely to the trade practices? A. I never said that.

1386

Q. Can you attribute them to the trade practices? A. Partially, yes.

Q. How much, what percentage? A. That I couldn't tell you, and I don't think anybody could.

Q. I agree with you. Now, isn't it a fact that in the year 1927 chickens sold at 38 cents per pound and in the year 1933 at 16 cents per pound? A. I do not think that is a fact. I don't remember whether it is 30. It is 28, isn't it?

Q. There was a difference in the price, was there not? A. That is correct.

Q. And if a price is lower the total amount is lower? A. Well, surely, that is true.

Q. So that it is inaccurate to say that the volume fell off because of trade practices, isn't it? A. I did not say it fell off entirely, because of trade practices.

Q. You mean the price affected the value of the poultry, if you get more, then the value is higher and if you get less it is lower, isn't that correct? A. That is true.

Q. You would not, as an economist, ask this jury to take that all into consideration in saying that these trade practices that you claim have affected this price structure in that manner, would you? A. They should take into consideration the effects that it may have, combined with other things.

Q. And these other things you have not mentioned, except in cross examination, is that correct? A. I have answered the questions as they have been asked of me.

Q. And you could not with any degree of certainty or definiteness attribute any particular percentage to trade practice or to the bank closings or to the credit situation, could you? A. I do not think anyone can.

1388

Mr. Rice: May we have a two-minute recess, your Honor?

The Court: Yes. Gentlemen of the jury, do not let anybody talk to you about the case.

(Short recess taken.)

1389

Q. Isn't it a fact that a decided well-established principle of economics is that commodity prices are registered in the form of money? A.

1390 *W. T. Termohlen—By Govt.—Cross*

I would not say that that is entirely true. On the exchanges in the markets, the principal market centers, that is true,—in the form of money.

Q. See whether you can agree with this economic principle. When money inflates or deflates every commodity price must be carried higher or lower than it otherwise would be? A. Before I could agree entirely with that I would want to analyze it further. There may be things in there that are not so.

1391 Q. Do you know Professor Irving Fisher? A. I do.

Q. He is the foremost economist at Yale University? A. He is one of the economists at Yale.

Q. And a well-known professor of economy? A. That's right, well known of one school.

Q. Well, if I tell you that he made that statement, would you say—would you accept it now as correct? A. No, I would not entirely.

Q. Have you taught economy anywhere? A. I have in my extension work, the general principles.

Q. Have you taught other people? A. Yes.

1392 Q. A class? A. Not a class, extension work—meeting with farm people and people who handle the products and so forth. I do not teach that type of economics, it is the general application of economics that I teach.

Q. You mean you apply your practical economy? A. Yes.

Q. In this industry? A. That's right.

Q. Now that was not my question; did you ever teach at any college—economics? A. I teach in the extension service of the Iowa State College. Our campus was the entire State.

Q. And how big is your college? A. Oh, about 4,000 students roughly.

Q. And who is your famous professor of economy? A. At the present time the head of our department is in Washington. We have had some men who have been nationally very famous.

Q. How many members are there in your economy department? A. I cannot tell you, because there are changes from time to time.

Q. How many were there when you were doing research work? A. I would say around ten.

Q. Ten members? A. Somewhere in that neighborhood.

Q. And you were one of the research directors? A. I was a research assistant.

Q. You actually have never taught a class of students economic principles, have you? A. Not a class of students.

Q. In other words you were limited to the application of economic principles concerning this industry in so far as it relates to farmers and so forth? A. General economic principles as they concern the farmer.

Q. Now isn't it a fact that the unemployment problem must be considered in your survey in determining whether or not these products had any effect upon the price structure and the price level? A. All of these facts are all things that come in this National Industry Recovery Act.

Q. Now going off the standard had something to do with it, did it not—did it? A. I would have to analyze it further before I could answer that and say yes or no.

Q. You have never analyzed all these elements before you came to this court, have you? A. A mere general analysis.

Q. Did I understand you to say that you are now beginning to make a thorough study of the

1396

W. T. Termohlen—By Govt.—Cross

entire situation for the future, is that correct?
A. Certain aspects of it, as they relate to price-making.

Q. Now before you came to this courtroom you have prepared yourself, haven't you, in the testimony you were to give? **A.** Naturally.

Q. And you went over the facts with Government counsel? **A.** Naturally.

Q. And you outlined to him what you were going to testify? **A.** Naturally.

1397

Q. And in preparing yourself to give this testimony did you specifically analyze on paper all these analyses before you arrived at your conclusions as given on your direct examination? **A.** I took my general knowledge of all these things.

Q. Just general, as you would read a newspaper? **A.** As I studied the reports.

Q. What kind of reports? **A.** Well, each month I have laid on my desk a general summary of the whole situation.

Q. For how long a period of time? **A.** Each month.

Q. From what year? **A.** Current reports.

1398

The Court (to witness): He wants to know how long have you had them.

The Witness: Since January I have had them put on my desk.

Q. January of this year? **A.** That's right.

Q. And you base your opinion from the facts as you gathered them since January of this year? **A.** Before that time I had to make more or less of an analysis for myself.

Q. And what did you consider in making that analysis? **A.** All business factors that I could get indexes of.

W. T. Termohlen—By Govt.—Cross

1399

Q. And did you get an index of all food products? A. We had one.

Q. Did you examine any? A. I used to.

Q. Did you examine any before you came to this court? A. I let my man do it.

Q. You relied upon him? A. Of course.

Q. And what was the general condition in average food products during the same period of time that you discussed relative to the poultry industry? A. To give you the exact figures I would have to look it up.

Q. Just generally how was the condition? A. It varied at different times. I would not want to venture an opinion on that.

1400

Q. You don't know? A. I have a general idea.

Q. Isn't it a fact that all food products came along at about the same line as the poultry industry? A. No.

Q. Isn't it a fact that all industries took the same drop as poultry did? A. Not the same, no.

Q. Similar? A. I would not even say that.

Q. Was it 2 per cent.? A. I would not say that.

1401

Q. When was the lowest period—that is, the lowest prices and the lowest condition of business and the worst condition of employment that you know of—what year, both for this industry and generally speaking the other industries? A. I think 1932 and 1933.

Q. That is a whole year. Can you tell us about what part of the year or what years it is in? A. The early part of 1932 was one of the bad spots.

Q. Isn't it a fact that the worst spot was in March of 1933 when the banks closed? A. It was very bad at that time.

1402 *W. T. Termohlen—By Govt.—Cross*

Q. That was the lowest point? A. Since then we have had some improvement.

Q. That is the lowest point for business? A. It might be in certain industry.

Q. The lowest point for employment? A. I wouldn't be able to tell you unless I would go back and look over the charts.

Q. The lowest point for payrolls? A. I would want to refer to charts.

Q. The lowest point for agriculture? A. Monthly figures do not always mean so much; I prefer annual figures to make any definite statement.

Q. You are familiar with some of these statistics, are you not, as an economist? A. That is true.

Q. Do you know that—when was the highest point beginning 1929? A. Well, I do not know that I can answer that definitely. I do not try to keep all those things in mind.

Q. Do you know a person by the name of Charles Mertz? A. I am not just sure; I have heard the name some time or other.

Q. He is an economist, isn't he? A. I couldn't tell you, there are so many accountants that I wouldn't be able to tell you directly.

Q. Have you ever read the statistics to be found in the New York Times, Sunday section? A. Occasionally; not very often.

Mr. Rice: If your Honor please, I wish to enter my objection to this line of cross examination. The sole purpose appears to be to have this witness compare the economic emergency prevailing generally in all commodities throughout the country with the economic emergency existing in

W. T. Termohlen—By Govt.—Cross

1405

the poultry industry. Now, he was not questioned as to that comparison on his direct examination. Counsel apparently does not wish to show at this point that the particular practices existing in other industries had an effect upon the economic conditions in the live poultry industry. He is merely seeking to argue with the witness as to the comparison between the economic emergency and generally throughout the country, and that in the live poultry industry, and if he does examine him on that topic, I submit he should make the witness his own.

1406

The Court: No, I think he is trying to test the witness' knowledge.

Mr. Rice: Very well.

The Court: I will let him do it. What he is trying to show is whether the witness took into consideration all the elements.

Q. Do you know what month and in what year conditions improved in the poultry business and in all other industries after March of 1933? A. I wouldn't be able to answer that directly without going into the information that I keep. I do not try to keep all those things in mind, I mean in general.

1407

Q. Do you know when it dropped after March, 1933? A. I would not know the specific month.

Q. Do you know whether it dropped during the last month over the month previous? A. The very last month?

Q. Correct.

The Court: You are asking about poultry now.

1408

W. T. Termohlen—By Govt.—Cross

Mr. Heller: Poultry and other industries.

A. Very recently the price in poultry has dropped.

Q. Do you know the conditions of other food commodities as they existed from the year 1929 till this present time? A. I do not keep it in my mind; I can find it very quickly.

Q. You haven't examined the statistics just before you came to testify, did you? A. Not all those general statistics.

Q. You have not examined the statistics of wholesale prices beginning in the year 1929 to 1934 in food products, have you? A. Not personally, recently.

Q. And you have not examined the statistics pertaining to retail food prices, their cost, from 1929 until the present time, have you? A. I have not examined those personally.

Q. Have you examined the index numbers for fats and oils from the year 1929 to the present time? A. No.

1410 Q. Have you examined factory employment statistics from the year 1926 to the present time? A. I have at different intervals.

Q. And do you know what the condition of that was in the year 1926? A. Factory employment, it wasn't as bad as it was in 1932, or 1933.

Q. Was it as bad as the year 1929? A. Off-hand, I would say that 1929 was a very good year.

Q. 1929, that was the time the banks closed, is that correct? A. The banks closed in 1929?

Q. Yes; did they? A. I thought the banks closed in March of 1933.

W. T. Termohlen—By Govt.—Cross

1411

Q. That is correct. Now, in 1929, what were the conditions generally? A. They were very good.

Q. Now, what do you mean by "very good"? Is that the highest point? A. General business was supposedly good, in all these industries that you are talking about here—

Q. They prospered? A. It was good; we had prosperity.

Q. And when did it start to go down? A. Started to go down in October and November.

Q. Isn't it a fact that the highest point of the industries I have mentioned was in the year 1928? A. That I wouldn't know without looking at the statistics.

Q. Isn't it a fact that it commenced to go down and it went down year by year from that period of time? A. Since 1929?

Q. Since 1928. A. It may be true in some industries, not in all of them.

Q. And the same thing happened with reference to food industries in general, isn't that correct? A. I would say in general.

Q. Do I understand you to say that there is no code in the City of Philadelphia, the City of Chicago, and the City of Boston? A. Not as yet.

Q. Not as yet? A. That is right.

Q. Do I understand you to say these trade practices exist in those cities? A. I didn't say that.

Q. Do they exist in those cities? A. Some, but not all of them.

Q. Have you made a study of conditions as they exist in those cities? A. We are making studies.

1412

1413

1414 *W. T. Termohlen—By Govt.—Cross*

Q. Have you made them until this time? A. I am making some of them personally, and some of them I have my employees make.

Q. And no code provisions were made until the year 1934, during the month of April, although these conditions existed for all these years, is that correct? A. There never had been any way of making it before.

Q. This was the first opportunity? A. This was the first opportunity.

1415 Q. And by its own limitation it expires next year, isn't that correct? A. Unless amended by Congress.

Q. In other words, these regulations are only for one year, is that correct? A. Not for one year; the act is in effect for two years all told.

Q. But this code was enacted this year, 1934, April 23rd, is that correct? A. That is right.

Q. And that expires next year? A. In June.

Q. Do you hope to remedy the entire condition by the code being in existence for one year?

1416 The Court: Does it make any difference what he hopes?

Mr. Heller: All right.

The Court: We won't capitalize hope.

Mr. Heller: All right.

Q. Now, it is a true statement that there is no code anywhere in existence at present except—

Mr. Rice: I object to that; that is the third time he has been asked about that.

The Court: I thought he told you that.

Mr. Heller: There is no other code; all right.

Q. Is it possible to grade chickens at the source of shipment? A. It depends upon the particular source of that shipment.

Q. If the diseased chickens were condemned at the source of shipment, would any come into the City of New York? A. Only what might develop any sickness in between.

Q. Outside of that nothing would come in, is that correct? A. Oh, I would say that.

Q. And there are no code provisions pertaining to the source of shipment, are there, as to inspection, as to grading, are there? A. Not code provisions; there are some State laws.

Q. But I mean Federal Code provisions. A. No.

Q. Now, you say you have examined certain conditions as they existed in the markets in the City and State of New York during the course of the last two years; is that correct? A. That is right.

Q. Wholesale markets? A. Wholesale and retail.

Q. About how many days would you spend at a particular slaughter house, and how many slaughter houses would you visit during your stay in New York City? A. I would not spend only a short time at each place, getting a broad picture of it.

Q. Just exactly what were you looking for and what did you find? A. Looking for the methods that they used in the handling of poultry.

Q. And you found one method in one slaughter house to be practically the same as in another? A. Not always.

Q. What was the difference? A. I found slaughter houses that were doing a better job of handling their product than another, more sanitary.

1420

W. T. Termohlen—By Govt.—Cross

Q. We are talking about slaughter houses now, are we? A. Yes.

Q. What else did you find? A. I found some of those places were very careful in the handling of their birds, and other places that were not.

Q. What else? A. I found in some places that they were sorting their poultry in such a way that people were able to buy it to better advantage than others.

Q. Did you look for anything else? A. Well, I looked to see the general methods that they used in their business.

Q. What is there to selling poultry, please? A. What is there to selling poultry?

Q. Yes, in a slaughter house. Describe to the jury what is done in a slaughter house. A. Slaughter houses get their poultry from the market man, bring it into their place of business, pile it up in coops, probably along the side of the wall, in some instances out from the side of the wall, and people come in various days at various times—some days they open up earlier than other days—they come in, look at the poultry, tell the slaughter house man how much they want, start to bargain with him in order to get their poultry. In some instances that isn't necessary, some instances they may call the slaughter house, depending upon the particular type of slaughter house. The birds are then killed according to the custom, Jewish custom, thrown into a barrel, put into bags, boxes, and then taken to the place of business of the retailer or chicken store.

Q. In other words, we have approximately five operations that a slaughter house man has to go through, the purchase of the poultry— A. That is right.

1421

1422

Q. (Continuing.) —stacking them in their place, selling them to the customer, slaughtering them and getting their money, is that correct?

A. In general that is.

Q. That is uniform of all slaughter houses, is it not? Wholesale slaughter houses? A. Not of every one exactly like that, because you have one or two slaughter houses that get their poultry in directly to their place of business.

Q. But the operation, when it is there— A. Oh, yes.

Q. (Continuing.) —it is about the same. That is what you found in your studies, did you not? A. Generally, as far as the technique is concerned, about the same.

Q. And in your opinion this method of doing business is not exactly proper, and for that purpose you have made recommendations to the Code Authority, is that it, for these additional regulatory provisions? A. I have not made any recommendations to the Code Authority.

Q. Well, someone else did, is that correct? A. I don't know what you are talking about.

Q. There is nothing peculiar about this business, is there? A. I would say there are a lot of peculiar things.

Q. About the sale of the poultry in the place of business? A. A lot of things that are done differently than they are in other cities.

Q. We are talking about the City of New York, because this is the only place that has a code; that is correct, isn't it? A. You asked me if there is anything peculiar about the business.

Q. In New York City, when the poultry gets there. A. I said I think that it is peculiar be-

1426

W. T. Termohlen—By Govt.—Cross

cause it is different than it is in most other places.

Q. But that is the uniform method of doing the business in the City of New York, isn't it? A. As far as killing, and so forth, is concerned.

Q. Nothing peculiar about it as far as the City of New York is concerned, as far as the merchants are concerned, is there? A. I don't suppose in their minds.

1427

Q. And you do not have to be really an expert, trained in colleges, in order to conduct this kind of little business? A. I wouldn't say that one did.

Q. Isn't it a fact that these slaughter house men purchase their chickens in coops at the railroad terminals or the various markets; isn't that correct? A. That all was brought out. That is true.

Q. I want to bring it out from you. They come to the market, don't they, and buy certain coops of chickens, isn't that correct? A. Either in this city or other places.

1428

Q. We limit ourselves now to the various markets in the City of New York. When they buy their poultry there, it is inspected poultry, is it not, at the market, West Washington Market, for instance? A. Yes, if it is bought—

Q. All train loads that come in are inspected first, is that correct? A. That is right.

Q. And then these wholesale market people, such as the defendants, buy their coops of chickens, is that correct? A. No, not entirely, because they don't all buy there.

Q. Some that do buy there, what they buy are chickens crated in coops, is that correct? A. Yes, buying at the central market.

Q. Yes, after they were inspected. A. That is right.

Q. They load them on their trucks, is that correct? A. That is right.

Q. And bring them into their places of business, is that correct? A. Yes.

Q. And it is from that point on that they are prohibited from having straight killing; is that correct? Am I right? A. Straight killing refers to killing that is in the slaughter house.

Q. Exactly. Now, after they get delivery of the poultry in coops,—they buy whole crates, is that correct? A. Half or whole crates.

1430

Q. But they don't select them down there, they don't grade them down there, do they, at the West Washington Market, for instance? A. Oh, many of them look the poultry over very carefully to see that the general run of it looks good. They do a certain amount of grading, yes.

Q. In other words, if they find a cull, they throw it out? A. Many of them do.

Q. And the rest they take, is that correct? A. They do, if they accept the purchase, surely.

1431

Q. They cannot say to the commission merchant, "I want a coop of chickens with average weight of six pounds," can they? A. They can say that, yes.

Q. Can they get it? A. They could if they would all live up to this thing and do it.

Q. Is there anything in the Code which provides that they can buy or cannot buy selected chickens at the West Washington Market, that you know of?

Mr. Rice: I object, if your Honor please. I have no objection to the complete discussion of this, but it seems to me that we are

1432

W. T. Termohlen—By Govt.—Cross

wasting time in fruitless arguments upon the meaning of the code provision. That is a question of interpretation.

The Court: If there is anything in it, he may ask it.

Mr. Rice: Very well.

The Court: Is there anything to it at all?

Mr. Rice: I do not think there is any question about the interpretation of the Code's provision.

1433

The Court: Is there any question at all that they cannot select the individual chicken, but must take the coop or half coop? Is there any question?

Mr. Rice: There is no question but that the Code simply prohibits any practice other than straight killing.

The Court: That is, they must buy the coop or half coop, they cannot select the individual chickens out of the coop or half coop?

1434

Mr. Rice: Yes. And that is transactions between market men and the retailers.

Mr. Heller: In other words, the transaction that counsel speaks of is when the poultry has already reached the place of business, such as the defendants, correct? Am I right, Mr. Rice.

Mr. Rice: I will read the exact Code provision, Section 14 of Article 7 of the Code, "Straight Killing." It is provided that the following practice is prohibited, "The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on

W. T. Termohlen—By Govt.—Cross

1435

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."

Now, that says the use in the wholesale slaughtering of poultry, which means the transactions between wholesale slaughter house operators and the retail dealers, butchers, that purchase from them. In connection with that we should read the definition contained in the code of straight killing.

Section 15 of Article 2 of the Code "The term 'straight killing' means the practice of requiring persons purchasing poultry for resale," that means retailers or butchers, purchasing for retail to the consumer—"to accept the run of any half coop, coop or coops as purchased by any slaughter house operators except for culls," and then culls is defined as "poultry unfit for human consumption."

Q. So that if one goes to the West Washington Market, they would get their coops of chickens as is, except they would throw out the diseased chickens or culls? A. Unless they insisted that it be graded the way they wanted it.

Q. I suppose that if they insisted that they be graded the commission merchant would have to dispose of the poultry which was not graded, that which was left over after the grading took place and take a losing price or a less price than the graded poultry? A. What would happen in that case is the slaughter house man insisted on having the kind of poultry that they

1436

1437

1438

W. T. Termohlen—By Govt.—Cross

wanted, we would develop a program of grades, where the grades would be reflected back to the man in the country and he would buy accordingly and ship the kind of stuff in here that was demanded.

Q. All right, a dealer comes to the market—he goes right there this morning—he needs three coops of chickens, and he selects the grades of chickens. He takes the cream of them, the very best, and he leaves the rest there. Now what happens to the others, today—this Friday—would they have to be sold for less or more? A. They would be sold at whatever price that man could get for them.

Q. It would be less than those that were graded or better quality? A. Unless some other individual was in a place where he felt he could still sell at a good price.

Q. That is a possibility? A. A slight possibility.

Q. So that the commission merchant is more apt and can control the purchase of chickens as is, is that correct? A. I don't know what you mean by that question.

Q. Will the commission merchant permit the grading or does he permit grading and has he permitted grading for the last three months? A. I imagine if anybody would want grading and insist on it sufficiently they would get it.

Q. That is to your own knowledge? A. That is if they asked for it enough they would get it.

Q. Don't imagine anything, please. Have you any personal knowledge that such a condition existed for the past three months or past year—the grading of poultry by the West Washington Market? A. No, I haven't.

1439

1440

W. T. Termohlen—By Govt.—Cross

Q. Did you listen in to the witness yesterday, the commission merchant from the Bronx? A. Most of the time.

Q. Did you hear him say that the only thing that takes place is that the inspection is a little more rigid but the wholesale slaughter house man must take his coop as is? A. I don't recall him saying that.

Q. If he said it that would be a fact, wouldn't it? A. I presume he knows what he is talking about.

Q. Now if Rogers Peet were selling a suit of clothes for \$60 and John Wanamaker was selling a suit for \$17, would that tend to increase the sale of poorly-made clothes or would it throw John Wanamaker out of business? A. I don't know anything about the suit business.

Q. In other words your economic conclusion as an expert is that a man selling chickens at a cheaper price would tend to bring in unfit chickens or diseased chickens, that is based on what? A. The fact that it actually happens when they do those things.

Q. Didn't you say this morning that you had no statistics to show just how many diseased chickens, if any, are actually consumed? A. I have never made a study of the consumer to that extent.

Q. Yet you draw a line between the sale of a suit of clothes and a sale of a chicken? A. From an economic standpoint, because a suit of clothes is not a perishable product and a live chicken is.

Q. In what way would that affect the thing? A. Well, a man can hold a suit of clothes for a long time, but not a chicken.

1444

W. T. Termohlen—By Govt.—Redirect

Q. Have you ever heard of a seasonable product, such as a summer suit or a fall suit or a winter suit? A. Yes, but a summer suit you can hold for three or four months, you do not have to sell it within a day or two.

Q. Three or four months. A. I imagine you could.

Q. In other words, a man desiring a summer suit would buy it in the middle of August? A. Quite frequently I have bought a summer suit in the month of August.

1445

Q. Because it is cheaper? A. Not necessarily.

Q. Because it is dearer—

The Court: Aren't we getting wide afield. Chickens do not carry any labels on them.

Q. Have you any statistics as to what percentage of all poultry consumed in the United States, New York consumes? A. You asked me that once before, I haven't them here.

Q. As to live chickens? A. I haven't them with me, but I can get it for you.

1446

Mr. Heller: That is all.

Redirect examination by Mr. Rice:

Q. Mr. Termohlen, just one question; as an economist you of course are familiar with the fact that there has been a national economic emergency in this country? A. Yes.

Q. And you are generally familiar with the fact that this national economic emergency in all commodities has been produced partially as the result of unfair methods of competition? A. Yes.

W. T. Termohlen—By Govt.—Recross

1447

Q. And that there are unfair methods of competition for the poultry industry which may differ slightly from unfair methods of competition in other industries? A. Yes.

Q. Each industry may have unfair methods of competition that may have brought about or accentuated the economic emergency, is that right? A. That is true.

Mr. Rice: That is all.

Recross examination by Mr. Heller:

1448

Q. What are the unfair methods of competition in the clothing industry? A. I cannot tell you, but I could find out quickly by looking at their Code.

Q. What are the unfair methods of competition in the shoe industry? A. I say again that I cannot tell you, but I could find out by examining their Code.

Q. Can you tell us the unfair methods of competition in any other industries than the poultry industry? A. Some general ones.

Q. That is the extent of your knowledge? A. I know that unfair methods exist in practically all businesses. **1449**

Q. You are guessing? A. I am not guessing. They must have or we would not have some 600 Codes at Washington.

Q. You don't know what they are? A. I cannot tell you each specific one for each industry, no.

Q. Well, isn't it a fact that some Codes are enacted for the purpose of freezing out the small fellow? A. Just the opposite.

1450 *W. T. Termohlen—By Govt.—Redirect*

Q. Are you sure about that? A. Very specifically, there is a mandate that there can be no creation of monopolies.

Q. Have you read the Darrow report? A. That is one man's opinion.

Q. Wasn't he delegated to do that and report to the President? A. I do not know that I should agree with him in his report.

Q. But he did make such a report, didn't he? A. A report was made.

Q. And that was his conclusion, wasn't it? A. Not agreed to by everybody.

Q. But that was his conclusion, wasn't it?

Mr. Rice: I object, your Honor, I object to the conclusion of this man, it is purely argumentative anyhow.

The Court: He has already said that.

Q. Don't you know that price-fixing has been found to be unworkable? A. There is no price-fixing in any of the Codes that I have anything to do with.

Q. Don't you know that that is the policy of your administration now? A. What is it?

The Court: I do not think that has anything to do with this, there is no price-fixing in this case.

Redirect examination by Mr. Rice:

Q. There is no price-fixing in the live poultry Code, is there? A. I have watched it with a great deal of care to see that there should not be.

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

Leroy Peterson—By Govt.—Direct

1453

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

Direct examination by Mr. Rice:

Q. Mr. Peterson, what is your occupation? A. I am the Code Supervisor for the Live Poultry Code in New York City.

Q. How long have you been Code Supervisor? A. Since April 23, 1934.

Q. What did you do prior to that time? A. I was an economist with the Consumers' Council of the Agricultural Adjustment Administration, in Washington.

Q. What were your functions as an economist of the Consumers' Council's office? A. To analyze requests for Codes, sit on the hearings of codes for the protection of the producers and consumers.

Q. What was the function of the Consumers' Council's office of the Agricultural Adjustment Administration? A. To represent the consumers of products, and to see that the consumer is properly protected.

1454

1455

Mr. Heller: I do not think we ought to go into that, that does not pertain to this industry.

The Court: He is trying to qualify him.

Mr. Heller: As what?

The Court: I do not know, but he is asking him in general what his occupation has been, what his duties were.

Q. Will you describe a little more fully what your particular functions were as economist in

1456

Leroy Peterson—By Govt.—Direct

the Consumers' Council's office? A. Myself, along with other economists, were assigned to various codes which came before the Agricultural Adjustment Administration. Our duties were to make an analysis of the requests for these codes by industries, become acquainted with the members of the industry to find out what they were attempting to obtain through these codes, and attend the hearings, the formal hearings, and the informal hearings after the formal hearings, assist in the preparation of a code, and our particular function was to see that the consumer of whatever product was sold by that industry was adequately protected.

1457

Q. When an industry such as the live poultry industry proposed to the Agricultural Adjustment Administration that there be a price-fixing provision in a proposed code what was your function in connection with that?

Mr. Heller: That is objected to.

The Court: We have no price-fixing here, why bother with that?

1458

Mr. Rice: Very well.

The Court: It would only confuse the jury, we are not dealing with that here.

Q. What codes did you deal with as an economist of the Consumers' Counsel's office?

Mr. Heller: I do not think that is any part of the qualifications of anyone.

The Court: What?

Mr. Heller: What codes he dealt with.

The Court: Oh yes, he is trying to show as an economist what he was doing, he may do that.

Leroy Peterson—By Govt.—Direct

1459

Mr. Heller: All right.

The Court: We are not going into each Code.

A. Quite a wide variety of Codes. The Baby Chick Code formerly mentioned, the Naval Stores Marketing Agreement, that is turpentine and rosin; the Manufacture of Hog Cholera Serum; the Packers' Commission Men's Code; this present Live Poultry Code in New York, and many informal conferences on codes that were never passed, poultry codes for practically the entire United States were proposed and we had informal hearings on them, but for one reason or another those codes were never passed and approved by the President. I went to San Francisco, Jacksonville and Chicago to attend these hearings, and also a great many hearings in the City of Washington.

1460

Q. Do you know under what circumstances the Live Poultry Code was adopted? A. I do.

Q. The Live Poultry Code for metropolitan New York? A. Yes.

Q. What were those circumstances, just briefly?
A. The Code was proposed by the industry—

1461

Mr. Heller: Now, if it please your Honor, we have conceded that a Code has been adopted, and I think that ends it.

The Court: I know, but I will let him testify.

Mr. Heller: Exception.

A. The Code was proposed by a number of associations of the live poultry industry here in the metropolitan area. They requested a Code, and a formal hearing was called. Due notice of

1462

Leroy Peterson—By Govt.—Direct

that hearing was given to the various units of the Agricultural Adjustment Administration—

The Court: We have got all that, that is all in evidence.

The Witness: I meant notice to us as the Consumers' Council.

Q. Yes. A. We attended a formal hearing and a number of informal hearings following the formal hearing, and a Code was finally presented and signed by the President.

1463

Q. Just what duties did you have in connection with the consideration of the proposed Live Poultry Code for New York? A. A very careful analysis of trade practices that would be finally adopted in this Code, particularly having to do with matters that would affect the consumer, that is the desirability as to standards and grades, complete elimination from the Code of any price-fixing arrangements, seeing that the consumer would get a good quality of poultry at a reasonable price.

1464

Q. Did you attend the hearing on the Live Poultry Code? A. I did.

Q. You sat at the chairman's table? A. I did.

Q. You questioned members of the industry in regard to their proposals? A. I certainly—

Q. For code provisions? A. Yes.

Q. Approximately how many members of the industry were represented, I mean how many were actually present?

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

The Court: I will allow it.

Mr. Heller: Exception.

Leroy Peterson—By Govt.—Direct 1465

A. From 80 to 125. The hearing went on for two days, and at various sessions of the hearing there were different numbers of people there.

Q. Now, after the Code was adopted on April 13, 1934, you became the Code Supervisor, did you not? A. I did.

Q. Will you describe briefly the circumstances under which you became Code Supervisor?

Mr. Heller: I do not think that is pertinent to the issues here, how he became Code Supervisor.

The Court: I do not know, if he was elected by the industry or anything of that sort—

Mr. Heller: The indictment sets out how he became Code Supervisor.

The Court: I will let him answer.

Mr. Heller: Exception.

A. The Code Supervisor, although working for the industry, is in this particular Code responsible only to Secretary Wallace—

Mr. Heller: I object; that isn't the answer. 1467

The Court: That isn't the answer. Let us get down to the case.

Q. Who were you appointed by? A. Secretary Wallace and Hugh Johnson.

Q. When were you appointed? A. April 23, 1934.

Q. When did you take office? A. The same day.

Q. What did you do after your appointment on April 23, 1934? A. I accumulated a staff, got a place for an office, bought the necessary equip-

1468

Leroy Peterson—By Govt.—Direct

ment, and got ready to get the Code into operation.

Q. Approximately how long did it take you to organize your staff and prepare for enforcement of the Code? A. A little less than a month.

Q. What steps did you take? A. I obtained offices in the Federal Building at 641 Washington Street.

Q. Is that near the West Washington Market? A. About five blocks from West Washington Market.

1469

Q. And West Washington Market is the place where a great number of people in the live poultry trade congregate? A. Yes. We wanted to be in close proximity to the market so we could have constant access to the members of the industry, and still not be in the market. We obtained an office, as I said, in the Federal Building, being a semi-federal agency. We accumulated a staff of lawyers, office help, investigators, stenographers, and so on.

Q. How large is your staff today? A. Either sixteen or seventeen people.

1470

Q. Approximately what is the annual budget?

The Court: What has that to do with this case?

Mr. Rice: If your Honor please, I wish to show the extent of the enforcement and compliance program.

Mr. Heller: I have no objection; he can ask that. I will consent to it.

A. Our present budget is approximately fifty thousand dollars—our present expenditure on an annual basis is about fifty thousand dollars, although we have an approved budget of eighty-eight thousand dollars.

Leroy Peterson—By Govt.—Direct 1471

Q. Per year? A. Per year.

The Court: We had better stop now because it is one o'clock.

Mr. Rice: Thank you.

The Court (addressing the jury): Gentlemen, do not allow anyone to talk to you about the case, do not discuss it among yourselves, do not form any opinion until it is finally submitted to you. Come back at two o'clock.

(Recess until 2 P. M.)

1472

(Met pursuant to adjournment at 2:00 P. M.; present as before.)

LEROY PETERSON resumes the stand:

Direct examination (continued) by Mr. Rice:

Q. Mr. Peterson, you testified this morning that you had been appointed Code Supervisor by General Hugh Johnson of the National Industrial Recovery Act and by Secretary Wallace of the Department of Agriculture, is that right?

A. That's right.

1473

Q. And had you been recommended by the live poultry industry prior to that appointment?

A. Yes.

Q. Under what circumstances? A. Well, the same group of the industry that proposed the Code, immediately on the expiration of the hearing, first approached me after the hearing and asked if I would be interested in becoming Code Supervisor in the industry.

1474

Leroy Peterson—By Govt.—Direct

Mr. Heller: I do not think that is relevant, your Honor, he is the Code Administrator, and that settles it.

Q. What was the effective date of that Code?

A. The Code became effective April 23, 1934.

Q. Ten days after it was approved by Franklin D. Roosevelt? A. Yes, sir.

Q. And you were appointed on April 23rd? A. Yes, sir. I was appointed—

Q. Never mind specifically when your two appointments came through; when was your ultimate appointment? A. April 23rd.

Q. Then you stated that you spent the next two or three weeks getting your staff together? A. Yes.

Q. What did you do after that? A. We called a general meeting of the entire industry for May 15th.

Q. 1934? A. 1934. We were ready then to put the Code into effect on May 16th and we called a meeting of the entire industry in the Federal Building at No. 641 Washington Street on the afternoon of May 15th. About 800 people of the industry attended that meeting.

Q. 800? A. Everybody that had even the remotest affiliation with the industry attended that meeting.

Q. What happened at that meeting? A. At that meeting—

Mr. Heller: Just a minute, your Honor, I object to it as not binding upon us.

The Court: I don't know what they are trying to show.

Mr. Rice: I will withdraw the question.

1475